MARCH 2025 CASELAW UPDATE

(Cases from February 1–28, 2025)

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Although Final Trial In The Divorce Occurred Before Husband's Death, The Trial Court Did Not Render The Parties Divorced Before His Death, And Wife Was An Heir Of Husband's Estate.

1. *In re Estate of Williams*, No. 09-23-00019-CV, 2025 WL 5384669 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (02-06-2025).

Facts: Decedent had been married twice. He had one child with his first wife and two with Second Wife. Only the youngest was still a minor at the time of Decedent's death. After a final hearing in a suit to divorce Decedent and Second Wife, the court took the issues under advisement. Three days later, the judge issued a letter ruling, which was file-stamped about a week after it was signed; however, it was unclear from the record whether the letter was filed with the clerk by a party or by the court. The letter ruling addressed the division of property and child-related orders, but it did not state the divorce was granted. Before a decree could be presented to the court, Decedent died.

Decedent's Brother filed an application for independent administration in the same court, asserting Decedent was not married at the time of his death and that Decedent's only heirs were his three children. Second Wife filed an objection, alleging she and Decedent were married at the time of his death, and she was one of Decedent's heirs. Second Wife also sought to be appointed administrator of the estate. The court appointed Second Wife as administrator of the estate and signed a judgment declaring heirship, which identified the percent interest in Decedent's estate for each of his four heirs. Brother and Decedent's Oldest Child appealed.

Holding: Affirmed.

Opinion: Brother and Oldest Child argued the probate court erred in finding the court had not rendered a divorce before Decedent's death. Rendition of judgment requires a present act, either by spoken word or signed memorandum, that decides the issues on which the ruling is made. The critical inquiries concern the court's use of language indicating a present intent to render a full, final, and complete decision and whether the court officially announced that decision publicly. If the judge's words only indicate an intention to render judgment in the future or to provide guidelines for drafting a judgment, the pronouncement cannot be considered a present rendition of judgment. The words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed.

The records from the divorce case were not included in the appellate record; however, the same court heard both matters. In the heirship hearing, the court noted that it had taken the divorce issues under advisement and subsequently issued a letter ruling. Neither during the divorce hearing, nor in the letter ruling, was a mention of whether the divorce was granted. Brother and Oldest Child argued the letter indicated an intent to render a divorce. However, the language of the letter did not express a final rendition. It contained no language regarding jurisdictional findings, the date of marriage, the date any children were born, the grounds supporting divorce, or that the property division was just and right. The letter ruling instructed the parties to prepare a decree and noted that a hearing would be scheduled if the parties could not reach an agreement as to the form of the decree.

Despite Husband's Untimely Submitted Proposed Jury Questions And Other Failures To Respond To Discovery, Trial Court Erred In Dismissing Venire Panel Because Fact Issue Remained To Be Presented To A Jury.

2. *In re Marriage of Leeson*, No. 13-23-00158-CV, 2025 WL 555766 (Tex. App.—Corpus Christi–Edinburg) 2025, no pet. h.) (mem. op.) (02-20-2025).

Facts: Husband and Wife were married for nearly 25 years when Wife filed for divorce. Husband responded with a cross-petition. In addition to disputing characterizations and value of certain assets, both parties alleged cruelty and each sought reimbursement to the community estate from the other's separate estate. After the close of discovery pursuant to a scheduling order, Husband filed a jury demand. The trial court gave Husband a deadline for submitting his proposed jury questions, but he failed to timely comply. After a hearing on Wife' motion in limine, the court determined there were no factual issues to be presented to a jury, dismissed the venire panel, and conducted a bench trial. After a final decree was signed, Husband appealed.

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

Opinion: On appeal, Husband complained of the trial court's refusal to conduct a jury trial. It was undisputed that Husband timely requested a jury and paid the requisite fee. Wife asserted Husband waived his appellate complaint by failing to object when the trial court announced that the venire panel was to be dismissed, and a bench trial would be conducted instead. However, the Texas Supreme Court previously affirmed the proposition that a formal exception to the trial court's ruling to dismiss a jury is not required to preserve the complaint for appeal. Thus, Husband's complaint was not waived.

Wife next argued that denial of Husband's request for a jury was harmless because Husband "was unable, solely by his own pre-trial conduct, to identify a single jury issue that was not foreclosed by a combination of the pleadings, pretrial discovery answer, and sworn inventories." Contrary to Wife's assertion, even if the jury findings on the disposition of property would have

been merely advisory, the denial of Husband's jury demand would be harmful if there were disputed fact issues concerning the "status of property" upon which the disposition of property was based.

The appellate court disagreed with Wife that there were no fact issues appropriate for the jury to decide. For example, while Husband's failure to timely respond to discovery prohibited him from presenting certain evidence in support of his claim of cruelty, Wife was permitted to present her claim that Husband had been cruel. Thus, Husband would have been able to present evidence in defense of Wife's claims against him, which was a fact issue appropriate for a jury. Additionally, certain characterization claims were timely raised in Husband's sworn inventory creating a fact issue for a jury. Further, the parties disputed the value of certain assets, also addressed in Husband's inventory.

Moreover, the trial court incorrectly sustained Wife's objection that Husband could not testify as to value under the property-owner rule because Husband failed to identify himself as an expert. This rule allows *lay witnesses* to provide opinion testimony, providing the testimony is (a) rationally based on the witness's perception and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

DIVORCE: GROUNDS FOR DIVORCE/ANNULMENT

No Evidence Supported Grounds For Divorce Granted In Default Decree.

3. *Janish v. Janish*, No. 03-23-00275-CV, 2025 WL 492505 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (02-14-2025).

Facts: Father filed for divorce on insupportability and adultery grounds. Mother did not answer. Mother received notice of final trial but did not appear. Father testified but offered no documentary evidence. The trial court granted the divorce on insupportability and adultery; granted Father a disproportionate share of the estate; granted Father the exclusive right to designate the Son's residence and Mother the exclusive right to designate the Daughter's residence; and ordered no child support. Less than six months later, Mother filed a restricted appeal.

Holding: Reversed and Remanded

Opinion: To succeed on a restricted appeal, the appellant must establish error on the face of the record. The only evidence to support insupportability:

> Q (by Father's attorney). And do you ***agree that there is no possibility*** of being able to put your marriage back together?
>
> A (by Father). ***No***.

(emphasis added). Because the question was framed in the negative it is possible that Father misunderstood it. However, as worded, the record reflects that Father believed the marriage could be salvaged, so granting the divorce on the ground of insupportability was not supported by the evidence. Additionally, the only evidence regarding adultery was Father's confirmation that he pleaded for that relief. Thus, no evidence supported granting the divorce on the ground of adultery.

DIVORCE: PROPERTY DIVISION

Husband Failed To Preserve Any Complaints For Appeal By Failing To Present His Own Valuations Of The Parties' Assets.

4. *Zhang v. Ding*, No. 14-24-00128-CV, 2025 WL 454224 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-11-2025).

Facts: Husband appealed a divorce decree.

Holding: Affirmed.

Opinion: Although Husband complained that the trial court erred in accepting Wife's values, Husband failed to present any evidence of his own regarding the couple's property. Further, Husband did not request findings of fact or conclusions of law.

Husband additionally argued the trial court erred in granting Wife's claims for reimbursement. However, the final decree did not mention reimbursement. The decree awarded Wife a money judgment for "the purpose of a just and right division."

Husband finally argued the trial court erred in failing to stay enforcement pending his appeal. However, Husband never set the motion for hearing.

Husband Could Not Properly Present Appellate Complaint Regarding Property Division Because He Failed To Request Findings Regarding The Values Of The Estate.

5. *Nieczyperowicz v. Nieczyperowicz*, No. 14-23-00695-CV, 2025 WL 480824 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-13-2025).

Facts: Husband and Wife were married for about 15 years before Wife filed for divorce, alleging cruelty. Husband countersued on no-fault grounds but asked for a disproportionate share of the community estate. The trial court rendered a final decree of divorce, and Husband appealed.

Holding: Affirmed.

Opinion: In his sole complaint, Husband argued the trial court erred in awarding Wife a disproportionate share of the community estate. Neither party requested findings and none were issued. Moreover, contrary to Husband's allegations in his brief, the decree appeared to divide the assets and liabilities relatively evenly between the parties.

DIVORCE: RETIREMENT BENEFITS

Just And Right Division Remanded Because Trial Court Failed To Account For Matching Contributions When Determining The Value Of Wife's Pension Plan.

6. ***Key v. Key***, __ S.W.3d __, No. 14-23-00726-CV, 2025 WL 409047 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (02-06-2025).

Facts: After nearly 30 years of marriage, Wife left the marital residence without notice to Husband. She then filed for divorce and requested a disproportionate division of the marital estate. Part of the estate included Wife's pension plan, which Wife valued at roughly $400,000, but Husband believed it was worth between $1.6 and $3 million. The court accepted Wife's valuation of the pension plan, found that the estate was worth about $1.7 million, awarded Wife her pension, and divided the estate roughly equally. Husband appealed.

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

Opinion: Part of the basis for Husband's estimate was the fact that Wife's employer would match her contributions, and Wife did not factor that into her valuation at all. The appellate court held that failing to factor in the matching contributions or undervaluing those contributions resulted in a severely undervaluation of the pension. Although the appellate court could not determine the specific actual value, it appeared that the matching contributions would at least double the amount assigned to the asset by the trial court. Given the size of the pension, the erroneous valuation probably caused the rendition of an improper judgment, requiring a remand of the entire division of the community estate.

Husband also complained of the trial court's finding of fraud and reconstituting the community estate in the amount of that fraud claim. Fraud is presumed when one spouse disposes of community assets without the other spouse's knowledge or consent. At trial, Husband acknowledged to writing checks to his mother amounting to roughly $150,000 without Wife's knowledge or consent. The burden was then on Husband to introduce evidence those transfers were fair. He testified that Wife had left and had taken many assets with her. Husband claimed to have transferred the funds to his mother because he was afraid Wife would deplete the accounts. Husband asserted that he used those funds to pay bills and other necessaries; however, he did not offer any corroborating evidence to support that assertion. The trial court was free to reject Husband's explanation.

DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

Trial Court's Determination For Amount Of Bond Required To Supersede Money Judgment Affirmed Under Abuse Of Discretion Standard.

7. *Moore v. Moore*, No. 04-24-00367-CV, 2025 WL 470392 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (02-12-2025).

Facts: A divorce decree awarded Wife $20,000. Husband appealed from the divorce. The trial court set a supersedes bond to suspend enforcement at $22,125 to cover the judgment plus interest pending appeal. Husband motioned the appellate court to review the bond, claiming it was excessive.

Holding: Motion to Review Supersedeas Bond Denied.

Opinion: A judgment debtor may supersede a judgment while pursuing an appeal by filing with the trial court clerk a "good and sufficient bond." The bond must be in the amount required by Texas Rule of Appellate Procedure 24.2. When the judgment is monetary, the bond must equal the sum of compensatory damages plus interest for the during of the appeal and costs.

A party may challenge in the appellate court the trial court's supersedeas ruling for sufficiency or excessiveness, and the appellate court will review such a challenge under an abuse of discretion standard. Here, however, Husband failed to present the appellate court with a sufficient record to review the judgment.

Dissolution Of Receivership Order With Accompanying Turnover Order Appropriate When Purpose Of Receivership Satisfied And Non-Exempt Assets Existed To Satisfy Judgments In Divorce Decree.

8. *McCray v. Spector*, No. 05-23-00738-CV, 2025 WL 537425 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (02-18-2025).

Facts: Husband filed for divorce 15 years ago. While the divorce was pending, a receiver was appointed to manage and dispose of Husband's property as ordered by the court. Five years later, another receivership order was rendered due to Husband's bankruptcy proceeding. The same receiver was authorized to pay Husband's living expenses and all family support obligations to Wife. About a year after the second receivership order, the trial court signed a final decree of divorce that included a judgment against Husband for fraud against the community estate. The receivership continued.

Six years after the divorce, Wife filed a motion to dissolve the receivership, for release of funds, and for turnover relief. She asserted the purpose for the receivership had been satisfied, and Husband had non-exempt property under the receiver's control that should be turned over to her to satisfy the judgment against Husband. At the hearing on Wife's motion, she said she was still owed $1.5 million. She had no complaints about the receiver's conduct.

The parties had agreed on a process for determining tax liability for the year of divorce. The receiver was contacted once by Husband and once each by two of Husband's attorneys regarding payment of Husband's income tax liabilities. The receiver informed them he was not opposed to paying the taxes, but he would need court approval. Husband never filed a motion to withdraw money from any account to pay taxes. The receiver explained that paying Husband's tax obligation would diminish Wife's expected share of the estate at the end of the receivership, and he wanted the court and Wife to be involved before taxes were paid.

Wife had been awarded securities accounts from which the receiver withdrew money to pay expenses pursuant to the receivership order. When the receiver made these withdraws, he was unaware of any tax liability associated with the withdraws because the accounts had "sufficient cash" each time. The bank holding the securities account refused to communicate with the receiver for any purpose other than sending money, so the receiver was unaware that, despite the divorce decree, the accounts were still associated with Husband's social security number instead of Wife's.

The receiver received payments from one of Husband's companies on Husband's behalf. The receiver suspected the funds were pretax monies, but he never received any tax documents from the company. Additionally, the receiver did not disclose one account until Wife's motion to dissolve the receivership because, until that time, the receiver believed it was an illiquid account held by a partnership. He disclosed the account to Wife upon learning it was a liquid security and stated that the money in it had not been touched since the divorce.

The associate judge granted Wife's requested relief, and after a de novo review hearing, the trial court generally affirmed and adopted that ruling. Husband appealed.

Holding: Affirmed.

Opinion: During a divorce, a trial court may render an order appointing a receiver for the preservation and protection of the parties' property. A receiver is not appointed for the benefit of the applicant, but to receive and preserve the property for the benefit of all interested parties. A receiver must exercise "the same degree of discretion in the discharge of his duties as an ordinarily prudent man of business would exercise in the management of his own affairs." A receiver derives authority from the receivership order and has only the powers conferred by that order.

Husband challenged the trial court's finding that the receiver's duties were discharged in accordance with the trial court's order with reasonable care and prudence. Specifically, Husband complained that he believed the receiver was in control of all Husband's finances, income, and accounts and that there was not anything left to do. Husband stated that because of this belief, he further believed he did not have to handle his annual tax return. However, two years after the divorce, he learned that the bankruptcy trustee had filed his taxes during the bankruptcy. When the receiver informed Husband that Husband would need to file a motion to have his taxes paid, Husband responded that he did not have a lawyer at that time. Further, the receiver acted with diligence and prudence based on the information available to him. Consistently, upon learning new information, the receiver took necessary steps as appropriate.

Husband further complained of the turnover order to satisfy Wife's judgments. He argued there was no lien on the assets, and the assets were not in his possession at the time of the turnover order. The turnover statute is a purely procedural device by which creditors may reach nonexempt assets that are otherwise difficult to attach. Contrary to Husband's assertion, Wife was not required to first exhaust other legal remedies before relying on the turnover statute. Additionally, the order dissolving the receivership distributed the estate and allocated assets to Husband, so they were in his possession to be turned over to Wife.

SAPCR: PROCEDURE AND JURISDICTION

Aunt Had Standing Under TFC § 102.003(a)(13) Because Mother Was Deceased, And No Person Fit The Family Code's Definition Of "Father" Of The Children.

9. *In re Battenfield*, No. 06-24-00090-CV, 2025 WL 502507 (Tex. App.—Texarkana 2025, orig. proceeding) (mem. op.) (02-14-2025).

Facts: Mother was never married and had three minor Children. Unrelated Guardians took in the Children with Mother's consent—first via a guardianship, then via conservatorship. Mother's sister ("Aunt") had children similar in age to Mother's Children. After Mother died, the relationship between Aunt and Guardians became strained. Then, one of the Children died while under the Guardians' care. Aunt attempted to gain custody of the two surviving Children. The Guardians contested standing, stating Aunt could not rely on Family Code Section 102.003(a)(13) (third degree of consanguinity and deceased parents) because the Children's fathers were still alive. The Guardians offered evidence of whom they believed the Fathers were. After a hearing, the court found Aunt lacked standing, so she sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: The Guardians relied on the plain and common meaning of parents, which would include the Children's biological fathers, whoever they may be. Aunt responded that the Family Code defined "father," and no one fit that definition at the time she filed her suit.

When interpreting statutes, courts presume the Legislature's intent is reflected in the words of the statute and give those words their fair meaning. The court will analyze statutes as a cohesive, contextual whole, accepting that lawmaker-authors chose their words carefully, both in what the authors included and in what they excluded. Courts look to the statutory scheme as a whole, not to snippets taken in isolation.

The statutory definition of "parent" prevails; the definition of "parent" in Section 101.024(a) applies to "parents" in Section 102.003(a)(13). Section 101.001 explicitly provides that definitions in that subchapter apply to that title. Both the definition of parent and subsection (a)(13) are in Title 5. The trial court erred in accepting the purported plain meaning of "parents." An alleged father is not a parent under the Family Code. Because Aunt was related to the Children within the third degree of consanguinity, and because the Children's only legal "parent" was deceased, Aunt had standing.

Allegation That Attorney Would Be A Material Witness In Modification Suit, Without Supporting Evidence, Insufficient To Support Attorney Disqualification.

10. *In re Smith*, No. 10-24-00347-CV, 2025 WL 559913 (Tex. App.—Waco 2025, orig. proceeding) (mem. op.) (02-20-2025).

Facts: Father filed a modification suit. The Child's maternal grandfather is an Attorney, who filed an answer and counter-petition on Mother's behalf. Father filed a motion to disqualify based on a "clear conflict of interest." Father further argued Attorney was a material witness because Attorney purchased a motorcycle that was wrecked by one of the Children. The trial court granted the disqualification. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: An order disqualifying an attorney is subject to mandamus relief because such an order can cause immediate harm by depriving a party of chosen counsel and disrupting court proceedings. To establish a basis for disqualification, the movant must show specific violations of one or more disciplinary rules. The disciplinary rules are merely guidelines, and the trial court should not disqualify a lawyer for a disciplinary violation in the absence of actual prejudice shown. "Thus, technical compliance with ethical rules might not foreclose disqualification, and conversely a violation of ethical rules might not require disqualification."

Rule 3.08(a) applies when an attorney may be called to testify regarding an essential fact of their client's case, and Rule 3.08(b) applies when an attorney may be compelled to testify in a manner that will be substantially adverse to their client's case. In either instance, Rule 3.08 should rarely be the basis for disqualification.

During the disqualification hearing, Father called no witnesses and offered no evidence. His sole contention was argument regarding his belief that Attorney was going to be a material witness. Father additionally argued that Attorney would have more access to the guardian ad litem, which would be unfair to Father. The reporter's record, containing only attorney argument, was a mere 8 pages long. Because a mere allegation will not support attorney disqualification, mandamus relief was appropriate.

After the disqualification, the trial judge ordered the clerk to return or reject documents filed by Attorney. Although Mother complained of this act in her mandamus, she had not attempted to refile the documents directly with the trial court or bring her complaint first to the trial court. Thus, the appellate court could not address this issue in the mandamus.

SAPCR: Conservatorship

Although The Parents Disagreed On How To Treat Their Autistic Child, No Evidence Showed That One Parent's Choice Was Better Than The Other, So Each Permitted To Make Non-Invasive Medical Decisions During Their Periods Of Possession.

11. *In re S.S.*, No. 05-23-00928-CV, 2025 WL 593671 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (02-24-2025).

Facts: In their divorce proceeding, Mother and Father contested how to care for their youngest Child, who was diagnosed with autism spectrum disorder, level two severity; ADHD; intellectual, developmental disorder with mild severity; and combined presentation and language disorder. In Father's possession, the Child was unruly and sometimes hit Father. Mother testified the

Child was well behaved in her possession. Father adhered to prescribed medication regimens, but Mother did not because she struggled to believe the Child needed medication. The Child's doctor testified that sporadic administration of the medication would reduce their beneficial effect. While the intermittent administration would not cause harm, it likely contributed to unruly behavior.

Father argued that both parents should have been ordered to administer the prescribed medications because medication is not optional. Father wanted Mother to have limited possession due to her failure to administer the medication. Another doctor prescribed a different therapy, which Mother believed was helping the Child. Mother believed that the Child regressed when with Father because he was not receiving the different therapy (which was not described in the appellate record).

Mother enrolled the Child in public school, where he was in general and special education classes. An assistant accompanied the Child to the general education classes. His special education case manager testified that the Child had made tremendous growth over the past year. Father wanted the Child to attend a special needs school, where all the Child's needs could be met. At the special needs school, the Child would receive one-on-one attention.

The parties' divorce decree gave each parent the right to consent to non-invasive medical treatment for their youngest Child during that parent's period of possession and gave Mother the exclusive right to enroll the youngest Child in school. Father appealed.

Holding: Affirmed.

Opinion: Medication and behavioral therapies had been prescribed to help the Child, and each therapeutic intervention would be most effective when administered consistently. The parents disagreed on which was the best, and both refused to administer the therapy chosen by the other parent. Father's solution was for him to be given the exclusive right to make decisions, but he did not explain why his chosen therapy was superior or why the court should not award Mother the exclusive right instead. The record did not show that either parent's chosen treatment was better than the other. The trial court acted within its discretion in awarding each parent the right to consent to non-invasive medical treatment during their respective periods of possession.

The evidence showed that the school Mother chose was giving the Child individualized attention. The Child was having fewer meltdowns, was developing coping skills, was improving his ability to express his wants and needs, and was experiencing tremendous growth. The trial court did not abuse its discretion in giving Mother the exclusive right to enroll the Child in school.

Evidence Of Father's Overuse Of Prescription Painkillers Sufficient To Support Injunction Against Operating Motor Vehicles With The Child As A Passenger, Despite Mother's Failure To Plead For That Specific Relief.

12. *Rincon v. Berezkina*, No. 09-23-00054-CV, 2025 WL 634904 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (02-27-2025).

Facts: Mother—a citizen of Croatia and Cypress, resident of Monaco and Austiria, and temporary-visa-holder in New Zealand—filed for divorce in Russia, where she and her family lived. A few weeks later, Father filed for divorce in Texas. Father asserted that while on vacation in France, Mother abducted the one-year-old Child and went to Russia. Father believed Mother was suffering from post-partum depression and claimed to be fearful for the Child's safety. The Russian court granted Mother a divorce and awarded Father limited possession. Father unsuccessfully appealed in the Russian courts.

In Texas, Mother filed a plea to the jurisdiction, request to decline jurisdiction, notice of foreign order, and motion to dismiss. After a hearing, the Texas court found the Russian order violated Father's rights and did not recognize the Russian order under the principles of comity.

Both parents sought sole managing conservatorship. Mother alleged Father abused prescription drugs and asked that he be enjoined from drug use during his periods of possession.

A jury heard evidence regarding conservatorship. Mother explained that Father was from Venezuela, and the couple had met about nine times in different countries before marrying. After marriage, they had a home in Texas, where the Child was born. Shortly before trial, Mother learned Father had been diagnosed with rhabdomyolysis years earlier, for which he had been prescribed pain medication. Father had told Mother he had cancer, but that was not true.

While Mother and Father were vacationing in France, Mother learned that her green card was denied, so she and the Child went to Russia on her father's private plane. In the time leading up to this departure, Mother had become increasingly frustrated with Father's pill usage, refusal to attend marriage counseling, and lack of assistance with the Child. In 2015, Father told her he stopped taking pills; however, Mother saw signs in 2017 that he was still taking them. Upon leaving for Russia, Mother told Father he needed to address his drug use before she would return.

After moving to Russia, Mother entered the U.S. twice using a Croation passport and did not bring the Child because she was traveling for court appearances. She offered to exchange the Child in France or Dubai, but Father refused.

Father's father was awaiting federal sentencing for federal crimes that had led to wealthy individuals losing millions of dollars in civil forfeitures and going to prison. Father's family had been deposed in the divorce proceeding in relation to these crimes, which caused Father stress and anxiety. Father did not have a good relationship with his father. Mother's father was an oligarch affiliated with Vladimir Putin. Both parties obtained orders in limine to prevent discussions about criminal activity, but during trial they argued that doors had been opened and to not allow full coverage of testimony would create false impressions for the jury. After hearing argument, the court dissolved portions of the orders in limine to allow relevant testimony.

After hearing testimony from the parties and many other witnesses, the jury found that Mother should be appointed the Child's sole managing conservator. After mediation failed to address the remaining issues, the court rendered a modified step-

up possession order for Father with exchanges occurring in France. Father was enjoined from operating motor vehicles when the Child was a passenger. After a decree incorporating the jury verdict was signed, Father appealed.

Holding: Affirmed.

Opinion: Father argued the trial court abused its discretion by deviating from the standard possession order and setting the location for exchange in France, rather than Texas. While there is a presumption that the standard possession order is in a child's best interest, that presumption is rebuttable if the court is presented with sufficient evidence. In deviating from the standard possession order, the trial court may consider "(1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and (3) any other relevant factor." Here, the court heard testimony regarding the parents' abilities to care for the Child, Father's drug use, the stability of Mother's home in Russia, the potential danger imposed by the Child's grandparents, and the parties' ability to travel internationally. Father did not feel comfortable traveling to Russia, and Mother could not return to the U.S.

Father next complained of the injunction against him operating a motor vehicle with the Child. He argued no pleading placed him on notice of this request. In child custody cases, the child's best interest are of paramount concern, and technical pleading requirements are of reduced significance. The court may unilaterally impose conditions not requested so long as the court does not act arbitrarily. Here, there was significant evidence Father was taking more pain medication than was prescribed or recommended. Father refused rehabilitation and denied that his drug use could impact the Child. Father spent much time sleeping and watching TV and was described as being withdrawn and zoned out. The court's restriction was not arbitrary or an abuse of discretion.

Finally, Father argued the court erred in permitting testimony regarding his parents' white-collar criminal history. Father asserted that even if relevant, the probative value of the testimony was substantially outweighed by its prejudicial effect. Father sought to introduce evidence that Mother once told her life coach that she would kill the Child before letting Father's family have him. Mother argued that this statement in isolation was incredibly inflammatory, and Mother should be permitted to describe Father's family to give the jury context. The trial court agreed with Mother that Father had opened the door to that line of questioning. Allowing Mother to introduce the rebuttal testimony was not a clear abuse of discretion, and the trial court could have reasonably concluded that the door had been opened and that the evidence regarding Father's family's criminal history was relevant to the Child's best interest because it concerned the Child's home environment.

Despite Father's Assertions To The Contrary, The Record Showed The Court Considered All The Evidence And The Best Interests Of The Children.

13. *Schilling v. Farmer-Schilling*, No. 14-23-00177-CV, 2025 WL 630662 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-27-2025).

Facts: After a bench trial in a divorce, the court signed a final decree. Father appealed.

Holding: Affirmed.

Opinion: Father argued the court erred in granting Mother the exclusive right to designate the Children's primary residence, Father asserted the trial court ignored "many of the warning signs presented during trial." Mother used the family Apple ID to share intimate photos with people she was dating. Mother sexted using a text account she shared with one of the Children. Mother testified that she did not know at the time that the accounts were shared, and she assured the court that the Children never saw the objectionable content. Father additionally said that the parties' daughter made an outcry and said Mother encouraged the Child to touch her own genitals, which led to a CPS report filed by the Child's counselor. Father cited no evidence to support the claim. Rather, the counselor contacted CPS after Father alleged Mother abused the Child. Father admitted he believed the photos Mother shared with her paramours was abuse. After hearing this from the Father, the amicus attorney explained to Father the difference between abuse and poor parenting decisions.

Father additionally complained of Mother not informing him of doctors' appointments, minor scrapes and bruises, and the name of one of the Children's therapists. However, Father had a habit of making the Children and Mother uncomfortable during doctor's appointments, which he never attended during the marriage. Mother always informed Father of the result of the visits. Additionally, Father subpoenaed the Child's therapist during trial, and Mother chose not to disclose the name of the new therapist to afford the Child privacy and allow her to feel safe to express herself during therapy.

Father further asserted that Mother drank alcohol in the Children's presence and had paramours at the residence, even before the divorce was final. Mother acknowledged having a glass of wine a week and apologized for consuming alcohol in violations of temporary orders. Father claimed 17 men visited Mother after separation, but video surveillance showed only two, and Mother testified that she only had a relationship with one, which she said was a mistake. She apologized for the behavior and said she was in a bad headspace and was truly sorry. Additionally, the men did not visit when the Children were present.

Subsequently, nine months after separation, Mother began exclusively dating someone, got engaged, and allowed her fiancé to move into her home three years after Mother and Father petitioned for divorce. She testified that the kids like him and appreciated how well he treated Mother. They were building a life together and operated as a family unit.

Contrary to Father's assertion, none of the above evidence showed the trial court acted arbitrarily in appointing Mother as the parent with the exclusive right to designate the Children's primary residence.

Father next asserted that giving each parent the independent right to make medical decisions robbed the other parent of the right to be informed. First, the decree required the parties to keep each other informed and gave each person the right to access medical information for the Children. Second, the evidence showed that the parties could not be in each other's company without causing the Children stress. Thus, the trial court reasonably determined that the parents should not attend appointments together.

Next, Father complained that the trial court abused its discretion in deviating from the standard possession order. The court awarded each parent 15 days a month in each of June, July, and August. The court explained to Father that this was more generous to him than the standard 30 days. Father appeared to be complaining that he did not get 30 consecutive days. However, Mother testified that 30 days away from the Children would be too long for either parent. The trial court's determination was not an abuse of discretion.

Father additionally attempted to challenge the division of the community estate; however, no findings of fact were issued, making an appellate review impossible.

Finally, Father asserted the trial court erred in failing to hold Mother in contempt for violations of temporary orders, e.g., drinking alcohol, letting her fiancé stay the night, and failing to inform him of the change to the Child's therapist. Contempt should only be used as a last resort, and despite his pleading for jail time, Father testified that he did not want Mother to go to jail. Rather, he asserted the trial court ignored the best interest of the Children. The record did not support this assertion; the court stated it wanted the Children to have a great relationship with both their parents.

SAPCR:
POSSESSION

Father's Aggressive Behavior And Disregard Of The Child's Emotions Supported Granting Him Only Periodic Video Access And Prohibiting Him From Interacting With The Child's School And Medical Professionals.

14. *In re S.C.T.*, No. 09-23-00044-CV, 2025 WL 635082 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (02-27-2025).

Facts: After their divorce, Mother sought to limit Father's periods of possession with the Child because Father's behavior caused the Child anxiety. Father threatened therapists and evaluators who provided reports that Father was aggressive and paranoid. Initially, the trial court temporarily limited Father's access to the Child to two eight-hour periods on the first and third Saturdays plus two ten-minute phone calls on the second and forth Saturdays of the month. Father filed pro se motions to set aside the child custody evaluations on the ground that he was not determined to be unfit. Mother said that Father told the Child that Mother lied to her, and Father made efforts to remove people who might help the Child from the Child's life. Mother was cautious about asking the court for help because Father retaliated through the Child. After another evidentiary hearing, the court temporarily excluded Father from possession of or access to the Child until after another custody evaluation. The new evaluation was critical of both parents and recommended Father's access resume on a stair-step progression. Mother later filed a motion for emergency temporary orders, attaching an affidavit from the court-appointed supervisor who reported suicidal ideations from the Child purportedly based on Father's behavior. The trial court granted Mother's requested relief, noting Father's open disregard for the orders prohibiting him from discussing litigation with the Child.

Questions of conservatorship were presented to a jury. Mother testified at length about the difficulties presented by Father's behaviors and asked for exclusive rights to make medical, psychiatric, and educational decisions for the Children. She asked that Father not attend the Child's extracurricular activities during Mother's periods of possession. Mother did not believe the Child would be better without Father, but she wanted both parents to be mentally healthy and safe. She did not think Father was a good parent, but the Child loved Father. Father testified about the conspiratorial plot against him. Father did not take medication recommended by mental health professionals. He claimed to have sought counseling but had no records to support that claim. He believed it was appropriate for him to tell Mother how to parent and admitted to calling Mother names and questioning the Child about Mother's life. Father produced extensive videos that he claimed to have taken to protect himself, but some of the videos supported Mother's version of events. A therapist testified that Father projected blame onto others but was unable to accept responsibility for his own actions. However, the therapist also criticized Mother for believing Father was the sole cause of the Child's problems. Other than anxiety issues, the Child appeared to be a normal, happy child. The therapist recommended Father's visitation resume with "strings attached." Other witnesses testified along similar lines.

The jury found the parents should be joint managing conservators, with Mother having the exclusive right to determine the Child's primary residence. The trial court held a hearing to address the remaining issues. The judge granted Mother's requested relief and expressed regret at that outcome. The judge explained that he believed Father should have a relationship with the Child, but the Child's suicidal ideations should be taken seriously. In addition to granting Mother most of the statutory rights exclusively, the court permanently enjoined Father from appearing at the Child's school and repetitively asking to speak to the Child outside of his designated times.

Holding: Affirmed.

Opinion: Father first argued that the trial court erred in not granting him specific periods of possession of the Child. Citing *In re J.J.R.S.*, 627 S.W.3d 211 (Tex. 2021), the court noted in some circumstances, an order for possession "as agreed" can be in a child's best interest. Further, contrary to Father's assertion, the possession order did not completely deny Father possession or access. The order gave Father video visitation three times a month on specific days at specific times and allowed for the possibility for an expansion of his access per written agreement. Multiple witnesses testified about the negative impacts of Father's

behavior on the Child. Contrary to Father's assertion, the appointment as a joint managing conservator did not require the award of equal or nearly equal periods of possession.

Father next argued the court erred in requiring him to secure all firearms during his periods of possession, asserting this infringed on his Second Amendment rights. The Child had repeatedly mentioned Father's guns to counselors and reported Father was scary and had pointed a gun at someone. Further, multiple witnesses testified the Child expressed a desire to kill herself and once asked for a weapon. Moreover, the restriction only required Father to secure his firearms while the Child was in his possession. Protecting the Child from harm was a compelling government interest.

Father further complained of the prohibition from recording the Child and others. Father asserted this restriction violated his First Amendment rights. The evidence showed that Father's recordings made the Child uncomfortable to the extent that she quit some activities that she had enjoyed. This evidence supported a finding that the restriction against videoing the Child was in the Child's best interest. Further, there is no constitutional right to record others.

Additionally, Father challenged numerous other prohibitions, including him contacting the Child's school, teachers, medical professionals, and others. Significant evidence showed Father's poor behavior at school events, which constituted some evidence of a substantive and probative behavior supporting the injunctions being in the Child's best interest.

In his fifth issue, Father challenged the permanent inunction against having non-married romantic interests stay the night when the Child was present. Although Father testified to a stable relationship with his girlfriend, the next day, he contacted the police for a civil standby while his girlfriend moved out of Father's home.

In his last issue concerning the Child, Father challenged the court's award of exclusive rights to Mother. The trial court's order mirrored the therapist's recommendations, which were further supported by evidence of Father's harmful parenting, dismissive attitude about the Child's emotions, and disregard of court orders.

Finally, Father argued the court erred in awarding Mother attorney's fees for trial and conditional post-judgment and appellate attorney's fees. The evidence presented satisfied the *Rohrmoos* standard and an attorney's fee award was permitted by the Texas Family Code.

SAPCR: Child Support

Evidence Supported Finding Father Was Underemployed Because He Was Paid $9 An Hour By A Consulting Company He Founded With His Wife.

15. *In re J.T.L.*, No. 14-23-00741-CV, 2025 WL 409044 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-06-2025).

Facts: Mother and Father never married and had one Child. Father was ordered to pay child support and medical support. A few years later, he sought to decrease his child support obligation. Mother countered with a petition seeking an increase in child support because Father was intentionally underemployed. After a bench trial, the court agreed with Mother and increased Father's child support obligation. Father appealed.

Holding: Affirmed.

Opinion: Father worked as an office clerk earning $9 and hour with irregular hours. Additionally, he was a musician. While he used to have a successful career as an R&B singer, he transitioned to Christian music, which resulted in a significant decrease in earnings. He further testified that his earning potential was limited because he only had a high school diploma, and he had a criminal record for assault. He had worked as a janitor in the past, but he claimed that paid less than the office clerk job.

Mother testified that Father used to have an ownership interest in a medical supply company, which allowed Father to earn a few thousand dollars a month. Mother did not offer any documentary evidence to support that claim, which Father argued made Mother's testimony insufficient to support a finding of his underemployment.

However, a tax return from two years before the modification was introduced showing Father's self-employment income had been $153,300. Additionally, there was evidence that Father and his current wife founded the company for which he was allegedly an office clerk. Although Father denied founding the company, he was its registered agent. A formal letter from the company documenting Father's pay was dated less than three weeks before he filed his modification suit. The company consisted of four individuals, including Father and a person who was paid entirely on commission. Finally, the evidence showed Father did not have a close relationship with the Child and had not exercised his possession rights in the last three years. The trial court did not abuse its discretion in finding Father was underemployed.

SAPCR: Modification

Mother's New Husband's Failure To Acknowledge How His Aggressive Behavior Affected The Children Supported Decision To Give Father The Exclusive Right To Designate The Children's Primary Residence.

16. *Cobb v. Dennis*, No. 03-23-00511-CV, 2025 WL 608321 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (02-26-2025).

Facts: Mother and Father had six Children, and in the divorce decree, Mother was granted the exclusive right to designate the Children's primary residence without a geographical restriction. Father was granted possession as agreed by the parties. Subsequently, through an MSA in a modification proceeding, Father was given a standard possession order. A few years later, Father sought a TRO and filed for modification, asserting that Mother's new husband had assaulted one of the Children. By the time of final trial, all but two of the Children had become adults, and Father sought to be their joint managing conservator with the exclusive right to designate their primary residence. The court granted Father's requested relief, and Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted, relying on *In re V.L.K.*, 24 S.W.3d 338 (Tex. 2000), that the evidence was legally insufficient to support a finding that the modification would be a positive improvement for the Children However, after *V.L.K.*, the legislature amended the Family Code to remove the "positive improvement" language. To support a modification, Father was required to show that a material and substantial change occurred and that modification was in the Children's best interest. Construing Mother's complaint as a challenge to the second prong, the appellate court reviewed the record.

The trial court heard from seven witnesses—three of the Children, two ex-wives of Mother's current husband, Mother's current husband, and the Children's guardian ad litem. The adult Children testified about the current husband's angry outbursts and breaking of things in the home. The outbursts caused "terror" in at least one of the Children. One adult Child did not think the youngest two were safe around Mother's current husband; he was concerned about his Mother's ongoing relationship with the man.

Both ex-wives testified about verbal abuse and aggression but no physical violence. He was described as charismatic and manipulative. Mother's husband denied being a danger to the Children. He said he was in counseling and an "overcomers" class at his church. He expressed surprise at the older Children's testimony because they had normal interactions all the time and never mentioned being fearful. He also controverted his ex-wives' descriptions of his anger.

The guardian ad litem testified that she was unaware of any problems in the last 16 months and recommended the Children continue living primarily with Mother.

The trial court as factfinder could have reasonably determined that, despite his efforts, Mother's husband did not acknowledge or hold himself accountable for inappropriate conduct and failed to recognize the lasting impact of his assault. Considering the evidence as a whole and indulging every reasonable inference that would support the trial court's finding, the appellate court held that sufficient evidence supported the judgment.

SAPCR:
Removal of Child / Termination of Parental Rights

Mother Entitled To Extension Of Automatic Dismissal Date To Give Her More Time To Complete Service Plan Because She Had Had Made A Good Faith Effort To Complete The Plan.

17. ***In re X.M.B.E.***, __ S.W.3d __, No. 11-24-00237-CV, 2025 WL 409039 (Tex. App.—Eastland 2025, no pet. h.) (02-06-2025).

Facts: After the Child was removed, Mother was given a service plan. At the conclusion of a permanency hearing, the "permanency specialist" testified that Mother was partially compliant with all that had been asked of her. Mother had done almost everything, and if she completed the services, there was a good possibility the Child would be returned home. Three weeks later, Mother called the police because the Child's father had beaten up Mother. The police stated that Mother was upset but not confrontational. The father was uncooperative, and force was necessary to detain him.

At the final hearing, Mother requested an extension of the automatic dismissal date. She explained that the recent assault had caused her to fear being in the father's presence and that she had fled to Oklahoma to live with her mother. Because Mother was out of state, there had been a disruption in her services leading to an inability to complete her service plan requirements. The court denied Mother's request because, at that time, she still had nine more months to complete the plan before the deadline.

Mother attempted to complete her services in Oklahoma, but that state did not provide the same services that had been required of her in Texas. The permanency specialist was unable to provide a recommendation regarding Mother's home because she had not travelled to Oklahoma to see where Mother was living. Mother struggled to exercise visitation because she relied on her mother for transportation, and Mother's mother had recently been in an accident. The permanency specialist testified the Child should remain with her aunt and uncle because Mother had not sufficiently addressed the reasons for removal; however, the permanency specialist did not address at the hearing the reasons for the removal. The trial court terminated Mother's parental rights. Mother appealed.

Holding: Reversed and Remanded in Part.

Opinion: Actions caused by the parent's fault generally cannot constitute "extraordinary circumstances" to support extending the automatic dismissal date. Yet, in 2021, the legislature amended Section 263.401 to include subsection (b-3), which provides:

> A [trial] court *shall* find under Subsection (b) that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department if:
>
> (1) a parent of a child has made a *good faith effort* to successfully complete the service plan but needs additional time; and
>
> (2) on completion of the service plan the [trial] court intends to order the child returned to the parent.

Because the change to the Code was recent, there was little caselaw interpreting it. Thus, the appellate court analyzed the plain meaning of "good faith effort" and other caselaw interpreting the concept in other contexts. A parent's obstinance, apathy, intentional delay, or outright refusal to engage in services is the antithesis of a "good faith effort." Here, however, Mother had a valid reason for leaving Texas, and she made genuine attempts to comply with the service plan after moving to Oklahoma. TDFPS had described the father's attack as "a spectacular physical blow-up where [he] brutally assaulted [Mother]." Mother found herself suddenly without housing, transportation, and financial support and sought refuge with her mother. Mother found mental health services in Oklahoma that were "just not in the way that suited the Department." The permanency specialist was not "able to give a judgment on" Mother's current living arrangement. Further, the court expressed a clear intention to return the Child to Mother upon the completion of her service plan. Because Mother had made a good faith effort to complete the service plan and needed additional time to do so, and because the court stated an intent to return the Child to Mother upon completion, the trial court erred in refusing to find extraordinary circumstances existed.

Further, to the extent the court relied on prior pleadings and hearings to reach its determination that denying the extension of the automatic dismissal date, that too was error. TDFPS failed to introduce any evidence explaining the need for removal or why denying the extension was in the Child's best interest.

MISCELLANEOUS

Evidence Supported Imposing Restriction For Mother To Obtain Written Consent From Father Before Traveling To India With Child.

18. *Allepalli v. Allepalli*, No. 03-23-00536-CV, 2025 WL 464844 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (02-12-2025).

Facts: At the time of the final decree of divorce was signed, the parties' Child was 9 years old. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court abused its discretion by placing a restriction on the Child's international travel until the age of 13. The restriction required written consent from the non-traveling parent. On appeal, Mother did not challenge the trial court's findings that (1) she unreasonably withheld the Child in India before the divorce for nearly two-and-a-half years without Father's consent; (2) she had strong ties to India, which was not a party to the Hague Convention on the Civil Aspects of International Child Abduction; and (3) the restriction was in the best interest of the Child.

The Family Code authorizes a court to take measures to prevent international abduction if credible evidence is presented. To determine whether there is a risk of international abduction of a child by a parent, the court shall consider evidence that the parent (1) has taken, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child; (2) has previously threatened to take, keep, withhold, or conceal a child; (3) is able to work outside of the United States; (4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent; (5) has a history of domestic violence; and (6) has a criminal history or a history of violating court orders. If there is credible evidence of a risk of abduction through one or more of such factors, the court shall then consider evidence of additional factors to evaluate such risk, including the following factors relevant here: (1) whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; (2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States; (3) whether the foreign country to which the parent has ties presents obstacles to the recovery and return of a child who is abducted to the country from the United States or has any legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the child issued by this state.

Based on the unchallenged findings, plus additional evidence in the appellate record, the court did not abuse its discretion by requiring Mother to obtain written consent from Father before taking the Child to India.

Mother next challenged the trial court's refusal to let a real estate agent testify about property in India. However, because she failed to make an offer of proof, that issue was not preserved for appeal.

Finally, Mother challenged the valuations of certain properties. Although holding the issue was not adequately briefed for appellate review, the court noted that the only evidence of value was provided by Father. Without any controverting evidence from Mother, the trial court did not abuse its discretion in accepting Father's valuations.

Appellants Failed To Provide Evidence To Rebut Lack Of Service Of Appellee's Motion For Summary Judgment; Appellee Established Entitlement To Summary Judgment As A Matter Of Law And Appellants Failed To Respond To Counter Appellee's Evidence.

19. *Longoria v. Garcia*, No. 13-23-00352-CV, 2025 WL 480811 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (02-13-2025).

Facts: A divorce decree provided that certain real property would be sold, with the proceeds being divided equally between the parties. About a year later, the parties entered a contract to sell the property to Husband's Son. The divorce court appointed Husband to be "the receiver in charge of selling the property" to his Son. Relying on that order, the Son took possession of the

property and made improvements to it. Subsequently, Wife sold her interest in the property to the Buyers, who demanded the Son vacate the property. Husband then gifted his interest in the property to his Son.

The Son sued the Buyers for interfering with his contract and for civil conspiracy. The Son filed a traditional motion for summary judgment and asserted the Buyers attended the hearing at which Husband was appointed as the receiver in charge of selling the property and had seen the Son's contract to purchase the property from Husband. The trial court granted a partial summary judgment, finding the Buyers interfered with the Son's contract. The Son then filed a second motion for summary judgment seeking damages for lack of use of the property. The trial court granted this motion as well and rendered a final order.

The Buyers moved to set aside the second summary judgment on the grounds that they had no notice of the Son's motion. The Son had faxed motion to the Buyers, but their fax machine had been disconnected. Further, the Buyers claimed to have received no emails from the Son on that date. The Son responded that he used the e-filing system to email the Buyers using the email address on file with the e-filing system and also faxed the motion. The Son said nothing had been returned as undeliverable. The motion to set aside the judgment was overruled by operation of law, and the Buyers appealed.

Holding: Affirmed.

Opinion: First, the Buyers challenged the denial of their motion to set aside the judgment based on lack of service. A certificate of service is prima facie evidence of service. However, if service is challenged, it must be proved. Here, the record showed that the Buyers were served via the e-filing service in accordance with Rule 21a, and an automated certificate of service showed that notice had been sent to the email address on file. Other than saying in their motion that they could not locate an email with notice, the Buyers presented no evidence—by affidavit or otherwise—that they did not receive notice at the email address on file. This situation is precisely what Rule 21a was designed to avoid. In the absence of evidence, the Buyers failed to rebut the presumption of service.

Next, the Buyers asserted the Son had not established he was entitled to summary judgment as a matter of law. The general rule in cases involving injury to real property is that the proper measure of damages is the cost to restore or replace, plus loss of use for temporary injury. Here, because the Buyers failed to respond to the motion for summary judgment, the only question was whether the Son established entitlement to damages as a matter of law.

Through an affidavit, the Son explained that when he initially took possession of the property, he made improvements and repairs, and he provided the cost of those repairs. When the Buyers took possession and the Son was removed from the property, the Buyers "made a mess." The Son attached photos showing the property before and after the Buyers had taken possession. The Son stated that he lost use of the property due to the Buyers wrongful possession. The Son further provided an expert affidavit opining on the property's potential rental income for the period during which the Son was forced to vacate the property. Finally, the Son detailed the expenses related to cleaning up the mess created by the Buyers. The trial court granted a money judgment comprised of the lost potential rent and the cost to clean the mess. Thus, the Son provided evidence he was entitled to judgment as a matter of law, and the Buyers did not present any evidence to refute the Son's evidence.