

DECEMBER 2025 CASELAW UPDATE

(Cases from November 1–30, 2025)

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**DIVORCE:
PROCEDURE AND JURISDICTION**

Because He Made A General Appearance In Divorce, Father's Military Deployment Was Not A Ground To Set Aside Default Judgment Under Servicemembers Civil Relief Act.

1. *In re Austin*, __ S.W.3d __, No. 04-25-00300-CV, 2025 WL 3084534 (Tex. App.—San Antonio 2025, orig. proceeding) (11-05-2025).

Facts: Mother filed for a divorce from Father. Mother's attorney unsuccessfully attempted to contact Father's attorney before the final trial, at which neither Father nor his attorney appeared. (Father's attorney was later disbarred for conduct in representing multiple clients.) Father was a military police officer in the US Air Force, had assaulted Mother and the Children, and had engaged in multiple affairs. The Children barricaded themselves in their rooms when Father consumed alcohol. Mother did not previously report Father's actions because she did not think she would be believed.

The trial court granted a default divorce on the grounds of cruelty, adultery, and insupportability. Mother was appointed sole managing conservator, and Father was ordered to pay child support and spousal maintenance. The court additionally changed the Children's last names and awarded Mother attorney's fees. Eight months later, Father filed a petition for bill of review asserting: (1) he was deployed and unable to communicate during the divorce proceedings; (2) he was still on active duty; (3) he had not communicated with his attorney and had filed a grievance against her; and (4) he received actual notice of the default about 6 weeks after it was signed.

Argument at the bill of review hearing centered on the Servicemembers Civil Relief Act (SCRA). In her response to the bill of review, Mother asserted that Father's deployment alone did not invoke SCRA provisions, and she attached a memorandum from the Air Force confirming Father had been convicted by court martial of child endangerment and assault on a family member or partner. No witnesses were called, and no evidence was admitted at the bill of review hearing. After taking the matter under advisement, the court vacated the default judgment and reopened the divorce. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: To successfully prevail on a bill of review, the petitioner "must allege and prove: (1) a meritorious defense to the cause of action alleged to support the judgment, (2) which he was prevented from making by the fraud, accident or wrongful act of the opposite party, (3) unmixed with any fault or negligence of his own." Courts strictly apply these requirements because "it is fundamentally important in the administration of justice that some finality be accorded to judgments." Courts do not relax these requirements even if it appears that an injustice has been done.

Father received notice of the default judgment more than 20 days but fewer than 90 days after the judgment was signed, yet he did not invoke Texas Rule of Civil Procedure 306a to extend post-judgment deadlines. This lack of due diligence constituted negligence that was fatal to his petition for bill of review. Father's inaction could have been explained by either his failure to act or his attorney's failure to act. If the fault was that of his attorney, that circumstance was insufficient to support a bill of review. Similarly, a pro se litigant cannot rely on ignorance of his legal remedies to excuse his inaction. While the appellate court recognized the harshness of the result, it also noted the necessity for there being finality to judgments.

Under the SCRA, a servicemember may file an application to vacate or set aside a default judgment rendered against them if (1) the servicemember was materially affected by reason of that military service in making a defense to the action; and (2) the servicemember has a meritorious or legal defense to the action or some part of it. While this remedy is comparable in some respects to a bill of review, it constitutes a distinct statutory process governed by separate standards. In the divorce, Father had filed a general denial and counterpetition. The SCRA remedy only applies when the servicemember did not make an appearance. Father could have sought a stay during the divorce under the SCRA, but he did not do so. Although Father was deployed throughout the divorce, he made a general appearance and was, thus, not entitled to use the SCRA to attempt to set aside the default judgment.



Testimony Of Former Judge In Jury Trial Harmful Error Because It Conveyed "An Official Endorsement" That Likely Impacted The Jury's Determination.

2. *In re Estate of Lopez*, __ S.W.3d __, No. 24-0315, 2025 WL 3114451 (Tex. 2025) (11-07-2025).

Facts: After Decedent's death, Son moved for independent administration and an heirship determination. The probate court granted Son's requested relief, and Decedent's estate was distributed to Son and his two siblings. Subsequently, Wife filed a petition for bill of review, seeking a judgment that she was an heir of Decedent. Before ruling on heirship, the question of whether Decedent and Wife were informally married was presented to a jury. At that jury trial, a former family-court judge testified via a videotaped deposition as an expert over Son's objections. The Former Judge opined that the parties satisfied the statutory elements of informal marriage. The jury found a marriage existed.



Son appealed, and the appellate court affirmed, finding the inclusion of the expert testimony was harmless error. The appellate court reasoned (1) the evidence was cumulative; (2) the Former Judge did not present any improper legal concepts; (3) Wife did not emphasize the Former Judge's testimony; and (4) other evidence supporting Wife's claims withstood Son's factual sufficiency challenge. Son petitioned the Texas Supreme Court for review.

Holding: Court of Appeals Reversed; Remanded to Trial Court

Opinion: A qualified expert may testify if their specialized knowledge will help the trier of fact. Because the expert's testimony does not help unless the expert's knowledge and experience are beyond that of an average jury, the court should exclude expert testimony if the expert is forming an opinion within the common knowledge of the jury.

Erroneous admission of expert testimony is harmless unless the inclusion of the testimony probably caused the rendition of an improper judgment. To determine whether error was harmful, the court must evaluate the entire case from voir dire to closing, considering the evidence, strengths and weaknesses of the case, and the verdict. For example, the error would be harmless if the testimony was cumulative of other evidence but harmful if the testimony was crucial to a key issue.

Because the question of whether evidence established an informal marriage was within the average juror's knowledge, inclusion of the Former Judge's testimony was error. Wife offered no argument for why "specialized knowledge" was necessary. The Former Judge testified at length about Family Code presumptions, but conveying that information to the jury is the role of the sitting judge not an expert. Instead of aiding the jury, the Former Judge's testimony provided "an official endorsement" favoring Wife's position. She emphasized that she formed her opinions "wearing [her] judge's hat" and explained that on the evidence presented, based on her experience presiding over 5,000 family-law trials, Wife should win.

Further, the Former Judge's testimony was critical to the only contested issue in the case. While there was evidence favoring Wife's claim, there was also controverting evidence. The evidence was not one-sided. It was unclear from the record whether the jury would have found an agreement to be married in the absence of the Former Judge's testimony. Additionally, contrary to the appellate court's findings, not all the Former Judge's testimony was cumulative. She provided her own spin on how the jury should weigh the competing evidence. Wife's use of the Former Judge's testimony was calculated and not inadvertent. Finally, the Former Judge's role was emphasized throughout her testimony. The trial court abused its discretion in including the testimony, and the appellate court erred in finding the error was not harmful.

The Supreme Court noted that it was not stating that former judges should never testify as experts. However, practitioners should be mindful of touting and emphasizing the former judge's role. "The entrance of a judge into the litigation arena in aid of a combatant impacts not only the outcome of that conflict but the very idea of judicial impartiality."

**DIVORCE:
PROPERTY DIVISION**

Without Evidence Of Source Of Funds Used For "Purchase," Deed Conveying Separate Property From Husband "A Single Man" To Husband "A Married Man" Did Not Establish Character Of Property As A Matter Of Law.

3. *Cruz v. Bazan*, No. 03-24-00478-CV, 2025 WL 3180239 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (11-14-2025).

Facts: Husband and Wife were married for just over one year. Husband owned real property before marriage. During the marriage, Husband conveyed that property to himself for \$10, identifying himself as a single grantee and a married grantor. During the divorce, Wife moved for summary judgment to find this transaction converted the property to community property. Wife obtained the deeds through the real property records because Husband failed to produce them in response to Wife's discovery requests. Husband did not file a response to the motion for summary judgment. The trial court granted Wife's motion and signed a final decree including the property as part of the community estate. Husband appealed.

Holding: Reversed and Remanded.

Opinion: On appeal, Wife argued that her motion was a no-evidence motion, to which Husband failed to respond. Wife did not assert in her motion that there was an element of Husband's claims or defenses for which no evidence existed. Thus, the motion was a traditional motion for summary judgment—not a no-evidence motion. Accordingly, Wife bore the burden to establish her claims as a matter of law, and this burden remained the same regardless of whether Husband filed a response.

Husband argued the deed did not conclusively show the disputed property was community property. Presumptions do not apply in summary-judgment proceedings. An essential factor in determining whether property acquired during marriage was separate or community is the source of funds to make the purchase. Wife offered no evidence of the source of the \$10 for the "purchase." Wife did not establish she was entitled to relief as a matter of law, so the burden never shifted to Husband to present a genuine issue of material fact.



Property Received By Wife From Her Parents During Marriage Presumed To Be A Gift, And Husband Failed To Rebut Gift Presumption; Provision Allowing Wife To File Federal Taxes As Head Of Household Struck Because State Court Cannot Determine Issues Of Federal Tax Law.

4. *Miles v. Miles*, No. 05-24-00018-CV, 2025 WL 3241330 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (on reh'g) (11-19-2025). [On reh'g, the court considered Wife's first cross-issue on the merits instead of finding waiver.]

Facts: Husband and Wife were married almost 25 years. When the parties married, Husband worked at Texas Instruments, but about 8 years into the marriage, he lost his job. Although he used a severance package to contribute to family expenses for a while, Husband did not obtain another job and instead stayed home with the parties' Child. About 6 years after being laid off, Husband went to law school in South Carolina, while Wife remained in Texas and continued working. The Child stayed with his paternal grandparents during that time. Husband and the Child returned to Texas after Husband's graduation, but Husband did not obtain a law license or a job.

After the Child was an adult, Wife filed for divorce, and Husband filed a counter-petition. At trial, Husband was represented by counsel, and Wife appeared pro se. Wife testified that certain real property in North Carolina was gifted to her by her parents. She acknowledged that the property was gifted during the marriage. Husband asserted that community funds were contributed to the property during marriage, but he conceded he personally did not pay taxes on the property.

The trial court issued a memorandum ruling requiring a relatively immediate sale of the marital residence and dividing the proceeds of the sale of the marital residence 60/40 in Wife's favor. Other personal property was specifically awarded in the division, with many accounts being divided in half, and the North Carolina property was confirmed as Wife's separate property. Additionally, Wife was permitted to declare herself as head of household for the year before the memorandum ruling was issued. Husband was awarded attorney's fees to be paid out of the proceeds of the marital residence. And, the party remaining in the residence until the sale was ordered to pay rent to the other party if one of them moved out. A final decree was signed in conformity with the memorandum ruling.

Subsequently, Husband filed motions to modify the judgment. The trial court issued an order setting aside the decree and instructed Wife pay \$10,000 as security to Husband or else the trial court would grant Husband's requested relief, which included his request that the North Carolina property be characterized as community property. Wife filed a motion for reconsideration of that order. The trial court then issued a new ruling setting aside its interim order and modifying the prior decree by changing the division of the net proceeds of the sale of the residence to a 50/50 split (after the attorney's fees were paid to Husband) and including additional provisions regarding the potential appointment of a receiver.

Husband appealed pro se.

Holding: Affirmed as Modified in Part, and Remand in Part.

Opinion: Husband first challenged the characterization of the North Carolina property as Wife's separate property. While the evidence was not voluminous, it was sufficient to support the determination. When a parent conveys property to a child, a gift presumption arises. The party challenging that presumption must show with clear and convincing evidence a lack of donative intent.

The deeds granting the property from Wife's parents to Wife included the nominal consideration of \$10. Husband argued this consideration negated the gift presumption. However, consideration recited in a document of transfer may refer to a non-valuable consideration that is not inconsistent with a gift. There was no evidence of "onerous consideration." Further, there was no evidence in the record the \$10 consideration was paid. Additionally, Husband testified that he would not pursue an appeal with respect to the North Carolina property if the trial court divided the marital residence 50/50, indicating his understanding he did not have a valid legal claim to the North Carolina property. Thus, Husband failed to overcome the gift presumption, and the trial court did not abuse its discretion in characterizing the property as Wife's separate property.

Husband additionally complained of Wife transferring the North Carolina property to her brother after the divorce. However, even if the appellate court had sustained Husband's first issue, the only relief the court could have provided was a remand for a just and right division.

Husband also challenged the decree's provision that Wife was permitted to file federal income taxes as head of household. Husband also waived that issue for review; however, the court was required to address the issue because it raised jurisdictional questions. State courts cannot determine issues of Federal tax law. Accordingly, this provision was struck from the decree for lack of jurisdiction, and Husband's issue was dismissed as moot.

Further, Husband complained of the decree's award to Wife of the parties' master bedroom furniture. He asserted the bedroom suite should have been divided equally with the other household furniture. Husband did not contradict Wife's claim at trial that the suite was purchased during marriage, and he failed to show how any error regarding this award would have had more than a de minimis impact on the just and right division.

Finally, Husband challenged the receivership language. Husband separately appealed the appointment of the receiver, and Husband's complaints in that appeal were overruled. Thus, most of Husband's challenges regarding the receiver in this appeal were moot. Husband additionally asserted that the trial court abused its discretion in modifying the receivership provision of the initial decree. However, the trial court had plenary power at the time it rendered its modified order.

In a cross-appeal, in two issues, Wife complained of the sufficiency of the evidence to support the attorney's fee award and argued the provision that the fees be taken from the proceeds of the marital residence was unconstitutional. Wife failed to preserve her constitutional complaint by failing to raise it in the trial court. However, an evidence-sufficiency complaint after a bench trial may be raised for the first time on appeal. In support of his request for fees, Husband offered his fee agreement with



the law firm representing him and redacted invoices. However, Husband's attorney did not testify as an expert on fees or submit an affidavit or sworn declaration as to the reasonableness of the fees charged. Because the trial court had statutory and equitable authority to award fees, but the evidence was insufficient to support the award, the proper remedy was to reverse the fee award for a new hearing on fees.

Wife additionally challenged Husband's claim of indigency. However, such a challenge must be raised in the trial court with an allegation that "the Statement was materially false when made or that because of changed circumstances, it is no longer true."

Portions Of Jury Verdict Reversed For Legally Insufficient Evidence; Trial Judge Incorrectly Made Determinations That Should Have Been Presented To Jury; Funds Deposited In Registry During Divorce Should Have Been Included In Division Of Community Estate Because No Evidence Was Presented To Rebut The Community-Property Presumption.

5. *Horgan v. Horgan*, ___ S.W.3d ___, No. 14-22-00893-CV, 2025 WL 3236342 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (11-20-2025).

Facts: The parties married in California and opened a jewelry business together. Almost 15 years later, they moved to Texas and continued operating the jewelry business. Ten years after that, Wife filed for divorce, and Husband filed a counterpetition.

Questions of fraud and reconstitution of the community estate were tried to a jury, and the division of the marital estate was presented to the bench. The jury found both parties committed fraud but valued Husband's fraud at zero and Wife's at just over \$20k. The jury further found Wife had unfairly depleted the community estate by over \$1 million. The trial court reconstituted the community estate and, accounting for the parties' debts, divided the reconstituted assets nearly equally between the parties. However, about 70% of the debts were allocated to Wife. The overall division resulted in a 55/45 split in Husband's favor. Wife appealed.

Holding: Affirmed in Part; Reversed and Remanded in Part.

Opinion: After the jury returned its verdict, Wife filed a motion to disregard certain findings because the evidence was insufficient to support them. She reasserted these complaints in a motion for new trial, preserving the issue for appeal.

The jury found three transactions to be unfair; however, Wife presented evidence that one of the transactions was duplicative of two others. An expert review of the accounts corroborated Wife's claim of duplication. A reasonable factfinder could not disregard the conclusive evidence of duplication, making the evidence legally insufficient to find all three transactions to be unfair. Accounting for the duplication, the division of the community estate would be 58/42 in Husband's favor.

Wife additionally asserted that there was no evidence *she* made the transfers described above. Wife claimed the bank made the transfers without her knowledge. However, the question presented to the jury read, "Were the following transfers or transactions made by [Wife] to her mother [], fair?" This wording presupposed Wife made the transfers, and Wife did not object to the jury submission. Thus, Wife did not preserve that issue for appellate review. Further, the evidence showed only Husband and Wife had access to the bank account in question. Funds from that account were transferred to Wife's mother, which the jury found to be unfair to the community estate.

Wife further complained of a separate transaction and asserted no evidence supported a finding that she made the transfer. There was no evidence in the record of the accounts from or to which the transfer was made. "In the absence of any evidence establishing that this transaction occurred, we conclude that the trial court abused its discretion by refusing to disregard the jury's finding." Taking this error and the above error into account, the division of the community estate would be 61/39 in Husband's favor.

Wife next argued the court erred because, when reconstituting the community estate, the trial judge included other transactions it determined were fraud committed by Wife. The transactions in question were presumptively fraudulent because they were made by Wife, and there was no evidence Husband knew about or consented to the transactions. Thus, the question of whether those transactions were fraud should have been submitted to the jury, but they were not. The parties had expressly agreed the jury would serve as the factfinder on these issues, yet they were omitted from the jury charge. Therefore, the claims of fraud were waived, and the trial court lacked discretion to unilaterally treat those unsubmitted transactions as fraud in reconstituting the community estate.

Wife additionally complained that the trial court failed to account for funds "returned" to the community estate by her mother. However, Wife did not offer sufficient evidence at trial to account for these funds.

Wife further complained about a lack of findings. However, the court need not issue findings on fact issues determined by a jury.

In her final issue, Wife challenged the valuation of the parties' business. Wife offered no evidence at trial of value. Husband did not offer a formal valuation, but he presented values based on the "asset approach" and the "market analysis approach." While he did not expressly state an opinion as to the fair market value, Husband provided the trial court with some evidence to value the business.

In a cross-appeal, Husband asserted the jury undervalued Wife's fraud. However, Husband's claims were controverted and not supported by another witness or any documentary evidence. The jury valuation of Wife's fraud was supported by the evidence.

Finally, during trial the court found Wife in contempt and required her to post a bond into the court's registry in lieu of serving a sentence in jail. Wife's mother posted the bond. Because those funds were received during marriage, they were



presumptively community property. At trial, Wife presented no evidence that the funds in registry were separate property. However, the trial court did not include those funds in the division of the community estate. Thus, because Wife did not carry her evidentiary burden of establishing the separate character of the funds, the court sustained Husband's second cross-issue on appeal regarding the failure to divide those funds.

Due to the above errors, the entire division was reversed for a new just and right division in light of the appellate court's opinion.

**SAPCR:
PROCEDURE AND JURISDICTION**

Father Not Entitled To Bill Of Review To Challenge Enforcement Order That He Failed To Timely Appeal; Attorney-Immunity Protected Mother's Attorney From Claims Of Fraud Relating To Proposed Order Included Attorney's Fee Award Not Orally Rendered.

6. *Gunal v. Block*, No. 01-23-00838-CV, 2025 WL 3210085 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (11-18-2025).

Facts: In a child-support-enforcement suit, Mother was represented by her Husband. After a final hearing, the court rendered judgment in Mother's favor but did not mention attorney's fees. When Husband prepared the final written order, he included fees. Father's attorney objected to the inclusion of fees and prepared another proposed order. The court signed the order that included fees and denied Father's motion for judgment nunc pro tunc to remove the fee award.

A year later, Father filed a petition for bill of review, sought declaratory relief modifying the order, and alleged Husband committed fraud. Mother and Husband moved to dismiss and for summary judgment. They argued Father could not use a declaratory judgment action to collaterally attack the final order; Father's claims against Husband were barred by attorney immunity; and Father's bill of review petition failed on the merits. The trial court dismissed Father's suit, and he appealed.

Holding: Affirmed.

Opinion: Father could not prevail on his bill-of-review petition because he did not establish that his failure to appeal the final order was not due to his own negligence. Father argued he could not appeal because he did not receive timely notice of the order. However, the record showed that the order was mailed to Father's home address six days after it was signed. Father additionally argued Husband provided false information to the court outside of a trial setting. However, even if true, Father saw Mother's proposed order, objected to the order, presented his own order, and received a copy of the signed final order. Nothing prevented Father from timely appealing that final order. Finally, to the extent that the written order varied from the oral ruling, the written order controls. Additionally, the court maintains power to modify its judgment for 30 days after signing. Moreover, the Family Code requires the award of fees when enforcing child-support orders.

Next, a declaratory judgment action may not be used to collaterally attack, modify, or interpret a prior judgment. Father sought to use a declaratory judgment to modify the enforcement order, and the trial court did not abuse its discretion in granting summary judgment on that ground.

Father further asserted Husband violated Father's due process rights by submitting a proposed order that did not conform to the court's oral ruling. The attorney-immunity defense applies when an attorney is discharging their professional duties to a client. The question of applicability focuses on whether the action is "the kind" immunity protects, not on the act's alleged wrongfulness. The submission of the proposed order was "lawyerly work" and protected by immunity.

**SAPCR:
ALTERNATIVE DISPUTE RESOLUTION**

In Modification Suit, Grandparents Not Entitled To Judgment On MSA Signed During Divorce They Failed To Bring To Courts' Attention While Trial Court Retained Plenary Power Over Divorce.

7. *In re C.T.H.*, ___ S.W.3d ___, No. 05-22-01202-CV, 2025 WL 3285467 (Tex. App.—Dallas 2025, no pet. h.) (on reh'g) (11-25-2025).

Facts: Early in their relationship, Mother, Father, and one of their Children lived with the maternal Grandparents. Mother and the Child moved out, but after the birth of the second Child, Mother moved back in with Grandparents. Grandparents filed an original SAPCR; however, Mother and Father soon filed their own divorce action, and the two cases were consolidated with Grandparents as "intervenor." The parties entered into an enforceable MSA that gave Grandparents visitation rights, but that agreement was never brought to the trial court's attention. Despite the MSA, Grandparents agreed to entry of a final decree that did not incorporate the MSA. The decree required Grandparents to provide health insurance for the Children but did not give Grandparents rights to visitation.

In a subsequent modification proceeding, Mother stated that she had moved out of Grandparents' home and that Grandmother had become more controlling since Mother and Father's divorce. Mother moved in with her boyfriend, whom she later



married. Grandparents intervened in the modification suit seeking to be named sole managing conservators of the Children. Father had no affirmative pleading in the suit. After trial but before the written order was signed, Grandparents moved for entry of an order on the MSA signed during the divorce proceeding. The trial court declined to include the MSA's terms. In the final written order, Grandparents were released from any obligation to provide health insurance, their requests for conservatorship and possession were denied, and multiple injunctions were entered against Grandparents to prevent them from contacting the Children. Grandparents appealed.

Holding: Affirmed

Opinion: Grandparents argued the injunctions preventing them from contacting or communicating with the Children, Mother, and Mother's husband and from contacting the Children's child-care facilities or schools constituted an unconstitutional prior restraint on their free speech without the requisite supporting findings. First, Grandparents failed to make this complaint to the trial court. Moreover, even if they preserved their complaint, it lacked merit. The injunctions were not directed at the content of Grandparents' communications. Because the injunctions were not content based, the court was not required to perform a prior restraint analysis.

Grandparents additionally argued that the evidence did not support any of the injunctions against them. They asked the appellate court to review whether the traditional requirements of a permanent injunction—a wrongful act, imminent harm, irreparable injury, and no adequate remedy at law—were met, as the Fort Worth appellate court does in family law cases. However, in family-law cases, the Dallas court reviews permanent injunctions for an abuse of discretion. Grandparents argued the injunctions could not stand under either standard. The trial court was in the best position to weigh the evidence and found that Grandmother's behavior had risen to the level that it was in the Children's best interest that she be enjoined from contacting the Children's schools. It further found that the injunctions were necessary due to the high level of animosity between the parties.

Grandparents further argued that a conflict between the findings and injunctions required reversal. Despite an injunction that Mother not permit the Children to have contact with the Grandparents, the court issued a finding that Mother had the discretion to choose to allow Grandparents to have access to the Children. If there is a conflict between the judgment and findings, the findings control. Here, however, the conflict was harmless. Even if that injunction were vacated, other injunctions prevented Grandparents from communicating with the Children. Thus, a modification suit would still need to be filed if Mother changed her mind about Grandparents' access to the Children.

Grandparents additionally sought to enforce an MSA entered into during the parents' divorce proceeding that gave Grandparents access to the Children. Grandparents did not raise this issue in the trial court, and the MSA applied to the divorce, not the subsequent modification suit. The trial court did not abuse its discretion in refusing to render judgment on the ten-year-old MSA. Further, the MSA was entered into during the divorce proceeding, and the trial court's plenary power in that suit had expired by the time Grandparents sought judgment on the MSA. Moreover, Grandmother showed that she had read and understood the final decree in the divorce when she signed it as "agreed as to form and substance related to child support, health insurance ... agreed as to form only as to all remaining issues." Grandmother unsuccessfully appealed on grounds that did not involve the MSA. The trial court's continuing, exclusive jurisdiction did not alter its plenary power over the divorce. Only after participating and not prevailing in the modification suit did Grandparents seek enforcement of the MSA.

"Grandparents have been litigating with their family since 2012. The policy behind [the Family Code's MSA statute] is to bring custody battles to an end and stop the overwhelming emotional and financial burdens that such a case places upon a family. Grandparents' continued litigation over the MSA turns the statute upon its head—exacerbating litigation long after it was concluded in the divorce case. The statute is not a forever statute. An MSA does not apply to any and all cases that happen to involve the same family members at some point in the future. When the plenary power of the trial court expired in the original case and Grandparents had done nothing with the MSA, the MSA simply evaporated. ... the MSA no longer applied because the case in which it was mediated was over." (citations omitted).

The claim that Grandparents were entitled to judgment on the MSA was an impermissible collateral attack on the divorce decree. Further, *res judicata* barred this relief because Grandparents should have sought entry on the MSA during the divorce proceeding. Additionally, a modification suit requires a material and substantial change since the prior judgment or agreement, indicating the circumstances supporting the MSA were no longer applicable and also barred by *res judicata*.

Grandparents next argued that the trial court erred in failing to reopen the evidence to present online interviews given by Mother discussing one of the Children's sexuality and suicidal behaviors. Grandparents believed Mother's actions could significantly impair the Children's mental health. However, some of these interviews happened before the trial. Thus, Grandparents failed to establish due diligence in obtaining the evidence to support reopening the evidence.

Finally, Grandparents argued the evidence was insufficient to support a fit-parent finding. Because there is a presumption of fitness, Grandparents bore the burden of overcoming that presumption. However, Grandparents' allegations were not supported by the evidence, and there was evidence to reflect Mother had legitimate reasons to disassociate herself and her Children from Grandparents. Contrary to Grandparents assertions, the record reflected the Children were more than adequately cared for by their parents.



**SAPCR:
PARENTAGE**

No Evidence Supported Finding Husband As Children's Father When Every Party Claimed Or Acknowledged Otherwise And No Evidence Supported Finding.

8. *In re E.K.*, No. 02-24-00482-CV, 2025 WL 3248090 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (11-20-2025).

Facts: Although Mother was married to Husband, she lived with Father for many years. Husband lived in Kenya. Mother and Father had three Children together, all while Mother was married to Husband. Father was abusive and had made false statements about the Children's paternity in prior suits by stating the Children had no presumed father, despite Father's knowledge of Mother's marriage.

After Mother died, maternal Grandfather sought custody of the Children and asked for an order for child support. The court declared Father's paternity acknowledgments void, found Father was not the Children's father and adjudicated Husband as the Children's father. No one believed or alleged Husband was the Children's father. The amicus argued, and the trial court agreed, Husband was a necessary party to the prior suits, making the final orders in those suits void. Father appealed.

Holding: Reversed and Remanded.

Opinion: Father argued the trial court abused its discretion in finding he was not the Children's father. While the appellate courts review these types of decisions under the abuse-of-discretion standard, neither the appellate court nor the trial court can ignore undisputed evidence that allows for just one reasonable conclusion. A trial court abuses its discretion if it ignores undisputed truths or makes findings that lack evidentiary support. No party disputed Father's paternity. Grandfather asked for the adjudication of Father's paternity. Husband did not claim to be the Children's father. Father admitted to his paternity. The OAG's petition stated Father was the father and asked for Father to pay child support. Even the amicus referred to Father as the father. On appeal, Grandfather urged the appellate court to keep the Children in his custody but did not dispute that Father was the father. The conclusion that Husband was the father "teetered on the edge of physically impossible."

**SAPCR:
CONSERVATORSHIP**

Evidence Supported Appointing Father Sole Managing Conservator And Restricting Mother's Access To Two Phone Calls A Week.

9. *In re Marriage of Waters*, No. 07-25-00057-CV, 2025 WL 2056875 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (11-18-2025).

Facts: Mother and Father had five Children during their marriage. Father filed for divorce. Mother made allegations of a sexual nature against Father, claiming possible assault on a Child, preoccupation with teenaged girls, and addiction to pornography. The record also showed Mother suffered from mental health issues, and at least some of her allegations were fabricated. Additionally, some evidence showed abuse and trauma to the Children inflicted by Mother. Mother also attempted to alienate the Children from Father. After a bench trial the court signed a final decree and issued findings, which included one finding that most of Mother's testimony was not credible. Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted the trial court abused its discretion in appointing Father as the Children's sole managing conservator. Mother argued the trial court erroneously relied on a polygraph taken by Father referenced in the child-custody evaluation. However, she failed to object to the polygraph's admission and, thus, failed to preserve that complaint for appellate review. Regardless, the court also heard evidence about the Children's circumstances, Mother's attempts to coach and alienate the Children, Mother's unfounded allegations against Father, and Mother's physical abuse of one of the Children. Additionally, the court heard expert witness testimony regarding Mother's mental health. While the court also heard evidence that painted Father in a negative light, the trial court was in the best position to evaluate witness demeanor and credibility.

Mother additionally argued the trial court erred in limiting her access to the Children to two supervised phone calls twice a month. While Mother repeatedly compared her alleged risk to that of Father's, that was not the proper inquiry. Rather, the court was tasked with determining how to best further the Children's best interests. In addition to the evidence discussed above, the record was replete with evidence of how damaging Mother's emotional abuse and developmental trauma were to the Children. The trial court did not abuse its discretion in heeding the child custody evaluator's recommendation to restrict Mother's access to phone calls.

Finally, Mother challenged the just and right division of the community estate. Mother's argument was based on her allegations that Father hid cash. Mother argued that without evidence of the amount of cash he hid, the court could not make a just and right division. However, the trial court found most of her testimony was unbelievable. Based on the information before the



court, the division was approximately 52/48 in Father's favor. Evidence showed Mother made false police and CPS reports against Father causing unnecessary and expensive testing. Father paid nearly all the litigation and professional costs. Father paid support for Mother during the divorce and provided health insurance for himself and the Children. Mother did not show the division was so unjust and unfair as to constitute an abuse of discretion.

**SAPCR:
CHILD SUPPORT**

Evidence Supported Father Was Underemployed Given His Multiple Businesses And Subsidized Lifestyle.

10. *In re K.W.*, No. 04-24-00831-CV, 2025 WL 3157649 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (11-12-2025).

Facts: Father, who was five years older than Mother, began dating her when she was in middle school. She gave birth to their Child just before Mother turned 18 years old. The parents never married. Father claimed to be active in caring for the Child, who was about 10 years old at the time of this suit. Father was married to another woman, with whom he had three children. Mother lived with her fiancé and worked full time at a job that provided access to health insurance for her and the Child. The trial court appointed the parties joint managing conservators, gave Mother the exclusive right to designate the Child's primary residence, issued an extended standard possession order for Father, and ordered Father to pay child support. Father appealed pro se.

Holding: Affirmed.

Opinion: Father challenged the conservatorship and possession orders. However, the trial court was free to find Mother to be the more credible witness and disbelieve Father's testimony. The evidence supported the trial court's judgment, so the appellate court could not find an abuse of discretion.

Father additionally challenged the amount of his child support obligation. He argued the trial court found he was intentionally underemployed and incorrectly included in his net available resources money he reinvested in his businesses and money he received from family. Father owned at least three businesses, paid his wife \$5000 a month as a salary for working at two of those businesses, and previously received \$1000 a month for working at his parents' restaurants. Additionally, his parents paid a \$1300 monthly mortgage on Father's second house, paid his monthly \$1100 car payment, and paid other bills. Father testified that he supported the Child in ways other than money but offered to get a job if necessary. The trial court could have reasonably concluded Father was intentionally underemployed. Further, the evidence supported the court's determination of Father's net resources and child-support obligation at \$800 per month.

Finally, Father asserted the trial court erred in excluding certain evidence. Father made neither an offer of proof or formal bill of exception and, thus, failed to preserve error.

Husband's Net Resources Could Not Be Based On Temporary Orders Because Neither The Temporary-Orders Transcript Nor Evidence Supporting That Ruling Was Offered At Final Trial.

11. *In re B.R.*, No. 05-24-01146-CV, 2025 WL 3208209 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (11-17-2025).

Facts: Husband owned a lawn care business and received some assistance from family during the divorce proceedings. Wife did not present evidence of Husband's income but provided her belief as to the value of Husband's company. Husband presented some evidence of his income but no evidence for his business valuation. The parties had four Children, including one who was an adult disabled Child. Caring for that Child prevented Wife from maintaining full-time employment. Both parties provided estimates for their belief of the value of the marital residence. At the trial's conclusion, the court ruled Father would continue to pay child support based on the temporary orders and divided the marital estate, including awarding Husband his business and Wife the marital residence. Husband appealed.

Holding: Affirmed in Part; Reversed in Part.

Opinion: Husband argued the evidence was insufficient to support the determination of his net resources. Although evidence was presented regarding Husband's net resources, the evidence did not support the ultimate determination of his net resources. Rather, when orally rendering, the trial court stated its intent to set child support at the amount set in the temporary orders. However, the temporary orders transcript was not offered into evidence and, thus, could not be relied upon by the trial court for the final ruling. The appellate court sustained Husband's issue and remanded the issue of determining Husband's net resources.

Husband next complained of the division of the marital estate because the evidence for the values of his business and the marital estate was insufficient. Generally, a party who does not provide the trial court with valuation for property cannot complain about the lack of information on appeal. Moreover, Husband did not argue on appeal that the division was so unequal as to materially affect the just and right division of the community estate.

Finally, Husband complained of the order's requirement that he pay all ad valorem taxes on real property awarded to Wife. In the allocation of debts section, Husband was ordered to pay all taxes, etc. on property awarded to Wife. However, the exact



same provision later provided that Wife was ordered to pay all taxes awarded to Wife. The conflicting language created an ambiguity regarding who was required to pay past-due ad valorem taxes and was remanded for clarification.

**SAPCR:
MODIFICATION**

Evidence Supported Keeping El Paso Geographic Restriction And Giving Father The Exclusive Right To Designate Primary Residence After Mother Married An Englishman And Wanted To Move To Manchester.

12. *In re A.M.G.*, __ S.W.3d __, No. 08-24-00335-CV, 2025 WL 3192601 (Tex. App.—El Paso 2025, no pet. h.) (11-14-2025).

Facts: The parties' divorce decree imposed a single-county geographic restriction on Mother's exclusive right to designate the Child's primary residence. A year later, Mother began dating a man who lived in England. After that relationship progressed, Mother disclosed the relationship to Father and indicated she was considering moving to England but had no definitive plans. Later, she made her decision to move and notified Father of that intent. Father filed a petition to modify the decree and asked to be the conservator with the exclusive right to designate the Child's primary residence. Mother filed a counterpetition asking to remove the geographic restriction on the Child's residence.

At trial, Mother testified that she and her fiancé had a long-distance relationship and had spent about 100 days together during the prior 2 years. The fiancé had a contract with Manchester United that would be expiring within a year of trial. Mother had voluntarily quit her six-figure-income job. Per Mother, the Child had spent less than 30 days with the fiancé, and they had a "pretty good" relationship. Mother intended to get a family visa after marrying. The Child was active in her Texas community. Father was a "good father" and had been present in the Child's life. Mother claimed difficulties co-parenting but also described the parties working out a schedule together monthly. Mother was unconcerned by the distance because technology permitted long-distance communication and travel. However, Mother acknowledged the Child asked Father not to sign anything that would let Mother take the Child to Europe. Mother rejected Father's proposal that the Child remain in the U.S. during school and travel to Europe for vacations and breaks.

On the second day of trial, which occurred a few months after the first day, Mother reported that she had married her fiancé, her new husband earned close to \$2 million a year, and he would be able to fully support Mother and the Child. Mother claimed the Child's relationship with extended family would not be impacted because the family could visit the Child in Manchester. In Texas, the Child's education was dual language, and in Manchester it would be fully in English. Mother admitted the Child had never been exposed to full-immersion English instruction.

Father had a work-from-home job that paid \$85k annually. Father expressed concerns about the Child being removed from her community, school, and family. Father stated Mother often insulted him when she did not get her way and made coparenting difficult. He further described an assault against him by Mother during an exchange. The Child started therapy after that incident. Ultimately, the trial court found in Father's favor and issued findings. Mother appealed.

Holding: Affirmed.

Opinion: Mother first challenged the denial of her request to remove the geographic restriction. When determining whether to lift a geographic restriction, the courts consider the *Lenz* factors: (1) the parent's good-faith reasons for the proposed move; (2) the effect the move would have on the economic, educational, health, and leisure opportunities for the custodial parent and the child; (3) the positive impact the move would have on the custodial parent's emotional and mental state, with beneficial results to the child; (4) whether the move would improve the custodial parent's financial situation and ability to provide a better standard of living for the child; (5) whether the child's special needs or talents could be accommodated at the new location; (6) the child's relationship with and presence of extended family and friends, and the effect the move would have on those relationships; (7) the effect the move would have on the noncustodial parent's visitation and communication with the child, and his ability to maintain a full and continuous relationship with the child; (8) whether the noncustodial parent has the ability to relocate; and (9) whether a visitation schedule could be arranged that would allow the noncustodial parent to continue a meaningful relationship with the child following the move.

In reviewing the *Lenz* factors under the abuse-of-discretion standard, the evidence supported finding the geographic restriction should not have been lifted. For example, most of the prospective advantages of moving to Manchester were already available in the Child's current county, and the cultural and travel opportunities would remain available to the Child if the Child lived with Father and visited Mother.

Mother next challenged the appointment of Father as the conservator with the exclusive right to designate the Child's primary residence. The parties did not dispute the existence of a material and substantial change to support modification. Like the above analysis, in reviewing the *Holley* factors under the abuse-of-discretion standard, the evidence supported giving Father the exclusive right to designate the Child's primary residence.

In closing, the appellate court noted, "[w]e appreciate the difficulties of sharing children and the strain that co-parenting can place on families. There are, all too often, no perfect solutions. However, as we have explained before, our job, is not to second-guess the trial court's decision, or express how we might have ruled differently ... instead our job is to ensure that the trial court did not act unreasonably, arbitrarily, or without reference to guiding principles of family law in reaching its decision." (internal quotes omitted).



Mandamus Relief Granted After Trial Court Failed To Enforce Appellate Mandate Reversing Modification Order.

13. *In re Rogers*, No. 13-25-00585-CV, 2025 WL 3254611 (Tex. App.—Corpus Christi—Edinburg 2025, orig. proceeding) (11-21-2025).

Facts: In a prior appeal, the appellate court reversed a judgment from a modification suit filed by Mother because the trial court abused its discretion in finding a material and substantial change since the parties' earlier MSA. The appellate court issued a mandate in conformity with its opinion. Subsequently, Father filed a pro se petition for writ of mandamus asserting the trial court failed to enforce the appellate mandate and instead set the case to be heard on its dismissal docket. Neither Mother nor the OAG filed a response to Father's petition after being invited to do so.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: The mandate "reversed and rendered" judgment in accordance with its opinion and commanded the trial court to observe the order. The opinion stated the evidence did not support a finding of a material and substantial change, and the trial court abused its discretion in granting Mother's petition to modify. The appellate court rendered judgment denying Mother's petition to modify and instructed that possession, access, and child support should proceed according to the prior orders.

Father asserted in his petition for writ of mandamus that the trial court had taken no action to implement the mandate, resulting in Father being subject to erroneous provisions of the appealed order. The trial court erred in failing to conduct its mandatory, ministerial duty of enforcing the appellate judgment.

SAPCR: ENFORCEMENT OF POSSESSION / CONSERVATORSHIP

Denial Of Request For Contempt Could Not Be Challenged Through Direct Appeal; Only Through Petition For Writ Of Mandamus.

14. *In re R.J.J.*, No. 12-25-00126-CV, 2025 WL 3301167 (Tex. App.—Tyler 2025, no pet. h.) (mem. op.) (11-26-2025).

Facts: The court appointed Father sole managing conservator. Mother was ordered to pay child support, given a staircase possession schedule beginning with limited supervised possession and ordered to submit to random drug testing. Subsequently, Mother initiated an enforcement suit, alleging Father refused to allow her access to the Children. After a hearing, the trial court acknowledged that text messages introduced by Mother appeared to be frustrating, but Father had not done anything that would subject him to being held in contempt.

Later, Mother filed another similar motion for enforcement. Mother complained that Father had not turned over the Children for all of her visitation. However, Father argued that because visitation was to be supervised, he was not required to turnover the Children when Mother failed to provide a supervisor. The court expressed a belief Father was "playing games with this whole program" and stated a desire to hold him in contempt but again held that nothing Father had done could subject him to contempt. Mother appealed pro se.

Holding: Affirmed in Part; Dismissed in Part.

Opinion: Mother first challenged the decision against finding Father in contempt. However, contempt orders are only challengeable through a petition for writ of mandamus or petition for writ of habeas corpus. They are not challengeable through appeal. Accordingly, that portion of Mother's appeal was dismissed for want of jurisdiction.

Mother next argued the court erred in maintaining the supervision requirement on her periods of possession despite evidence of a material and substantial change in circumstances. At trial, Mother bore the burden to establish a modification was in the Children's best interest and was supported by a material and substantial change in circumstances. While Mother testified that Father was uncooperative, Father explained why he was unable to cooperate. Mother claimed one of the Children was afraid of Father, but Father testified both Children were happy and were performing well. Although Mother had been participating in substance abuse treatment, she also recently tested positive for methamphetamine. The trial court could have reasonably credited Father's version of events more than Mother's.

SAPCR: ENFORCEMENT OF CHILD SUPPORT
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Father Could Not Use Collateral Estoppel To Shift Burden To Mother To Prove He Was Not In Arrears Because A Recognized Exception Prevented Him Shifting That Burden To His Benefit.

15. *Bird v. Ledesma*, No. 03-24-00051-CV, 2025 WL 3083869 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (11-05-2025).



Facts: A divorce decree required Father to pay monthly child support, but he did not. Nearly 10 years after the divorce, in a modification proceeding, the court slightly increased Father's obligation. However, after a mandamus proceeding, the increase was vacated. After the Child reached adulthood, Father filed a suit seeking the return of alleged overpayments of child support. Mother responded that if Father had overpaid anything, it was subject to offsets due to his initial failures to pay the original obligation and temporary support during the modification proceeding. After a trial, the court ordered all parties take nothing. Father appealed pro se.

Holding: Affirmed.

Opinion: The applicable Family Law statute permits seeking recovery of overpayment if the obligor is not in arrears. Mother asserted Father failed to pay over \$60k for the period following the divorce until the modification proceeding. Additionally, Father failed to pay the increased monthly obligation imposed by temporary orders during the modification proceeding. Even crediting Father for the amounts reversed by the appellate court in the mandamus proceeding, Father still had an arrearage of almost \$60k, and he was seeking recovery of nearly \$40k.

To support his claim, Father pointed to a joint request filed by the parents to terminate his child support obligation. However, the divorce decree was never modified until the above-referenced modification. An agreement by the parties does not modify an order of the court. The evidence was sufficient to support a finding Father was in arrears and not entitled to relief.

Father further argued the post-divorce modification order resolved any outstanding arrears. The final modification order terminated Father's future child support obligation but did not reference any arrearage. Collateral estoppel may be used either offensively or defensively, and its offensive use "seeks to stop a defendant from relitigating an issue that the defendant has previously litigated and lost." A recognized exception to the offensive use of collateral estoppel is when the relevant burden from the first proceeding has shifted in the second proceeding against the party invoking offensive collateral estoppel.

Father asserted that Mother should have raised the issue of arrearages in the modification proceeding, and because she did not, she was not entitled to an offset in the current proceeding. But even if she had pleaded for that relief, the issue of Father's arrearage in this suit was his burden to disprove while he would not have had the burden on the issue in the modification suit, under his argument here. He did not address this exception, and his issue was overruled.

SAPCR:
REMOVAL OF CHILD / TERMINATION OF PARENTAL RIGHTS

Mother Not Entitled To Specific Findings Regarding "Continuing Danger" Preventing Returning The Child, Despite Recent Revisions To Section 161.001.

16. *In re M.B.*, __ S.W.3d __, No. 14-25-00418-CV, 2025 WL 3275376 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (11-25-2025).

Facts: TDFPS received a referral for neglectful supervision after Mother's youngest child ingested a THC gummy. Subsequently, Mother tested positive for drugs and was uncooperative. TDFPS sought termination of Mother's parental rights. The trial court terminated Mother's parental rights based on the grounds of endangerment, abandonment, and failure to follow court orders. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court abused its discretion in terminating her parental rights without making the statutorily required findings. After reviewing the briefs, the appellate court abated the appeal and directed the trial court to make findings, which the trial court did in an amended order. Mother argued the amended order was still deficient.

In 2023, the Legislature amended Section 161.001 to require certain written findings in a termination order, including a finding TDFPS made reasonable efforts to return the child to his home. Mother argued the amended order was deficient because it made no specific findings about any continuing danger in her home preventing the Child's return. However, the statute does not require specific findings as to the continuing danger.

During the proceedings, TDFPS implemented a service plan for Mother, which is most often the means by which reasonable efforts are established. Although the trial court's findings did appear to be superficially generic, they represent the evidence presented at trial as well as the efforts made by TDFPS. In this case, the evidence reflected that TDFPS put together a plan and counseled Mother.

Mother next challenged the underlying grounds for termination. However, the evidence surrounding the Child's initial removal and Mother's continued drug use supported the endangerment finding. Thus, the court did not need to address the other predicate findings.

Mother further challenged the finding that termination was in the best interest of the Child. However, the evidence showed that maintaining a relationship with Mother was not a priority for the Child. An abundance of evidence showed Mother was unable to provide for the Child's emotional and physical needs. Mother did not have a stable home environment, got involved in violent activities, and used illegal drugs. Mother did not have a job and was not able to create a safe, positive environment for the Child. The Child was placed with a safe and stable family who was willing to provide a permanent home for the Child.



Evidence Supported Granting 3-Year Protective Order Under The Code Of Criminal Procedure Based On Grandmother's Stalking Of Mother.

17. *Todd v. Garza*, No. 01-23-00891-CV, 2025 WL 3165387 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (11-13-2025).

Facts: Mother's maternal uncle owned a car repair shop, where Mother and her sister worked. One day, Mother's mother ("Grandmother") appeared at the shop uninvited to accuse her brother (Mother's uncle) of sexually harassing her as a child. Grandmother was extremely aggressive and damaged computers, furniture, and other items in the shop. Grandmother hit Mother's car with a fire extinguisher, broke a car window, and left the extinguisher in the car, causing Mother \$5000 in damages. This total did not include the damages to the shop or to a house where Grandmother caused additional damages. Mother stated she was terrified of Grandmother and stopped communicating with her. Mother believed Grandmother was angry with Mother for continuing her relationship with her uncle.

Although Mother did not press charges, Grandmother was charged with criminal mischief, and Grandmother's pretrial bond prohibited Grandmother from contacting Mother, Mother's husband, and Mother's uncle. The charges resulted in deferred adjudication and community supervision. After Grandmother's community supervision ended, she tried to contact Mother. At that time Mother was teaching at a private church-affiliated school. Grandmother called the school's principal demanding to have calls returned regarding sex offenders at the church. Grandmother pledged to bring protesters to the school, but she did not follow through. Grandmother appeared at Mother's home uninvited at one of the Children's birthdays acting "angry and irritated." Mother called 911 claiming to be afraid for her and the Children's safety. A similar incident occurred at the school. Additionally, Grandmother entered Mother's home when Mother was absent to leave a letter for Mother. Mother wrote a letter to Grandmother asking to be left alone, but Grandmother again contacted the school about sexual predators. Mother testified that she had PTSD from Grandmother's actions and felt threatened or harassed by Grandmother's behavior.

Mother sought a protective order, and although some witnesses testified on Grandmother's behalf, the court granted a three-year protective order based on stalking and harassment.

Holding: Affirmed.

Opinion: The appellate court began, "We understand [Grandmother] as arguing that the protective order must be set aside because [Mother] did not prove, and the trial court did not find, that [Grandmother] committed family violence. This argument conflates the requirements of a protective order under the Family Code with the requirements of a protective order under the Code of Criminal Procedure."

The Family Code allows the issuance of a protective order if it finds family violence has occurred. At the time this order was issued, the Family Code also required a finding that family violence was likely to occur in the future. Chapter 7B, Subchapter A of the Code of Criminal Procedure authorizes a protective order on the trial court's finding that "there are reasonable grounds to believe that the applicant is a victim of [stalking]." No other fact findings are required under that provision.

Here, Mother alleged Grandmother engaged in conduct that constituted stalking, which was intended to harass, annoy, alarm, abuse, torment, or embarrass her. Although Mother also alleged family violence, she sought a protective order under the Code of Criminal Procedure, and the protective order was granted under the Code of Criminal Procedure. No finding of family violence was required.

Grandmother additionally challenged the sufficiency of the evidence to support issuing the order. A finding of stalking can support a protective order under the Code of Criminal Procedure, and the order may be effective for the duration of the lives of the offender and the victim or for any shorter period. The stalking statute incorporates a subjective harm element and an objective harm element. A person commits stalking if she engages in conduct that (1) she knew or reasonably should know that the other person will regard as threatening; (2) causes the other person to be in fear of bodily injury or feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and (3) would cause a reasonable person to be placed in fear or feel as described above. Under the abuse-of-discretion standard, there was ample evidence to support the issuance of the order.

Texas Family Code Provision Allowing For Modification Of Protective Orders Could Not Permit Trial Court To "Modify" Code Of Criminal Procedure 7B Protective Order Out Of Existence.

18. *Tate v. Landa*, No. 01-23-00656-CV, 2025 WL 3239073 (Tex. App.—Houston [1st Dist.] 2025, orig. proceeding) (mem. op.) (11-20-2025).

Facts: The appellate court construed an appeal as a petition for writ of mandamus and found that the trial court had authority to consider Respondent's request to modify a protective order issued under the Code of Criminal Procedure. The Applicant moved for a rehearing en banc, which was denied.

Holding: En Banc Reconsideration Denied.

Concurring Opinion: (J. Morgan)



Respondent may have won in the appellate court, but the law requires he lose again in the trial court. The protective order (a “7B protective order”) in question was issued under the Code of Criminal Procedure on the grounds of stalking. Many Family Code provisions apply to 7B protective orders; however, the Family Code and Chapter 7B part ways on who may ask to change a protective order’s duration. The subject of a 7B protective order may not ask the court to reduce the duration of the order based on a lack of “continuing need.”

In an amended motion, Respondent purportedly asked the trial court to “modify” the protective order to permit him to possess a firearm, review the restrictions placed upon him, and determine the necessity of all restrictions and “duration thereof.” The final request was “meaningless.” A trial court does not have a duty to “engage in a free-ranging review of a protective order at a party’s request.” Under the facts of this case, the first two requests effectively sought rescission, not modification. Additionally, excluding any specific item from the protective order would not restore Respondent’s right to possess a firearm. The only way to grant that request would be to rescind the order. Moreover, Respondent’s requests never sought the inclusion or exclusion of any specific item that would help him. His complaint was about the order’s existence, not its content.

The opinion from which Respondent sought rehearing correctly determined that Texas Family Code Section 87.001 may be used to modify a 7B protective order. However, that Family Code Section does not permit rescission of the order at the subject’s request. “Had the trial court restricted its reasoning to the issue at hand and stated it could not use 87.001 to grant [Respondent’s] request to modify a 7B protective order *into nonexistence*, that would have been correct.”

“If I were deciding this case in the first instance, I would deny [Respondent’s] request for mandamus relief. Mandamus is a discretionary writ. The trial court’s reasoning was incorrect in the abstract, but its ruling was the only correct one available. That’s not a matter an appellate court should concern itself with.” This case did not meet the standards for en banc reconsideration.

Evidence Supported Three-Year Protective Order Because There Was Evidence Of Choking, Which Constituted A Felony.

19. *Bent v. Bent*, No. 01-24-00335-CV, 2025 WL 3236295 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (11-20-2025).

Facts: After a few years of marriage, the couple began fighting. Wife had been undergoing breast reconstruction surgery due to breast cancer. During fights, Husband made derogatory comments to Wife and showed her pictures of Husband having intercourse with another woman. On another occasion, Husband choked Wife, threw her down by her hair, and stomped on her. Wife called the police after locking herself in the bathroom.

Wife needed to go to a doctor’s appointment, but Husband refused to let her use the car. Wife got a ride from a friend. At the post-operation appointment, the doctor noted bruising around Wife’s chest and back that appeared to be the result of violence and expressed concerns about Wife’s ability to heal.

At trial, Husband denied any violence occurred. However, the court issued a three-year protective order and instructed Husband to treat Wife better. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court erred in rendering a three-year protective order because none of his acts of family violence were felonies. A misdemeanor assault may be elevated to a felony if the defendant (1) had a prior conviction for an offense against a member of the defendant’s family or household; or (2) intentionally, knowingly, or recklessly impeded the normal breathing or circulation of the blood of a family member by applying pressure to the person’s throat or neck or by blocking the person’s nose or mouth. While Husband had no prior convictions of family violence, the evidence was sufficient to support a finding that Husband choked Wife to the point that she could not breathe. Thus, the appellate court presumed the omitted “felony” element of the “family violence-assault” supported the protective order.

Husband next argued the evidence did not support the family-violence finding because Wife’s story was inconsistent and police officers found Wife lacked physical evidence at the time of the incident. However, the trial court is the sole arbiter of witness credibility. Further, circumstantial evidence supported Wife’s story, including the police reports and her doctor’s notes regarding Wife’s injuries. Further, lack of bruises on Wife’s neck was not evidence no choking occurred. Physical injury was not an element. All that was required was that he impede Wife’s ability to breathe.

Finally, Husband asserted the trial court was biased against him based on the court’s chastisement of Husband’s actions. Remarks made by the judge “during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge”—nor do “expressions of impatience, dissatisfaction, annoyance, and even anger” establish bias or partiality. Here, none of the complained-of remarks demonstrated bias.

Parental-Rights Termination Did Not Deprive Biological Granddaughter Of Standing To Seek Protective Order To Protect Biological Grandmother From Abuse And Exploitation By Biological Mother.

20. *Taylor v. Norton*, __ S.W.3d __, No. 06-25-00014-CV, 2025 WL 3248186 (Tex. App.—Texarkana 2025, no pet. h.) (11-21-2025).



Facts: Biological Daughter filed an application to protect her Maternal Grandmother from Biological Mother from abuse and exploitation. Biological Daughter had been adopted as an infant by an unrelated couple. After a temporary order was issued, Biological Mother moved to vacate that order on the ground that Biological Daughter lacked standing to seek a protective order on behalf of the Maternal Grandmother due to the adoption and termination of the parent-child relationship between Biological Daughter and Biological Mother. The trial court denied Biological Mother's motion to vacate, so she filed an interlocutory appeal. However, the appellate court found it lacked jurisdiction over the interlocutory appeal. After another hearing, the trial court rendered a final protective order and found that the adoption did not extinguish consanguinity. Biological Mother appealed.

Holding: Affirmed.

Opinion: The Family Code gives standing to file an application for a protective order to adult family members. Family includes individuals related by consanguinity as determined by the Government Code, which provides that people are related by consanguinity if one is a descendant of the other or if the two share a common ancestor. An adopted child is considered a child of the adoptive parent for this purpose.

Biological Mother argued that the termination of the parent-child relationship between her and Biological Daughter also terminated the familial relationship between Biological Daughter and Maternal Grandmother, thereby depriving Biological Daughter from having standing to seek a protective order on Maternal Grandmother's behalf. However, Biological Mother did not deny Biological Daughter was the biological granddaughter of Maternal Grandmother. Being such, the relationship met the requirements for standing under the Government Code and Family Code.

Biological Mother further argued that because the termination order divested her of "all legal rights and duties," that prevented the biological relationship between Biological Daughter and Maternal Grandmother any legal effect. After reviewing past legal precedent, the court noted a distinction between an adopted child's right to inherit from her biological family versus the inability to collect wrongful death or workman's compensation damages. Further, it noted the use of the word "descendent" in the Government Code and Legislature's presumed knowledge of the status of the law regarding adopted children.

Because neither party alleged any statute was ambiguous, the court was required to "consider how Sections 161.206(b) and 162.017 of the Texas Family Code [termination statutes] operate in relation to Section 573.022(a) of the Texas Government Code [definition of family], which feeds into Sections 71.003 and 82.002(a) of the Texas Family Code [protective orders] , based on the plain text of those statutes." Biological Mother's argument asked the court to consider each statute in isolation. However, the court's role was to consider the consequences of potential interpretations under realistic scenarios that might arise.

One could imagine an adopted child reaching out to and forming a relationship with a grandparent, from whom the child has a right to inherit. Whether altruistic or not, the child would have an interest in protecting the grandparent from abuse. Thus, "preserving the legal effect of the biological descent relationship for both inheritance and consanguinity would be more harmonious than preserving the legal effect of that relationship for one and destroying it for the other."

Additionally, the standing statutes for grandparents seeking access to grandchildren do not call for a different conclusion. "Within the context of the statutory combination before this Court, the statutory grandparent-access-right scheme does not indicate that the Legislature meant to preserve the legal effect of biological descent for purposes of inheritance but to cut off the legal effect for purposes of grandparent access."

Finally, public policy would favor the broader interpretation of the statutes to allow a biological descendant to protect inheritance.

