JULY 2025
CASELAW UPDATE

(Cases from June 1–30, 2025)

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DIVORCE: PROCEDURE AND JURISDICTION

Wife Had Two Residences In Two Different Counties And Could File For Divorce In The County Where She Spent Her Weekends.

1. *Bennett v. Bennett*, No. 09-23-00305-CV, 2025 WL 1583396 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (06-05-2025).

Facts: Husband and Wife were married for nearly 40 years. When they separated, Wife filed for divorce in a county where the parties owned farmland and stayed on the weekends. Husband sought to transfer the divorce to the county where the parties lived during the week. After hearing evidence, the trial court denied the motion to transfer. After a final bench trial, the court signed a final decree of divorce, and Husband appealed pro se.

Holding: Affirmed.

Opinion: Husband first complained of the trial court's denial of his motion to transfer venue. Husband asserted Wife resided in the county where they lived and worked during the week. He offered Wife's driver's license, voter registration, and tax returns to support this assertion. Husband said they only went to the other property on the weekends to take care of the animals. Wife testified that she grew up in the area where the parties went on the weekends and that she only lived in the weekday residence for work. A person may have two residences. The trial court did not err in finding that one of Wife's residences was at the farm.

Husband additionally raised issues regarding characterization and the division of the community estate; however, the evidence supported the trial court's judgment. To the extent Husband cited in his appeal evidence that was contrary to the judgment, the trial court as factfinder was free to determine Wife's evidence to be more credible than Husband's.

Husband finally challenged the trial court's finding he committed adultery. Wife placed a tracker on Husband's car, which showed that Husband went to a motel to meet various women. Wife provided photos of Husband's car in the parking lot and testified as to her observations. Husband argued that the mere fact his car was in the parking lot did not establish he engaged in an adulterous act. Husband claimed he was meeting the women to discuss church business regarding a new building and FEMA funding. The trial court did not abuse its discretion in believing Wife's testimony.

DIVORCE: PROPERTY DIVISION

Wife Allowed To Present Parol Evidence That She Lacked Donative Intent When Refinancing Separate-Property House, Despite Husband's Name Being Included On The Deed.

2. *Blackwell v. Holzer*, No. 14-24-00301-CV, 2025 WL 1661839 (Tex. App.—Houston 2025, no pet. h.) (mem. op.) (06-12-2025).

Facts: Wife purchased a home two years before marriage. The couple lived in that home throughout their marriage. A few years after marrying, Wife refinanced the mortgage and signed a warranty deed granting Husband a one-half interest in the home.

The trial court found Wife did not intend to gift any interest in the home to Husband and confirmed the home as Wife's separate property. Husband appealed.

Holding: Affirmed.

Opinion: Wife unquestionably owned the home before marriage, making it her separate property at the time of marriage. However, the inclusion of Husband's name on the deed at the time of refinancing created a presumption of a gift to Husband. To establish that the home remained her separate property, notwithstanding the presumption created by the deed, Wife was required to present clear and convincing evidence to rebut the presumption she intended to gift an interest to Husband.

Wife testified that the mortgage lender required Husband's signature. Husband consistently stated he hated the home and wanted to move because the home was "small and awful." When the couple began talking about divorce, Husband referred to the home as Wife's house. Wife denied ever having an intent to gift Husband an interest in the house and said the couple never discussed such a proposition. Husband never mentioned that Wife had purportedly gifted him part of the property.

Husband argued that the deed supported his claim to a 50% interest in the property, and the court should not have considered Wife's evidence. However, the appellate court cited the recent Supreme Court opinion holding otherwise: *In re J.Y.O.*, 709 S.W.3d 485 (Tex. 2024). "Only in instances when there is 'an express separate-property recital' in a deed is a party barred from offering extrinsic evidence of intent to contradict the express recital[.]" Because no express separate-property recital was in the deed, Wife was permitted to offer parol evidence, and from that evidence, the trial court could have reasonably concluded that Wife rebutted the presumption of a gift by testifying she had no donative intent.

Reimbursement Award Reversed Because Wife Failed To Present Clear And Convincing Evidence To Establish Her Separate Property Was Used To Benefit The Community Estate.

3. *In re T.E.R.*, No. 05-24-00014-CV, 2025 WL 1771837 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (06-26-2025).

Facts: During the parties' marriage, they purchased a marital residence and a commercial property. Some of the funds used to purchase the marital residence came from Wife's separate property. A few years before the divorce, they sold the marital residence. Wife asserted that a large portion of the net proceeds from the sale of the marital residence was used to enhance the commercial property, and her separate estate was entitled to reimbursement from the community estate. The trial court awarded Wife a large reimbursement award. Husband appealed.

Holding: Reversed and Remanded.

Opinion: Husband first challenged the admission, over Husband's hearsay objection, of three cashier's checks totaling $475,000. The funds to purchase the cashier's checks came from an account Wife held jointly with her grandmother. Wife asserted that she did not contribute any funds to that account and that the entirety of the account was funded by her grandmother.

One exception to the hearsay rule is for records of regularly conducted activities, which is also known as the business records exception. To lay the proper foundation for a business records exception, the proponent must present a qualified witness to show (1) the record was made at or near the time of the regularly conducted activity by someone with knowledge, (2) the record was kept in the course of a regularly conducted business activity, and (3) making the record was a regular practice of such activity. Documents received from another entity are not admissible under rule 803(6) if the witness is not qualified to testify about the entity's record keeping. However, documents received by a party may constitute admissible business records if the party shows that (1) she verified the accuracy of the documents generated by the other person or entity, (2) she incorporated the records and kept them in the course of her business or record keeping, (3) she typically relies on the accuracy of the records' contents, and (4) the circumstances otherwise indicate the documents are trustworthy.

Here, Wife's testimony adequately authenticated the cashier's checks as records she kept in her course of business that were reliable because she knew the amount of each check when she purchased it, she kept a copy of the checks in her possession as a record of her purchase, the checks were made payable to the title company, and the total amount of the three cashier's checks combined corresponded to the amount on the closing statement for the commercial property. The trial court did not err in overruling Husband's hearsay objection.

Husband next challenged four reimbursement awards to Wife. Husband asserted, among other complaints, that Wife failed to adequately trace her separate property and show she was entitled to reimbursement. A marital estate is comprised of three estates: the community estate and each party's separate estate. When separate property funds are used to benefit the community estate without itself receiving a benefit, the contributing spouse may have an equitable right to reimbursement. As the party seeking reimbursement, Wife bore the burden to establish that she used her separate estate to confer a benefit on the community estate, the value conferred, and that unjust enrichment would occur if she were not reimbursed.

Based on both parties' testimony, the cashier's checks that contributed to the purchase of the marital residence came from funds from Wife's grandmother and were Wife's separate property. However, the parties later sold the marital residence and deposited the proceeds into a joint savings account. Before depositing the net proceeds from the sale of the marital residence, the savings account had funds in it that were presumptively community. Additionally, once the funds were commingled, courts presume community funds are withdrawn first. Further, after the net sales proceeds were deposited but before and during improvements to the commercial property, the parties made multiple transfers, payments, deposits, and withdrawals that Wife failed to account for in her reimbursement claim. Wife failed to adequately trace the commingled funds. Finally, to determine the value of a reimbursement claim based on improvement to property, the party seeking reimbursement must show the enhanced value, not the cost of improvement. Wife failed to produce any evidence of enhanced value.

Because the reimbursement claim amounted to a large portion of the parties' overall estate, the entire division was remanded for a new just and right division.

Reimbursement Claims Reversed For Applying Incorrect Standards: Wife's Parents Not Entitled To Reimbursement For Time, Toil, And Effort To Enhance Husband's Separate Property Estate, Reduction In Principal On Separate-Property Mortgage Did Not Create Community Interest In Property; And Reimbursement For Funds Contributed To Enhance Property Is Determined By Enhanced Value.

4. *Ponzio v. Ponzio*, No. 03-23-00336-CV, 2025 WL 1773246 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (06-27-2025).

Facts: During the parties' four-year marriage, they had two Children. Before marriage, Husband owned a home that was sold during the marriage. Wife's parents physically assisted the couple in preparing the home for sale. When they purchased the second home during the marriage, Husband required Wife to spend a large portion of funds gifted to her from her parents on improvements to the new home. Wife asserted she was entitled to reimbursement for her parents' time, toil, and effort on the first home and for her separate-property financial contribution towards improvements on the second home. Wife additionally asserted the community estate was entitled to reimbursement for the reduction of the principal on the mortgage on Husband's separate property home before it was sold.

After the Children were born, the couple fought about daycare. Wife believed that a more expensive daycare was necessary for the Children, while Husband thought a less expensive daycare was appropriate. At trial, Wife asserted Husband should be ordered to pay above-guideline child support to cover the cost of daycare.

The court issued a final order granting Wife's requested relief with respect to both the child support and the reimbursement claims. Husband appealed.

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

Opinion: Husband argued the trial court erred in ordering him to pay above-guideline support without any finding that application of the guidelines would be unjust or inappropriate. Although not part of the monthly child-support obligation, the court ordered Husband to pay "as additional child support" 50% of daycare costs. Although there was no explicit finding that guideline support would be unjust or inappropriate, the trial court did find that it was in the Children's best interest to continue to attend daycare and for the parents to each pay 50% of that expense. The lack of an "unjust or inappropriate" finding did not prevent Husband from presenting his appeal, so any error was harmless.

Additionally, there was evidence to support the implicit finding. Mother worked full-time, and the two Children started daycare at 18- and 13-months old. The Children were thriving in their current daycare in light of their personal needs. The older Child had developed anxiety problems, and the younger Child was premature and developmentally delayed.

At trial, Wife argued (and the trial court agreed) that the community's reduction in the principal of the mortgage on the first home created an ownership interest in the home that appreciated with the home's value. On appeal, Wife conceded that argument was flawed, and the reimbursement claim was fixed at the amount the principal was reduced without appreciation. While the trial court erred in awarding reimbursement for an amount greater than the actual contribution, the evidence supported a reimbursement award for the exact amount of the contribution. Thus, Husband's appellate issue was sustained to the extent of Wife's concession.

Wife supported her "time, toil, and effort" claim by itemizing the cost of materials purchased with community funds and the total number of hours she and her parents spent working on the home. The trial court did not award Wife any reimbursement for the actual expenses but did award Wife 80% of her claimed amount for the time, toil, and effort. Husband argued (1) Wife did not meet her burden to establish the enhancement value of the home; (2) Wife's testimony was conclusory or speculative as to the value of her and her parents' efforts; and (3) Wife was not entitled to reimbursement for her parents' efforts.

At the time the divorce was pending, the former reimbursement statute applied, and the provision requiring a claim be calculated by enhancement value was for funds expended to improve an estate. Wife sought reimbursement for time, toil, and effort. The trial court appropriately sought to measure the value of the uncompensated time, toil, and effort expended by the community estate.

With respect to that valuation, Wife provided the aggregate amount of hours she and her parents spent on each project, and she testified about the tasks she and her parents did to perform the projects. Wife's mother also testified about the tasks performed and the family's knowledge of construction. Thus, the evidence supported the trial court's valuation of Wife's claim.

However, the uncompensated time, toil, and effort of Wife's parents did not impose any cost on the community estate, so it was not entitled to reimbursement for that work. Wife did not segregate her hours from her parents' hours. Thus, there was insufficient evidence to support the time, toil, and effort reimbursement award, and the appellate court reversed that award.

Finally, with respect to Wife's separate-property financial contribution to the enhancement of the second home, which was community property, Husband argued Wife failed to establish the enhanced value added by any improvements paid for with Wife's separate-property funds. Husband was correct that the proper measure for this type of reimbursement claim was enhanced value. Without that evidence, this award was also reversed.

Because the reversed reimbursement claims would materially affect the just and right division of the community estate, the division was reversed and remanded for further proceedings.

DIVORCE: SPOUSAL MAINTENANCE AND ALIMONY

★★★ TEXAS SUPREME COURT ★★★

Child Support Payments Could Be Considered When Determining Whether Wife Had Sufficient Property To Meet Minimum Reasonable Needs, And Trial Court Could Reasonably Consider Qualitative Testimony About Wife's Inability To Pay Essential Basic Living Expenses.

5. ***Mehta v. Mehta***, __ S.W.3d __, No. 23-0507, 2025 WL 1733267 (Tex. 2025) (06-20-2025).

Facts: Husband and Wife had triplets, and one of the Children was "medically fragile." Wife quit her job to be the primary caregiver and shouldered the responsibility of providing childcare. When the Children were about 12-years old, Husband filed for divorce. Temporary orders required Husband to pay child support and spousal support.

At the three-day bench trial, Husband expressed concerns about Wife having the ability to pay the mortgage and other expenses. Wife responded that Husband failed to pay spousal support and was behind on child support payments. The final order set Husband's monthly child-support obligation at $2760 and ordered Husband to pay $2000 in monthly spousal maintenance for 3 years.

Husband appealed, challenging the spousal-maintenance award. The appellate court held that Wife failed to present legally sufficient evidence that she would lack sufficient property to provide for her minimum reasonable needs. Wife testified that her monthly mortgage was $2032, and that she would have to pay about $756 per month in property taxes. However, the appellate court noted that Wife failed to present evidence of other monthly expenses, such as food, utilities, clothing, medical expenses, child-care costs, or car-related costs. The appellate court reviewed the evidence and determined that between three cash accounts awarded Wife that she could withdraw from, her income, and her child support, Wife had $5,635 a month accessible to her in the next three-year period, which was about twice the amount needed for mortgage and property taxes. Thus, the appellate court held that the evidence was legally insufficient to support the award of spousal maintenance. Wife petitioned the Texas Supreme Court for review.

Holding: Court of Appeals Judgment Reversed; Trial Court Judgment Reinstated.

Majority Opinion: (J. Huddle)

Although an itemized list of monthly income and expenses is the most "helpful" evidence to establish eligibility for spousal maintenance, neither the Family Code nor caselaw require that exactitude. The court of appeals in this case recognized that almost everyone has basic essential needs such as food, utilities, and medical expenses. Additionally, the law does not require the spouse to spend down long-term assets, liquidate all available assets, or incur new debt simply to obtain job skills and meet short-term needs.

The purpose of spousal maintenance differs from that of child support. Spousal maintenance exists to ameliorate the very real hardships that would otherwise exist as the result of a divorce. Child support acts to fulfill parents' natural and legal duty to support children during minority. Child support is not a debt to a former spouse. The parent receiving child support is obligated to spend or hold child support for the child's welfare, upkeep, and benefit. Child-support payments are designed to benefit children, not parents.

The appellate court erred in only considering the incomplete quantitative evidence of Wife's expenses and erred in treating the child-support payments as entirely available for Wife's minimum reasonable needs without also considering the children's expenses. Blanket treatment of child-support payments as property available in full to meet the spouse's minimum reasonable needs absent consideration of the children's expenses is inconsistent with the Family Code.

When the spouse receiving child support also seeks spousal maintenance, that spouse's child-related expenses—whether commingled, like housing; or child-specific, like clothing or medical expenses—diminish the amount of income that can be devoted to the spouse's own reasonable needs. Where the spouse seeking maintenance also receives child support, both the child support and the children's expenses necessarily factor into the spousal-maintenance calculus. Additionally, the trial court must avoid double counting on either side of the ledger.

During trial, Husband testified about his concern that Wife could not afford the mortgage and that the home needed repairs that were not being addressed. Wife testified that Husband once paid the mortgage during the pendency of the divorce after being late on child support because Wife lacked funds to make the payment. While an itemized list would be the best practice, the court could also credit qualitative testimony about a spouse's inability to pay essential, basic living expenses.

Finally, because one of the children was "medically fragile," and evidence supported that assessment, spousal maintenance was authorized by the Family Code.

Concurring Opinion: (J. Lehrmann, J. Busby)

It is superficially tempting to say that child support should not be considered in determining eligibility for spousal maintenance. However, the reality is that a spouse's expenses will overlap with child-related expenses, and child support has an impact on the spouse's ability to provide for her own needs. Child support is intended for the benefit of the child, but payment of child-related expenses that overlap with household expenses would also benefit the spouse seeking maintenance. Simultaneously, the spouse seeking maintenance may have expenses that would be necessary for the spouse's needs that are also necessary for the child's needs. Trial court's do not err when including child-support payments as "property" when determining whether the maintenance-seeking spouse can meet minimum reasonable needs. But, the court should also consider all the spouse's expenses, including child-related expenses.

Wife's Choice To Stay Temporarily With Boyfriend For 116 Days While Awaiting The Completion Of Remodeling On Her New Home Constituted Cohabitation In A Permanent Place Of Abode On A Continuing Basis And Triggered The Termination Of Husband's Spousal Maintenance Obligation.

6. ***Begala v. Begala***, __ S.W.3d __, No. 01-24-00734-CV, 2025 WL 1759017 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (06-26-2025).

Facts: Husband sought to terminate his monthly $5000 spousal support obligation because Wife had allegedly resided with her boyfriend for 116 days. Wife admitted that she stayed overnight continuously at her boyfriend's house while waiting for renovations to be completed at her new home. She had a lease at a condominium and then purchased a new home. Although she intended to move directly from the condominium to the new home, complications made the new home not ready in time. Wife did not consider her temporary "stay" with her boyfriend as her "residing" with him. The trial court denied Husband's motion to terminate, and he appealed.

Holding: Reversed and rendered

Opinion: Husband argued that Wife "cohabit[ed] … in a permanent place of abode on a continuing basis" and the trial court erred in failing to terminate his spousal maintenance obligation on that ground.

Texas has long rejected post-divorce alimony as contrary to public policy. Spousal maintenance is relatively new, having been created in 1995, and is only permissible under very narrow and limited circumstances. The statute does not define "cohabits," "permanent place of abode," or "continuing basis," and few cases have construed this provision of the statute. In the informal marriage context, cohabitation is more than sexual relations under a common roof; it indicates maintaining a household together and doing things ordinarily done by spouses. Cohabitation need not be continuous for a party to establish that element of an informal marriage. Cohabitation is not dependent on whether the two individuals are married to each other or intend to marry. An Illinois court reviewing a similar statute stated that the "purpose underlying the statutory termination of maintenance when the recipient spouse cohabits with a third party is to remedy the inequity created when the recipient spouse becomes involved in a husband-wife relationship but does not formalize the relationship, so that he or she can continue to receive maintenance from his or her ex-spouse."

Wife admitted that she and her boyfriend were in a "dating or romantic relationship," and that her boyfriend had a "permanent place of abode." Thus, the question was whether Wife "cohabited" with boyfriend "on a continuing basis." The appellate court noted that Texas removed the word "conjugal" from the statute, which indicates that the cohabitation does not have to resemble a marriage. Husband disagreed with Wife's assertion that the statute required the cohabitation to be permanent. Husband asserted that 116 days—almost four months—satisfied the "continuing basis" requirement. Wife read the entire phrase "in a permanent place of abode on a continuing basis" as requiring a long-term or permanent arrangement, not a temporary one.

The court determined that the legislature's use of the word "permanent" before "place of abode" distinguished a house from a hotel room. Boyfriend's house was a "permanent place of abode." Ideally, the statute would have set a specific time frame (a week, a month, a year, a decade…) instead of "continuing." Because spousal maintenance can generally never last for more than 10 years, a decade would be too long. Because the calculation of the obligation is determined based on monthly payments and monthly resources, months would be an appropriate unit of measurement—"the temporal coin of the realm." If cohabitation took place for more than two months, that would constitute a "continuing basis." Here, Wife admitted to staying the night continuously at her boyfriend's home for more than 60 days. Thus, the appellate court held that the conditions for termination occurred.

DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

★★★ TEXAS SUPREME COURT ★★★

Husband's Offer Of Alternate Security To Supersede Judgment Pending Appeal Not Foreclosed Based On Trial Court's Finding Of Husband's Net Worth To Exceed $10 Million.

7. ***In re Kay***, __ S.W.3d __, No. 24-0149, 2025 WL 1668350 (Tex. 2025) (06-13-2025).

Facts: Wife sued Husband for breach of their divorce agreement and fiduciary duties. A jury awarded Wife $54 million in actual damages. Seeking to suspend enforcement pending appeal, Husband filed an affidavit, in which he asserted his net worth was less than $100,000.00 and submitted cashier's checks totaling half his net worth pursuant to the Rules of Appellate Procedure.

The trial court held a multi-day bond hearing to ascertain Husband's net worth. The parties disputed the value of shares in Husband's privately held startup company. Wife's experts valued the shares at $182 million, while Husband's experts claimed the shares had zero value due to restrictions on the shares' transferability and low marketability.

The trial court found that Husband's net worth was $147 million and impliedly rejected Husband's offer to tender the stock certificates as alternate security. The court ordered Husband to submit a $25 million (the maximum allowed under the Rules) bond or a cash deposit to supersede the judgment. The appellate court affirmed this ruling, holding that the trial court did not abuse its discretion in determining Husband's net worth or in believing Wife's assertion that Husband could sell the stock under an applicable exemption. The appellate court also held that the option to accept the stock certificate in lieu of a deposit or bond was only available to debtors with a net worth less than $10 million. Husband sought mandamus relief from the Texas Supreme Court.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Husband conceded that finding a buyer for the stock, while difficult, was not an absolute impossibility. Husband argued that Wife failed to identify a buyer aside from the two who already declined Husband's offer to sell to them. However, it is the judgment debtor who has the burden of establishing his net worth. The parties agreed that the trial court's net worth finding depended on its credibility determinations of the witnesses. The appellate and Supreme Court may not resolve disputed factual matters in a mandamus proceeding. The trial court did not abuse its discretion in accepting Wife's values.

Texas Rule of Appellate Procedure 24.2(e) was added in 2023 to address the availability of alternative security in certain cases. The addition followed the Legislature's enactment of Civil Practice and Remedies Code Section 52.007, which provides that if "a judgment debtor with a net worth of less than $10 million" makes a required showing, "the trial court shall allow the

judgment debtor to post alternative security." Under Rule 24.2(e), the judge is likewise *required* to allow alternative security for such debtors.

But Rule 24.2(e) is not the exclusive authority for alternative security. Rule 24.1(a) has long permitted alternative security and allows a debtor to "provid[e] alternative security under Rule 24.2(e) *or* [as] ordered by the court." Thus, trial courts retain discretion to allow alternative security for debtors with a net worth of $10 million or more, and the appellate court erred in holding that the alternative-security option was categorically unavailable to Husband. Due to that finding, the appellate court did not address the question of whether the trial court erred in rejecting the alternate security. The Supreme Court directed the appellate court to address that question.

"We express no view as to the outcome on remand. But we note that if a court finds a judgment debtor's net worth to require a $25 million supersedeas bond only because of the valuation of particular personal property, an unrestricted tender of that very property into the registry of the court generally will constitute adequate alternative security unless the record demonstrates a particular need for different treatment."

Receiver Appointed To Collect First Wife's Judgment After Nearly All Of Husband's Property Awarded To Second Wife In Apparently Fraudulent Divorce; Receivership Fee Assessed Prematurely Because No Work Had Been Completed Yet.

8. *Chase v. Chase*, No. 01-23-00501-CV, 2025 WL 1738304 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (06-24-2025).

Facts: Husband and First Wife divorced. That year [it was unclear whether this judgment was associated with the divorce], Husband was ordered to pay $250k to a company and $8k to First Wife for attorney's fees. Seven years later, First Wife filed writ of garnishment actions in Arkansas against several banks relating to the money judgments. Because First Wife had become the sole owner of the company to which Husband owed money, the Arkansas court awarded her $70k in one of those actions.

Thirty-seven days after First Wife filed her garnishment actions, Second Wife filed for divorce from Husband. The final decree in that divorce awarded everything except a truck to Second Wife, and Husband and Second Wife continued to live together.

First Wife asserted the new divorce decree fraudulently transferred property to Second Wife to shield that property from Husband's creditors. First Wife sought the appointment of a receiver under the Civil Practices and Remedies Code.

After a hearing, for which no transcript was provided to the appellate court, the trial court appointed a receiver and ordered Husband to turnover certain assets to the receiver until the judgment" was fully paid. Husband appealed.

Holding: Affirmed in Part; Reversed in Part.

Opinion: Husband asserted that the trial court erred in appointing a receiver because First Wife was essentially challenging the property division in the divorce between Husband and Second Wife. Husband asserted that to be entitled to relief, First Wife was required to have intervened in the divorce proceedings.

The case on which Husband relied involved a bank seeking a receivership in a separate civil proceeding while a divorce was pending for fear of property being lost during a divorce. The appellate court held that bank had an adequate remedy by intervening in the divorce. Here, First Wife filed her receivership request after the second divorce had been finalized because she had no knowledge of the divorce while it was ongoing. Further, the receivership-appointment order did not rely on provisions applicable to appointing a receiver in a divorce.

Husband next argued that First Wife lacked standing to request a receiver for the full amount awarded her by the Arkansas court. Although the Arkansas court found First Wife was the owner of the company to which he owed money, First Wife did not identify her relationship to the company in the Texas suit. First Wife responded that argument went to capacity, not standing, and Husband waived that issue by not raising it in a verified pleading.

"A plaintiff has standing when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has capacity when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy." Texas Rule of Civil Procedure 93(2) requires a party contesting another's capacity to file a verified plea if the record does not affirmatively demonstrate the plaintiff's right to bring the suit in whatever capacity the plaintiff is suing, and the failure to do so waives the challenge for appellate review. Here, the record contained no verified pleading.

Husband further challenged the sufficiency of the evidence. However, First Wife asserted the truck awarded to Husband was a non-exempt asset. Once she offered evidence of ownership, Husband bore the burden to account for the vehicle. Moreover, without a record of the evidentiary hearing, the appellate court presumed the evidence was sufficient to support the judgment.

Finally, Husband argued the trial court's award of a receiver's fee plus expenses to the receiver was premature and not supported by the evidence. The appointment order awarded the receiver up to 25% percent of all proceedings coming into the receiver's possession, not to exceed 25% of the balance due on the judgment, plus any out-of-pocket expenses. While the trial court has discretion to assess a fee, the fee is measured by the value of the services rendered and must be supported by evidence to establish reasonableness. Despite the order's limitation on the receiver's fee, granting a fee was premature because no work had been done yet, so there was no evidence to establish what was a fair, reasonable, and necessary fee.

Order In Enforcement Proceeding Requiring Husband To Sign Amended Tax Return Did Not Modify Property Division In Divorce Decree.

9. *Kozinn v. Kozinn*, No. 03-23-00378-CV, 2025 WL 1748191 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (06-25-2025).

Facts: The parties' divorce decree required each of them to be responsible for 50% of all tax liabilities and to execute necessary related documents. If either party failed to comply, that party would be responsible for all reasonable and necessary attorney's fees as a result of that failure.

Husband initiated an enforcement suit and a modification suit relating to provisions concerning the parties' child, and Wife cross-petitioned in the enforcement suit and included allegations that Husband failed to sign an amended tax return on three occasions, preventing a refund. Wife asked the court to impose a fine for each violation and to award her attorney's fees. After a hearing, the court granted Wife's enforcement in part and denied all of Husband's requested relief. The court ordered Husband to sign an amended tax return and to pay Wife's attorney's fees. Husband appealed.

Husband filed a petition for writ of mandamus to challenge the contempt findings because contempt orders cannot be challenged through an appeal. *See In re Kozinn*, No. 03-23-00748-CV, 2024 WL 2855077 (Tex. App.—Austin 2024, orig. proceeding).

Holding: Affirmed.

Opinion: Husband asserted the trial court abused its discretion in ordering him to sign an amended return because the order improperly modified the terms of the property division in the divorce decree. Husband argued that because the decree did not include a provision regarding filing an amended return, the trial court lacked jurisdiction to order him to do so after its plenary power in the divorce proceeding had expired. The decree explicitly required the parties to "execute and deliver to the other party any and all other documents, and to do or cause to be done any other acts and things as may be necessary or desirable to affect the provisions and purposes" of the decree. The decree required each party to 50% of their combined tax obligation and entitled them each to 50% of any refund. The fact that the amended tax return was not referenced in the original decree—because it did not yet exist—did not change Husband's original obligations to execute and deliver tax returns to Wife.

Husband next challenged the award of attorney's fees because it was not authorized by statute or by any contract between the parties. Husband did not object, either in the trial court or appellate court, to the sufficiency of Wife's pleadings to support an award of attorney's fees. Additionally, if the trial court does not specify the basis of the attorney-fee award, the award will be upheld on any basis supported by the evidence. Husband's appellate argument focused on the Family Law section entitling a movant to fees in an enforcement suit for nonpayment of child support or failure to comply with a possession order. However, Wife asked for fees in conjunction with the provision of the divorce decree allowing for fees in an enforcement suit. Additionally, Chapter 9 of the Family Code permits the award of fees. Further, attorney's fees are allowed in all suits affecting the parent-child relationship.

Husband also argued Wife was required to segregate her fees in the enforcement suit from the modification suit. However, Husband did not make this objection in the trial court and, thus, waived it for appeal.

Finally, Husband complained that the evidence was insufficient to support the attorney's fee award. Husband cited a case in which the award could not be supported alone by heavily redacted invoices. However, here, in addition to the redacted invoices, Wife's attorney testified that she incurred fees from doing research, preparing witnesses, and speaking to law-enforcement agencies. Husband regularly threatened Wife with legal action and either refused or threatened to refuse to release the Child to a competent adult during exchanges. She stated that Husband greatly caused fees to increase and exceed what would be normally expected in a custody case and that the sole reason so many fees were incurred were due to the constant chaos, communication, and threats from Husband. Further Wife's attorney attempted to keep costs down, including writing off billable work performed by summer associates.

Husband Not Permitted To Assume Mortgage When Decree Only Permitted Refinancing The Mortgage Or Selling The Residence.

10. *Canady v. Canady*, No. 03-24-00318-CV, 2025 WL 1759008 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (06-26-2025).

Facts: In the parties' divorce decree, Husband was required to assume the promissory note secured by the marital residence awarded to him and pay the note timely. He was further ordered to refinance the mortgage within 180 days of the entry of the decree. If he failed to remove Wife's name from the mortgage, the residence would be sold the first day following the expiration of the 180-days deadline.

After the 180 days had passed with no refinancing, Wife filed a motion for enforcement. The court asked Husband, who appeared pro se, whether he had refinanced or sold the home (option A or B), and Husband said that he had been approved for a refinance, but the VA agent told him he did not have to refinance but could assume the loan entirely instead. The trial court characterized the VA agent's suggestion as an Option C not authorized by the decree. The court advised Husband he had to choose A or B, and Husband chose B. The court asked if Husband could get the residence listed for sale by a date certain, and Husband responded he could. The court, thus, granted Wife's enforcement. Husband appealed.

Holding: Affirmed.

Opinion: In his appeal, Husband argued the term "refinance" was ambiguous. He contended that assuming the loan as suggested by the VA agent would remove Wife's name from the mortgage and satisfy the decree's requirements to avoid a forced sale.

Husband acknowledged in open court that he had neither refinanced nor sold the residence. He then agreed to sell the home. Husband consented to the judgment. A party cannot complain on appeal of an action or ruling he invited or induced.

Additionally, Husband's argument asks the court to modify the property division, which is expressly not permitted by the Family Code.

SAPCR: PROCEDURE AND JURISDICTION

Father Entitled To New Trial Because, Despite Request For Record To Be Made Of Final Hearing, No Record Could Be Located, And Without The Record, Father Could Not Present His Appellate Issue.

11. *In re A.B.*, No. 02-24-00264-CV, 2025 WL 1668332 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (06-12-2025).

Facts: After a visiting associate judge conducted a hearing and rendered a final child-support order, Father sought to appeal. However, the reporter was unable to provide a reporter's record because the audio recording of the hearing was missing.

On abatement, the trial court conducted a hearing regarding the missing record. Neither the visiting judge, nor Mother's counsel recalled whether a record had been requested. The OAG believed that it had requested a record and believed another party had also requested a record. Father's counsel remembered a record being requested and remembered an audio device being on the bench during the hearing. The court coordinator stated that after a diligent search, no recording could be located.

Holding: Reversed and Remanded.

Opinion: Father intended to appeal the evidentiary sufficiency of the order, but in the absence of a record, Father simply asserted he was entitled to a new trial under the Rules of Appellate Procedure.

If the appellant requested a record, a significant portion of the record was lost or destroyed without the appellant's fault, the lost or destroyed portion is necessary to the appeal, and the lost or destroyed portion cannot be replaced by agreement of the parties, then the appellant is entitled to a new trial. Although the clerk's record did not include a written request for a record of the hearing, no one disputed Father's assertion that a request was made, and to hold otherwise would "elevate form over substance."

Mandamus Appropriate To Set Aside Default Final Order On Conservatorship When Mother Had Only Been Noticed Of A Hearing On Father's Motion To Enforce Temporary Orders.

12. *In re Ponce*, No. 08-25-00102-CV, 2025 WL 1787164 (Tex. App.—El Paso 2025, orig. proceeding) (mem. op.) (06-27-2025).

Facts: In their divorce decree, the parties were named joint managing conservators, and Mother was given the exclusive right to designate the Child's primary residence. Two years later, Mother field a motion to modify, alleging abuse, and seeking sole managing conservatorship. Father filed a general denial.

During the proceeding, Father filed motions to enforce temporary orders. The trial court entered an order for Mother to appear at a hearing on Father's "Motion for Enforcement." Mother did not appear. At that hearing's conclusion, the trial court signed a final order in the modification suit and appointed Father as the Child's sole managing conservator. Additionally, due to credible evidence from Father regarding a risk of international abduction by Mother, the court suspended Mother's visitation.

After receiving notice of the default order, Mother filed a motion for new trial and noted that she had timely requested a jury trial and paid the requisite fee. The court denied the motion as to conservatorship but granted it as to possession and access, child support, injunctions, and other order of the court with respect to the Child. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother asserted that the default order deprived her of fair notice, and the new trial order was ambiguous and left the parties rights and responsibilities unclear.

A trial court's judgment must conform to the parties' pleadings, and a trial court may not grant relief that exceeds the scope of the relief requested. A party's pleadings must give fair notice to the opposing party of the cause of action and relief sought. In his motion, Father had asked for the exclusive right to designate the Child's primary residence until further order of the court. Father did not ask to be appointed the sole managing conservator. Father's pleadings did not provide Mother fair notice of all the exclusive rights that the default order assigned to Father.

Additionally, Father did not seek a final order on conservatorship. The order to appear did not provide Mother with notice that a final order would be considered or rendered. Mother was entitled to no less than 45 days' notice of a final trial. Mother was only afforded 13 days' notice. Finally, Mother was entitled to jury on the issue of conservatorship.

SAPCR: MODIFICATION

Despite Conflicts Between The Parties Post-MSA, Mother Failed To Establish Any Material And Substantial Change Had Occurred To Support A Modification.

13. *In re D.P.R.*, No. 13-24-00302-CV, 2025 WL 1587758 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (06-05-2025).

Facts: The trial court signed an order for the conservatorship, possession, and support based on an MSA between Mother and Father, which provided for a 2-2-3-3 possession schedule for their one Child. Subsequently, Mother filed a suit to modify the order requesting a change to a standard visitation schedule because, in part, Father failed to return the Child's medication to Mother, and she was being forced to get new prescriptions filled, and sometimes the insurance would not cover the refills. Mother also stated the Child was very attached to her and had separation anxiety when they were apart. She complained that the current possession schedule was inconvenient for her and that Father cursed at her and called her names via text message. Father claimed that the Child never saw those messages. The court's final order gave Father a standard possession schedule, and he appealed.

Holding: Reversed and Rendered.

Opinion: Father argued that Mother failed to show a material and substantial change since the parties' MSA, and the evidence did not support the court's ruling.

Although Father initially filed a counterpetition to modify that asserted a material and substantial change existed, he non-suited his counterpetition before trial. Thus, Father did not judicially admit to a material and substantial change in circumstances.

Mother complained about events that occurred after the MSA, but she did not establish that circumstances had changed since the agreement. In fact, Mother testified that the issues between her and Father had gotten better since the initiation of the modification proceedings. The inconveniences and minor logistical challenges Mother complained of were those that should be expected in any co-parenting arrangement, regardless of the specific visitation schedule.

Mother's Inability To Accurately Perceive Reality Placed The Children At Risk And Supported Modification Order Giving Father The Exclusive Right To Designate The Children's Primary Residence And Make Medical, Psychiatric, And Educational Decisions.

14. *In re L.K.M.*, No. 07-24-00138-CV, 2025 WL 1671898 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (06-12-2025).

Facts: For over twenty years, Mother falsely represented to Father, her parents, and others that she was a cardiothoracic surgeon despite not having a medical license or degree. Father discovered the lie about her job about two months after filing for divorce and discovered the lie about her education after signing an MSA. The divorce decree, based on the MSA, gave Mother the exclusive right to designate the Children's primary residence, gave Father a graduated possession schedule, and awarded all other rights independently to the parties.

After increasingly difficult exchanges and defiant, aggressive behavior from the oldest Child, Father filed a suit to modify, asking for the exclusive rights to designate the Children's primary residence and to make medical, psychological, and educational decisions. The child custody evaluation found no support for Mother's allegations that Father did not adequately care for the Children but found evidence supporting Father's assertions that Mother engaged in behaviors that negatively impacted his relationship with the Children. Although Mother's parents knew that she had not gone to medical school, they still believed she was a doctor, which evidenced Mother's continued pattern of making false statements. Mother continued to lie to the custody evaluator about having an undergraduate degree. Mother sometimes took months to respond to Father on OurFamilyWizard. The custody evaluator recommended the parents remain joint managing conservators, with Father having the exclusive right to designate the Children primary residence.

Pursuant to the custody evaluator's recommendation, the parents underwent psychological evaluations. Mother's behaviors fell into "quasi psychotic thinking" that impaired her ability to make good decisions. Mother feared losing the unconditional love of her Children and orchestrated situations that would cause the Children to cling to her even at the cost of their relationship with Father. Mother did not understand how her behavior impacted the Children.

Mother presented a rebuttal witness who questioned the psychological evaluator's use of the term "pathological liar" when that term is not in the DSM. Separately, Mother's personal therapist had no concerns about Mother's parenting skills but had not spoken with the Children, Father, or other professionals. The trial court granted Father the exclusive rights he sought, and Mother appealed.

Holding: Affirmed.

Opinion: Mother first challenged the conservatorship orders. In her appeal, Mother relied heavily on her rebuttal expert; however, that expert did not have access to the extensive collateral data gathered by the court-appointed expert witnesses. The trial

court found its appointed experts to be credible witnesses and found Mother was not a credible witness. The evidence supported the trial court's finding that Mother's distorted perception of reality created concrete risks and supported the conservatorship order based on that finding.

Mother additionally challenged the trial court order that she undergo a neuropsychological evaluation and meet with a psychiatrist. These requirements were tied to Mother's opportunity to obtain an expanded possession schedule. Because the process served the Children's interest by ensuring Mother comply with recommended treatment, the trial court did not abuse its discretion.

Finally, Mother challenged the phased, step-up possession schedule conditioned on her compliance with the order. Mother characterized the conditions as "rigorous" and "severe," but the trial court followed the express recommendations of the appointed experts. Both experts were concerned that Mother's behaviors put the Children at risk. The court did not abuse its discretion.

Court Not Required To Allow Father To Appear By Videoconference; Inconsistencies Between Memorandum Ruling And Final Judgment Did Not Establish Error.

15. *Bento v. Green*, No. 14-23-00587-CV, 2025 WL 1765510 (Tex. App.—Houston [14th Dist] 2025, no pet. h.) (mem. op.) (06-26-2025).

Facts: Mother filed a suit to modify the parent-child relationship. The trial was reset twice. On the Friday before the actual final Monday trial, Father filed a motion to appear by videoconference, but the court denied that motion. Father was represented at trial by his attorney. After a final judgment was signed, Father appealed.

Holding: Affirmed as Modified.

Opinion: Father first argued the trial court abused its discretion by denying his motion to appear by videoconference. While the rules allow a court to permit attendance by videoconference, nothing in the rules requires a court to do so. The local rules provided that trial dockets were on Mondays and would be conducted in person. Exceptions to the in-person requirement would be considered on a case-by-case basis. Father had about six-weeks' notice of the trial but filed his motion on the eve of trial—just before midnight the Friday night before the Monday setting. Father received his boarding pass for the flight that caused his in-person absence about two weeks before trial. Although Father's employer wrote a letter stating Father's presence out of town was critical about a week before trial, the employer did not provide any explanation as to why Father could not return in time for trial. The trial court did not abuse its discretion in denying Father's motion.

Father additionally argued the final written order did not comport with the memorandum ruling and contained errors. The final order recited that the Attorney General agreed to the order, as evidence by its signature. However, the AG did not sign the order. Additionally, the order stated that the parenting plan constituted the parties' agreed parenting plan, but the parties did not agree to a parenting plan. The Court ordered that these two inaccurate statements should be removed from the final order. However, the other inconsistencies identified by Father were not error to be corrected on appeal. The trial court maintained plenary power at the time it signed the final order and, thus, had the authority to modify its judgment. Mere differences between the memorandum order and final judgment do not alone constitute error.

SAPCR:
Removal of Child / Termination of Parental Rights

★★★ Texas Supreme Court ★★★

Father's Repeated Felony Incarcerations Supported Endangerment Ground For Termination.

16. ***In re N.L.S.***, __ S.W.3d __, No. 23-0965, 2025 WL 1687924 (Tex. 2025) (06-13-2025).

Facts: The Child was removed from Mother's care on a report of neglect. Father had a history with drugs and imprisonment for felonies relating to drugs, theft, and violence. He testified that when he was not in prison, he and Mother cared for the Child. Father claimed not to be aware that Mother had a history with TDFPS. A guardian ad litem recommended terminating Father's parental rights because his repeated incarcerations subjected the Child to uncertainty and instability. The trial court terminated Father's parental rights on endangerment grounds. Father appealed, and the appellate court reversed the termination because TDFPS failed to establish any causal link between Father's criminal conduct and any alleged endangerment to the Child. TDFPS petition the Texas Supreme Court for review.

Holding: Appellate Judgment Reversed; Remanded to Trial Court.

Majority Opinion: (per curiam)

Endangerment does not require direct harm. A pattern of parental behavior that presents a substantial risk of harm is sufficient to support the finding. Here, weighing the evidence in a light favorable to the trial court's finding, the evidence was sufficient to support the endangerment finding.

Although half of Father's crimes occurred before the Child's birth, he continued that course of conduct after the Child was born. During the entirety of the Child's life, Father had been either under indictment for a felony or in prison on felony convictions.

The appellate court focused on Father's testimony that he did not know the Child would be endangered while in Mother's care. However, that evidence was disputed. Regardless, Father's lack of knowledge was a result of his incarceration. Father chose not to monitor the Child's safety while he was incarcerated, never provided financial assistance, and could not provide a safe and stable home.

Dissenting Opinion: (C.J. Blacklock, J. Devine, J. Sullivan)

It appeared to the dissent that courts may no longer be strictly construing involuntary termination statutes in favor of parents. "Once again, 'it rings hollow to continue to say that mere imprisonment will not, standing alone, constitute engaging in conduct which endangers the emotional or physical well-being of a child.'" A denial of a petition to terminate does not leave a child uncared for or prevent the government from continuing to monitor the child's well-being.

Reconsideration Denied For Appellate Reversal Of Parental-Rights Termination; DISSENT: The Evidence Was Sufficient To Support Termination, And The Appellate Standard Of Review Required Affirmation Of The Trial Court's Decision.

17. ***In re A.C.P.***, __ S.W.3d __, No. 04-24-00653-CV, 2025 WL 1748868 (Tex. App.—San Antonio 2025, no pet. h.) (on reh'g) (06-25-2025).

Facts: Mother appealed the termination of her parental rights. The appellate court reversed the termination and affirmed the appointment of TDFPS as managing conservator. *In re A.C.P.*, No. 04-24-00653-CV, 2025 WL 900127 (Tex. App.—San Antonio March 25, 2025, no pet. h.) (mem. op.). TDFPS filed a motion for en banc reconsideration.

Holding: En Banc Reconsideration Denied Without Majority Opinion

Dissenting Opinion: (J. Rios, J. Valenzuela, J. McCray)

In a footnote, the dissent noted that the vote on whether to reconsider was a 3-3 tie; however, the rules require a majority of the participating justices to vote for en banc reconsideration for one to be granted.

The reversal of the termination deviated from the appellate court's usual application of the appropriate standards of review and disregarded the deference the appellate court must give the factfinder. Moreover, the Children's best interests were not served by the reversal. The four subject Children were in foster-to-adopt homes, and the reversal "left [the Children] in limbo without permanency." The Children were not reunified with Mother or able to be adopted.

The trial court terminated Mother's rights on grounds D (endangerment), N (abandonment), and O (failure to follow orders). The appellate panel affirmed those findings but further found that the evidence was insufficient to support the best-interest finding. A concurring opinion stated the termination should have been reversed on the statutory grounds, and the appellate court should not have addressed the best-interest ground. A different justice concurred and dissented because the evidence was sufficient to support termination based on endangerment and best interests.

This dissent to the motion for en banc reconsideration agreed that the evidence supported termination based on endangerment and best interest.

TDFPS initially sought to engage in family-based safety services. During that time, despite TDFPS's diligent efforts, Mother failed to show improvement. Mother and the Children were living in an abandoned barbeque restaurant with holes in the ceiling and walls. There was no air conditioning. The Children suffered severe injuries due to Mother's lack of supervision. There was an allegation that one of the Children's fathers inappropriately touched two of the Children but Mother made no effort to protect the Children from that man. Mother's drug tests were concerning, and she did not attend even half of her scheduled visitations. Mother had no income or stable housing. Mother claimed she did not participate in services due to lack of transportation, but transportation was offered to her. The Children had improved in foster care. One of the Children had been placed with her paternal grandparents, who wanted to adopt her. Mother was incarcerated at the time of trial and was facing a pending motion to revoke community supervision.

The appellate panel expressed concerns about a thin record. However, a thin record is not necessarily an insufficient record. The panel concluded that Mother's rights were terminated because she was experiencing financial hardship and lacked transportation. But poverty did not cause all of the issues faced by the Children and did not cause Mother to miss drug tests for which she was offered transportation. Poverty did not cause Mother to engage in criminal activity that led to her incarceration.

The deferential nature of the appellate standard of review required an affirmation of the termination.

Statutory Requirement That No Appeal Be Pending At The Time Of Filing A Suit To Reinstate Parental Rights Was Not A Jurisdictional Requirement, And The Trial Court Erred In Dismissing Without Considering The Merits Of The Suit.

18. *In re S.H.V.V.*, No. 14-23-00807-CV, 2025 WL 1765511 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (06-26-2025).

Facts: A relatively new Section of the Family Code permits reinstatement of parental rights after the rights have been terminated. The proceedings are conducted on an accelerated time-table and cannot be initiated if the Child has already been adopted.

Father's parental rights were terminated on the grounds of endangerment, failure to comply with court orders, and failure to complete a substance-abuse program. The appellate court affirmed the termination, and Supreme Court denied Father's petition for review.

A few months after the Supreme Court's denial but while his motion for reconsideration was pending in that court, Father filed a petition for reinstatement of his parental rights. Before a hearing was conducted, TDFPS filed a motion to dismiss because Father's appeal remained pending in the Supreme Court. Father claimed that he was unaware that his counsel had filed the motion for reconsideration. Subsequently, the reconsideration was denied and a mandate was issued.

Although the appeal had ended, and Father had amended his petition after that time, TDFPS continued to pursue its motion to dismiss because the petition to reinstate was filed while the appeal was pending. The trial court concluded that because the appeal was pending when Father filed his petition, the petition was defective. Thus, the trial court dismissed Father's petition under Texas Rule of Civil Procedure 91a without prejudice. Father appealed.

Holding: Reversed and Remanded.

Opinion: No party sought dismissal under Rule 91a, and that rule is inapplicable to suits brought under the Family Code. The trial court erred in dismissing the suit pursuant to Rule 91a.

Father additionally argued that the statutory requirements of the new statute are not jurisdictional, so the trial court erred in dismissing his suit on jurisdictional grounds. In determining whether a statutory requirement is jurisdictional, the courts begin with a presumption that it is not, and that presumption is overcome only by clear legislative intent to the contrary. In evaluating whether a statutory requirement is jurisdictional, the court considers (1) most importantly, the statute's plain meaning; (2) the presence or absence of specific consequences for noncompliance; (3) the purpose of the statute; and (4) the consequences that result from each possible interpretation.

Here, the statute allows for a suit to reinstate parental rights "only if" an appeal is not pending. However, there was no language for jurisdictional consequences for non-compliance. Further, a court may grant an order reinstating parental rights if the movant shows *at the hearing* that no appeal is pending. The statute requires a hearing be conducted within 60 days of filing. Thus, a movant could file a petition for reinstatement if he anticipates the completion of the appeal within 60 days. If the appeal remains pending at the time of hearing, the court could dismiss the suit on its merits. Additionally, nothing prohibits the respondent from filing a motion for summary judgment if the statutory requirement is not satisfied. Because nothing indicated that the requirement should be construed as jurisdictional, the court held that it was not, and the trial court erred in dismissing Father's suit on that basis.

Family Violence / Protective Orders

Attorney's Fees As Sanctions For Unsupported Protective-Order Application Upheld Despite Limited Evidence Due To Husband's Pattern Of Filing Post-Judgment Motions For The Purpose Of Harassment And Increasing Litigation Costs.

19. *Breeden v. Breeden*, No. 01-23-00654-CV, 2025 WL 1710291 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (06-19-2025).

Facts: During the divorce proceeding, an agreed two-year family-violence protective order was entered against Husband. A month later, a final decree of divorce gave Wife sole managing conservatorship of the parties' Child, required Husband's periods of possession be supervised, and permanently enjoined Husband from permitting the Child to be in the presence of Husband's mother.

Three months after the divorce was final, Husband sought a family-violence protective order against Wife. Husband alleged Wife was abusing and neglecting the Child. Wife responded with a general denial and request for sanctions. At the hearing, Wife noted that Husband had filed multiple pro se motions to try to overturn the divorce decree, Husband's alleged claims were barred by res judicata because they predated the divorce; Husband had no personal knowledge of anything that had happened after the trial court signed the protective order, and Husband's pro se petition for divorce asked the court to appoint Wife sole managing conservator, indicating Husband did not believe any abuse had occurred. Wife's attorney stated that it cost $2300 in fees to prepare for the hearing and asked for that amount to be awarded as a sanction. The trial court initially held that Husband's claims were barred by res judicata and imposed sanctions. However, after a recess, the court reversed the res judicata ruling and told Husband he could proceed if Husband wanted. Husband said, "it depends." The court stated that it was not reversing the sanctions ruling and that Husband was lucky Wife had not asked for more. The court "was looking for somewhere around seven grand. That 2300 isn't nothing. [Wife's counsel] did you a solid." The court warned Husband that if he proceeded with the hearing, he could face additional sanctions for attorney's fees and expressed doubt about the likelihood of success on the application, given that Husband had not seen the Child since the protective order was issued. Husband eventually passed on the hearing.

The court dismissed Husband's application without prejudice and awarded Wife attorney's fees as a sanction. Husband appealed.

Holding: Affirmed.

Opinion: The appellate court construed Husband's complaint as an evidence-sufficiency challenge to the sanctions ruling. In addition to the points made by Wife's attorney regarding why Husband's application should have been denied, Husband's application for protective order sought tit-for-tat relief against Wife to prohibit her conduct similar to the prohibitions against him in the agreed protective order. The relief requested was inconsistent with what he sought in the divorce case. Husband's application was presented for an improper purpose and sought to harass or needlessly increase the costs of litigation. Although Wife did not present evidence, the record itself supported a finding that Husband's application and other post-divorce filings were brought as part of pattern of harassment and needlessly increasing the cost of litigation.

Five-Year Protective Order Permissible Because Court Found Boyfriend Engaged In Acts That Could Constitute Felony Extortion Against Girlfriend, And Boyfriend Had Previously Been Convicted For Assault Against A Family Member.

20. *Kanady v. Chan*, No. 01-23-00399-CV, 2025 WL 1710292 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (06-19-2025).

Facts: When Boyfriend and Girlfriend met, Girlfriend was renting a house but staying nights at Boyfriend's house. Girlfriend then rented a second house for the couple to live in together. Boyfriend was not listed on the lease for either house. Girlfriend agreed to allow Boyfriend's friends and mother to move into the first house and pay Girlfriend rent.

After living together for four months, Girlfriend filed an application for a protective order. Boyfriend had made threats against her person, attempted to force Girlfriend to put his name on the lease and give him her car, and threatened to make false allegations of HIPAA violations to compromise her work as a nurse. He said he would not make the HIPAA allegations if she let him stay in the house. Additionally, despite the agreement, Boyfriend's friends did not pay rent and refused to move out. Girlfriend was forced to leave the house she was sharing with Boyfriend and did not live in either of the houses she was renting at the time of the protective order proceeding. At the hearing on her application, Girlfriend offered text messages and audio recordings into evidence.

Boyfriend admitted to past criminal convictions, including assault against a family member, but denied Girlfriend's accusations. He asserted Girlfriend abused drugs and had horrible mood swings. Boyfriend claimed he was sorry about threatening to make allegations to Girlfriend's employer but said "she pushed [him] there." The court found that Boyfriend's acts of extortion were of a felony nature, allowing the court to render a protective order exceeding two years. The court issued a five-year protective order, and Boyfriend appealed

Holding: Affirmed.

Opinion: Among other complaints, Boyfriend asserted the trial court erred in issuing a protective order exceeding two years when no such request was made. Boyfriend asserted the five-year duration violated his due process rights.

The trial court's judgment included a finding that Boyfriend "committed acts constituting a felony offense involving family violence, theft, blackmail and extortion against [Girlfriend], and as such a protective order in excess of 2 years is warranted and authorized by law." The Family Code permits the issuance of a protective order for a duration exceeding two years if the person subject of the protective order "committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense." Additionally, an assault can be considered a felony offence if the alleged assailant had been previously convicted of assault against someone with whom the assailant was in a dating, familial, or household relationship. Boyfriend admitted during trial to such a previous conviction. Thus, the evidence and legal authority supported the 5-year protective order.

Judge Erred In Vacating Temporary Ex Parte Protective Order Without A Hearing Or Any Formal Response From Applicant.

21. ***In re Glenny***, __ S.W.3d __, No. 03-25-00412-CV, 2025 WL 1749993 (Tex. App.—Austin 2025, orig. proceeding) (06-24-2025).

Facts: Mother filed an application for a protective order against Father. A temporary ex parte order was issued, and a hearing was set. Before the hearing, Father filed a motion to vacate the ex parte protective order on the ground that a jury trial in a child custody suit had just concluded less than a month earlier. The jury found that the parties should be appointed joint managing conservators, and Father should have the exclusive right to designate the Child's primary residence. The judge in the protective order case granted Father's motion to vacate without conducting an evidentiary hearing. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother asserted the judge erred in vacating the temporary ex parte protective order without a live, evidentiary hearing. Texas Family Code Section 83.004 provides that "[a]ny individual affected by a temporary ex parte order may file a motion at any time to vacate the order." "On the filing of the motion to vacate, the court shall set a date for hearing the motion as soon as

possible." The appellate court saw no reason to not follow the statute's plain language. "Given the remedial nature of Title IV of the Texas Family Code…courts should broadly construe its provisions so as to effectuate its humanitarian and preventative purposes."

MISCELLANEOUS

Wife Failed To Prove Any Fraud Prevented Her From Participating In Divorce Proceeding; Wife's Assertion That Husband Implied Reconciliation Was Possible Was Not Supported By Record.

22. *In re Beamon*, No. 05-25-00266-CV, 2025 WL 1570532 (Tex. App.—Dallas 2025, orig. proceeding) (mem. op.) (06-03-2025).

Facts: Husband served Wife with a petition for divorce, but Wife failed to answer or appear. Husband was granted a default judgment, which included provisions for the property division and the parties' Children. Wife filed a motion to set aside the default judgment but did not secure a ruling before the trial court's plenary power and did not appeal the operation-of-law denial.

Wife then filed a bill of review stating that she mistakenly believed she would receive a notice of final trial despite her failure to answer. The trial court denied the bill of review, and Wife appealed. Because the trial court applied an incorrect burden in the bill of review proceeding, the appellate court remanded for a new evidentiary hearing.

On remand before a visiting judge, Wife acknowledged that she read the portion of the citation advising her that a failure to answer could result in a default judgment. Wife called the clerk's office and was told no hearing was currently scheduled, so Wife assumed she would receive notice if a hearing was set. Wife consistently communicated with Husband during their separation, and their conversations involved reconciliation and coparenting. She claimed to have been "blindsided" by the default order. The trial court granted the bill of review, and Husband sought mandamus relief. Because the visiting judge was no longer sitting by assignment, the appellate court denied mandamus relief to give the presiding judge time to consider Husband's complaint regarding the bill of review. On reconsideration, the presiding judge also granted the bill of review, and Husband again sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Husband argued Wife failed to establish that she was prevented from presenting a meritorious defense in the divorce proceeding due to Husband's fraud, accident, or wrongful act or an official mistake, unmixed with any fault or negligence of her own. Wife argued that Husband's representations regarding reconciliation caused her to believe that the divorce was not being pursued.

The record did not show a specific representation or any other conduct constituting fraud, accident, or wrongful conduct. Wife testified that she and Husband were separated when he filed for divorce, but they had conversations on a regular basis that "involved" reconciliation. Her hope for reconciliation was based on "the years of us going back and forth." But she admitted that Husband never made any representations to her about the divorce. In fact, Husband told Wife to contact the court clerk if she wanted more information about the case. Further, Wife acknowledged Husband told her that he would see her in court and would take the kids. Husband testified that he never indicated to Wife any desire to reconcile.

Wife argued that the clerk misled her, but Wife's own testimony established otherwise. The clerk did not tell Wife that she would be notified of a hearing; Wife merely made that assumption.

Jury Verdict In Favor Of Wife's IIED Claim Overturned Because Husband's Conduct Was Not Extreme And Outrageous, And Wife Had Other Legal Recourses; Wife Failed To Establish The Children's Proven Needs To Support Above-Guideline Child Support; Wife's Civil Lawsuit Against A Coworker Incorrectly Characterized As Community Property Because The Damages Were To Her Person.

23. *In re Marriage of Hettinger*, No. 13-23-00403-CV, 2025 WL 1701222 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (06-18-2025).

Facts: The parties were married for over twenty years and had three Children. They owned a plastic recycling company. Wife filed a petition for divorce, alleging Husband committed adultery and asking the court to grant her sole managing conservatorship of the two minor Children. Later, Wife amended her petition to raise an IIED claim.

A jury found in favor of Wife on her IIED claim and awarded her $1 million in damages. The trial court denied Husband's motion for JNOV, and his motion for new trial was overruled by operation of law. Wife appealed, raising issues relating to characterization and the property division. Husband counter-appealed, challenging the IIED judgment and his child-support obligation.

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

Opinion: Husband first argued the evidence was insufficient to support the IIED claim. An IIED claim is a "gap-filler" tort and was never intended to be used to evade legislatively imposed limitations on statutory claims or to supplant existing common-law remedies.

At trial, Wife testified that Husband had multiple affairs and that Husband and a female coworker mismanaged the business and "duped" Wife into signing a bank note of $6.5 million. When Wife filed for divorce, Husband fired Wife and took her off the company payroll. Although Wife testified that she was "beyond shocked and angry" and "incredibly hurt" by some of Husband's actions, her testimony was insufficient to support an IIED claim.

Wife had judicial recourse for her claims because she could sue Husband for breach of contract, and she could acquire her share of the business through the just and right division of the community estate. To the extent Wife asserted Husband's accrual of attorney's fees depleted community funds, Wife could assert causes of action for constructive fraud and waste.

The parties also disputed whether Husband's conduct was extreme and outrageous, which is behavior that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Husband's conduct was not more than mere insults, indignities, or threats or discord normally resulting from an unhealthy marriage.

Husband additionally argued the trial court erred in ordering him to pay above guideline child support because Wife failed to prove the cost of the Children's needs. Additionally, he argued the court abused its discretion by considering Wife's household expenses and lifestyle in setting the amount for child support.

The parties agreed that Husband's income exceeded the amount for the maximum child support obligation. The trial court relied on Section 154.123 ("Additional Factors for Court to Consider") instead of Section 154.126 ("Application of Guidelines to Additional Net Resources"). "The family code expressly prohibits the trial court from considering the § 154.123 factors when it orders child support beyond the statutory range as the trial court did here." "Child support awarded above the presumptive guideline amount must 'be based solely on the needs of the child at the time of the order.'" "'Although the court may consider a wide range of factors in setting support obligations for persons who earn less than [$9,200] in net monthly resources, the Code provides a much narrower method for calculating the support obligation when an obligor's net monthly resources exceed $[9,200], as they do in this case.'"

Wife testified as to how her lifestyle preferences decreased significantly since the parties separated, how unfair it was that Husband was able to travel more, and how terrified she was for her own financial stability. Wife testified regarding shared expenses between her and the children and numerous miscellaneous expenses—unrelated to the proven needs of the Children. Reviewing the entire record, the evidence did not support ordering Husband to pay above-guideline child support.

In Wife's first issue, she argued the trial court erred in characterizing a pending lawsuit as community property and in awarding 100% of it to Husband. She argued that it was her separate property. Wife had sued the female coworker for gross negligence, breach of fiduciary duty, IIED, DTPA violations, interference with business relationships, and civil conspiracy. Wife asserted the female coworker had a conflict of interest because she was having an affair with Husband, conspired to obtain property, wasted community money, and plotted with Husband to violate her fiduciary duty to Wife to maximize Husband's financial advantages. At trial in the divorce, Wife asserted the claims were her personal property because they included claims for IIED and breach of fiduciary duty. The trial court awarded—at Husband's suggestion—Wife a money judgment equal to the value she placed on the suit and awarded the suit itself to Husband. Although Wife argued to the trial court that she could get a greater judgment, the court noted she could also get no money out of the suit.

Because a spouse's recovery for personal injuries are defined as separate property, Wife was not required—contrary to Husband's assertion—to overcome a community property presumption with respect to those claims. Husband did not produce any evidence that the breach of fiduciary duty and IIED claims against the female coworker were not Wife's separate property. The trial court erred in characterizing the lawsuit as community property and awarding it to Husband. Further, the appellate court could not determine the extent to which the characterization error impacted the just and right division, requiring a remand of the division of the community estate.

Finally, Wife complained of the exclusion of a tracing expert witness. Husband argued the trial court did not err because Wife failed to timely disclose the witness and failed to timely produce the documents on which the expert relied. Wife did not dispute that she did not provide documents but argued that Husband never took a deposition at which the expert would have brought the documents subject to the duces tecum. Wife's disclosure was late, she did not establish good cause for the late disclosure, and the sanction of striking the witness was specifically related to Wife's conduct. Further, Wife was admonished about her behavior before the witness was stricken, but she continued to fail to comply. The punishment fit the crime.

Wife Waived Appellate Challenge By Accepting The Benefits Of The Divorce Decree.

24. *In re Marriage of Albritton*, No. 07-24-00119-CV, 2025 WL 1792843 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (06-27-2025).

Facts: After a divorce decree was finalized, Wife appealed.

Holding: Affirmed.

Opinion: Husband argued Wife waived error on appeal under the acceptance-of-benefits doctrine. To effectuate an equalization payment, the decree awarded Wife about $160,000 from a community account. Wife endorsed and deposited the check reflecting her share of the account the day before she filed her notice of appeal. On appeal, Wife challenged the division of that same account. Wife did not file a reply brief and did not identify any exception to the doctrine. There was no evidence Wife's acceptance of the benefits was compelled by duress or other economic circumstance. Thus, Wife was estopped from challenging the equalization payment.

Wife additionally challenged the characterization of a condominium as Husband's separate property. However, to the extent the challenge was not waived by Wife's acceptance of the benefits, she failed to show that any alleged error required reversal. Wife did not show how the alleged mischaracterization affected the overall division of the community estate.

Mandamus Granted To Vacate Erroneous Order Granting Bill Of Review.

25. *In re Garcia*, No. 13-25-00219-CV, 2025 WL 1805516 (Tex. App.—Corpus Christi–Edinburg 2025, orig. proceeding) (mem. op.) (06-30-2025).

Facts: Wife filed for divorce, and both Husband and Wife appeared at trial pro se. Wife advised the court that the parties had reached an agreement in which Husband was relinquishing his rights to everything and giving her monthly alimony of $6500 for life. The court asked Husband if he agreed, and Husband confirmed he did. The court asked Husband why he was giving up everything, and Husband said he made a mistake and should repay it and continue. The court held a brief off-the-record conference. After returning to the record, Husband confirmed he was not under medical care, receiving medical treatment, or taking medications. Husband advised the court that Wife had agreed to stay with him and manage his finances because he was not good at doing that. Husband hoped the couple could eventually work things out.

The court offered to delay the hearing for a few months to see if the parties could reconcile, but Wife insisted that she wanted a divorce because Husband had committed adultery and was in a long-term relationship with another woman. Wife indicated there had been some family violence. Despite the parties' agreement, the court ordered Husband to pay Wife $2000 per month for three years.

Five months later, represented by counsel Husband filed a petition for bill of review. Husband argued that Wife falsely represented to him that there was a possibility for reconciliation after the divorce. The trial court signed an order granting Husband's bill of review and concluded that Husband was unable to appreciate the legal ramifications for what he signed away, Texas does not recognize alimony, and Husband believed he would be able to reconcile with Wife. Wife sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Wife asserted the trial court abused its discretion in granting a bill of review because Husband failed to prove extrinsic fraud, failed to exhaust legal remedies, lacked a meritorious defense because he filed no counterpetition, and his subjective misunderstanding of legal consequences could not support a bill of review.

Husband's petition asserted he lacked legal representation, the division was not fair, he did not appreciate the legal ramifications of his agreement, the alimony was not supported by law, he lacked a legal remedy, and he relied on Wife's representations of a possible post-divorce reconciliation. Husband's petition was unverified, and he offered no evidence to support his claims. The bill of review hearing addressed the terms of the decree and the testimony of the final divorce trial, but no evidence was adduced regarding the issues raised in Husband's petition for bill of review. Contrary to Husband's claims, the divorce transcript established that Wife wanted a divorce, and there was no evidence she intended to reconcile. Wife made no promises of future reconciliation. Husband failed to plead and prove the elements necessary to entitle him to a bill of review.
