Dallas Bar Association
Family Law Section
2026 Bench Bar

ANNUAL CASELAW UPDATE

(2025 Cases)

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DIVORCE:
PROCEDURE AND JURISDICTION

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.) (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.) (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.

Default Divorce Decree Reversed Through Restricted Appeal Because Return Of Service "Incomplete In All Regards."

3. *In re Marriage of Garcia and Alvarado*, No. 10-24-00209-CV, 2025 WL 799302 (Tex. App.—Waco 2025, no pet.) (mem. op.) (03-13-2025).

Facts: Husband filed for divorce and citation was served on Wife in Mexico. Five months after the trial court signed a default decree of divorce, Wife filed a restricted appeal.

Holding: Reversed and Remanded.

Opinion: A restricted appeal must be filed within six months after the judgment by a party to the suit who did not participate in the hearing resulting in the judgement or file any post judgment motions, and to be entitled to reversal, an error must be apparent on the face of the record.

The return of citation was "incomplete in all regards." It included no date or time the citation "came to hand;" no identification of the person to whom it was to be delivered; no date or time the citation was delivered; and no signature by an officer or authorized person. Although Husband argued Wife had actual knowledge of the suit, no evidence of that knowledge was before the trial court at the time it rendered the default judgment. Moreover, even with a DHL tracking sheet Husband submitted after the judgment, the failure to file a complete return of service was fatal to the judgment.

Wife Failed To Timely Object On The Record Or Make Any Offer Of Proof To Preserve Appellate Complaint Regarding Time-Limitations At Trial.

4. *In re B.P.*, No. 05-23-01322-CV, 2025 WL 1083615 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (03-10-2025).

Facts: The appellate court previously reversed the property division of the parties' divorce decree, finding a vehicle should not have been characterized as community property.

On remand, the trial court allotted one hour total for the trial and advised each party they had 20 minutes. After the trial, the court signed an amended final decree of divorce. Wife appealed.

Holding: Affirmed.
Opinion: Wife argued the trial court erred in setting the time limit. Although Wife asserted that she objected, the record contained no evidence of an objection. Thus, she failed to preserve that issue for appellate review. Wife additionally argued the shortened timeframe failed to allow her time to fully present her case. Again, the record showed no evidence of an objection on this ground, so Wife failed to preserve that complaint for appellate review. Finally, Wife argued that the trial court erred in not granting her additional time that she requested when her time expired. However, Wife did not make an offer of proof to show what additional evidence she intended to present. Thus, that complaint, too, was not preserved for appellate review.

★★★ TEXAS SUPREME COURT ★★★

Guardian Lacked Authority To Seek Divorce On Ward's Behalf Without Express Finding In Appointment Order That Divorce Would Be In Ward's Best Interest And Promote And Protect Ward's Well-Being

5. ***In the Matter of the Marriage of Benavides***, 712 S.W.3d 561 (Tex. 2025) (04-25-2025).

Facts: Husband, a powerful and wealthy man, signed a pre- and post-nuptial agreement before marrying his fourth Wife. The agreement provided that the parties would have no community property, and all property would be each party's separate property and could only be transferred through a written instrument.

Only seven months into the marriage, Husband filed for divorce; however, five months after that, Husband was diagnosed with dementia. The divorce was dismissed for want of prosecution. Wife asserted that Husband had changed his mind. One of Husband's children claimed Husband still wanted the divorce but could not pursue it because of his health. By the end of that year, despite the pre- and post-nuptial agreements, Husband had added Wife's name to bank accounts and conveyed property to her. Wife said that Husband often told her "todo lo mio es tuyo" ("all that I have is yours").

Husband's children filed an application for appointment of guardianship over Husband's person and estate. Two weeks later, Husband signed a new will appointing Wife as his executor and disqualifying his children from serving as guardians. The probate court appointed Guardian (not one of the children) as Husband's temporary guardian and appointed an attorney ad litem. The Guardian and Wife then began legal proceedings challenging the right to control Husband's assets. The Guardian filed for divorce on Husband's behalf, however that divorce proceeding was nonsuited. Ultimately, in the guardianship suit, Husband's Daughter was appointed the permanent guardian of the person and Guardian as the guardian of Husband's estate. The order explicitly gave Guardian the right to file a divorce, and a subsequent order gave Daughter the right to participate in a divorce on Husband's behalf. Neither of these orders found that a divorce would be in Husband's best interest or would promote his well-being.

Guardian resigned, and Daughter was appointed as the full guardian of both person and estate. Daughter filed for divorce (the third filing) on Husband's behalf. The trial court denied Wife's plea to the jurisdiction. Subsequently, the trial court granted Daughter's MSJs to enforce the pre- and post-nuptial agreements and rendered a divorce. Wife appealed. During the pendency of the appeal, Husband died.

The court of appeals agreed with Daughter that Husband's death mooted the appeal but also affirmed the divorce decree. Wife sought review from the Texas Supreme Court.

Holding: Dismissed; Court of Appeals Reversed; Divorce Decree Vacated

Majority Opinion: (J. Boyd)

First, the Court determined Husband's death did not moot the appeal. While a spouse's death before divorce will moot the divorce proceeding, a death after the decree is signed does not. The marriage ended by divorce, not death, and an appeal may be required to challenge the decree's validity. While such a challenge might be rendered legally irrelevant, if the property rights would be significantly affected, the live controversy would remain after one spouse's death. Here, Wife's appeal would directly impact whether she had standing in the probate court.

Wife next argued that Daughter lacked authority to pursue a divorce on Husband's behalf. Courts have held that a guardian may maintain a divorce action if the suit was initiated before the party was declared incompetent. But, divorce is a personal choice, and some people choose to stay in a marriage that may not appear to be in their best interest from an outsider's perspective. A more recent approach in American courts permits a guardian to initiate a divorce even if the ward does not appear to want one. These courts have held that by disallowing the right to pursue a divorce deprives the guardian of the full ability to protect the ward and gives power to the ward's spouse, despite risk of exploitation and abuse. Some courts held that a guardian can only file for divorce on the ward's behalf if the legislature granted guardians that power. However, most courts have more broadly determined that the right to "file suit" generally includes divorce actions.

The Texas Legislature has not expressly given guardians the right to file for divorce, but it has given them the right to seek an annulment. After reviewing the existing statutes and public policy, the court determined that if the Estates Code does permit giving a guardian authority to seek divorce on a ward's behalf, that specific right must be expressly granted. Further, there must be a finding that a divorce would be "in the ward's best interest and promote and protect the ward's well-being." Because the orders detailing Daughter rights in the guardianship proceeding did not make that finding, the Texas Supreme Court vacated the divorce decree. Whether Daughter presented in the divorce court evidence to support such a finding would not cure the lack of the finding in the guardianship-appointment order.

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

The concurrence approved of the majority's decision not to definitively answer the question of whether a guardian may seek a divorce on a ward's behalf, finding that determination unnecessary to dispose of the case. The concurrence further expressed approval for the "traditional view" that a divorce is a personal matter that requires an exercise of will. Thus, without the express desire by the ward to seek a divorce, a guardian should not make the decision to seek a divorce on the ward's behalf. The recent and growing trend in American courts goes against the traditional view and against the accumulated wisdom of the ages.

Husband Failed To Show Any Diligence In Ensuring A Written Order Granting A New Trial Was Timely Signed And Was Not Entitled To Bill Of Review.

6. *Hernandez v. Cepeda*, No. 14-24-00090-CV, 2025 WL 1232346 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (04-29-2025).

Facts: Wife obtained a default decree. The trial court orally granted Husband's motion for new trial, but no written order granting the new trial was signed. Five months later, Husband filed a petition for bill of review with no evidence attached. Wife argued Husband failed to show he was not negligent in failing to ensure he obtained a written order granting the new trial. Husband

responded he should not have been required to call the court every day to make sure an order was signed. The court denied Husband's petition for bill of review, and he appealed.

Holding: Affirmed.

Opinion: Husband did not contend or present evidence that he requested an entry date, presented the trial court with an order to sign, or attempted to ensure an order was signed. Husband, who did not show due diligence, was not entitled to a bill of review.

In Absence Of Answer Or Appearance, Husband Was Not Entitled To Notice Of Final Trial.

7. *In re K.R.G.*, No. 05-24-00429-CV, 2025 WL 1425226 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (05-16-2025).

Facts: Husband and Wife had two Children. Wife filed for divorce. Husband failed to appear at the final hearing, and a default decree was signed. Husband timely filed a restricted appeal.

Holding: Affirmed.

Opinion: To succeed on a restricted appeal, the appellant must establish error on the face of the record. Here, Husband argued that although he was served with citation of the suit, he did not receive notice of the final hearing. Husband did not file an answer or otherwise appear. The citation included a notice that if Husband failed to answer, a default could be taken against him. Because he failed to answer, he was not entitled to notice of the final hearing.

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

8. *Bennett v. Bennett*, No. 09-23-00305-CV, 2025 WL 1583396 (Tex. App.—Beaumont 2025, no pet.) (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.

Wife Not Entitled To A Hearing On Her Motion For New Trial; No Error In Allowing It To Be Overruled By Operation Of Law.

9. *Ahrens v. Ahrens*, No. 04-24-00573-CV, 2025 WL 2058077 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (per curiam) (07-23-2025).

Facts: After the parties signed a mediated settlement agreement, Wife refused to sign the final decree of divorce. Husband filed a motion to enter, and Wife was unrepresented at the hearing on that motion. Subsequently, Wife filed a motion for new trial complaining that she did not know she could sign the decree to indicate her agreement as to form without also agreeing as to substance. She asked the trial court to remove the "as to substance" from the decree. Wife's motion for new trial was overruled by operation of law. Wife appealed with the aid of appellate counsel.

Holding: Affirmed.

Opinion: Wife's sole issue on appeal was a complaint that her new trial was allowed to be overruled by operation of law. Generally, the trial court need not hear a motion for new trial and may allow it to be overruled by operation of law. A hearing is required only when the motion "presents a question of fact upon which evidence must be heard." Here, no question of fact was presented that would have required an evidentiary hearing.

Default Divorce Decree Reversed Because Not Supported By Mother's Pleading Or Her Evidence At Trial.

10. *In re Marriage of Sanchez*, No. 07-24-00399-CV, 2025 WL 2167249 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (07-30-2025).

Facts: Mother filed for divorce on the ground of insupportability and did not request a disproportionate division of the community estate. She asked the court to appoint the parties joint managing conservators with neither parent having the exclusive right to designate the Child's primary residence. She stated that the parties should be given equal periods of possession because the standard possession order would be "unworkable." Father was served but filed no answer and did not appear.

At trial, Mother was the sole witness and stated "in passing" that Father had been convicted and imprisoned for indecency with a Child. The default decree awarded Mother all real property, an automobile, and the corresponding debt. Mother was appointed sole managing conservator. Father was purportedly granted a standard possession order, but the order did not include any terms for possession. Father timely filed a notice of restricted appeal.

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

Opinion: Father argued the trial court erred in dividing the marital estate without evidence of values. Mother's testimony indicated that the parties purchased the home together before marriage, which would mean that each party had an undivided 50% separate-property interest in the property. Thus, in awarding the home to Mother, the trial court likely divested Father of his separate-property interest in the home. Regardless, even if the home was community property, the trial court erred in dividing the estate with no evidence of values of any of the parties' assets or debts.

Father also argued that the trial court erred in rendering orders for the Child that did not conform to Mother's pleading. As a fundamental component of due process, a pleading gives the responding party the ability to identify the relief being requested to inform the decision of whether to contest the allegations. Father received no notice that Mother would be seeking sole managing conservatorship or something other than a 50/50 possession order.

Thus, the property division and SAPCR provisions were reversed for a new trial. The appellate court affirmed the trial court's dissolution of the parties' marriage.

Trial Court's Oral Ruling In Conjunction With Parties' Requests, Docket Entry, And Lack Of Any Outstanding Issues To Be Ruled Upon Indicated A Present Rendition Of Divorce Based On Parties' Agreement.

11. *Valdez v. Valdez*, No. 05-23-01286-CV, 2025 WL 2346150 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (08-13-2025).

Facts: At the final hearing in their divorce, the parties entered an agreement into the record regarding the property division. The parties asked the court to accept their agreement, and Husband testified that he wanted a divorce that day. The court stated "I'll approve the agreement of the parties. Make it an order of the Court. Who is going to draft this for[] me?" The docket sheet indicated "Final Hrg. Both parties with Atty. Agreements dictated and approved. Divorce Granted."

Although Wife's attorney drafted and circulated a decree, Husband did not sign. Wife filed a motion to sign the decree. Six months after the final hearing, Husband filed a motion for new trial or reconsideration and a notice of his revocation of the agreement that was read into the record. The trial court reviewed the transcript and determined that it had orally rendered judgment at the final hearing. Nearly three years later, Wife filed another motion to sign. Husband again asserted that his agreement had been timely revoked. The trial court signed a final decree in conformity with the parties' agreement, and Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court's language at the conclusion of the hearing did not indicate a present rendition that would make the agreement an order of the court and irrevocable. However, the parties asked the court to accept their agreement. Husband asked for an order that day, the court informed the parties to make it an order of the Court. It did not provide guidelines for drafting a judgment or indicate intent to render judgment in the future. The same-day docket entry was consistent with this interpretation. Further, the decree stated that it was "pronounced and rendered" on the day of the final hearing. Nothing in the record conflicted with that statement, so the appellate court presumed that recitation in the decree was true.

Due To Husband's Failure To Timely Or Adequately Produce Discovery Responses, Trial Court Did Not Err In Denying His Post-Trial Motion To Reopen Evidence.

12. *Hoff v. Hoff*, No. 02-25-00058-CV, 2025 WL 2458611 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (08-26-2025).

Facts: Husband and Wife filed cross petitions for divorce. Only Wife filed an inventory and appraisement. Husband failed to respond to discovery or serve her with initial disclosures. Because Husband's attorney could not get in contact with Husband to acquire discovery responses, Husband's attorney withdrew. After the court granted Wife's motion to compel, Husband still failed to respond.

Husband retained a new attorney on the day of trial, but the trial court denied Husband's motion for a continuance. After the conclusion of the bench trial, the court took the property division under advisement. The court denied Husband's motion to reopen the evidence. After the court signed a final order, no findings were requested or issued. Husband appealed.

Holding: Affirmed.

Opinion: Husband asserted the trial court abused its discretion by awarding Wife a disproportionate division of the community estate. At trial, the parties disputed the methods for valuing oil interests and farming and ranching property. Each presented their lay opinions as to how they reached their respective proposed valuations. These two assets were not the only ones divided in the decree, which did not include values for most of the assets or liabilities. The decree did not specify whether the divi-sion was disproportionate. In the absence of findings, the appellate court could not determine whether an error occurred or, if so, whether the error was harmful.

Husband next complained of the denial of his motion to reopen evidence. In determining whether to grant a motion to reopen the evidence, a trial court may consider several factors, including whether (1) the moving party showed due diligence in obtaining the evidence; (2) the proffered evidence is decisive; (3) the reception of such evidence will cause undue delay; and (4) granting the motion will cause an injustice. Here, Husband refused to adequately participate in discovery for the 18 months between the original petition and trial. He had ample opportunity to obtain the evidence he sought to introduce post-trial but chose not to timely do so.

Despite Trial Judge's Use Of Word "Will" In Oral Ruling, Considering The Evidence As A Whole, The Trial Court Expressed A Present Intent To Render Judgment On Parties' Agreement Resolving All Issues In Divorce.

13. *Sargent v. Sargent*, No. 02-24-00470-CV, 2025 WL 2627033 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (09-11-2025).

Facts: After filing cross-petitions for divorce, the parties reached an agreement that was read into the record in open court when the parties appeared for final trial. The court responded that it "will adopt the agreement" and instructed that Wife's attorney "will prepare the final order" "that will be the order of the court." The court stated that it "will grant [the] divorce based on insupportability and the Court will accept the agreement … And this will be the order of the Court." Husband's attorney asked, "And you've rendered that today, correct?" to which the court responded, "And I've rendered that today, yes, yes, yes." Husband, Wife, and their attorneys signed a copy of the agreement containing the provisions read into the record. That signed document was later signed by the court as "Judge's Order."

Two months later, Husband moved for entry of a final decree. Wife identified discrepancies between the "Judge's Order" and Husband's proposed decree. Several weeks after that, Wife purportedly revoked her consent to the agreement and moved for a new trial. After a hearing, the court struck several provisions of Husband's proposed decree, denied Wife's motion to revoke consent, and signed a final decree. Wife appealed.

Holding: Affirmed.

Opinion: Wife argued the trial court did not exhibit an intent to render after the parties read the agreement into the record. In its findings, the trial court found that at trial, the parties announced that agreement on all issues had been reached, and they asked the court to accept the agreement and find the division to be just and right. The court found that it rendered judgment on the agreement and granted a divorce. On appeal, Wife focused on the trial court's use of the word "will" when referring to its judgment and argued that the term "will" evidenced a future, rather an a present, intent to render judgment. Here, however, the word "will" did not stand alone, and additional evidence supported a present rendition. Focusing only on the use of the word "will" ignored (1) the later statement by the trial court that it had "rendered" judgment that day and (2) the "Judge's Order" setting out the agreement of the parties that was signed by the parties and the trial court the same day and filed-marked three days later. Moreover, on the date of the agreement, Wife asked the court to adopt the agreement as the order of the court.

Wife further argued the court could not render judgment on the day the parties read their agreement into the record because a full, final, and complete judgment was not rendered until months later. When presenting the agreement to the court, Husband testified that the settlement was "just, right, and equitable" and asked the court to approve it. Wife testified that she agreed to the division and also asked the court to adopt it as an order of the court. The trial court was not required to independently determine the division was just and right when the parties' agreed it was.

Wife additionally argued that the final decree included provisions not agreed to by the parties. The appellate court disagreed because the specific provisions were in line with the general terms of the agreement. For example, the decree divided interests in the parties' respective travel and hotel rewards benefits, which was not specifically addressed by the agreement. However, the parties agreed that each party would be granted all property in his or her possession. The inquiry was not whether the divorce decree varied from the terms of the agreement but rather whether any variances in the decree significantly altered the parties' agreement in a way that deviates from their intent as manifested in the agreement—whether any changes were material. The decree contained only those terms that were necessary to effectuate or implement the parties' earlier agreement.

Wife finally argued the final decree was void because Wife had revoked her consent to the agreement. Because the court rendered judgment when the parties read their agreement into the record, and because Wife did not try to revoke her consent until months later, Wife's attempt to revoke her consent was untimely and ineffective.

Oral Award Of Attorney's Fees Granted After Decree Signed Could Not Be Included In Decree Through Judgment Nunc Pro Tunc Because Award Was Judicial Decision And No Written Order Issued Before Expiration Of Plenary Power.

14. ***In re Lowman***, __ S.W.3d __, No. 09-25-00153-CV, 2025 WL 2664323 (Tex. App.—Beaumont 2025, orig. proceeding) (09-18-2025).

Facts: Neither Husband nor his attorney appeared at the final trial in the parties' divorce. A final decree provided that each party would be responsible for his or her own attorney's fees, expenses, and costs. About a week later, Husband filed a motion for new trial, and a hearing was conducted on the motion. Wife's attorney moved for attorney's fees, asserting that Husband's actions—including a repeated failure to appear at hearings—had increased litigation costs. The court orally awarded $2560 in attorney's fees to Wife.

Nearly 5 months later (over 7 months after the decree was signed), Wife moved for a judgment nunc pro tunc to "correct" the final decree to include the attorney's fee award. About a month after that, the trial court granted Wife's motion and signed a judgment nunc pro tunc. Husband's pro se motion for new trial was denied, so he then sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: While a court has plenary power, its authority to change its judgment is nearly absolute. However, after the expiration of plenary power, it can no longer make substantive changes to a judgment. It may at any time, regardless of plenary power, correct clerical errors through a judgment nunc pro tunc. A judgment nunc pro tunc may not be used to correct judicial errors. Mandamus is appropriate to require a trial court to vacate a void order.

Although the oral pronouncement awarding fees was issued while the court had plenary power, no written order was issued before plenary power expired. The hearing on Husband's motion was held after the 75th day after the decree was signed, so at the time of the hearing, Husband's motion for new trial had already been overruled by operation of law. However, the court retained jurisdiction over that implicit denial of Husband's motion for another 30 days (or until 105 days after the decree was signed). An order granting a new trial or modifying, correcting, or reforming a judgment must be written and signed.

Although Wife cited other cases in which a trial court's failure to include an attorney's fee award in a final decree could be corrected by a judgment nunc pro tunc, those cases were distinguishable. In Wife's cited cases, the trial court orally awarded fees but then omitted referencing attorney's fees in the written order. Here, however, the final decree provided that each party would be responsible for his or her own fees, and nothing indicated that written order varied from any prior oral rendition. The final decree was free from clerical error. The trial court subsequently changed its judgment, which was a judicial decision and not correctable through a judgment nunc pro tunc.

Wife's Trial Amendment To Add Request To Partition Marital Residence—Despite A Consistent Claim Until Trial The Property Was Community Property—Was Permissible Because It Did Not Reshape The Nature Of Trial, Husband Could Have Anticipated The Claim, And The Amendment Did Not Detrimentally Affect Husband's Presentation Of The Case.

15. *Anderson v. Anderson*, No. 12-25-00030-CV, 2025 WL 3049979 (Tex. App.—Tyler 2025, no pet.) (mem. op.) (10-31-2025).

Facts: Before marriage, the couple purchased real property, and each party's name was on the deed as a grantee. The purchase was made using funds from a joint checking account, but some of the funds in the account were from the proceeds of a sale of Husband's separate property. The parties disputed whether the source of the funds to purchase the property came from community funds or Husband's separate funds.

At the trial's conclusion, the parties' attorneys discussed with the trial court whether a potential partition of the property—if Wife had a separate-property interest in it—was tried by consent. Wife's counsel took the position that because the issue of characterization was thoroughly tried, the court could partition the property. Husband argued that he had only taken the position that the entire property was his separate property, and he had not consented to partition. Wife then asked to allow a trial amendment to include a request to partition the property. The trial court orally found it had jurisdiction to render an order partitioning the property.

Initially, a final decree confirmed the property as Husband's separate property. However, after reviewing Wife's motion to modify, correct, or reform the judgment, the court issued an order requiring Husband to transfer a portion of the proceeds from the sale of the property (which occurred after the decree) to Wife. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court erred in granting the trial amendment because the issue of partition was not tried by consent. The parties agreed that prior to trial, neither had sought partition of the property. Wife consistently maintained the property was community property, while Husband asserted it was his separate property.

An amendment is prejudicial on its face when: (1) it asserts a new substantive matter that reshapes the nature of the trial itself; (2) the opposing party could not have anticipated the new substantive matter given the development of the case up to the time the amendment was requested; and (3) the amendment would detrimentally affect the opposing party's presentation of its case. In examining the first factor, partition had common elements with Husband's claim. Because both parties' names were on the deed, for Husband to prove his separate-property claim, he was required to rebut the presumption that he and Wife had equal interests in the property. At trial, Husband presented evidence that Wife "contributed an unequal amount" toward the acquisition. Additionally, the parties disputed the admissibility of bank records. Wife's counsel explained the records were necessary to determine Wife's percent interest in the property, and Husband's counsel made no direct response to that explanation. The trial court could have, thus, reasonably concluded Husband could have anticipated the partition issue. Finally, although Wife maintained until trial the property was community property, she acknowledged at trial that because the property was acquired before marriage, it could not be community property, and instead, she asserted each owned an undivided one-half interest in the property. Nothing in the record suggested Husband would have presented different or additional evidence (or that the amendment would have reshaped the nature of the trial) if Wife had changed her position earlier. Therefore, the trial court did not abuse its discretion in allowing the trial amendment.

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

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

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

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

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

Holding: Writ of Mandamus Conditionally Granted.

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

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

Under the SCRA, a servicemember may file an application to vacate or set aside a default judgment rendered against them if (1) the servicemember was materially affected by reason of that military service in making a defense to the action; and (2) the servicemember has a meritorious or legal defense to the action or some part of it. While this remedy is comparable in

some respects to a bill of review, it constitutes a distinct statutory process governed by separate standards. In the divorce, Father had filed a general denial and counterpetition. The SCRA remedy only applies when the servicemember did not make an appearance. Father could have sought a stay during the divorce under the SCRA, but he did not do so. Although Father was deployed throughout the divorce, he made a general appearance and was, thus, not entitled to use the SCRA to attempt to set aside the default judgment.

TEXAS SUPREME COURT

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

17. ***In re Estate of Lopez***, 724 S.W.3d 847 (Tex. 2025) (11-07-2025).

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

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

Holding: Court of Appeals Reversed; Remanded to Trial Court

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

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

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

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

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

TEXAS SUPREME COURT

Wife's Non-Receipt of Citation Sufficient to Support First Element of *Craddock* Test, Entitling Her to a New Trial, Notwithstanding Completed Alternative Service Before Rendition of Default Decree.

18. ***Tabakman v. Tabakman***, __ S.W.3d __, No. 24-0919, 2025 WL 3492090 (Tex. 2025) (per curiam) (12-05-2025).

Facts: The parties had been married for 13 years and had one Child together. Wife left due to mistreatment by Husband, and that same month, Husband filed for divorce and informed Wife of his filing. Wife later testified that she did not know what to do, had no access to money for an attorney, and was afraid. Wife assumed she would be served in person. However, after months of unsuccessful service attempts, the trial court signed an order for alternative service by attaching the petition to the door of

Wife's parents' home. After Wife failed to answer, Husband obtained a default judgment. Wife learned of the default judgment when Husband absconded with the Child and their dog, and she immediately contacted an attorney, who filed an answer and a *Craddock* motion for new trial. Although Wife's motion was filed before the written order was signed, the court nevertheless signed the default decree. Subsequently, the court denied Wife's *Craddock* motion, finding she was consciously indifferent to answering and failed to show a new trial would not harm Husband.

Wife appealed. The appellate court held that Wife was aware of the ongoing suit and that her excuse of not being aware of the alternative service was insufficient to negate the finding of conscious indifference in failing to answer. Thus, the appellate court affirmed the default decree. Wife petitioned the Texas Supreme Court for review.

Holding: Appellate Judgment Reversed; Remanded to Trial Court.

Opinion: Default judgments are greatly disfavored under Texas law. The law merely tolerates such judgments because defendants cannot defeat the authority of the courts simply by refusing to appear. "Accordingly, any doubts about a default judgment—not just doubts about service—'must be resolved against the party who secured the default.'" When the three elements of *Craddock* are satisfied, a new trial must be granted. Even if a defendant does not satisfy the *Craddock* test, a court has broad discretion to order a new trial if "good cause" supports doing so.

A failure to answer is not intentional merely because it is deliberate, and conscious indifference is more than mere negligence. Here, Wife thought the papers would be served on her in person. Her mistake of law in not knowing of alternative service methods could satisfy the first *Craddock* element. Additionally, Wife was unaware of any attempts to serve her. She had not heard anyone knocking on her parents' door and was unaware of anyone otherwise attempting to contact her. Once she learned of the default decree, she expeditiously filed an answer before the decree was signed. She never learned of any documents being affixed to her parents' door.

Husband argued Wife's claims of nonservice were conclusory. However, "[p]eople often do not know where or how they lost something—that is precisely why it remains 'lost.'" Additionally, Wife's claims were supported by her father's testimony explaining that construction work was being done at his house at the time. He testified that the neighborhood security officer should have notified him of visitors, but no notification was received. The construction crew also did not give him any documents from the door.

While Wife had general knowledge of an ongoing suit, she never received a citation warning her that a failure to answer could result in a default judgment. While not understanding a citation is not an excuse for not answering, not receiving citation is generally sufficient to support granting a new trial.

Husband additionally argued that he controverted Wife's claim by establishing alternative service was properly executed. Alternative service provides proof of how and when service was executed but is "no evidence in the record of when defendant received actual notice." The process server testified that he did not see Wife, and there was no evidence she received the citation.

Husband next argued Wife failed to show that she would succeed on a meritorious claim. However, Husband set Wife's burden too high. She was merely required to "set up" a meritorious defense, not show that she would succeed at trial on the claim.

Finally, Wife represented at the hearing on her *Craddock* motion that she was ready for trial, agreed to pay Husband's costs incurred in obtaining the default decree, and acknowledged the court's authority to award fees relating to the new trial motion. This satisfied her initial burden and shifted the burden to Husband to show injury. While he generally complained about strains relating to litigation, he did not show how those complaints would disadvantage him in presenting the merits of his case at a new trial.

Docket Sheet Indicating Parties' Were Divorced, a Record Was Waived, and an Agreement Was Adopted Was Sufficient to Establish Present Rendition of Divorce Before Husband's Death.

19. *Chancey v. Chancey*, No. 01-24-00266-CV, 2025 WL 3521319 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (12-09-2025).

Facts: Husband filed for divorce. About nine months later, the parties signed a handwritten Rule 11 agreement with respect to use of property during the divorce, payment of debts, and Wife's name change. Subsequently, counsel for both parties withdrew. Before a decree was signed, Husband passed away. Wife filed a suggestion of death and motion to dismiss, claiming the parties had reconciled before Husband's death. The case was dismissed for want of prosecution.

Nearly a year and a half later, Husband's Daughter filed a motion for new trial or to reinstate, arguing the divorce had been granted before Husband's death. Daughter relied upon a docket sheet entry stating that evidence was presented, the divorce was granted, and property was divided pursuant to a Rule 11 agreement. Wife moved to strike Daughter's petition in intervention, challenging her standing and the claim that the divorce was ever rendered.

After an evidentiary hearing, the trial court reinstated the case and signed an "agreed" final decree of divorce. The trial court denied Wife's motion for new trial, and she appealed.

Holding: Reversed and Rendered.

Opinion: Wife argued the divorce was not final when pronounced and rendered from the bench. The appellate court reviewed *Baker v. Bizzle*, 687 S.W.3d 285 (Tex. 2024) and the more recent *Sargent v. Sargent*, No. 02-24-00470-CV, 2025 WL 2627033 (Tex. App.—Fort Worth Sept. 11, 2025, no pet.). In *Baker*, the trial court rendered the divorce but took the property division under advisement. Although there were email discussions regarding the division, no final order was signed before one of the parties' died, and the emails were not part of the trial court's record. Thus, the oral rendition was interlocutory, and the trial court lacked jurisdiction to finalize the divorce. In *Sargent*, the court rendered judgment on the record, and the subsequent written order was merely a ministerial act.

Here, there was no reporter's record; however, the docket sheet indicated a present rendition of divorce. The docket sheet notations further indicated the parties' waived the making of a record, granted Wife's name change, and adopted the parties' Rule 11 agreement. Thus, unlike in *Baker*, the court finally disposed of all issues between the party on the day of rendition. Additionally, the parties and the trial court signed the document entitled both "Final OR[D]ERS/Decree" and "RULE 11 AGREEMENT (with entry to follow)" and filed it with the court clerk. Thus, unlike in *Baker*, the court made its ruling public before the death of a party.

Wife argued the "Final OR[D]ERS/Decree" document was not final because it did not divide her retirement account, credit cards, bank accounts, art, or mementos. However, the parties waived the making of a record, so the appellate court was required to assume the evidence presented at trial supported the judgment.

Accordingly, the rendition finalized the divorce, and the documents signed that day controlled. Husband's subsequent passing divested the trial court of authority to sign any subsequent orders. Further, the orders dismissing and reinstating the case were void and without effect.

DIVORCE: INFORMAL MARRIAGE

Wife's Claimed Date Of Marriage In Petition Put Husband On Notice Of Informal-Marriage Claim; However, Conclusory Evidence Insufficient To Support Finding Of Informal Marriage.

20. *Montemayor v. Montemayor*, No. 01-23-00374-CV, 2025 WL 898315 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (03-25-2025).

Facts: Husband's petition for divorce asserted a date of marriage coinciding with the parties' marriage ceremony. Wife's counterpetition asserted they married about a year earlier. They signed a partial MSA addressing the child-related issues but presented their property disputes to the court. The parties disputed the value and characterization of the marital residence, and the characterization of a piece of real property in Mexico and Husband's trucking company.

At trial, when Wife brought up her claim of informal marriage, Husband objected to Wife asserting an informal marriage in the absence of a pleading for that claim. The trial court agreed with Wife's assertion that she was not required to specifically plead for such an adjudication.

Husband noted that the parties' first Child was born less than a year before the ceremonial marriage. He had signed an acknowledgement of paternity and asked the divorce court to formally adjudicate his paternity.

After the court issued a memorandum ruling, Wife filed a proposed final decree. Husband objected to her inclusion of the date of marriage being a year before the ceremony. After a decree was signed, Husband appealed.

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

Opinion: When no special exceptions are made to a pleading, courts will liberally construe pleadings in the pleader's favor. Acknowledging there was little authority addressing the issue of whether an informal marriage must be specially pleaded, the court could find no authority requiring a specific pleading that an alleged marriage began informally. Wife's pleading included a date of marriage a year before Husband's, and the inclusion of that date was sufficient to put Husband on notice of Wife's claim.

The parties agreed they began cohabitating before the marriage date identified in Wife's petition. Wife claimed the parties referred to each other as husband and wife before getting a marriage certificate and filed taxes as a married couple before the ceremony. Husband could not recall how they filed taxes that year, and the tax return was not admitted as evidence. The deed for the marital residence referred to the parties as husband and wife and was signed before the ceremony. However, there was no evidence regarding an agreement to be married or that they represented to others that they were married. The appellate court sustained Husband's complaint and found the evidence to be legally and factually insufficient to support a finding of an informal marriage.

Because the date of marriage was inaccurate, the property division was reversed to address characterization issues.

"Dead Man's Rule" Did Not Require Exclusion of Wife's Testimony About Her Agreement with Decedent to Be Married Because Other Evidence Corroborated the Existence of an Agreement.

21. *In re Estate of Davidson*, No. 01-24-00026-CV, 2025 WL 3712248 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (12-23-2025).

Facts: After Decedent's death, his adult Sons discovered a will that had been executed while Decedent was still married to their Mother, and the Sons sought to admit that will to probate. Wife objected to the application and asserted she had entered into an informal marriage with Decedent and that he had revoked his previous will but died before executing a new one.

In a bench trial, Wife presented evidence she and decedent lived together and held themselves out as a married couple. While Wife also testified that she and Decedent agreed to be married, the Sons argued the "Dead Man's Rule" barred her testimony about what Decedent may have said. The trial court determined Wife established a marriage by the preponderance of the evidence and that Wife was Decedent's surviving spouse. The Sons appealed.

Holding: Affirmed.

Opinion: The Sons challenged the sufficiency of the evidence to support the finding that the Wife and Decedent entered into an informal marriage and argued the trial court erred in denying their oral motion for a "directed verdict" because Wife presented no admissible evidence to support her assertion Wife and Decedent agreed to be married.

The trial court was presented with conflicting evidence regarding cohabitation in Texas and representations to others that Wife and Decedent were married. However, the trial court as the sole judge of the credibility of witnesses was free to believe Wife and her witnesses while disbelieving the Sons' version of events.

With respect to the agreement, Wife testified about a conversation she had with Decedent regarding an agreement. Per Wife's testimony, Decedent said, "you f*** around on me, I'll kill you. And [Wife] said to him, if you f*** around on me, I'll kill you too." After that conversation, they laughed and began holding themselves out as a married couple. The Sons argued that the Dead Man's Rule prevented the trial court from considering this conversation as evidence to support an agreement to be married.

Texas Rule of Evidence 601(b) details the Dead Man's Rule as it exists today. Generally, testimony of a decedent cannot be admitted without corroboration. Corroborating evidence "must tend to support some of the material allegations or issues that are raised by the pleadings and testified to by the witness whose evidence is sought to be corroborated." "It is sufficient, for instance, if the corroborating evidence shows conduct on the part of the deceased which is generally consistent with the testimony concerning the deceased's statements." Contrary to the Son's argument, there was evidence from other sources that Decedent behaved as if he were married to Wife. Again, the evidence was conflicting, but the trial court was in the best position to resolve those conflicts.

DIVORCE: GROUNDS FOR DIVORCE/ANNULMENT

No Evidence Supported Grounds For Divorce Granted In Default Decree.

22. *Janish v. Janish*, No. 03-23-00275-CV, 2025 WL 492505 (Tex. App.—Austin 2025, no pet.) (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.

Marriage Annulled Because Husband Fraudulently Induced Wife Into Marriage For A Green Card; Attorney's Fees Reversed Because Despite Stipulation As To Qualifications And Amount Sought, There Was No Stipulation Or Evidence About The Reasonableness And Necessity Of The Fees.

23. *Singh v. Kaur*, No. 02-24-00023-CV, 2025 WL 728102 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (03-06-2025).

Facts: When Husband and Wife began dating, Wife was a US citizen, but Husband was not. They were engaged for about 4 months before having a civil ceremony at a courthouse. They discussed travelling to India for a traditional wedding ceremony; however, Husband was involved in a pending asylum case that made this difficult. Husband needed a green card in order to be

able to return to the US after a trip to India. Wife was particularly upset by Husband's pressure to assist him because he knew that she had been married before to a man who used her to gain US citizenship before becoming abusive. Before the couple could travel to India, the marriage fell apart. Wife obtained an annulment based on Husband's fraudulent inducement to marriage, and the trial court awarded Wife attorney's fees. Husband appealed.

Holding: Affirmed in Part; Reversed and Remanded in Part

Opinion: Husband first challenged the annulment, arguing the evidence was insufficient to support a fraudulent inducement finding. A trial court may annul a marriage if the other party used fraud to induce the petitioner to marry, and the petitioner did not voluntarily cohabitate with the other party after learning of the fraud. Fraudulent inducement is established by proving that a false material misrepresentation was made that was known to be false, was intended to be acted upon, was relied upon, and caused injury. A material misrepresentation means a reasonable person would attach importance to and be induced to act on information.

Husband argued that he did not need a green card to live or conduct business in the US. Wife knew of Husband's asylum status while the couple was dating. Husband told Wife he was not the person who would ask her to file for his paperwork. However, the day after he proposed, Husband did just that. Husband was aware of Wife's prior Husband using her to obtain immigration status. After the civil ceremony, Husband began pressuring Wife to help him get a green card because of his inability to travel. Husband asked Wife to meet with an immigration attorney about a potential trip to India. Husband would claim not to want a green card but would continually bring up his expiring work visa and inability to visit family in India. Wife discovered that despite pushing for the trip to India for the alleged purpose of conducting the traditional ceremony, Husband had not formalized any plans for the ceremony. The court was free to believe Wife's version of events and discredit Husband's disavowment of Wife's testimony.

Husband additionally complained of the attorney's fee award. At trial, Husband stipulated to Wife's attorney's qualifications and the amount of fees Wife incurred in the suit. A stipulation is an agreement, admission, or concession made in a judicial proceeding by the parties or their attorney's respecting a specified matter. A stipulation is not enforceable unless it is made in writing or in open court on the record. The court stated on the record that Husband's attorney stipulated to Wife's fees being reasonable and necessary; however, the record did not reflect that stipulation. Husband's attorney stipulated only to Wife's qualifications and the amount sought. Husband's attorney did not state that the fees were reasonable or necessary. Thus, the attorney's fee award was remanded for further proceedings.

Despite Husband's Admission To Adultery, Trial Court Was Not Required To Grant Divorce On That Ground Or Award Wife A Disproportionate Share Of The Community Estate.

24. *Tanner v. Tanner*, No. 03-23-00268-CV, 2025 WL 1084871 (Tex. App.—Austin 2025, no pet.) (mem. op.) (04-11-2025).

Facts: During their divorce trial, Wife asserted Husband had two affairs, which he did not deny. Husband complained that Wife spent too much time and energy caring for her mother and adult son. The parties attempted marriage counseling but were unable to reconcile. Although Wife pleaded for divorce on the ground of adultery and insupportability, the trial court granted the divorce only on the insupportability ground. Wife appealed.

Holding: Affirmed.

Opinion: Wife argued that because Husband committed adultery, the trial court erred in granting the divorce only on the ground of insupportability. Wife next argued that because Husband committed adultery, the trial court abused its discretion in failing to award her a disproportionate share of the community estate.

The appellate court noted that Wife failed to adequately brief her issues, and Husband chose not to file a responsive brief. The law addressing the issues raised by Wife are discretionary. Regardless of whether Husband admitted to committing adultery, there was evidence to support granting a divorce on the ground of insupportability. Wife acknowledged that both parties contributed to the parties' breakup. A trial court is not required to grant a disproportionate division if one spouse commits adultery, and Wife did not show that the division was an abuse of discretion.

Annulment Reversed Because Husband's Evidence Could Not Support A Finding He Was Fraudulently Induced Into Marriage.

25. *Trapal v. Dodge*, No. 14-24-00770-CV, 2025 WL 2419945 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (08-21-2025).

Facts: About one month after the parties married, Wife moved out. Husband filed a petition to annul the marriage, and Wife filed a counter-petition for divorce.

Husband met Wife in the Philippines while vacationing with a friend. He claimed she was a prostitute, but Wife denied that allegation. They immediately began a sexual relationship and continued a long-distance relationship for over five years. Shortly after meeting, Wife quit her job, and Husband sent her at least $700 a month. Husband visited her frequently, and they travelled

together on vacations. Husband met Wife's family. Wife declined Husband's marriage proposals a number of times before finally accepting. Husband obtained a visa for Wife so she could live with him in the U.S. No evidence indicated Wife sought a visa or asked Husband to obtain one for her. The visa process took a few years, and during that time, the couple became less close. When Wife finally arrived in the U.S., she refused to share a bed with Husband. They did not consummate the marriage on their wedding day but did have sexual relationship on several occasions during the marriage.

Wife left Husband a note when she moved out expressing her dissatisfaction with the relationship and apologizing because the relationship did not work out. Wife moved to California with Husband's friend. Husband believed Wife had planned to leave him before she arrived in the U.S. At the hearing, Husband's friend testified about Husband's temper and stated his belief that he had to help Wife get away from Husband. The friend denied having a sexual or dating relationship with Wife.

Husband claimed Wife induced him into marriage for a green card. Wife claimed she did not want to come to the U.S. because she had no family here but changed her mind when Husband told her they could get married and start a life together. Wife stated that the relationship changed because of COVID-19 and a surgery she had that made her unable to engage in sex. She claimed to have attempted to resolve her problems with Husband, but he would become angry. She was not scared of Husband when she lived in the Philippines, but she became scared when living with him in the U.S. Husband told her she could no longer speak with her family on the phone.

The trial court signed a decree of annulment. The trial court's findings sided with Husband's version of events but also included findings that were not supported by the record, including a finding that Husband reduced Wife's monthly support from $700 to $500 after she moved to the U.S. Husband gave Wife a single gift of $500 and then became angry with how she spent it. Wife appealed.

Holding: Reversed and Remanded.

Opinion: In determining whether to grant an annulment based on fraud, courts generally look for evidence of fraudulent inducement, which is established by proving that a false material misrepresentation was made that was known to be false when it was made, was intended to be acted upon, was relied upon, and caused injury.

Here, the trial court did not find that Wife made a material misrepresentation or a false statement of any kind. There was no evidence Wife pushed Husband to marry her or made any promises or representations if Husband did not marry her. Rather, Wife declined marriage proposals for two years before accepting. Husband testified that Wife used her "attractiveness" and "her sexuality to coerce" him into assisting with her visa application. But, Husband did not begin the visa application process until after Wife agreed to marry him. There was no evidence Wife raised the immigration issue during the two years she was declining his proposals. Further, Husband's allegations that Wife used her attractiveness to induce him were conclusory. He offered no statements or actions by Wife to support his allegation. "That the two were engaged in a years-long consensual sexual relationship cannot be considered 'coercion[.]'"

Even presuming Wife's general attractiveness could support a fraudulent inducement theory, Wife resisted sexual contact for months before moving to the U.S. and marrying Husband, but he went through the marriage anyway. Even accepting Husband's version of events as true—as the appellate court was required to do—the evidence did not support a finding that Wife fraudulently induced Husband into a marriage.

Further, because Husband met the residence and domiciliary requirements for a divorce, and because the requisite waiting period had passed, the trial court should have granted Wife's request for a divorce.

Mother's Testimony About Father's Physical Abuse Supported Implicit Finding That His Cruelty Made Living With Him Insupportable.

26. *Mpacko v. Ngue*, No. 03-25-00122-CV, 2025 WL 2471788 (Tex. App.—Austin 2025, no pet.) (mem. op.) (08-28-2025).

Facts: The parties married in Cameroon and moved to the U.S. the following year. Mother moved to DC from Texas while she was pregnant with their second Child. Father filed for divorce in Texas shortly after that Child was born. The Texas and DC courts determined Texas was the older Child's home state, but DC addressed custody of the younger Child.

In Texas, Mother asked to be named the sole managing conservator of the older Child based in part on allegations that Father committed family violence. At the bench trial, Mother testified about multiple instances of Father physically abusing her. After Father threatened to kill her, Mother moved to DC. The DC court had given Mother sole custody of the younger Child and granted Father limited supervised access. Mother asked the Texas court to grant the same order for the older Child to let the two Children be on the same schedule. Father denied Mother's allegations and stated he was appealing the DC order.

The court granted a divorce on the ground of cruelty, appointed Mother the older Child's sole managing conservator, made a family violence finding against Father, gave Father limited supervised possession of the older Child in DC, and ordered Father to pay child support. Father appealed.

Holding: Affirmed

Opinion: Among other complaints, Father argued the trial court abused its discretion in granting the divorced based on cruelty. "'Cruelty,' as that word is used in divorce cases, is an act that endangers or threatens life, limb or health of the aggrieved party, including any outrages upon the feelings or any infliction of mental pain or anguish." Cruelty has also been defined as "the willful, persistent infliction of unnecessary suffering, whether in realization or apprehension, whether of mind or body, to such an extent

as to render cohabitation dangerous and unendurable." "The term comprehends conduct endangering life, limb or health or productive of mental anguish, and conduct of a nature utterly destructive of the purpose and object of the marital relationship." "Abuse need not be limited to bodily injury; nonetheless, physical abuse will support granting a divorce on cruelty grounds."

Although Father acknowledged that Mother testified that he physically abused her, he asserted that "there was no real testimony or documentary evidence that detailed how [his] behavior rendered living with him insupportable." However, Mother answered in the affirmative when asked if it was fair to say that the marriage ended due to family violence. Moreover, Mother provided ample testimony from which a reasonable factfinder could find Father engaged in abusive behavior that rendered living with him insupportable.

DIVORCE: DISCOVERY

Contempt Order Not Void Because Mother Received Adequate Notice, And The Underlying Order Was Not Too Vague To Be Enforceable By Contempt.

27. *In re Goldrup*, No. 08-24-00311-CV, 2025 WL 1129018 (Tex. App.—El Paso 2025, orig. proceeding) (mem. op.) (04-16-2025).

Facts: Mother filed for a protective order against Father in Virginia and, a few months later, filed for divorce in Texas. Mother produced certain audio and visual recordings in Virginia that she did not produce in the divorce, so Father sought their production in the divorce. In response to Father's motion to compel, Mother claimed to no longer have the phone on which the recordings were made. Father responded that the recordings would still be available on the cloud. After the compel hearing's conclusion, the court orally commanded Mother to turnover her devices for forensic inspection within a week. The written order was signed the following day, but it was not filed with the clerk or forwarded to Mother until the day before Mother's deadline. Father filed a motion for enforcement by contempt a few days after Mother missed the deadline, but the contempt hearing was not held until many months later. At the conclusion of the contempt hearing, the court held Mother in contempt, fined her $500, and sentenced her to one-day confinement but suspended the confinement pending Mother's compliance with the underlying order. Mother sought mandamus relief.

Holding: Writ of Mandamus Denied

Opinion: Orders for contempt are not reviewable by appeal and may only be challenged by a petition for writ of habeas corpus (if the relator is confined) or a petition for writ of mandamus (if the relator is not confined). Father argued that Mother should have filed a petition for writ of habeas corpus because confinement was a possibility; however, Mother's sentence was suspended, and she was not presently confined. Thus, a petition for writ of mandamus was the appropriate vehicle to challenge the contempt order.

The appellate court first defined the nature of the contempt order, noting it imposed penalties for both civil and criminal contempt. The $500 fine constituted a punishment for criminal contempt because it was punitive in nature. The suspended confinement was a coercive in nature and constituted a punishment for civil contempt. Mother had the power to purge the civil contempt by complying with the underlying judgment.

Mother complained she did not receive adequate notice of the underlying order. Because the judgment for contempt was a hybrid of criminal and civil, the court held that it would be appropriate and equitable to apply the criminal standard of review and notice requirements. The motion for enforcement clearly identified the underlying order Mother allegedly violated, included the order's language, and stated the time, date, and manner of Mother's alleged noncompliance. Mother did not identify any aspect of the motion that was vague. The motion itself afforded Mother adequate notice of the conduct at issue.

Mother further complained that the order was void because she did not receive timely notice of the order, making any failure to comply unwilful. However, Mother was present in the hearing at which the trial court orally ordered Mother to produce the device for forensic examination by a date certain. The contempt hearing occurred 10 months after that hearing, and Mother failed to comply during that time. Mother could not show that her lack of compliance was not knowing.

Finally, Mother argued the contempt order was vague because the underlying order was too vague and ambiguous to support a contempt finding. Mother's final issue was "more properly construed as a factual challenge to her inability-to-comply defense." The appellate court cannot reweigh evidence of a contempt order; the contempt order would only be void if there was *no evidence* to support the order (as opposed to factually insufficient evidence). Mother's discovery responses conflicted with her testimony about whether the device was still in her possession. The discovery responses constituted some evidence of Mother's ability to comply, so the contempt order was not void on that ground.

Death-Penalty Sanctions Not Error Because Lesser Sanctions Were Attempted, And Husband Failed To Show Striking His Pleadings Resulted In Improper Judgment Or Prevented Him From Presenting His Case.

28. *In re R.J.K.*, No. 05-24-00099-CV, 2025 WL 2723277 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (09-24-2025).

Facts: Husband and Wife were married for about 6 years and had one Child. Husband petitioned for divorce, and Wife counter-petitioned. Leading up to trial, Wife filed motions to compel discovery, and the trial court entered rulings in Wife's favor. However, the transcripts of those hearing were not part of the appellate record. Additionally, transcripts relating to Wife obtaining a protective order were omitted from the appellate record. At trial, Husband admitted to placing tracking and listening devices on Wife's car and breaking into her cell phone. Wife testified that Husband sexually assaulted her more than once and placed spyware on her phone. Wife went to a women's shelter due to Husband's behavior. Additionally, due to Husband's failure to respond to discovery, the trial court presumed Husband's income for the purpose of determining child support.

The final decree appointed Wife as the Child's sole managing conservator and ordered Husband to pay maximum guideline child support. The decree included a family-violence finding and permanent injunctions against Husband stalking Wife or committing family violence. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court abused its discretion by striking his pleadings because the evidence was legally insufficient to support death penalty sanctions. To succeed on appeal, Husband was required to show the trial court erred in entering the sanctions and that the sanctions probably caused error. When imposing death penalty sanctions, the trial court may consider the history of the litigation. It is not limited to considering only the last violation of discovery rules.

Husband failed to provide a full reporter's record with his appeal. Thus, the appellate court was required to presume the omitted portions of the record supported the judgment. Moreover, the record established, and Husband did not dispute, that Husband failed to comply with prior discovery orders. Despite lesser sanctions of fees and prohibitions from conducting further discovery, Husband continued to fail to fully respond to Wife's discovery requests. Moreover, Husband failed to establish how striking his pleadings caused the rendition of an improper judgment or prevented him from presenting his case.

Husband additionally raised a due process complaint on appeal, but because that issue was not raised in the trial court, he failed to preserve error. Regardless, because the trial court considered lesser sanctions, and because Husband received notice of Wife's motion for sanctions, Husband's due process complaint failed on the merits.

Husband next complained of the final protective order, but he failed to include the relevant transcripts in the record. Although Husband attached the transcript to his brief, attaching exhibits to an appellate brief does not make those exhibits part of the record. In the absence of a record, the appellate court did not consider this argument on appeal.

Finally, Husband challenged the sufficiency of the evidence to support the permanent injunction. Husband asserted there was no evidence he continued to stalk Wife and no evidence of harm. However, Wife told the court Husband's actions caused her to feel threatened and afraid for her life. The trial court was free to believe Wife's testimony and discredit Husband's.

Contrary to Husband's assertion, the permanent injunction did not require an underlying finding that family violence was likely to occur in the future. Although there was conflicting evidence presented at trial, there was sufficient evidence to support the trial court's determination that the permanent injunction was necessary.

DIVORCE:
ALTERNATIVE DISPUTE RESOLUTION

Husband Entitled To Judgment On MSA Because Wife Did Not Establish She Was Threatened Into Signing The Agreement.

29. *Priddy v. Priddy*, No. 10-24-00156-CV, 2025 WL 1340533 (Tex. App.—Waco 2025, no pet.) (mem. op.) (05-08-2025).

Facts: Wife filed for divorce after a 20-year marriage. The parties signed a mediated settlement agreement in which Wife purported to acknowledge that Husband was not a co-maker of a certain promissory note and that she would hold him harmless from any obligations due under the note. After mediation, Wife obtained new counsel and attempted to set aside the MSA. Wife alleged she was threatened and forced to sign the agreement. After a hearing, the trial court denied Wife's motion to set aside the MSA and signed a final decree. Wife appealed.

Holding: Affirmed.

Opinion: A month before the divorce, Wife signed a promissory note in both spouses' names without Husband's knowledge. The note was intended to cover improvements on property owned by Wife's mother, where Husband and Wife lived during marriage. At the hearing on her motion to set aside the MSA, Wife said the mediator told Wife that if she did not forfeit her rights to Husband's 401k, he would pursue criminal charges against her, and she would be convicted for fraud associated with the promissory note. Wife asserted she had been blackmailed. Husband denied blackmailing her or accusing her of anything. Husband noted that Wife was an attorney and knew the law. He further stated that he would not put his Child's mother in jail. Husband acknowledged that he may have discussed Wife's actions with the promissory note while in mediation, but he never threatened to send her jail. The attorney who represented Wife during mediation testified that the mediator never said anything about criminal charges.

Wife Showed No Basis For Vacating Arbitration Awards Because She Failed To Establish Arbitrator Exceeded His Authority.

30. *Pyle v. Wedekind*, No. 09-23-00200-CV, 2025 WL 2166586 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (07-31-2025).

Facts: During the parties' divorce proceedings, Husband and Wife signed a mediated settlement agreement ("MSA") and an agreement incident to divorce ("AID") that the trial court incorporated into a final decree. The decree provided that in the event of conflicts, the decree and AID would control. The MSA included an arbitration provision that included a disclosure regarding the likelihood of professional interactions between the arbitrator and attorneys.

Husband filed a motion to compel arbitration to enforce the AID. Wife opposed arbitration, asserting that a deadline in the AID had passed, and the arbitration agreement was no longer binding. The trial court ordered arbitration, and the arbitrator returned three awards, one of which awarded fees and sanctions against Wife, in part for failing to make a reasonable inquiry before bringing allegations that were not supported by facts.

Husband moved for the trial court to confirm the arbitration awards, and Wife sought vacatur on the grounds that the trial court should not have compelled arbitration. The court affirmed all three awards, and Wife appealed.

Holding: Affirmed.

Opinion: An arbitration award that exceeds the authority conferred by the agreement is void. However, in the absence of a clear agreement to limit the arbitrator's authority and expand the scope of judicial review, the appellate court may not exercise expanded judicial review. Absent an agreement for expanded judicial review, the appellate court will not reverse even for a mistake of law or fact.

Wife argued the AID included an arbitration deadline, and the trial court's arbitration ordered was signed 11 months after that deadline. The AID and decree stated that disputes would be resolved by binding arbitration on or before the deadline. The fact that the parties did not attend arbitration by that date did not necessarily preclude arbitration. The appellate court first reviewed the "deadline" to distinguish between "substantive arbitrability questions addressing the existence, enforceability, and scope of an agreement to arbitrate …," and "procedural arbitrability questions addressing the construction and application of limits on that agreement …[,]" such as "'the satisfaction of 'prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate.'" Courts decide substantive arbitrability questions, while arbitrators decide procedural arbitrability questions. Other than the "deadline," Wife did not challenge the validity of the arbitration agreement. Because this deadline was a question of procedural arbitrability, it was a question to be decided by the arbitrator, and the trial court did not err in compelling arbitration.

Wife next argued the arbitrator exhibited evident partiality by declining to recuse himself based on his conduct during prior mediation and his failure to disclose relationships and business dealings. To exemplify partiality, Wife pointed to statements made by the arbitrator/mediator that Wife faced civil and criminal liability and implied that the deal being offered at mediation was Wife's best hope of avoiding those liabilities. The trial court was within its discretion to conclude the methods employed by the arbitrator did not demonstrate partiality, and without any record of the arbitration, Wife could not establish grounds for vacatur. Further, the AID and decree included a provision waiving appeal of arbitration. Additionally, the MSA included a waiver of disclosure of relationships and business dealings with members of the Family Bar. Wife produced no evidence of bias.

Wife further argued the arbitrator exceeded his authority by awarding sanctions because sanctions were not contemplated or authorized by the AID or decree. The arbitration order stated that the parties would be bound by the rules established by the arbitrator unless otherwise agreed by the parties. The arbitrator's docket control order stated that unless otherwise ordered or modified by the arbitrator, the Rules of Civil Procedure and Evidence would apply. The arbitrator had authority to issue Rule 13 sanctions.

Arbitrator Did Not Exceed Her Authority By Not Considering Issues Not Presented During Arbitration.

31. *In re Marriage of Sheridan*, No. 07-25-00006-CV, 2025 WL 2406112 (Tex. App.—Amarillo 2025, pet. denied) (mem. op.) (08-19-2025).

Facts: After Husband discovered Wife's affair, they participated in a few years of marriage counseling and signed a post-marital agreement ("PMA") before eventually divorcing. The PMA included a non-disclosure provision regarding data Husband obtained from Wife's phone and required him to delete the data within 48 hours of signing the agreement or else he would lose interest in certain assets. Additionally, the PMA included an arbitration provision.

Because the parties could not agree on whether Husband complied with the provision regarding deleting data, the dispute was submitted to be heard by an agreed arbitrator. The arbitrator found in Wife's favor. Husband challenged Wife's motion to enter a decree based on the arbitration award because Husband asserted there were still issues to be arbitrated, including claims of Wife's alleged breaches of the PMA. At the final hearing, Wife argued Husband should have addressed his concerns at the arbitration hearing. The trial court signed a decree based on the arbitration award, and Husband appealed with the aid of counsel.

Holding: Affirmed.

Opinion: Husband argued the arbitrator exceeded her authority by refusing to resolve specific issues related to the disposition of the marital estate. Wife responded Husband waived his appellate complaint by failing to invoke one of the statutory grounds for vacating the arbitration award. The appellate court agreed with Wife.

The PMA provided "[t]he parties agree to submit to binding arbitration any dispute or controversy," at the arbitration hearing, the parties narrowed the focus of the hearing to only one issue—whether the forfeiture provision of the PMA had been triggered. Husband's counsel announced, "the question before the arbitrator today is one of forfeiture …." Wife's counsel responded "[i]t's really going to boil down to [the forfeiture provision] of the postmarital agreement." "And we are asking that the forfeiture provisions [] be enforced." Husband's counsel stated, "[w]here we do agree, however, is that the Court's decision and focus, of course, will be on this concept of forfeiture." Husband did not present any other issues at the arbitration hearing, yet he maintained that she exceeded her powers by refusing to resolve those issues. The contention was not logical.

Consent Decree Required to Be Consistent with Parties' Oral Agreement Read into the Record; Because Joint Exhibit Not Offered into Evidence, Additional Provisions from Exhibit Could Not Be Included in the Consent Decree.

32. *In re Marriage of Rizvi and Khaja*, No. 13-24-00069-CV, 2025 WL 3764018 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (12-30-2025).

Facts: On the final day of trial, the parties announced they had reached an agreement. The parties then testified on the record regarding their agreement, and a joint exhibit was referred to but was not offered into evidence. Among other provisions, the parties agreed that a third party would manage the day-to-day activities of their company and that no further distributions would be made after that day. An email was sent from Wife's counsel to Husband's attorney's paralegal with the attached joint exhibit and stated the parties would agree to terms for transfer of ownership of the company or else they would re-appear before the trial court.

Subsequently, Husband filed a motion to sign and a motion to reopen evidence. Husband argued the evidence should be reopened to address whether Wife needed to refinance the company. The trial court denied the motion to reopen evidence. In his proposed decree, Husband included language restricting distributions from the company. Wife argued the additional language conflicted with the "Rule 11 agreement"—the post-trial email regarding transferring ownership. The trial court agreed with Wife and signed a decree without Husband's proposed language. Husband appealed.

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

Opinion: Husband argued the final decree did not match the parties' agreement. The parties' agreement at trial was dictated on the record in open court before a certified shorthand reporter, both parties were present, and the terms of the agreement and the parties' acknowledgement of the agreement was put on the record. Thus, that oral agreement satisfied the requirements of Rule 11 and was enforceable. Because the Rule 11 agreement was valid and enforceable, the decree was required to be in strict or literal compliance with the terms of the parties' agreement. However, the subsequent email was not signed by the parties or their attorneys and was not admitted into evidence. Thus, neither that email nor the joint exhibit was part of the Rule 11 agreement.

Wife responded that the circumstances surrounding the settlement agreement indicated that restrictions on distributions were only necessary until a decree was signed. Wife pointed to the joint exhibit to support this assertion. However, the joint exhibit was never offered and was not part of the agreement. Therefore, because the parties testified to their agreement regarding distributions in their oral agreement, the trial court erred in failing to include that language in the final decree.

Husband next argued the trial court erred in failing to reopen evidence. Although Husband urged that the information he sought to present was new, he offered no evidence as to why the evidence was previously unavailable, and he did not argue that he did not have an opportunity to present the evidence before judgment. Rather, he conclusorily claimed he was diligent in obtaining evidence without offering any further elaboration.

DIVORCE: PROPERTY AGREEMENTS

Evidence Supported Finding That Postnuptial Agreement Was Not Signed Voluntarily, Was Unconscionable, And Was Unenforceable.

33. *Stankewich v. Stankewich*, No. 09-23-00156-CV, 2025 WL 1523266 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (05-29-2025).

Facts: Wife filed for divorce and sought to enforce a purported postnuptial agreement. Husband filed a counterpetition and asserted Wife was guilty of cruel treatment, adultery, and fraud. The primary issue at the bench trial was the enforceability of the postnuptial agreement. The trial court found the agreement was unenforceable and found certain assets were Husband's separate property, but it awarded Wife 70% of the community portion of Husband's pension. Wife appealed.

Holding: Affirmed.

Opinion: The two parties presented vastly different accounts of the marriage and process of entering into the prenuptial agreement. In Husband's version, he testified that Wife threatened to kick him out of the house if he refused to sign the agreement. He said he had nowhere to go. Despite her threat, when Wife discovered Husband planned to return to Alaska, she intercepted and destroyed a letter Husband had written to a friend for help. Husband said Wife did not want him to leave because if he did, she would lose control of his money. Husband said they were always in debt because Wife spent all their money. Although Wife asserted certain provisions of the agreement were negotiated, Husband denied that assertion. He claimed Wife was violent against him and threatened to kill him in his sleep. On the day the agreement was signed, he had no prior knowledge of it. He had planned to go get a kitten that day. Husband said he only signed the agreement under duress.

A postnuptial agreement is not enforceable if it is unconscionable or was signed involuntarily. The issue of unconscionability is addressed on a case-by-case basis, looking to the entire atmosphere in which the agreement was made. Given the confidential relationship between spouses, Texas courts have closely scrutinized property agreements made during marriage. Whether a party executed an agreement voluntarily is a fact question that depends on all the circumstances and the mental effect on the party claiming involuntariness.

Wife first asserted that Husband did not plead the affirmative defense of involuntariness or unconscionability. However, the question was clearly before the court because the issue of enforceability was explicitly addressed before the court considered how to divide the community estate. The trial court asked the parties to provide briefing on the agreement's enforceability, and they did so. Thus, the issue was tried by consent.

Although the parties offered conflicting testimony, the trial court was free to weigh the witnesses' credibility and choose to believe Husband over Wife.

Agreed Post-Divorce Spousal Support For Wife Offset By Reimbursement Owed To Community Estate From Wife's Separate Estate; However, Court Erroneously Included Chapter 8 Termination Conditions When Obligation Was Not Chapter 8 Maintenance And Conditions Were Not Part Of Agreement.

34. ***McCartney v. McCartney***, 720 S.W.3d 789 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (08-05-2025).

Facts: About 15 years into the parties' marriage, they signed a partition and exchange agreement ("PEA"). About 2 years later, Husband filed for divorce. The court acknowledged the agreement and divided all other property pursuant to Husband's proposed property division.

Under the PEA, certain real property became Wife's sole and separate property; however, the community continued making mortgage, insurance, taxes, and HOA payments on the property. In the divorce decree, the court ordered Wife's separate estate to reimburse the community for those payments. The court ordered that the "balancing payment" for the reimbursement would be paid by reducing the amount of spousal maintenance to which Husband had agreed to pay under the PEA. The court additionally imposed contingencies that would trigger termination of the maintenance. Wife appealed.

Holding: Affirmed as Modified.

Opinion: In his appellee's brief, Husband argued that because Wife requested only a partial reporter's record and failed to file a statement of points to be presented on appeal, the appellate court was required to presume the omitted portions of the record were relevant and supported the trial court's judgment. However, that presumption does not apply when the issue on appeal turns on a question of law.

Wife first challenged the reimbursement award based on whether "Wife's half" of the community was used to pay the costs associated with the real property partitioned to her in the PEA. Because Wife's complaint was an evidence-based complaint, the court was required to presume the omitted portions of the record were relevant and supported the judgment.

Wife additionally challenged the reimbursement award based on an argument that Husband either waived the claim by signing the PEA or that the newly revised reimbursement statute of the Family Code precluded a reimbursement claim after the parties' agreement.

Neither party asserted the PEA was ambiguous. Neither party challenged that a community estate generally has a right to reimbursement for payments benefitting a separate estate as were made in this case. Wife's argument was that Husband released any right to reimbursement by signing the agreement. Such rights can be released by a marital property agreement, but to release a claim effectively, the instrument must mention the claim to be released. The parties' PEA did not mention reimbursement claims. Further, the Family Code relied upon by Wife (Section 3.410) merely clarifies that property agreements *can* release reimbursement claims after the recent amendments, just as they could before the amendments.

Wife also cited a conclusion of law from the trial court, which—in apparent conflict with the decree—found Husband gave up his right to reimbursement and was barred from making such claim. The appellate court noted the conclusion stated *Husband* gave up rights to reimbursement, not that the *community estate* did so.

When a conflict exists between a judgment and subsequent findings of fact and conclusions of law, the findings generally control. However, conclusions of law are not binding on the appellate court and are reviewed de novo. The appellate court held it was not bound by that conflicting conclusion of law and did not need to modify the judgment.

Wife next challenged the spousal support terms because the court reduced the agreed-to monthly payments and because the Court imposed additional contingencies for terminating Husband's obligation. Wife did not cite any authority to support her assertion that the trial court could not reduce the award. Further, the court did not rewrite the parties' agreement; it offset the amount due to Wife based on the reimbursement award, which was permissible, fair, just, and equitable.

However, the trial court included the conditions set out in Chapter 8 regarding termination of spousal maintenance, despite those conditions not being contemplated by the parties' PEA. The conditions of Chapter 8 apply only to court-ordered maintenance, not contractually agreed spousal-support obligations. Texas law distinguishes between court-*ordered* maintenance and court-*approved* obligations.

Declaratory Judgment Finding Post-Nuptial Agreement Unenforceable Reversed Because Wife Failed To Present Evidence The Agreement Was Signed Involuntarily Or Was Unconscionable When Signed.

35. *Choudhury v. Choudhury*, No. 14-23-00825-CV, 2025 WL 2399148 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (08-19-2025).

Facts: Husband and Wife were married for just over 30 years. A few years before the underlying divorce proceeding, Wife filed for divorce but nonsuited. After her nonsuit, the parties signed a post-nuptial agreement dividing the community estate. Once Wife filed for divorce again, Husband sought a declaratory judgment to enforce the post-nuptial agreement. Wife responded, asserting she entered the agreement involuntarily and the agreement was unconscionable.

In the first divorce, Husband filed a pro se answer indicating the parties were attempting to reconcile. Wife emailed Husband links to websites instructing parties on do-it-yourself post-nuptial agreements. Husband testified they drafted the document together, and Wife denied participating. Husband testified Wife told him her attorney would review the agreement, and he agreed to reimburse her for attorney's fees. The first divorce was nonsuited shortly thereafter. The parties went to a bank near Wife's work and signed the agreement in front of notary during Wife's lunch break. Wife's attorney was not present for the execution. The agreement did not disclose values for any of the accounts divided by the agreement.

Wife denied many of the events above and claimed she did not see a final copy of the agreement until the parties signed it at the bank. She denied having the opportunity for her attorney to review it. Although she received a $1000 deposit from Husband around that time, she claimed it was not for attorney's fees but did not suggest an alternate purpose for the deposit. Wife claimed Husband threatened to jeopardize her immigration status if she did not sign the agreement and that was the only reason she signed.

At the conclusion of the bench trial, the court found the agreement was unenforceable. Husband appealed.

Holding: Reversed and Rendered.

Opinion: Husband first asserted the evidence was legally and factually insufficient to support a finding Wife signed the agreement involuntarily. Husband argued Wife initiated the creation of the agreement, the agreement was signed in front of a notary, and Wife was represented by counsel at the time of negotiations and agreement.

As the party challenging enforceability, Wife bore the burden of establishing involuntariness. Even taking Wife's version of events as true, she sent email links to Husband about how to draft an agreement, she negotiated the amount of spousal support she would receive, and she saw the final version on Husband's computer while he read it to her. Additionally, Wife was represented by counsel while Husband was not, and Wife spoke to her counsel at the time the agreement was being drafted. Wife chose the location for where the agreement would be executed, and the parties arrived there separately.

Moreover, despite Wife's claims of duress, to be a contract defense, the alleged duress must consist of a threat to do something the threatening party has no legal right to do. Husband had the right to report suspected immigration violations to immigration authorities. Wife had an attorney and could inquire as to whether Husband's threats were credible. Despite Wife's claim that Husband "forbade" her from discussing the agreement with counsel, Wife offered no evidence of how that threat destroyed her free agency to reach out to counsel. Despite Wife's claim that she did not participate in drafting the agreement, she admitted to negotiating the amount of spousal support she would receive, and she emailed the links to Husband.

While the trial court issued findings to support the judgment, the appellate court's review of the record showed those findings were erroneous.

Wife claimed Husband breached a fiduciary duty to her. However, assuming Husband did breach a duty, the appellate court held that in the totality of the circumstances, a breach alone was insufficient to support a finding of involuntariness. Nothing indicated that Husband acted in the role of attorney or financial advisor during the marriage.

Next, Husband argued Wife failed to meet her burden to establish the agreement was unconscionable when signed. Wife was represented by counsel. No evidence indicated Husband had a superior bargaining ability or education. Wife picked the location for execution. The agreement stated that Wife was under no compulsion and was of sound mind. Nothing indicated the agreement was unconscionable. Wife had the means to discover values of any accounts through the use of her attorney.

DIVORCE: PROPERTY DIVISION

Company's Forfeiture Of Right To Do Business Due To Non-Payment Of Taxes Did Not Terminate Company Or Change Pre-Marriage Inception Of Title, And Issuance Of Stocks During Marriage Was "Non-Event" Due To Lack Of Consideration.

36. *In re Marriage of Pinkert*, No. 07-23-00309-CV, 2025 WL 108775 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (01-15-2025).

Facts: Husband and his father created a company, and Husband's father deeded real property to that company shortly after its foundation. Husband and Wife married about a year later. About 10 years later, Wife filed for divorce, and Husband counter-petitioned.

During the marriage, the company's right to do business was terminated through tax forfeiture, but it regained its status two years later after paying past-due taxes. Two years after that, a second forfeiture reoccurred, and the company remained inactive for the following seven years. During that second period of inactivity, the company issued stock (divided equally) to Husband and his father, although the amount of shares identified was 10 times the amount of the initial foundation.

After a trial, the court found Husband's interest in the real property that had been transferred to the company was community property to be divided in the parties' divorce. The court found that Husband's father held a 50% interest in the land, and Husband and Wife each held a 25% interest. Additionally, the court awarded Wife a reimbursement claim for her improvements to the property. Husband appealed.

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

Opinion: Husband argued that the property belonged to the company and, thus, could not be divided as part of the parties' divorce.

The record contained no evidence supporting a conclusion that the company dissolved during marriage, i.e., that it lost its corporate identity during marriage. The trial court's conclusion about dissolution appeared to have been based on one or both periods of tax forfeiture, implicitly treating the company as a terminated entity. However, under the Texas Business Organizations Code, a "terminated entity" means one whose existence has been terminated and not reinstated by Code provisions or forfeited under the Tax Code and the forfeiture not set aside. Nonpayment of franchise taxes cannot involuntarily terminate a corporation under the Texas Business Organizations Code. The company was therefore not a terminated entity under the Tax Code.

Wife countered that because the company distributed half its shares in the company to Husband during the marriage, the community property held a 1/2 interest in the company. While stock certificates can evidence ownership, actual ownership depends on all the facts and circumstances of a case. On creation, the company authorized 100 total shares with 50 each going to Husband and his father. For unknown reasons, six years later, certificates representing 500 shares were issued to each of Husband and Father, with no evidence of any consideration given. Under Texas law, shares may not be issued until consideration has been paid. Thus, in the absence of consideration, the issuance of the shares was, legally speaking, a non-event.

Divorce Decree That Divided Canadian Properties Pursuant To Parties Agreement Was Not Void.

37. *In re M.R.*, No. 02-24-00491-CV, 2025 WL 271279 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (01-22-2025).

Facts: Husband and Wife were married for about 25 years. Husband was born and raised in Canada, and Wife became a Canadian citizen during the marriage. They lived in Canada for a large portion of the marriage; however, Wife and their Children moved to Texas towards the end of marriage, so Wife could pursue a master's degree. Before Husband could join Wife in Texas, they decided to divorce. The parties signed an informal settlement agreement and an agreed decree of divorce that awarded Wife one Canadian property and awarded each party a 50% undivided interest in another Canadian property and included provisions to sell the second property.

About eight months after the divorce decree was signed, Wife filed a motion to modify the parent-child relationship alleging violence, and Husband "responded" with a petition for bill of review to set aside the divorce decree. Husband argued Wife was emotionally, verbally, and physically abusive to him during the marriage and that the decree did not match the informal settlement agreement. He claimed that he did not read either document but relied on Wife's representation of their contents. Husband asserted Wife breached her fiduciary duty to him and took advantage of his fragile mental state. Husband did not raise a claim regarding lack of personal jurisdiction.

During the hearing on Husband's petition for bill of review, the trial court halted the hearing and stated it lacked authority to divide the Canadian property. Thus, the trial court reasoned, the decree had to be set aside. The final written order stated that the decree was void for lack of jurisdiction and that the bill of review was dismissed. Husband filed a counterpetition for divorce, and Wife sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Because neither party appealed the dismissal of the bill of review, and in this mandamus proceeding, Wife only challenged the finding that the decree was void, the question of whether Husband presented sufficient evidence to support his bill of review was not before the appellate court.

Errors other than lack of jurisdiction merely render a judgment voidable, and a challenge to a voidable judgment must be timely corrected through the normal appellate process or other proper proceedings. A claim that a judgment is void because the trial court lacked jurisdictional power is a collateral attack on that judgment that can be raised at any time.

Here, even if the trial court lacked jurisdiction over the parties' Canadian properties, the decree as a whole was not void. Further, neither party asserted the court lacked subject matter jurisdiction over the divorce or the parties' children at the time of divorce. Further, the decree recited that Husband had made a general appearance and agreed to the terms of the decree, waiving any complaints of personal jurisdiction. Husband's direct attack of the decree through the petition for bill of review, rather than challenging jurisdictional defects, further emphasized his assent to jurisdiction. Thus, the trial court clearly abused its discretion in declaring the decree void.

Husband Not Harmed From Lack Of Findings Of Fact Because Trial Court's Letter Ruling Sufficient To Explain Why It Granted Disproportionate Division.

38. *In re Marriage of Pearson*, No. 06-24-00052-CV, 2025 WL 300827 (Tex. App.—Texarkana 2025, no pet.) (mem. op.) (01-27-2025).

Facts: Husband and Wife were married for about ten years and had three Children. When Wife filed for divorce, she accused Husband of cruel treatment and asked for a disproportionate division of the community estate. Husband filed a counterpetition requesting the same. At trial, Husband did not testify. Wife stated that Husband had abused her throughout the marriage, until she became afraid for her life and left without the Children. She testified to over 30 incidents of domestic violence and had called the police 20 times. She offered photos of her bruises from the abuse. She had incurred over $15,000 in bills for dental treatment caused by the abuse. Additionally, Wife had been diagnosed with lupus, which prevented her from getting work. She asked for $1000 a month in spousal maintenance. A psychological evaluation showed Husband suffered from bipolar disorder, PTSD, and generalized anxiety. He had a history of anger issues, getting arrested, and getting into fights. The trial court issued a letter ruling granting spousal maintenance and awarding Wife 60% of the proceeds from the sale of the parties' marital residence. Husband appealed.

Holding: Affirmed.

Opinion: Husband first complained of the trial court's failure to issue findings despite his timely request. However, the court set forth its reasons for a disproportionate division, so the appellate court was not forced to guess the basis of the trial court's reasoning. Because Husband could not establish harm, the error was not a reversible one.

Husband further complained the trial court erred in making a disproportionate division in Wife's favor. He argued that the division was inequitable because he was currently the managing conservator of the parties' Children. However, he did not address the reasons the trial court had in support of a disproportionate division. The trial court noted in its writing that part of the reason it granted Wife a larger share of the proceeds from the sale of the marital residence was due to Wife's dental expenses to repair her teeth due to Husband's abuse. This finding implied Husband was at fault for the breakup of the marriage. Even in a no-fault divorce, the court can consider fault in the break of the marriage as a factor supporting a disproportionate division.

Additionally, Husband argued the trial court failed to enter findings on the *Murff* factors relating to the spouses' capacities and abilities. However, in the letter ruling, the court stated it granted Wife spousal maintenance because she lacked sufficient property to meet her minimum reasonable needs. This finding implied that Wife had less capacity to earn sufficient income, in comparison to Husband, as a result of the breakup of the marriage.

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

39. *Nieczyperowicz v. Nieczyperowicz*, No. 14-23-00695-CV, 2025 WL 480824 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (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.

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

40. *Zhang v. Ding*, No. 14-24-00128-CV, 2025 WL 798082 (Tex. App.—Houston [14th Dist.] 2025, pet. denied) (mem. op.) (corrected op.) (03-13-2025).

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 Sufficiently Established Through Community-Out-First Tracing That 60% Of A Bank Account Was His Separate Property.

41. *Graham v. Graham*, No. 05-23-01258-CV, 2025 WL 886967 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (03-21-2025).

Facts: After a bench trial in a divorce, the court confirmed 60% of a bank account as Husband's separate property and divided the remaining 40% equally between the parties. Wife appealed.

Holding: Affirmed.

Opinion: On appeal, Wife challenged the characterization of 60% of the bank account as Husband's separate property. Wife argued that Husband's testimony alone was insufficient to overcome the community-property presumption. However, contrary to Wife's assertion, Husband offered corroborating and supporting evidence to demonstrate the separate property character of the funds. Moreover, Husband testified that funds originated from money he inherited from his father, and Wife did not contradict that assertion. Wife merely argued that the funds were comingled, making the entire account community property. However, Husband offered tracing evidence using the community-out-first method to establish the funds were his separate property.

Without Findings, The Appellate Court Could Not Determine Whether The Trial Court Abused Its Discretion In Its Just And Right Division Of The Community Estate.

42. *Do v. Vu*, No. 14-23-00729-CV, 2025 WL 1037264 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (04-08-2025).

Facts: During the marriage, Husband built Wife a nail salon at which Wife worked. Husband earned occasional cash for repair work. During the marriage, Wife withdrew about $125,000 from bank accounts and transferred the funds to various individuals. The trial court signed a divorce decree, and Wife appealed.

Holding: Affirmed.

Opinion: Wife argued that the trial court improperly considered her distributions of community funds when determining the just and right division of the community estate. However, neither party requested findings and none were issued. Moreover, although Wife testified that the distributions were repayments of loans needed to "keep the community estate afloat," without findings, the appellate court had no way of knowing whether the trial court found this testimony to be credible.

Although There Is A Split Of Authority, Wife Was Required By Austin Court Of Appeals To Establish Community Character Of Funds Used To Pay Separate Property Mortgage To Be Entitled To Reimbursement To Community Estate, And She Did Not Do So.

43. *Cockrell v. Cockrell*, No. 08-24-00096-CV, 2025 WL 1085581 (Tex. App.—El Paso 2025, no pet.) (mem. op.) (04-10-2025).

Facts: At their divorce trial, arrowheads were the most highly contested asset. Wife lied about how many arrowheads were in her possession, and the trial court explicitly found her testimony not to be credible and designed to mislead the court. After a final decree was signed, Wife appealed. On appeal, she challenged the characterization of certain assets (including the arrowheads), the trial court's failure to reimburse the community estate for mortgage payments on Husband's separate property home, and the overall division of the community estate.

Holding: Affirmed.

Opinion: The trial court found that there was a total of 1541 arrowheads, 834 of which were Husband's separate property. Wife claimed there were 2000 arrowheads, and only 100 were acquired before marriage. The trial court explicitly found that Wife's testimony was not credible, and Wife did not challenge that finding on appeal. Wife's testimony was the only evidence controverting Husband's testimony about which arrowheads he acquired before marriage. Thus, the evidence was sufficient to support the characterization of the arrowheads.

The trial court found that a company acquired during the marriage was Husband's separate property. Wife argued the evidence was insufficient to trace the company's acquisition to Husband's separate property funds. Husband testified that he sold real property that he owned before marriage to purchase the company. Wife offered no contrary evidence.

Next, Wife challenged the characterization of a BMW purchased during marriage as Husband's separate property. However, the trial court did not characterize it as separate; it awarded the vehicle to Husband in the division of the community estate.

The parties' marital residence was purchased by Husband before marriage and characterized as his separate property. Wife did not challenge the characterization on appeal, but she argued the community estate was entitled to reimbursement for mortgage payments. The court noted a split of authority regarding whether funds used to pay debt were presumed to be community. Although the El Paso court and other courts have held in favor of this presumption, this appeal was transferred from Austin, and that court has held that the party seeking reimbursement must establish the character of the funds used to make the payments. Because Wife failed to present evidence the funds were community, the appellate court overruled this appellate issue.

Finally, Wife asserted that improper valuations by the trial court led to an inequitable division of the community estate. However, the trial court was presented with conflicting evidence and did not abuse its discretion in accepting Husband's values.

Husband Committed Actual Fraud By Failing To Tell Wife He Won The Lottery And Then Wasting The Winnings While The Standing Order Was In Place.

44. *Stone v. Woodward-Stone*, No. 05-23-01308-CV, 2025 WL 1106085 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (04-14-2025).

Facts: A divorce decree confirmed two pieces of real property as Wife's separate property, found that Husband committed actual fraud, reconstituted the community estate based on Husband's fraud, and divided the reconstituted estate. Husband appealed pro se.

Holding: Affirmed.

Opinion: Husband argued Wife failed to adequately establish that the two properties were her separate property. However, Wife testified that she received one via gift before marriage and purchased the other before marriage. Husband offered no controverting evidence. The trial court did not err in finding the properties were Wife's separate property.

Husband additionally argued the trial court erred in finding he committed actual fraud. The evidence showed Husband won a million dollars in the lottery without telling Wife. Husband put the net proceeds (after taxes) in a bank account not disclosed to Wife. Then, after receiving Wife's petition for divorce with the local standing orders attached, Husband gave a large portion to his uncle and spent a significant portion at strip clubs, on cars, and other "exquisite" things until almost no money remained. The evidence supported the court's fraud finding.

Finally, Husband argued the court erred in reconstituting the marital estate based on the fraud finding and awarding Wife a disproportionate share of reconstituted estate. Given the evidence of Husband's fraud, the trial court did not err in reconstituting the community estate. Because Husband failed to adequately brief his complaint regarding the division, the appellate court overruled the issue.

Contrary To Husband's Assertion, Generic Premarital Agreement Purchased Online Did Not Have The Effect Of Eliminating Community Estate; Trial Court Did Not Err In Finding Husband's Retirement Account Was Community Property Subject To Division.

45. *Jimenez v. Jimenez*, No. 01-23-00087-CV, 2025 WL 1160683 (Tex. App.—Houston [1st Dist.] 2025, pet. denied) (mem. op.) (04-22-2025).

Facts: Before their marriage, Husband bought a premarital agreement online from a company in Mississippi. Both parties signed the agreement and subsequently married. About 10 years later, Wife filed for divorce and sought to enforce the premarital agreement. Husband counter-petitioned and also sought to enforce the agreement. The parties reached an MSA regarding their children and tried the property issues to the bench. After a decree was signed, Husband timely appealed.

Holding: Affirmed.

Opinion: Husband argued (1) the trial court divested him of separate property by treating his retirement accounts as community property; (2) Wife waived any reimbursement claims; and (3) the court erred in awarding Wife a lump-sum payment because it

divested him of his separate property. Husband asserted the agreement provided that all property in a spouse's name would be awarded to that spouse and each spouse agreed to waive claims against the other's separate property. Wife responded that the agreement only exempted certain things from the community estate and did not recategorize Husband's income as separate property.

Neither party argued the agreement was unenforceable; they merely offered different interpretations. A premarital agreement is treated like any other contract and is reviewed by the appellate court de novo.

The premarital agreement began with various recitals. A recital in an agreement acts as the formal statement establishing the reason for the transaction, but it cannot be used to contradict the operative terms of the actual agreement. Here, the premarital agreement's recitals manifested an intent to address various property interests, to make certain property separate, and to express the parties' desire that their marriage shall not change their rights.

The operative terms of the agreement did not designate Husband's retirement account—acquired during marriage—as separate property. The agreement provided that all property acquired by each party would be the separate property of the named spouse. Husband broadly interpreted this provision to include his retirement account, which Husband argued was "property" acquired during marriage.

However, the agreement did not specifically state that income during marriage would be a spouse's separate property. Portions of the agreement use the word "property" to refer to real property, personal property, or both, but no provision used "property" to refer to "income." Further, Husband's argument would require the court to substitute the word "held" for "acquired," which the court declined to do. Therefore, the court determined that the provision relied upon by Husband did not apply to salary, future salary, or retirement accounts. Moreover, Husband did not present any evidence to overcome the community property presumption.

Additionally, despite Husband's argument to the contrary, the agreement made no reference to reimbursement awards. Premarital agreements are construed narrowly, and in the absence of an express waiver, there was no premarital waiver of reimbursement claims in a divorce.

Finally, Husband's argument against a lump-sum award was based on his assertion that the only community asset was a checking account with a balance far less than the award. However, because the community estate included more than what Husband claimed, the lump-sum cash award did not divest Husband of any separate property.

Because Marital Residence Was Purchased By Father's Community Property Corporation, The Residence Did Not Belong To The Parties And Could Not Be Characterized As Community Property In Their Divorce.

46. *Oluma v. Cervantes*, No. 14-24-00339-CV, 2025 WL 1299178 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (05-06-2025).

Facts: Father and his mother (Grandmother) ran an incorporated marijuana business in Colorado. Mother and Father lived with Grandmother until Father left with the Child. Grandmother evicted Mother, and Mother began divorce proceedings in Colorado. Mother abandoned that divorce for lack of funds. Later, Mother and Father attempted to reconcile in Texas. Father purchased a home but deeded it to the marijuana corporation, of which Father and Grandmother were the sole members. Later, the articles were amended, making Grandmother the sole owner of the corporation. Grandmother moved in with the couple, and the marriage failed again.

Neither Father nor Grandmother appeared at trial despite receiving notice. Mother introduced extensive evidence of Father's abusive behavior towards her and the Child. Mother's testimony was supported by expert witnesses, photos, videos, and police reports. The court found that Father's transfer of the marital residence to his corporation was done without Mother's knowledge or consent and was void. The court characterized the corporation (formed during marriage) and the residence as community property. The corporation was awarded to Father, and the residence to Mother.

Father and Grandmother, pro se, appealed, raising numerous issues, including a complaint that the trial court mischaracterized the couple's residence as community property.

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

Opinion: The majority of Father's and Grandfather's complaints were moot, not preserved for review, or were not supported by argument and authority.

Title to the marital residence had its origins in Father's contract to purchase it. Although the contract named Father as the purchaser and did not disclose that his corporation was purchasing it, it was in fact the that corporation ultimately purchased it. A deed showed that the corporation financed the majority of the purchase price. Although property acquired during marriage is community property, neither party to the marriage ever acquired title to the house. Despite the fact the corporation was formed during marriage, the community's interest in the corporation did not make the corporation's assets community property. Mother did not seek to pierce the corporate veil. Because the marital residence was not an asset of the parties, the trial court erred by characterizing it as community property. Further, the net value of the house exceeded all the community property combined, so the error was much more than a de minimus error.

Husband Failed To Establish Community Estate Was Entitled To Reimbursement For Funds Wife Obtained After The Sale Of Community Property Because Husband Did Not Show How Wife Used The Funds.

47. *Montemayor v. Montemayor*, No. 05-24-00519-CV, 2025 WL 1334631 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (05-07-2025).

Facts: The parties filed cross petitions for divorce. Wife asked for a disproportionate division of the community estate, and Husband asked for reimbursement to the community estate from Wife's separate estate. After a bench trial, the court denied Husband's requested reimbursement. He appealed.

Holding: Affirmed.

Opinion: Husband complained that the trial court applied the law incorrectly. Husband alleged Wife took money from the sale of properties during the marriage, about eight years before she filed for divorce. The court stated it could not go back in time and fix that. The trial court stated it was charged with dividing the assets that were before the court on the day of trial.

Reimbursement awards are subject to the trial court's discretion. Husband bore the burden to establish the right to reimbursement. Husband asserted Wife took funds upon their separation and that he did not receive any of the funds. However, Husband offered no evidence whether Wife used the funds to benefit the community estate or her separate estate or whether she used the funds for her living expenses. Because Husband failed to meet his burden, the trial court did not abuse its discretion.

Husband Failed To Introduce Clear And Convincing Evidence To Establish Any Property Was His Separate Property; Husband Lacked Standing To Assert That Any Property Included In The Just And Right Division Belonged To His Mother.

48. *In re Marriage of Liardon*, No. 10-23-00428-CV, 2025 WL 1523016 (Tex. App.—Waco 2025, no pet.) (mem. op.) (05-29-2025).

Facts: Wife filed for divorce after a 16-year marriage. The trial court signed a final decree that did not confirm any property as either spouse's separate property. Husband appealed the property division.
Holding: Affirmed.

Opinion: Husband asserted the trial court erred in characterizing certain property as community because he asserted that it was partially his separate property and partially belonged to his mother.

Before marriage, Husband and his mother ran a cattle operation. Wife testified that certain pieces of farming equipment were acquired during marriage. Husband testified that he traded some equipment during the marriage for equipment of equal value. He did not have any documentary evidence to support his testimony. Husband generally did not offer any documentary evidence to support a claim that any property was partially owned by his mother. Additionally, Husband owned investments before marriage; however, Wife testified that the accounts had been comingled with community funds. Husband offered no tracing evidence. On appeal, Husband appeared to misunderstand that it was his burden to overcome the community property presumption, and he failed to present clear and convincing evidence at trial. Further, Husband's mother was not a party to the appeal, and Husband lacked standing to raise a complaint on her behalf.

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.

49. *Blackwell v. Holzer*, No. 14-24-00301-CV, 2025 WL 1661839 (Tex. App.—Houston [14th Dist.] 2025, pet. filed) (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.

50. *In re T.E.R.*, No. 05-24-00014-CV, 2025 WL 1771837 (Tex. App.—Dallas 2025, no pet.) (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.

51. *Ponzio v. Ponzio*, No. 03-23-00336-CV, 2025 WL 1773246 (Tex. App.—Austin 2025, no pet.) (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.

Past-Due Child Support Was Father's Obligation Alone And Was Properly Not Considered In The Just And Right Division Of The Community Estate.

52. *In re H.M.*, No. 05-24-00261-CV, 2025 WL 1909495 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (07-08-2025).

Facts: During their divorce proceeding, Father agreed to a temporary order that set his child support to the maximum guideline amount for two Children. Because Father failed to pay any child support, Mother sought to enforce the unpaid child support. A final order applied the same child-support obligation. Father appealed pro se.

Holding: Affirmed.

Opinion: Among other complaints, Father challenged the division of the community estate. Although the property was divided roughly equally, Father characterized it as grossly disproportionate. "To the extent Father [was] suggesting he should have been awarded a larger portion of the marital estate to cover his past-due support obligations, his argument [was] not well taken. The support debt is his alone and not subject to reimbursement by the marital estate."

Wife's Sister's Contradictory And Unclear Testimony, Without Any Supporting Documentation, Failed To Meet Clear-And-Convincing Standard To Overcome Community Property Presumption.

53. *Liu v. Li*, No. 14-23-00810-CV, 2025 WL 1936929 (Tex. App.—Houston [14th Dist.] 2025, pet. filed) (mem. op.) (07-15-2025).

Facts: In their divorce proceeding, Wife asserted Husband wasted community assets and identified several transactions he had made without her knowledge or consent. The final decree found that both parties wasted assets and committed actual fraud and divided the estate 55/45 in Wife's favor. The court additionally found that certain property in China was Wife's separate property and awarded Wife her attorney's fees. Husband obtained findings and appealed.

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

Opinion: Husband challenged the constructive fraud findings in part because he asserted Wife failed to show that complained-of transactions were made with community funds. However, there is a presumption that property of the spouses is community property. It was Husband's burden to establish the funds were his separate property, not Wife's burden to show the funds were community property.

Husband additionally challenged the confirmation of real property in China as Wife's separate property because Wife failed to present clear and convincing evidence of the property's character. At trial, Wife's sister testified about the acquisition of the property, but the testimony was contradictory and unclear. It was not apparent whether community funds or inherited funds were used, whether the purchase was made by Wife or her parents, or whether the property was inherited or purchased. No documentary evidence was offered. Wife failed to disclose the existence of the property until confronted about the property by Husband. Wife's evidence did not meet the clear-and-convincing standard, and the trial court erred in characterizing the property as Wife's separate property. Because this error had more than a de minimus effect on the overall division, the entire division was remanded for further proceedings.

Finally, Husband challenged the attorney's fee award to Wife because the evidence was insufficient to support a finding that the fees were reasonable. Wife presented no evidence of reasonableness. However, because the trial court had authority to award fees and because the evidence was merely insufficient, that issue was also remanded to the trial court for further proceedings.

Wife Not Entitled To Findings Of Value On Assets For Which She Presented No Competing Evidence.

54. *Hurt v. Hurt*, No. 14-23-00414-CV, 2025 WL 1982875 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (07-17-2025).

Facts: Wife's attorney withdrew on the day of trial, and Wife proceeded pro se. Husband presented two proposed property divisions for consideration, but Wife did not present one. The trial court awarded Husband the bulk of the assets and almost all the parties' debt. Wife appealed.

Holding: Affirmed.

Opinion: Wife complained that the findings of fact were insufficient to allow her to adequately present her appeal. Wife primarily complained about the lack of a finding of the value the trial court assigned to the community furniture. The court is only required to provide values for assets on which disputed evidence is presented. Although Wife vaguely testified that she believed the division was unfair, Wife offered no competing evidence and was not entitled to a finding. Moreover, the trial court accepted one of Husband's proposed property divisions, which included values. Thus, Wife was not required to guess at the reasons for the trial court's decision.

Wife additionally complained of the property division. However, when factoring in the parties' debts, the division was not as disproportionate as Wife claimed in her appeal.

Claims In Mother's Sixth Amended Petition Did Not Operate As A Surprise To Father And Were Improperly Struck From The Jury Charge; Trial Court Erred In Failing To Find Constructive Fraud Because Mother Raised The Presumption By Showing Improper Uses Of Community Funds, But Father Failed To Establish The Transactions Were Fair.

55. ***Wadhwa v. Wadhwa***, 720 S.W.3d 169 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (07-22-2025).

Facts: In their divorce proceedings, Mother filed a motion for continuance of final trial, but at the continuance hearing, Mother's lead attorney failed to appear, so Mother herself requested a continuance, which the trial court reluctantly granted. The trial court stated on the record that it believed Mother and her attorneys had engaged in gamesmanship to delay trial.

Mother's live pleading at trial was her sixth amended petition, and the trial court granted Father's request to strike "new" claims from that petition. After a jury trial, Mother moved for a new trial based in part on her claims not being presented to the jury. The trial court denied Mother's motion, and she appealed.

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

Opinion: Mother argued the trial court abused its discretion in denying her motion for new trial with respect to conservatorship. Specifically, she argued the trial court erred in striking her request for joint managing conservatorship and in submitting a jury charge that prohibited the jury from finding she should have been appointed a joint managing conservator with the exclusive right to designate the Children's primary residence.

Parties may amend pleadings as they desire at such time as not to operate as a surprise to the opposite party, but any amendments within 7 days of trial can only be made with leave of court. Further, the court must grant leave unless the opposing party establishes surprise. The question is not whether the opposing party did in fact anticipate the change but whether the change could have been anticipated. The remedy to cure the disadvantage of surprise alone is a continuance, not an exclusion of the amendment.

In striking the request for joint managing conservatorship from Mother's sixth amended petition, the jury was presented with only two options: to appoint Father as a sole managing conservator or appoint the parties joint managing conservators with Father having the exclusive right to designate the Children's primary residence. The trial court agreed with Father's complaint that he was surprised because until the sixth amended petition, Mother had sought sole managing conservatorship and all exclusive rights. However, Mother's fifth amended petition also requested joint managing conservatorship, although no geographic restrictions were sought until her sixth amended petition. Yet, Father had pleaded for a geographic restriction on the Children's residence. Accordingly, there was no evidence to support the trial court's finding that Father was surprised by Mother's narrower request in her sixth amended petition. That finding was harmful because Mother lost her right to present her case to the jury. The trial court therefore erred in failing to grant Mother a new trial with respect to conservatorship. Additionally, because the determination of conservatorship would have impacted the determinations of child support, allocation of rights, and possession, Mother was also entitled to a new trial on those issues.

Mother additionally complained the trial court abused its discretion in failing to make a finding of constructive fraud because the overwhelming weight of evidence showed Father committed fraud against the community estate by secreting hundreds of thousands of dollars. Specifically, the trial court found that Mother produced no evidence of actual or constructive fraud. However, Mother showed ample evidence of Father's use of community funds without her knowledge or consent, which shifted the burden to Father to show that the transactions were fair to the marital estate. Father failed to carry that burden.

Father transferred community property ownership in a company to his father for nothing in return. The company was then sold for millions of dollars, resulting in Father's father acquiring nearly one million dollars. Father did not offer any explanation that would have supported a finding that this action was fair to the marital estate. Additionally, Father wrote a check to his mother for over $200,000 without Mother's knowledge or consent, which raised a presumption of constructive fraud and shifted the burden to Father to establish the transaction was fair. Father claimed that the funds were his separate property, but he offered no evidence to support that claim. Rather, the evidence supported a finding the money was community property. Although Father testified to his accounting of the purpose of the funds given to his mother, he did not provide any documentary evidence to support his testimony and did not satisfy his burden. Father additionally took the Children on "fancy" expensive ski trips during the divorce proceeding while asserting the net worth of the community estate was negative. Father offered no explanation as to how these vacations were "fair" to the community estate.

Mother requested findings of fact and filed a notice of past due findings, but the trial court failed to issue findings. The appellate court abated the appeal for the trial court to sign findings, but those findings were insufficient. While the appellate court could have abated the appeal again, the evidence did not support the implied finding necessary to reverse the judgment, so an abatement was unnecessary.

Husband's Request For Annulment, Filed The Day Before Divorce Trial, Properly Refused Because It Substantively Altered The Case And Was Prejudicial To Wife; Property Owned By A Corporation And Two LLCs Could Not Be Included In Just And Right Division Because Not Part Of Marital Estate.

56. *Bravo v. Bravo*, No. 05-24-00419-CV, 2025 WL 2053579 (Tex. App.—Dallas 2025, pet. denied) (mem. op.) (07-22-2025).

Facts: Wife had three prior marriages (at least one in Mexico), and Husband had one prior marriage. Husband moved from Puerto Rico to the continental U.S. before marrying Wife and had formed businesses before marriage. He used separate property to purchase real property to be used by his separate property entities.

Husband and Wife both filed for divorce on the ground of insupportability. Wife later amended her petition to add the ground of cruel treatment. The day before trial, Husband amended his pleading to include a request for annulment based on his assertion that Wife failed to properly divorce two prior Husbands, including the one in Mexico. At trial, the court denied Husband's request to allow his amendment and proceeded with the divorce trial. The trial court signed a final divorce decree that divided the parties' property, including property held by Husband's business entities. Husband appealed.

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

Opinion: In his first issue, Husband argued the trial court erred in not permitting his trial amendment to seek an annulment because Wife was not divorced from her prior marriage. Under Texas Rule of Civil Procedure 66, a trial court must freely grant a request to amend pleadings during trial unless the opposing party presents evidence the amendment would prejudice that party in maintaining an action or defense on the merits. An amendment is not mandatory if it asserts a new substantive matter that reshapes the cause of action. An amendment is prejudicial on its face if (1) it asserts a new substantive matter that reshapes the litigation; (2) the opposing party could not have anticipated the amendment; and (3) the amendment would detrimentally affect the opposing party's presentation of the case.

Husband first raised his annulment claim the day before trial. To support a claim for annulment, Husband would have had to establish fraud or duress that induced him into marriage. There is no common element between a request for a divorce based on insupportability and a request for annulment, so the amendment was a new substantive matter that reshaped the litigation.

Husband additionally asserted that Wife could have anticipated the claim. During a deposition, Husband brought up an issue of annulment or prior un-divorced marriages. However, while there were some questions posed to Wife on those topics, there was nothing to suggest Wife did not divorce her prior Husbands, did not believe she was divorced, or should have anticipated an annulment claim. Further, even if the deposition raised the possibility of an annulment claim, Husband did not explain why he did not immediately amend his petition at that time, rather than at the eve of trial.

Finally, the amendment would have detrimentally affected Wife's presentation of the case because she had no opportunity to respond to the claim, conduct discovery, or prepare a trial defense. Most of Husband's documents were obtained from Mexico and were in Spanish. Wife would likely have had to obtain her own records from Mexico and investigate their validity and impact on the case.

In his second issue, Husband complained of the division of the marital estate because it included assets of businesses in the division. While a spouse's ownership interest in a corporation can be characterized as separate or community property, corporate assets and liabilities are owned by the corporation, and absent a finding of alter ego, are not party of the marital estate. Similarly, property of an LLC—a separate legal entity—is neither community nor separate property of its members.

Here, the trial court made express findings that a corporate entity was 100% owned by the community estate and characterized 13 real properties and a bank account held by the corporate entity as community property to be divided between the parties. Additionally, although the court did not make express findings as to the ownership of two LLCs, it ordered that the LLCs' assets would be divided as part of the just and right division of the community estate. The trial court erred by including the corporation's and LLCs' assets in the division of property, and this error required reversal because it materially impacted the just and right division. Although Wife argued that the trial court could have determined the entities were alter egos of Husband, Wife did not plead alter ego or ask the trial court to disregard corporate formalities.

Because Collection On Husband's Company's Loan Was Barred By Limitations, Husband Could Not Rely On That Alleged Debt To Devalue The Company.

57. *Loyd v. Loyd*, No. 02-24-00284-CV, 2025 WL 2087932 (Tex. App.—Fort Worth 2025, pet. denied) (mem. op.) (07-24-2025).

Facts: Before marriage, the parties signed a premarital agreement (PMA) providing there would be no community property created by the marriage. It additionally included provisions regarding Husband's existing business and the creation of a new business. Income was to be deposited into a joint account for necessary expenses of the couple.

Wife filed for divorce, and Husband counter-petitioned. Each party asserted the other had breached the PMA. After a final bench trial, the court rendered a final decree providing for the division of assets and rights and obligations regarding their two Children. Husband appealed, raising 11 issues.

Holding: Affirmed.

Opinion: Husband asserted the trial court erred in making a declaratory judgment that a loan to his company was unenforceable and did not impact the company's valuation. Under the parties' PMA, Wife was entitled to a portion of the net value of Husband's company. Husband asserted his company had a negative value due to an outstanding loan to another of Husband's businesses that exceeded all other assets. However, the loan matured 9 years earlier, and Husband had not made any payments on it. The trial court did not err in finding the loan was barred by limitations and unenforceable.

Additionally, Husband argued Wife lacked standing to seek a declaratory judgment on this issue because she was not a party to the loan. However, Wife had standing to seek a declaratory judgment on that issue because a justiciable controversy

existed regarding the amounts to which Wife was entitled to receive under the PMA and the resolution of this controversy turned on the validity of the loan.

Husband further argued that his two businesses were necessary parties that Wife failed to join in the divorce. However, Husband forfeited this complaint by failing to raise the issue in a verified pleading in the trial court.

Husband next complained of the trial court finding he breached his fiduciary duty to Wife. Husband asserted that because the PMA provided no community estate would be created, no fiduciary duty existed. Beyond appropriately managing, preserving, and disposing of community property, the fiduciary duty between spouses generally requires the "utmost good faith and frankness in their dealings with each other." Thus, even though no community estate was created during the parties' marriage, Husband nevertheless owed Wife a fiduciary duty of good faith and fair dealing.

Husband further complained the trial court erred in concluding he breached the PMA by failing to deposit his full salary from his company into the parties' joint account. Wife asserted that because Husband's company was a pass-through entity, he had the ability to determine his salary, and he greatly underpaid himself. Husband argued the PMA did not require him to set his salary at any specific amount. After analyzing the PMA's language, the trial court determined that "income" was defined as the earnings of the company minus certain expenses, regardless of Husband's "salary." Thus, because Husband did not deposit the full "income" due to him under the PMA, Husband breached the parties' PMA.

Husband complained the trial court erred in failing to find that Wife breached the PMA by depositing jointly owned funds in a separate account. However, Wife simply used a mobile deposit feature to deposit funds into her own bank account and always immediately transferred the funds to the joint account. Additionally, Husband was fully aware of how Wife was handling deposits. The trial court did not err in finding no material breach occurred.

Husband argued the trial court abused its discretion in choosing not to require Wife to provide Husband an explanation of benefits before being reimbursed for 50% of uninsured portions of healthcare expenses for the Children. The decree required Wife to provide "all forms, receipts, bills, statement, ***or*** explanations of benefits." (emphasis added). During the divorce proceedings, Husband repeatedly forced Wife to jump through hoops to receive reimbursement, and the trial court did not abuse its discretion by not explicitly requiring her to provide the explanation of benefits for every expense.

Finally, Husband complained of the trial court's award to Wife of attorney's fees in the SAPCR when the PMA provided that each party would pay his or her own attorney's fees. However, the PMA explicitly provided that it did not affect either party's right in any SAPCR, and a SAPCR is a separate and distinct suit from a divorce. The Family Code authorizes the award of attorney's fees in a SAPCR.

Because Ownership Interest In Company Stock Was Community Property, It Was Not An Abuse Of Discretion To Award Wife A 60% Interest In Future Distributions After Divorce.

58. *Brenner v. Brenner*, No. 03-23-00400-CV, 2025 WL 2087204 (Tex. App.—Austin 2025, no pet.) (mem. op.) (07-25-2025).

Facts: Husband worked as an oncologist, and Wife was a stay-at-home mother. Husband designed a drug to treat patients with breast cancer and owned a portion of the company owning the patent to that drug. After discovery of Husband's adultery, Wife filed for divorce. The trial court signed a final decree of divorce after a bench trial. Husband appealed.

Holding: Affirmed.

Opinion: Husband first argued the court erred in characterizing as community property future payments to Husband from a company of which Husband was a stockholder. Husband did not dispute that his 30% stock-ownership interest in the company was community property. In the decree, the trial court awarded Husband a 40% interest in the stock and Wife a 60% interest. The court imposed a constructive trust, naming Husband as trustee and Wife as beneficiary. Husband was required to transfer to Wife her share of distributions within 5 business days of receiving any distributions. Husband argued that future distributions would be based on "milestones" of the company that would be based on his future labor and efforts after the divorce and that those distributions should have been prorated based on the amount of time the parties were married compared to the amount of time worked after divorce. However, all distributions based on the milestone payments would be distributed to all stockholders, not just to Husband. The trial court did not abuse its discretion in its treatment of distribution income based on the community's interest in the stocks.

Husband additionally challenged the trial court setting his child support obligation in excess of the Family Code's guidelines. The Austin court of appeals has "upheld above-guidelines support awards where the evidence of the needs of the child included evidence of professional therapy, household maid services, cable television, yard maintenance, caretaking of the home, cleaning supplies, vehicle maintenance, car insurance, life insurance, extracurricular activities, and outings like trips to the zoo or to theme parks." Other appellate courts "have upheld support awards where the managing-conservator parent presented evidence that the child's needs included expenses for private-school tuition, extracurricular activities, summer camps, gasoline, clothing, a car lease, an allowance, and half of the parent's mortgage." Here, Wife presented evidence that the Children needed a math tutor, and their other needs included expenses for a share of the housing payments, utilities, and food while in her care. She also noted expenses for medical, dental, orthodontic, and medical-health treatments; clothing; and the car payment and related expenses. In sum, Wife showed the Children's needs were $6,709 per month and requested $5000 per month, which the trial court granted. The trial court did not abuse its discretion in setting the amount of Husband's child-support obligation.

Mineral Rights Purchased During Marriage Found To Be Community Property Because Husband Failed To Establish The Purchase Could Be Traced To Funds Gifted From His Father.

59. *O'Connor v. O'Connor*, No. 03-23-00407-CV, 2025 WL 2147786 (Tex. App.—Austin 2025, no pet.) (mem. op.) (07-30-2025).

Facts: During the parties' marriage, Husband's mother died, and Husband's father became the trustee of a trust in her name. Husband's father prepared a deed transferring mineral interests to Husband and his siblings. A few days after the deed was prepared, Husband's father purportedly gifted each sibling funds from their mother's estate to purchase the mineral interests. After hearing testimony and reviewing evidence, the court determined the transaction amounts presented by Husband were inconsistent, and Husband's testimony regarding the transactions was not credible. The court concluded that the royalties Husband received during marriage from the mineral interest were community property. Based on Husband's use of those royalties, the court reconstituted the community estate before making a just and right division. Husband appealed.

Holding: Affirmed.

Opinion: Husband asserted the trial court erred in failing to admit as evidence a handwritten note from his father discussing financial transactions related to estate planning. When attempting to admit the note, Husband authenticated the note by stating he was familiar with his father's handwriting and that the note related to transactions relating to estate planning. However, no offer of proof was made to describe the transactions allegedly discussed in the note or the intent behind making the transactions. Without that information, the appellate court could not determine whether the exclusion of evidence was harmful. Thus, Husband failed to preserve the complaint for appellate review.

Husband next asserted the trial court erred in failing to consider the presumption that a parent-to-child transfer of property is a gift. However, nothing in the record, including the court's findings, indicated that the trial court refused to consider the parental-gift presumption. The trial court discussed evidence rebutting the presumption.

Husband's primary argument was that the trial court erred in finding the mineral interests were community property. First, Husband asserted the mineral interest was gifted to him by his parents. Here, Husband's own evidence rebutted the gift presumption. The deed stated that the interests to Husband were sold for adequate compensation. Husband testified that he wrote a check to his mother's trust for the purchase and that his father gave Husband funds to purchase the interest. If the deed was a gift, those transactions would have been unnecessary. The evidence supported a finding that the mineral-interest deed was not a gift.

Next, Husband argued he adequately traced the purchase of the mineral interest from the gifted funds from his father. However, the copy of the check allegedly received from Husband's father did not have an account number, signature, or memorandum noting its purpose. Husband pointed to two transactions on a bank statement that were close to the amount of the alleged gift and mineral deed purchase, but the statement did not identify who participated in those transactions. Additionally, other transactions occurred between the two identified transactions. There was no line item on the statement indicating a check for the amount shown on the copy of the unsigned check was ever deposited.

Husband complained the court did not apply the appropriate tracing method. The findings did not identify the method used, and the appellate court will affirm if the judgment is supported by law and the record. Applying the community-out-first method, the trial court could have reasonably presumed that the purchase of the mineral rights was made with community funds. The clearinghouse method applies when a spouse can show that separate-property funds were deposited into a commingled account, and the same amount is used to make a purchase. Husband testified that he received a check from his father that he deposited and then used to make the mineral-rights purchase 10 days later. However, Husband did not provide clear documentation to show where the funds came from, nor did he provide documentation to support what the subsequent payment was for. While the clearinghouse method does not require the disputed transactions to be identical, the identical-sum-inference does. The transactions identified by Husband were not identical.

Trial Court Could Award A Disproportionate Division Without Granting Divorce On Fault Grounds.

60. *Paez v. Rodriguez*, No. 03-24-00731-CV, 2025 WL 2325163 (Tex. App.—Austin 2025, no pet.) (mem. op.) (08-13-2025).

Facts: Husband and Wife were married for nearly 50 years. Wife earned money from babysitting children at the marital residence. The parties had custody of their Grandchild, who Wife also cared for. Husband often threatened to sell everything and return to Colombia. Wife did not drive, spoke little English, and worried that without the marital residence, she would not have means to sustain herself and the Grandchild. Husband owned his own business.

After a bench trial, the court rendered a divorce and, as part of the property division, awarded Wife the marital residence. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court erred in awarding Wife the marital home when it granted the divorce on no-fault grounds. However, even when a divorce is not granted on fault-based grounds, the community estate need not be equally divided. The court should consider the *Murff* factors when making its just and right division. Here, Wife needed the home to have a steady income, whereas Husband owned his own business. The parties' adult child testified that Husband had a greater earning

capacity than Wife. Wife had custody of the parties' grandchild. Husband stated he wanted the house to be sold but offered no alternative for where the grandchild would live. Additionally, although the court granted the divorce on no-fault grounds, it could still consider the adult child's testimony about Husband's abuse of Wife during the marriage.

Tax Appraisal Could Support Trial Court's Valuation Finding When No Controverting Evidence Of Value Offered.

61. *Eudaric v. Ynganeh*, No. 05-24-00489-CV, 2025 WL 2346149 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (08-13-2025).

Facts: In his divorce petition, Husband alleged Wife committed fraud on the community estate and wasted community assets. Both parties sought a disproportionate division of the community estate. Wife's attorney withdrew the morning of trial, so Wife represented herself. After the bench trial, the court signed a final decree, and Wife appealed with the aid of counsel.

Holding: Affirmed

Opinion: Among other complaints, Wife argued the trial court erred in vastly undervaluing certain real property, which made the overall division of the marital estate unjust. At trial, Husband offered the tax appraisal as evidence of value, and Wife did not offer any different value. Wife failed to establish the trial court implicitly found in favor of Husband's valuation.

Wife's Separate Property Interest In Real Property Was Lost When The Property Was Transferred To An LLC.

62. *In re Marriage of Thatcher*, No. 07-25-00011-CV, 2025 WL 2396576 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (08-18-2025).

Facts: Husband and Wife married and then moved to Texas from the UK, primarily to invest in real estate. Wife's father gave her money to use to purchase property. One home was purchased using those funds. On the advice of an immigration attorney, the purchase and title documents were in Husband's name only. Later, the parties purchased another home with Wife's father. Pursuant to an oral agreement, Wife's father would have a fifty-percent interest in the property, but only Husband and Wife were on the title documents.

The parties then formed a real estate holding company (the "LLC") and each of Husband and Wife held a 50% interest in the LLC. The first-purchased home was transferred into the LLC and was subsequently transferred back out before being sold. Wife filed for divorce and claimed the first-purchased home as her separate property. Wife's father intervened in the suit to claim his interest in the second home. The trial court made rulings in Wife's favor, and Husband appealed.

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

Opinion: Through seven issues, Husband challenged the trial court's confirmation of Wife's separate property. Wife introduced evidence that the initial purchase money for the contested property was received by Wife as a gift from her parents. Wife produced a gift letter from her parents, and Husband and his expert both acknowledge the funds were a gift.

The funds received from Wife's parents were placed into a joint account, and the subsequently purchased real property was placed in Husband's sole name. While these actions created a presumption of a gift from Wife to Husband, that presumption was rebuttable. Wife testified that at the time of purchase, she was going through immigration proceedings and placed the property in Husband's name to avoid any appearance that she was attempting to immigrate illegally. She testified that it was never her intent to gift the property to Husband. That evidence was sufficient to rebut the gift presumption.

However, Wife subsequently transferred the property to a corporate entity, which meant that the property was no longer community or separate property because it was no longer owned by either party. Thus, the proceeds of the subsequent sale of the property could not be traced to Wife's separate property, and the trial court erred in confirming the proceeds as such.

Husband next complained of the trial court finding Wife's father owned a fifty percent interest in the other real property. Husband asserted that any oral agreement giving Wife's father an interest was unenforceable because it violated the statute of frauds. However, the statute of frauds is an affirmative defense in a suit for breach of contract that renders the contract voidable and unenforceable. The party relying on the statute of frauds to avoid his agreement must plead it as an affirmative defense and bears the initial burden of establishing its applicability.

Here, Wife's father intervened in the suit claiming his half-ownership in the property. Husband filed no responsive pleadings to the intervention. The record did not reflect that a statute-of-frauds defense was tried by consent. Testimonial evidence established that the parties would purchase the property and Wife's father would possess the rights to half the property's rentals and eventual sale. Wife's father wired funds to the parties and the title company for a portion of the purchase. Although Wife's father's name was not on the deed, Husband acknowledged that rental profits were provided to Wife's father. In the appeal, Husband pointed to a "gift letter" indicating that Wife's father's contribution to the property purchase was a gift. However, it was Husband and Wife who suggested the creation of that letter to ensure Wife's father would not be responsible for payments on the mortgage. The gift letter was not determinative.

Finally, Husband challenged the just and right division of the community estate. Because the characterization issues likely had a material effect on the division, the issue was reversed for further proceedings.

Possession Order Giving Father Access As Agreed By Him And The Children Reversed For Lack Of Specificity; Reimbursement Award For Community Contributions To Enhance Father's Separate Estate Reversed Because No Evidence Of Enhanced Value.

63. *In re Marriage of Cruey*, No. 12-24-00159-CV, 2025 WL 2416806 (Tex. App.—Tyler 2025, no pet.) (mem. op.) (08-20-2025).

Facts: Mother and Father were married about 14 years and had four Children. Father filed for divorce, and a jury found Father should have the exclusive right to designate one of the Children's primary residence, and Mother should have the exclusive right to designate the primary residence of the other three Children. All other issues were tried to the bench.

The final decree appointed the parents joint managing conservators of all four Children, required Mother's periods of possession of the one Child in Father's "primary care" to be supervised, and required Father's periods of possession of the other three be supervised. Additionally, Father was enjoined from attending the Children's school unless invited and from approaching Mother and her family members.

The decree also awarded two reimbursement awards to Mother for improvements on Father's separate estate and the community estate. Father appealed. Mother did not.

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

Opinion: Only a partial reporter's record was provided to the appellate court, and Father did not file a statement of points. The record did not include transcripts of evidentiary hearings that had been conducted to address Father's attendance at the Children's school lunches and attorney's fees. Thus, Father's appellate challenges on these two issues were waived because the appellate court was required to presume the omitted portions of the record supported those rulings.

Father first argued the evidence was legally insufficient to support the order giving him limited periods of possession. Father asserted the restrictions on his access were unreasonable because it did not specify times for his access, leaving his periods of possession to Mother's discretion. The court restricted Father's periods of possession due to sexual abuse by the one Child in Father's "primary care" against one of the other Children and Father's refusal to believe the outcry or take steps to protect the Children. Additionally, Father continually violated court's orders by not paying support and by going to the Children's school despite orders not to do so. Father did not exercise all his periods of possession, did not ask to visit one of the Children, and discussed the litigation with the Children. The order only gave Father access to the Children if the Children agreed in advance, which could effectively result in no access at all. The trial court abused its discretion in failing to either deny all access or give Father specified periods of access.

Father next challenged the reimbursement claims. The reimbursement awards were based on payments made by the community estate towards Father's separate real property. However, one of the awards was for repayment of a debt associated with one property, and the other was for improvements made to the other property. Both awards to Wife were valued at half the community estate's dollar-for-dollar contribution. Although some underlying facts were disputed, the parties agreed the two properties were Husband's separate estate and that the disputed payments were made from the community estate. With respect to the first reimbursement award, the dollar-for-dollar award was appropriate; however, when one estate enhances another, the correct valuation for the reimbursement should be the enhancement in value. The record contained no evidence of any changed value in that property. Thus, the trial court lacked sufficient information to exercise its discretion to award the second reimbursement award.

Trial Court Did Not Err In Not Including Every *Murff* Factor In Its Findings Because The Factors Are Discretionary, And Not All Of Them Were Applicable To This Case.

64. *Bustamante v. Salinas*, No. 05-24-00451-CV, 2025 WL 2495045 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (08-29-2025).

Facts: Husband and Wife were married 35 years before Wife filed her petition for divorce. Wife sought a divorce on the grounds of insupportability and cruelty. Husband generally denied her petition and countered for a divorce on the ground of insupportability. Both parties asked for a disproportionate division of the community estate based in part on alleged waste. At the bench trial, the parties argued about the contents of a safety deposit box. Husband asserted it contained only documents. Wife asserted it also had $100,000 cash in it. The safety-deposit box was awarded to Husband, and presuming it contained the $100,000 cash, Husband's share of the estate was about $7000 more than Wife's. Husband appealed.

Holding: Affirmed.

Opinion: Husband challenged the property division, arguing it was inequitable and unjust. Specifically, Husband argued the trial court failed to consider the *Murff* factors when dividing the community estate. In *Murff*, the Texas Supreme Court repeatedly used the words "may consider" when setting out the various factors; nowhere did the Court state that the trial court "must" consider each and every factor.

Here, there was no evidence the breakup of the marriage was the fault of one spouse. There was no evidence of the parties' education or business opportunities or any evidence of separate property. The findings indicated the court took the parties' earning capacities into consideration. Wife was injured, had to pay medical bills, and the injury reduced her ability to work and her recent income. Although no other factors were mentioned in the court's findings, the court did find that the division

was just and right having due regard for the rights of each party. Husband did not request additional or amended findings. Additionally, the court found that Wife's testimony was credible, where Husband's was not.

Husband further complained that the court failed to adequately consider and make findings regarding the liabilities of the estate. Husband failed to request findings pursuant to Texas Family Code Section 6.711 and only requested findings pursuant to the Rules of Civil Procedure. However, even if Husband had requested additional findings permitted under the Family Code, the parties only testified about a single car loan. While Husband complained of $40,000 Wife allegedly wasted, that would not be considered a debt, the court found the money was spent on reasonable necessities, and the court rejected Husband's waste claim.

Husband Failed To Rebut Gift Presumption Regarding Deeds Conveying Real Property To Wife During Marriage.

65. *Barragan v. Barragan*, No. 09-23-00312-CV, 2025 WL 2984680 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (10-23-2025).

Facts: During the parties' marriage, Wife learned Husband was unfaithful. Shortly afterwards, to show his commitment to the marriage, Husband executed two deeds transferring property to Wife. When the parties cross-petitioned for divorce, Wife claimed the two properties as her separate property, and Husband disputed the claim. He asserted that when the deeds were executed, he meant only to add Wife's name to the deeds, not to remove his own. After hearing evidence and reviewing the deeds, the trial court determined one property was gifted to Wife by Husband, making it her separate property. The court found the other property was community property but awarded it to Wife as part of the just and right division of the community estate. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued that the trial court mischaracterized one of the properties as Wife's separate property. Husband claimed that because the parties spoke Spanish, they did not understand the English-language documents, leading to a mutual mistake regarding the recitals. Further, Husband argued neither physical deed was conveyed to him as required to complete the transfer.

To prove a mutual mistake, the evidence must show that both parties were acting under the same misunderstanding of the same material fact. Wife testified that Husband desired to transfer the two properties to show he was a faithful husband. Wife explained the plan was to give her the properties, not to simply add her name to the deeds. Husband testified that he did not know the deeds would remove his name, but he also acknowledged that he did not pay attention or read the deeds before signing. Husband did not ask to speak to a lawyer or have a lawyer review the deeds. Husband's testimony did not support his claim of mutual mistake. Any mistake would have been Husband's unilateral mistake.

Further, contrary to Husband's assertion, manual delivery of the deed is not required. Moreover, Wife, the grantee, maintained control of the deeds after execution. The Property Code requires conveyance *by* the conveyor, not *to* the conveyor.

Next, Husband argued Wife failed to establish by clear and convincing evidence that the first property was her separate property because the deed did not include donative intent and separate-property recitals. Although the parties presented conflicting evidence, the trial court was free to disbelieve any or all of Husband's testimony. The trial court could have reasonably concluded Husband failed to rebut the gift presumption.

Evidence Supported Awarding Wife 75% Of Community Estate.

66. *In re Marriage of Jaroszewski*, No. 13-24-00222-CV, 2025 WL 3030597 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (10-30-2025).

Facts: Husband and Wife were married for about seven years and had three Children. During the divorce proceedings, by agreement, the parties shared the marital residence; although, Wife had exclusive use of the master bedroom. Both accused the other of adultery. There was evidence Wife had become close to another man shortly before the divorce but no evidence she engaged in intercourse with that man. Husband admitted to having sex in Wife's bed with another woman while Wife was out of town during the divorce. Husband did not believe that incident constituted adultery because the marriage was not "intact" at the time. Wife reported that Husband abused alcohol, but Husband denied having a problem. The child custody evaluator expressed concerns that Husband did not accept responsibility for his actions.

Husband denied many allegations against him, but admitted he beat up, in front of the Children, the man with whom he believed Wife had an affair. He also admitted to shooting guns at a large photo of Wife with the Children but asserted it was one of the Children's ideas. He burned the photo later so no one could see what had been done to it. After hearing evidence, the court named the parties joint managing conservators, granted Wife the exclusive right to designate the Children's primary residence, and gave Husband a modified standard possession order. Additionally, the court granted the community estate two reimbursement awards: one related to Husband's waste and one related to the purchase of property with Wife's separate funds. Husband appealed.

Holding: Affirmed.

Opinion: Husband first challenged the division of the community estate, arguing it unfairly and unjustly awarded Wife 78% of the estate. Wife acknowledged the division resulted in a 75/25 split but asserted the evidence supported the result.

Husband did not challenge the findings that he committed adultery and was guilty of cruel treatment against Wife. Rather, Husband challenged findings that he committed waste and that the community estate was entitled to reimbursement. However, Husband stipulated to the reimbursement claim relating to the purchase with Wife's separate funds, and the evidence supported a finding that Husband's use of community funds to benefit his parents' rental property was waste. Further, in addition to the adultery and cruelty findings, the court listed in its findings about 10 other *Murff* factors that supported a disproportionate award. While Husband complained of one of the listed factors on appeal, he failed to address all of them. Accordingly, Husband's appellate complaint was overruled.

Next, Husband complained that the court awarded him a standard possession order instead of a 50/50 possession order, which the parties had been following pursuant to their agreed temporary order. Rather than address the *Holley* factors, Husband complained that Wife did not explicitly request a standard possession order in her pleading. Wife's pleading asserted that she believed the parties would reach an agreement regarding possession, and if they could not, she asked the court to make orders in the best interest of the Children. Wife did not explicitly request either a standard possession order or a 50/50 possession order; however, she did request Husband's periods of possession be supervised due to his history of alcohol use. From that request, Husband was on notice that Wife sought to significantly reduce his possession. Further, Husband failed to object when Wife testified at trial that she did not believe 50/50 was in the Children's best interest. Nor did Husband object to the child custody evaluator's report, which did not recommend a 50/50 possession schedule.

Finally, Husband argued the judge was impartial and deprived him of a fair trial. Although Husband identified instances that he perceived to show bias, he did "not come close to making that showing [of bias] in this case."

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

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

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

Holding: Reversed and Remanded.

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

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

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

68. *Miles v. Miles*, No. 05-24-00018-CV, 2025 WL 3241330 (Tex. App.—Dallas 2025, pet. [to be] filed [mand. denied]) (mem. op.) (on reh'g) (11-19-2025).

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

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

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

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

Husband appealed pro se.

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

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

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

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

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

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

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

In a cross-appeal, in two issues, Wife complained of the sufficiency of the evidence to support the attorney's fee award and argued the provision that the fees be taken from the proceeds of the marital residence was unconstitutional. Wife failed to preserve her constitutional complaint by failing to raise it in the trial court. However, an evidence-sufficiency complaint after a bench trial may be raised for the first time on appeal. In support of his request for fees, Husband offered his fee agreement with the law firm representing him and redacted invoices. However, Husband's attorney did not testify as an expert on fees or submit an affidavit or sworn declaration as to the reasonableness of the fees charged. Because the trial court had statutory and equitable authority to award fees, but the evidence was insufficient to support the award, the proper remedy was to reverse the fee award for a new hearing on fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Finally, during trial the court found Wife in contempt and required her to post a bond into the court's registry in lieu of serving a sentence in jail. Wife's mother posted the bond. Because those funds were received during marriage, they were presumptively community property. At trial, Wife presented no evidence that the funds in registry were separate property. However, the trial court did not include those funds in the division of the community estate. Thus, because Wife did not carry her evidentiary burden of establishing the separate character of the funds, the court sustained Husband's second cross-issue on appeal regarding the failure to divide those funds.

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

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.

70. ***Key v. Key***, 712 S.W.3d 697 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (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.

Failure To Obtain Preapproval From Plan Administrator Did Not Render QDRO Defective.

71. *Burgin v. Burgin*, No. 02-24-00504-CV, 2025 WL 2552341 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (09-04-2025).

Facts: An agreed divorce decree awarded Husband all but $1000 of Wife's retirement benefits from an identified plan. The following year, Husband filed a petition for the entry of a QDRO. Wife filed a response alleging fraud in a real estate transaction and later filed a motion to dismiss for inadequate service. The trial court denied Wife's request for a continuance to seek further discovery into Husband's alleged fraud. The trial court signed a QDRO and issued findings of fact. Wife appealed pro se.

Holding: Affirmed.

Opinion: Wife presented several issues relating to her claims of fraud and alleged due process violations. However, Wife never set a hearing on her claims of fraud. Moreover, the trial court's plenary power in the divorce had expired, so the court would not have been able to modify the divorce decree's property division. Additionally, Wife's motion for continuance was not verified or supported by affidavit, so the court did not err in denying her motion for continuance. Wife complained of inadequate service, but her general appearance seeking affirmative relief cured any defective service. Although Wife complained she was not allowed to testify at the final hearing and the court showed bias against her, she failed to include a reporter's record for the appeal, waiving those issues for appellate review. Similarly, without a reporter's record, the appellate court could not address Wife's complaint regarding the sufficiency of the evidence to support the attorney's fee award to Husband. Wife further raised a claim of laches due to the over-a-year delay between the decree entry and QDRO entry; however, she waived appellate review of that affirmative defense by failing to raise it in the trial court. Moreover, she failed to show how the delay disadvantaged her.

Wife additionally challenged the entry of the QDRO because it had purportedly not been preapproved by the administrator of her retirement plan, which rendered the QDRO legally defective. But the relied-upon statute did not support Wife's assertion. Rather, ERISA Section 1056(d)(3)(G) simply provides that upon receipt of a domestic relations order, "the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination" within a reasonable time. While ERISA Section 1056 contemplates that no amounts will be paid to an alternate payee until the plan administrator (or a court of competent jurisdiction) has determined that a purported QDRO is, in fact, "qualified," the statute does not require the plan administrator to preapprove a QDRO before it is issued by a trial court. Thus, the appellate court rejected Wife's contention.

Decree Could Not Prohibit Husband from Electing VA Disability Retirement Even If That Election Deprived Wife of Any Agreed-to Retirement Benefits Pursuant to Their MSA.

72. *In re Marriage of Morgan*, No. 13-24-00256-CV, 2025 WL 3677314 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (12-18-2025).

Facts: The parties' MSA in their divorce provided Wife would receive 50% of the community portion of Husband's net disposable retired pay. Husband moved for entry of a decree, but Wife argued the MSA was unenforceable because it allowed Husband to waive his retirement pay to receive disability pay. Wife asked the trial court to include language to prohibit Husband from waiving his miliary retirement pay because military disability is not divisible in a divorce. The final decree prohibited Husband from taking action to reduce Wife's share of his retirement and required Husband, if he did reduce Wife's share, to pay her for the amount of the reduction. Husband appealed.

Holding: Affirmed as Modified.

Opinion: Husband argued the trial court improperly prohibited him from converting his military retirement into disability payments and erred in ordering him to reimburse Wife for the costs of that election. A divorce court cannot apportion miliary retirement pay that has been waived to receive VA disability benefits. A court may not expressly or impliedly prohibit a retired military member from making that election. Thus, here, the trial court erred in improperly prohibiting Husband from waiving some or all of his retirement pay to collect disability.

Additionally, a trial court may not require a retired military member to pay his ex-spouse for the reduced retirement benefits due to the election to receive VA disability benefits. Wife argued that other states had approved this type of provision. However, no Texas court has. Accordingly, the provisions were struck from the decree, but the decree was otherwise affirmed.

In a cross-appeal, Wife argued the MSA should be set aside because there was no meeting of the minds. The MSA met the Family Code's requirement to entitle the parties' to judgment on the MSA. No evidence was presented to the trial court regarding a meeting of the minds, so the appellate court could not reverse the decree on that ground. Additionally, while Wife argued the MSA was ambiguous, she failed to articulate what language was ambiguous or what the conflicting interpretations would be.

DIVORCE: SPOUSAL MAINTENANCE AND ALIMONY

Temporary Orders Pending Appeal Ineffective Because Motion Was Not Filed Timely; Evidence Supported Maximum Statutory Spousal Maintenance.

73. *Czarkowski-Golejweski v. Wilson*, No. 07-24-00127-CV, 2025 WL 20566 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (01-02-2025).

Facts: Husband and Wife married in Australia and then moved to Texas. Husband obtained a financially lucrative job, while Wife "toiled with employment paying no more than $10.50 an hour." Wife then suffered deteriorating health and a mental condition that resulted in unemployment, medication, and surgeries. Husband cheated on Wife and filed for divorce. After a trial, the court ordered Husband to pay spousal maintenance of $5000 a month for 30 months, after which time the matter would be revisited. Husband filed a notice of appeal. Wife obtained temporary orders pending appeal that included an award for appellate attorney's fees.

Holding: Affirmed; Temporary Order Pending Appeal Reversed

Opinion: Husband asserted the trial court erred in granting Wife spousal maintenance because her minimum reasonable needs included "wants." Husband cited no authority suggesting that only the cheapest basic essentials to survive constitute needs. Here, Wife "suffer[ed] from psoriatic arthritis to a degree requiring surgery, major depressive disorder, severe anemia, costochondritis, chronic pain, pain induced insomnia, and disk herniation resulting in multiple surgeries." Furthermore, the "continued erosion of [her] joints and spine will require continued surgeries into the foreseeable future." She was "disabled, and her disability will continue indefinitely beyond the foreseeable future." Husband did not contest these facts. Nor did he dispute that she had no income, her conditions prevented her from earning an income, she would have substantial medical and mental expenses indefinitely, or his monthly income exceeded $32,000.

In addition to her testimony, Wife presented an exhibit listing her monthly expenditures, which included veterinary bills, gas, housing expenses, utilities, transportation, and medical costs. Wife's expenses exceeded the statutory limit of $5000, which is what the trial court ordered. The trial court did not abuse its discretion.

Husband next complained of the temporary orders pending appeal that awarded Wife appellate attorney's fees. Texas Family Code Section 6.709 requires that a motion for temporary orders pending appeal be filed no later than the date by which that party must file a notice of appeal. Here, Husband extended the deadlines to 90 days after the judgment. Once Husband filed his notice of appeal, Wife was bound to file a cross-appeal by that same 90-day limit or 14 days after Husband's notice was filed—whichever was later. Regardless of whether she filed a cross-appeal, that date was her deadline to file a motion for temporary orders pending appeal. Her motion was filed about 2 weeks after that. Thus, the trial court lacked authority to sign any temporary orders pending appeal, and her award for appellate attorney's fees was reversed.

Husband Could Not Be Held In Contempt For Nonpayment Of Contractual Alimony.

74. *In re Aguilar*, No. 04-24-00222-CV, 2025 WL 262449 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (01-22-2025).

Facts: The parties' divorce decree included a provision that Husband pay contractual spousal maintenance to Wife for 48 months. The decree explicitly stated that the payments were "intended to qualify as contractual alimony as that term is defined in section 71(a) of the [IRS Code]." Nearly five years later, Wife filed a petition for enforcement seeking contempt for nonpayment of all 48 payments. After failed mediation and a hearing, the trial court held Husband in contempt for each violation and ordered

him confined for a period not to exceed 18 months but suspended the sentence on terms not relevant to the issues raised in this original proceeding. Husband filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Husband argued the trial court abused its discretion in holding him in contempt for nonpayment of a contractual obligation. An order incorporating a voluntary support obligation that does not qualify as Chapter 8 spousal maintenance creates a debt that is enforceable as a contract, not a court-ordered obligation that is enforceable as a judgment. Despite any use of decretal language ("It is ordered …") the use of the word order alone is not dispositive. The plain language of the order stated that the obligation was "contractual alimony" not Chapter 8 spousal maintenance. The obligation was a debt that could not be enforced through contempt.

Spousal Maintenance Could Not Be Terminated Retroactively As Of The Date Mother Allegedly Began Cohabitating With A Romantic Partner; The Termination Date Had To Be "After" The Hearing On Termination Of The Maintenance.

75. *In re T.M.B.*, No. 13-24-00070-CV, 2025 WL 1073173 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (04-10-2025).

Facts: In the parties' divorce, Mother was ordered to pay child support, and Father was ordered to pay spousal maintenance. Father was in the military and moved a few times after the divorce. He was in Alaska at the time of the underlying proceeding. Father initiated suit to terminate his spousal maintenance obligation because Mother was allegedly cohabitating with a romantic partner. Later, Mother counter-petitioned to reduce her child support obligation. Father amended his petition asking that Mother's access to the Children be supervised because she had dated three different men with criminal records since the divorce. After a final hearing, the court awarded Father overpayment for spousal maintenance, denied Mother's request to reduce her child support obligation, and granted Father's request that Mother's visitation be supervised. Mother appealed.

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

Opinion: Mother challenged the sufficiency of the evidence to support the denial of her request to modify child support. Mother's child support obligation was based on the income Mother represented that she would be capable of earning during the divorce proceeding and that her income would increase soon because she would be receiving a portion of Father's retirement. Mother argued that the termination of her spousal maintenance materially and substantially changed her financial circumstances. During the divorce, Mother stated an intent to go back to college to become an ASL interpreter; however, she did not do so. Mother blamed COVID for her decision not to go to school but conceded that she did not attempt to go to school after the pandemic ended. Further, there was no evidence Mother could not have obtained her education remotely. Mother had previously earned $25 an hour as an interpreter without a license, yet her current job at a convenience store paid only $11.50 per hour. The trial court found Mother was "voluntarily underemployed through her complete lack of effort and expense to obtain the education and license" she previously indicated she would seek. The evidence supported this finding.

Mother further argued that trial court erred in finding her income would increase soon because of Father's retirement. Father acknowledged that although he testified about an intent to retire, there was no evidence he intended to retire "soon." Thus, the evidence was insufficient to support that finding.

Next, Mother argued the trial court erred in deviating from the child-support guidelines. The ordered child support was apparently based on an assumption that Mother would receive spousal maintenance in perpetuity, but even under its own terms, the spousal maintenance would terminate after 30 months. Additionally, Father moved to Alaska, but Mother bore the burden for visitation costs. No evidence was offered regarding the Children's medical, education, or other needs. The evidence was insufficient to support a finding that deviation from the guidelines would be in the Children's best interest, and the trial court abused its discretion in finding otherwise.

Mother also argued the court abused its discretion in requiring her visitation to be supervised and only at dates and times as determined by Father. The trial court found that Mother had a history or pattern of reckless decision making and engaging in conduct that risked the children's physical health or emotional welfare. The evidence supported that finding. Mother dated numerous men after the divorce who had criminal records and had to obtain a protective order against one. Although Mother testified that she did not expose the Children to these men, the Children testified otherwise. Thus, the evidence supported the requirement that Mother's periods of possession be supervised.

However, the portion of the order allowing Father to have sole discretion of the dates and times of Mother's visitation was improperly vague and contrary to public policy. This provision was not necessary to protect the Children's best interest.

Mother further argued the trial court lacked authority to enter a judgment for alleged overpayment of spousal maintenance or to direct her to pay that judgment by a date certain. Father was ordered to pay spousal maintenance for 30 months. He moved to terminate that obligation because Mother was cohabitating with someone with whom she was in a romantic relationship and because she failed to go to school as promised. The court retroactively terminated the obligation based on Mother attempting to conceal her cohabitation. The statute does not specifically address retroactivity, but it does say that maintenance can be terminated "after a hearing." Further, termination "does not terminate the obligation to pay any maintenance that accrued before the termination." That provision would be redundant and nonsensical if the court were permitted to declare any date as the date of termination.

Award For Spousal Maintenance Reversed Because Wife Did Not Plead For That Relief.

76. *Masimula v. Masimula*, No. 08-24-00084-CV, 2025 WL 1387788 (Tex. App.—El Paso 2025, no pet.) (mem. op.) (05-13-2025).

Facts: Wife filed for divorce. Husband filed a late pro se answer with a general denial and asked to be notified of hearings. Additionally, Husband averred he owned separate property in South Africa and noted that he was a service member. At what was intended to be a final hearing, the court learned that Husband had not provided disclosures to Wife. The court informed the parties it could not make a determination of a just and right division without that information and continued the hearing.

Although Father had been duly notified of the reset final hearing, he failed to appear. Wife was the sole witness. The trial court signed a default divorce decree that included an award of spousal maintenance to Wife for 18 months. Additionally, the court ordered Husband to pay unpaid interim support as a lump sum to Wife. Husband appealed.

Holding: Reversed in Part; Affirmed in Part.

Opinion: Among the over 30 issues presented, most of which were inadequately briefed, Husband challenged the award of spousal maintenance. Because Wife did not plead for spousal maintenance, the trial court erred in awarding it.

Husband's Financial Support Of Wife During Divorce Proceeding Irrelevant To Question Of Whether She Would Have The Post-Divorce Ability To Provide For Her Minimum Reasonable Needs.

77. *In re Marriage of Mullis*, No. 13-23-00446-CV, 2025 WL 1403676 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (05-15-2025).

Facts: Wife filed for a protective order based on an allegation he choked her. A court granted the protective order, gave Wife exclusive use of the marital residence, and ordered Husband pay Wife support and pay all expenses associated with the cost of the residence. A few days after filing for the protective order, Wife separately filed for divorce on the grounds of insupportability and cruelty, and that case was assigned to a different court. After a bench trial, the divorce court granted the divorce on the ground of insupportability and issued a memorandum ruling in which it denied Wife's request for spousal maintenance. The divorce court found Wife was allowed to reside in Husband's separate property home for 7 months, and Husband paid all the utilities and household expenses and additionally paid to assist her to move out. The court expressly held in its memorandum ruling that due to the expenses paid by Husband, no spousal support was ordered. Wife appealed.

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

Opinion: First, the appellate court addressed the issue of findings. While no document entitled "findings of fact and conclusions of law" was filed, the trial court's memorandum ruling contained extensive factual findings and conclusions of law detailing the reasons for its judgment. The memorandum ruling was in writing and was filed into the record. No subsequent findings were entered. Thus, the findings contained in the memorandum ruling satisfied the purpose of Texas Rule of Civil Procedure 296.

Despite evidence to support such a cruelty finding, whether to grant a divorce on fault grounds is discretionary. Thus, contrary to Wife's assertion, the trial court was not required to grant the divorce on the ground of cruelty.

Wife additionally argued the court abused its discretion in failing to award her spousal maintenance and in determining funds expended by Husband during the pendency of the divorce disqualified Wife from her eligibility to receive spousal maintenance. The relevant statute provides that the court must decide whether "the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs." The court rejected Wife's request solely based on the funds spent during the pendency of the divorce. However, Husband's temporary support during the litigation was immaterial to the question of whether Wife would be able to support herself after the divorce.

While temporary support may be relevant to the division of the marital estate, it is not relevant to the question of whether a spouse is entitled to post-divorce spousal maintenance. Additionally, here, temporary support was not awarded by the trial court but was ordered by the court that issued the protective order. Husband earned over $100,000 per year, while Wife had no source of income. Husband expended some funds pursuant to the protective order; however, he did not support Wife for 30 months during the divorce proceeding after she moved out of his residence. Finally, because the trial court explicitly purportedly denied Wife's request based on her ability to provide for her minimum reasonable needs, the appellate court could not infer an implicit finding that the trial court found Wife was not disabled.

Evidence Supported Spousal Maintenance Award To Wife As Primary Caregiver For The Parties' Disabled Child.

78. *Duarte-Hernandez v. Rodriguez*, No. 03-24-00114-CV, 2025 WL 1477185 (Tex. App.—Austin 2025, no pet.) (mem. op.) (05-23-2025).

Facts: Husband and Wife had five Children, three of whom were adults by the time of divorce. The youngest child suffered from a disability and required significant care. Both parties alleged cruelty as a ground of divorce and sought reconstitution of the community estate due to the other party's alleged fraud. Additionally, the parties disputed ownership of a piece of real property. Husband co-signed for a mortgage on the Property in which his brother lived. Husband asserted he never intended to be an owner of the Property. Wife testified otherwise. After a trial, the court awarded Husband a 50% interest in the disputed Property and otherwise divided the community estate. Additionally, the court awarded Wife spousal maintenance. Husband appealed.

Holding: Affirmed.

Opinion: Husband challenged the trial court's inclusion of the Property in the division of the community estate because Husband asserted that the Property belonged solely to Husband's brother. Husband asserted his name on the deed was a mistake. Husband acknowledged co-signing for the mortgage but claimed not to have contributed any funds towards the purchase of the Property. However, Husband disregarded the evidence supporting the trial court's finding, including (1) a warranty deed listing him as one of the grantees in exchange for cash and a bank note; (2) a deed of trust identifying each as married men, debtors, and grantors; and (3) a property insurance declaration naming Husband as the insured.

Next, although Husband complained of a disproportionate division of the community estate, no findings were requested or issued. Thus, the appellate court could not address Husband's complaint. Moreover, both parties alleged fraud, and there was some evidence to support Wife's claim against Husband. If the trial court found Husband committed fraud against the community estate, that would have supported a disproportionate division of the community estate.

Husband additionally challenged the trial court's award to Wife of spousal maintenance. Although Wife did not offer an itemized list of monthly expenses, she did testify about recent expenses. Additionally, there was evidence about the monthly expenses associated with the marital residence that Husband had been paying during the divorce, and the marital residence was awarded to Wife in the decree. Thus, there was some evidence of Wife's minimum reasonable needs.

Further, Wife testified that she was prevented from working more hours due to her being the primary caregiver of the parties' disabled Child. Wife testified about the Child's abilities and needs. The Child needed constant supervision. Although one of the adult Children could babysit, he had his own job and could only babysit a few hours each month. Additionally, while Wife was awarded rental properties, those properties were in disrepair and were not earning much rental income. Combining the expected rental income and Wife's wages amounted to less than her minimum reasonable needs. The evidence supported that Wife did not earn sufficient income to meet her minimum reasonable needs and that the amount awarded was not excessive.

★★★ 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.

79. ***Mehta v. Mehta***, 716 S.W.3d 126 (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.

80. ***Begala v. Begala***, 722 S.W.3d 220 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (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.

Spousal Maintenance Could Not Be Based On Earning Potential.

81. ***Harwood v. Harwood***, __ S.W.3d __, No. 03-23-00455-CV, 2025 WL 2233982 (Tex. App.—Austin 2025, no pet.) (08-06-2025).

Facts: Husband and Wife were married for over 20 years and had three Children, one of whom was an adult by the time of their divorce. In her counterpetition, Wife asked for an award of spousal maintenance. Wife testified regarding her lymphedema that caused swelling and infections in her right leg. Wife received monthly social security disability payments ("SSDI"). Before that, Wife worked at Chanel as an account manager. However, she claimed that she could no longer get a job or work full-time. She requested spousal maintenance for an indefinite period, set at 20% of Husband's income. Wife presented evidence of her minimum reasonable needs and available resources, including SSDI and child support. Husband argued Wife led an active life and could push through a lot of things. Early in the marriage, Husband played professional basketball. He later began working at 24-Hour Fitness, working up to district manager with a six-figure annual salary. Later, he became a self-employed "life coach" earning less than $40k a year. The court set spousal maintenance based on Husband's earning potential, rather than his actual income. The court replied in the affirmative to Husband's attorney's clarifying question, "so you're applying Chapter 154 to Chapter 8 to come up with this amount of maintenance?" The trial court signed a decree and denied Husband's motion for new trial. Wife appealed.

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

Opinion: In reviewing the record, the appellate court determined the evidence was legally and factually sufficient to support a finding Wife's disability entitled her to spousal maintenance. Thus, the appellate court overruled Husband's first issue.

In his second issue, Husband asserted the trial court abused its discretion in setting his spousal maintenance obligation at $1500 a month based on a the finding he was intentionally underemployed. The Family Code limits the situations in which maintenance may be awarded, and if maintenance is available, it is capped at the lesser of $5000 a month or 20% of the obligor's average monthly gross income. The statute defines "gross income" with itemized lists of what is and is not included. At the time of trial, Husband testified to earning $3300 a month, 20% of which is $660.

Nothing in Chapter 8 authorizes the court to rely upon a finding of intentional unemployment when determining the amount of spousal maintenance to be ordered.

Wife's Symptoms Of PTSD Caused By Husband's Betrayals Prevented Her From Satisfying Her Minimum Reasonable Needs; Wife Was Not Required To Spend Down Long-Term Assets; Evidence Sufficient To Establish Needs Exceeded Award; And The Spousal Maintenance Award Did Not Exceed 20% Of Husband's Gross Monthly Income.

82. *In re Marriage of Willis*, No. 06-25-00007-CV, 2025 WL 2433204 (Tex. App.—Texarkana 2025, pet. denied) (mem. op.) (08-25-2025).

Facts: Husband was a real estate broker and an ordained Baptist minister. He wrote a book (not yet published) detailing his addiction to pornography and adultery, including with teenage boys while acting as a youth pastor. In the book, Husband admitted to cruel treatment of Wife. Husband contracted an STD, was aware of the symptoms, yet continued to have sexual relations with Wife before she had knowledge of his adultery.

Husband believed God had absolved him of his sins, so he decided to tell Wife everything and encouraged her to remain with him. She left. Later that year, Husband emailed the couples' adult children to apologize for treating Wife like a slave or as if she were worthless. Wife filed for divorce and asked for spousal maintenance.

At trial, the evidence showed that Wife had assisted Husband with his real estate business, often working long hours, sometimes into the night, without pay. Sometimes, Wife continued working while Husband left to go sit in a hot tub. During the marriage, Husband controlled the money and did not allow her funds to purchase new clothing because she did not go anywhere. Wife was 61-years old at the time of trial. A licensed counselor testified Wife had complex PTSD due to Husband's activities and disclosures. Wife would have great difficulty returning to work in the real estate industry because that work constituted a primary trigger for her trauma. The counselor testified that Wife was not physically capable of working due to the effects of the PTSD. The counselor could not predict how long it would be before Wife might be fit for work. Wife had previously been a teacher, but she quit in 1991 to homeschool the parties' children.

Husband had ignored Wife's requests for him to stop emailing and texting her. He sent her at least 252 emails and 260 text messages since the separation. Although he acknowledged his mistreatment of Wife, he still wanted to publish the book against her wishes to share his journey with God. The trial court reviewed Husband's book before ruling.

With respect to her minimum reasonable needs, Wife testified that she wanted to buy a home so that she could live alone and find herself again. She had inherited some money from her father and had some retirement funds. She had not applied for jobs or sought further training. The income earned from Husband's real estate business had been reported under Husband's Social Security number, so he would eventually receive those benefits. Wife's projected benefits were about a quarter of what Husband would receive. Husband had a six-figure annual income for the last few years, but Wife also had six-figure debt.

The trial court granted the divorce on the grounds of adultery and cruelty and awarded Wife a disproportionate share of the community estate. Additionally, the court awarded Wife monthly spousal maintenance of $2,500 for eight years. Husband appealed.

Holding: Affirmed.

Opinion: Husband challenged the award of spousal maintenance. The evidence supported a finding that due to her mental health, which deteriorated because of Husband's betrayal, Wife lacked the ability to earn sufficient income. Wife had trouble sleeping, experienced panic attacks, could not concentrate, and could no longer perform daily tasks that used to be easy for her. Husband set back Wife's ability to recover by continuing to email and text her.

Husband argued the court erred because Wife did not establish the amount necessary to meet her minimum reasonable needs and the amount exceeded 20% of his gross income.

Quoting *Mehta v. Mehta*, 716 S.W.3d 126 (Tex. 2025) (06-20-2025), the court explained that "'[m]inimum reasonable needs' is not defined in the Family Code." As a result, "[t]rial courts generally have discretion to determine these needs on a case-by-case, fact-specific basis." "Although an itemized list of monthly income and expenses is the most 'helpful' evidence to establish eligibility, neither the Family Code nor our cases require exactitude." "[A]lmost everyone has basic essential needs such as food, utilities, and medical expenses."

Although Wife did not testify what her anticipated mortgage payment would be, the trial court was aware that the parties' current monthly mortgage payment was almost $2000. Husband listed his monthly expenses, including yard maintenance, food, and utilities, the total of which exceeded $2000. Wife also testified she paid over $2000 a month for the couple's health insurance, and her monthly credit card debt payments were nearly $2500 a month. Both parties testified that they did not believe they could survive on $2000 a month, and Husband estimated he would need $4000 a month. The evidence supported the trial court's determination that Wife's needs were at least $2500.

Husband complained that in addition to her separate property, Wife had sufficient property awarded to her in the property division to meet her minimum reasonable needs. Wife's separate property included a $100 savings account, jewelry, and cemetery plots. She also inherited about $50k in an Edward Jones account, but she was not required to spend down long-term assets. The parties had real estate to be sold, but due to a market downturn, Husband could not predict how long it would take for the properties to sell. All the properties had mortgages associated with them. While Wife had some cash assets, she would need those funds to make a down payment on her new home. Viewing the evidence in the light most favorable to the judgment, the evidence sufficiently rebutted the presumption maintenance was not warranted and that Wife could not access sufficient funds immediately and without consequence to provide for her minimum reasonable needs.

The trial court awarded Husband the real estate business that previously netted between $100k and $300k in annual profits. The award of $2500 in monthly spousal support was less than 20% of Husband's monthly gross income.

Husband Not Entitled To New Trial After Entry Of Default Decree Because His Failure To Answer Was Result Of Conscious Indifference; However, Wife Failed To Present Evidence Of Her Due Diligence To Rebut Presumption Against Spousal Maintenance.

83. ***In re Marriage of Grigsby***, 721 S.W.3d 109 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (08-28-2025).

Facts: Wife filed a petition for divorce, alleging adultery and seeking a disproportionate share of the community estate and spousal maintenance. Husband did not answer or appear. The default divorce decree awarded Wife the marital residence and three vehicles. Each party was awarded his or her respective retirement and personal property in their control. Husband was ordered to pay to Wife $1000 per month for five years for spousal maintenance plus spousal support arrearages based on an earlier temporary order. Husband filed a *Craddock* motion for new trial, which was denied. Husband appealed.

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

Opinion: Husband argued the trial court erred in denying his motion for new trial. Husband had attached a supporting affidavit to his motion for new trial, which stated that he did not understand the legal process and believed the parties were going to reconcile. Although he acknowledged being served with the original petition, he claimed that Wife intercepted his mail, preventing him from knowing about any other activities in the proceedings. Wife asserted she informed Husband twice of the final hearing and never considered reconciliation.

Husband claimed that his long work hours made it difficult to speak with an attorney; however, the fact that he considered speaking with an attorney indicated that he understood the legal matter was important to his Wife. Husband claimed he did not

understand what he needed to do in the proceedings but acknowledged receiving an order to appear. Husband acknowledged being served with the original petition, and he knew the hearings were moving forward. The citation informed Husband that a failure to answer could result in a default judgment. Husband's excuses did not negate his conscious indifference in his failure to answer. The trial court did not err in denying Husband's motions based on the first element of *Craddock*.

Husband next challenged the sufficiency of the evidence to support the trial court's disproportionate division of the community estate, which Husband asserted was based on the finding of adultery. At trial, in support of her claim that Husband committed adultery, Wife simply answered "yes" twice when asked if Husband committed adultery. However, even in the light of this scant testimony, Wife also testified that Husband's gambling depleted the parties' savings, Husband was the breadwinner, and Wife needed some money to get back on her feet. The additional testimony supported granting Wife a disproportionate share of the community estate, regardless of whether Wife proved Husband committed adultery.

Finally, Husband challenged the award of spousal maintenance. Wife testified she would not be able to meet her reasonable and necessary expenses without maintenance. However, there was no evidence regarding whether Wife exercised diligence in earning sufficient income or in developing the necessary skills to do so.

In her appellee's brief, Wife asked the appellate court to remand the spousal-maintenance issue if it found the evidence was insufficient. The Texas Supreme Court has held

> [A]s a practical matter, in an uncontested hearing, evidence of unliquidated damages is often not fully developed. This is particularly true when the trial judge expresses a willingness to enter judgment on the evidence that has been presented. Therefore, when an appellate court sustains a no evidence point after an uncontested hearing on unliquidated damages following a no-answer default judgment, the appropriate disposition is a remand for a new trial on the issue of unliquidated damages.

The appellate court found this situation to be analogous and remanded the issue for further proceedings.

DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

No Evidence Supported Jury Verdict Finding Breach Of Contract Because Purported "Deeds" Did Not Convey Property And Were Not In Compliance With Parties' Agreement.

84. *Fausett v. Warren*, No. 05-22-01341-CV, 2025 WL 352192 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (01-24-2025).

Facts: Two men divorced, and the decree incorporated an AID that had been signed pursuant to an MSA. The AID confirmed as Warren's separate property two condominiums in Mexico. Additionally, Fausett was awarded a sum of cash for those condominiums. To effectuate this transaction, both parties were required to sign any required documents by a certain date.

Subsequently, Warren sued Fausett for failing to execute documents as ordered. Fausett then filed a petition to enforce the decree, and Warren filed an original counterclaim for breach of contract.

Warren's counterclaim (bifurcated from Fausett's claim) was tried to a jury. The jury found Fausett breached the agreement, which—by the terms of the agreement—entitled Warren to $600k in liquidated damages and about $61k in attorney's fees. Although Fausett's claims had not yet been presented, the trial court signed a final order conforming with the jury verdict and ordering Fausett take nothing on his claims. Fausett appealed.

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

Opinion: The agreement provided that Warren was only entitled to liquidated damages if Fausett had not signed deeds pursuant to the AID within 24 months from the divorce. However, the documents Warren provided to Fausett for signature were not deeds. Instead, they were instructions to a Mexican bank, identified as "Trustee," to take future actions with respect to the property. The only documents in evidence did not convey interest in land. Thus, there was no evidence to support the jury verdict, including the award for fees—which were based solely on the breach of contract claim.

On appeal, Fausett asserted that he was entitled to money damages as described in the AID if Warren's claims were unsuccessful. Although Fausett's claims were not presented to the jury pursuant to an agreed order to bifurcate the trials, the trial court dismissed his claims in its final judgment. Fausett filed post-judgment motions regarding the verdict; however, he did not raise any issue regarding the trial court's disposal of Fausett's claim for any funds. Because Fausett failed to timely raise an objection on this issue, he failed to preserve error for appellate review.

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

85. *Moore v. Moore*, No. 04-24-00367-CV, 2025 WL 470392 (Tex. App.—San Antonio 2025, no pet.) (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.

86. *McCray v. Spector*, No. 05-23-00738-CV, 2025 WL 537425 (Tex. App.—Dallas 2025, no pet.) (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.

Trial Court Had Authority To Appoint Receiver To Sell Marital Residence As Part Of Just And Right Division; However, Receivership Order Remanded To Ensure It Matched Language Of Divorce Decree Regarding Conditions of Sale.

87. *Miles v. Miles*, No. 05-24-00740-CV, 2025 WL 863479 (Tex. App.—Dallas 2025, pet. denied) (mem. op.) (03-19-2025).

Facts: Before the final divorce trial, the court ordered the parties to sell the marital residence, but that did not happen. At trial, because the parties had not even listed the house for sale, the judge expressed frustration with the parties. A final decree was rendered and subsequently modified. The initial decree ordered the parties to sell the residence and provided that if the parties did not appoint a realtor by a date certain or could not otherwise agree on certain prerequisites of a sale, the realtor would apply for the appointment of a receiver, and a receiver would be appointed with or without a hearing.

A subsequent order modified the division of the net proceeds from 60/40 in Wife's favor to a 50/50 split. It also included the possibility of the appointment of a receiver:

> If the Realtor Deadline is not met for any reason, the Court will sua sponte, without the need for any further Motion, appoint a Receiver, who may be a realtor (but is not required to be a realtor) on terms and conditions acceptable to the Court to take possession of the property and sell it on terms and conditions approved by the Court.
>
> The property shall be sold for a price mutually agreeable to the parties. If no agreement can be reached and the Realtor (or Receiver) obtains a contract for sale of the property for $600,000 or more, that price shall be used. If no agreement can be reached and the Realtor (or Receiver) believes that the property should be listed or sold for a price less than $600,000, the Relator (or Receiver) may seek permission of the Court, after hearing with notice to the parties, for a lesser price.

The "Realtor Deadline" was not met. A few months after the deadline, Wife filed a motion for the appointment of a receiver. After a non-evidentiary hearing, the court appointed a receiver. Husband (who had already pro se appealed the divorce decree), filed a pro se interlocutory appeal of the appointment of a receiver.

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

Opinion: Wife argued Husband's interlocutory appeal was untimely, and the appellate court lacked jurisdiction to consider the interlocutory appeal. Wife argued that because the amended decree provided for the sua sponte appointment of a receiver, Husband was required to challenge the appointment within 20 days after the signing of that order, rather than waiting until after the actual appointment. The appellate court held that because the parties could have avoided the appointment of a receiver by meeting the Realtor Deadline, Husband was not required to challenge the appointment of a receiver until one had actually been appointed.

Husband did not challenge the ruling requiring the property to be sold and did not challenge the 50/50 division of the net proceeds. He only challenged (in this appeal) the appointment of a receiver. Husband first challenged the lack of separate findings regarding the receivership appointment. Here, however, the court included relevant findings in the amended decree. Moreover, Husband did not argue or establish that he was unable to present his appellate issue due to a lack of findings. Thus, Husband was not harmed by the court not issuing separate findings.

Husband next argued that the sale of the marital residence before the conclusion of his other appeal would cause irreparable harm. In the other appeal, Husband challenged the characterization of certain real property as Wife's separate property, which, if reversed, would alter the division of the parties' other assets. However, the trial court temporarily stayed the receivership appointment, so the appellate court did not address that issue.

Husband further argued Wife failed to comply with the Texas Civil Practice and Remedies Code regarding receivership appointments. Husband's reliance was misplaced because the Family Code controls the division of property in a divorce. When property is not subject to partition in kind, a receiver may be appointed to effectuate a just and right division of the community estate. Here, the bulk of the community estate was the marital residence and retirement accounts. The court ordered the parties to sell the residence long before trial. Given the parties' failure to comply with court orders, the court did not abuse its discretion in appointing a receiver.

Husband additionally argued the receivership order impermissibly modified the property division. The receivership order tracked the language of the amended decree, with the exception of the language regarding the realtor needing court permission to sell the property for less than $600,000 if necessary. Thus, because it was unlikely the parties would agree to a price, the appellate court reversed with an instruction to modify the receivership order to include the $600,000 provision.

Because Husband Did Not Appeal Divorce Decree Dividing Entire Retirement 50/50, He Could Not Complain About QDRO's Language Consistent With That Division Five Years Later.

88. *Williams v. Nunnally-Williams*, No. 04-23-00110-CV, 2025 WL 871626 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (03-19-2025).

Facts: Five years after the parties' divorce, Husband filed a petition for a post-divorce QDRO to effectuate the division of his military retirement. The QDRO quoted the relevant portion of the divorce decree, which divided the entire retirement as

community property and split it equally between the parties. Husband argued that this division impermissibly divested him of a separate-property portion of the retirement. The trial court signed a QDRO that divided the entire retirement 50/50. Husband appealed.

Holding: Affirmed.

Opinion: The appellate record did not contain a copy of the divorce decree or of the transcript containing the agreement read into the record at the time of divorce. Additionally, there was no specific evidence of when the parties married or when Husband's military service began.

Although Husband's complaint on appeal concerned the recently signed QDRO, his complaint was really that the divorce decree contained an error. Husband bore the burden in the divorce to show that any portion of his retirement was separate property. The parties could have agreed at the time of divorce to have treated the retirement as community property. Husband failed to timely appeal the divorce decree, and the trial court's plenary power to modify the property division and long since expired.

Two-Year Limitations Statute in Chapter 9 Did Not Apply To Award Of Timeshare And Associated Parking Space; Trial Court Erred In Dismissing Wife's Enforcement For Being Time-Barred.

89. *Peterson v. Peterson*, No. 05-23-01023-CV, 2025 WL 1182591 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (04-23-2025).

Facts: A divorce decree awarded a timeshare and associated parking space jointly to the parties with Wife being required to maintain the parking space. Subsequently, Wife filed a motion for enforcement because Husband failed to sign documents necessary to effectuate the decree. Husband claimed the timeshare and parking space were not real property and were, thus, subject to the 2-year statute of limitations in Family Code Section 9.003. After receiving briefing from the parties, the trial court agreed with Husband and denied Wife's claims. She appealed.

Holding: Reversed and Remanded

Opinion: Section 9.003 provides that to the extent the divorce decree provided for the division of "tangible personal property," a suit to enforce that division must be filed "before the second anniversary of the date the decree was signed or becomes final after appeal, whichever date is later"; otherwise, "the suit is barred." Wife argued the trial court erred in finding the timeshare was tangible personal property.

Tangible personal property is property that can be seen, weighed, measured, felt, or touched. Intangible property includes property interests that lack a physical existence, like stock options, contract rights, or insurance policies. The two-year statute of limitation in Chapter 9 enforcements does not apply to real property or intangible personal property.

At trial, the parties disagreed about whether the parking space provision was "tangible personal property." Husband argued the timeshare was tangible personal property because it was not real property. There was no deed given for the parties' interest. Husband's argument did not explain how the timeshare was a "tangible" personal property interest. Because the assertion of a statute of limitations is an affirmative defense, Husband bore the burden to show that the timeshare was tangible personal property to show the limitation applied. He failed to do so.

Award Of Marital Residence To Wife Was Immediate And Unconditional Despite Language That Award Was "Subject To" Her Refinancing The Property And Paying Husband For His Half-Interest In The Residence's Equity.

90. *Stroik v. Stroik*, No. 02-24-00322-CV, 2025 WL 1416076 (Tex. App.—Fort Worth 2025, pet. denied) (mem. op.) (05-15-2025).

Facts: An agreed divorce decree awarded Wife the marital residence subject to the property being appraised shortly after the decree was signed. After using the appraisal(s) to set a value for the residence, Wife was to refinance the mortgage in her name and pay Husband 50% of the equity. The decree separately awarded Husband 50% of the equity in the marital residence. Wife could not refinance. Husband agreed that due to the parties' prior bankruptcy actions, he thought refinancing was impossible. Husband nevertheless believed the "subject to" language made the award conditional on Wife's refinancing of the residence and payment to him of half the property's equity. Because the refinancing process was stalled, Wife listed the property for sale, and Husband sought court intervention.

In the initial enforcement proceeding, the trial court found that the decree did not authorize Wife to sell the property and enjoined her from doing so unless Husband agreed in writing. Wife filed an interlocutory appeal of that order, but the underlying proceedings were not stayed pending that appeal.

After final trial but before rendition, Husband purportedly abandoned his request to appoint a receiver. (The appellate court expressed no opinion as to whether this was proper.) Husband then filed a separate suit asserting the marital residence was not divided by the divorce decree. At the same time, Wife appealed the final order in the first enforcement suit. As the trial court's actions were not stayed by any of the appeals, the trial court appointed a receiver to sell the residence, and Wife filed another interlocutory appeal.

Before the appeals could be addressed, the receiver sold the residence, mooting Wife's interlocutory appeals. The appeal of the enforcement order was later addressed and reversed on due process grounds, so it did not reach the question of whether the enforcement order modified the divorce decree.

In the ongoing Chapter 9 proceeding to divide undivided property (while Wife's not-mooted appeal was still pending), the trial court held that the division of the marital residence was conditional and because the conditions precedent were not met, the property was undivided by the final decree. Thus, pursuant to that determination, the parties were tenants-in-common of the residence. The court then rendered a "new just and right division" giving Husband a disproportionate share of the residence.

Wife appealed, arguing the redivision amounted to a modification of the divorce decree. Husband argued it was an enforcement of the decree.

"But the saga [did] not end there." Husband then filed for turnover relief seeking Wife's portion of the sales proceeds to satisfy a separate judgment secured against Wife. Husband additionally sought a receiver to take possession of the sales proceeds and to sell Wife's other nonexempt assets. The court denied the turnover application, and Husband appealed that decision.

Holding: Reversed and Rendered; Dismissed in Part.

Opinion: The appellate court reframed the dispositive question as whether the decree's award to Wife of the marital residence was conditional.

The purpose of a suit to divide undivided property is to establish finality, not to disturb finality. Modifying a property division in a divorce decree amounts to an impermissible collateral attack on the decree. An agreed decree is a contract, and the court's role in interpreting an agreed decree is to ascertain and give effect to the intent of the parties as expressed in the agreement. The parties' unwritten subjective intent is irrelevant. The court interprets terms based on their ordinary meanings and construes contracts as a whole to harmonize and give effect to its provisions as written.

Husband argued the words "subject to" made the award of the residence to Wife conditional on her compliance with the refinancing and payment to Husband provisions. However, Husband failed to acknowledge that the words "subject to" can be used in multiple ways and cannot be read in isolation. In context, the "subject to" phrase was buried within its listing of the assets awarded to Wife. The actual award of the residence to Wife was unconditional [form book language for the award of real property]. Further, the award used the present tense: the residence "is awarded" and Husband "is divested." Separately, to effectuate the award, the decree required Husband to deliver a warranty deed to Wife within 5 days. The delivery of the deed included no mention of refinancing or appraisal. In the provisions for the parties' debts, Wife was ordered to pay the mortgage and indemnify and hold Husband harmless from that debt. No mention of refinancing or appraisal was made in that provision, though it did state the mortgage was associated with the residence being "awarded in this decree to [Wife]," reiterating the present effect of the award. The provisions regarding the refinancing carried a procedural, rather than a conditional tenor. Notably, the last step of the 7-step process was not delivery of the deed because that requirement was located elsewhere in the decree and was required to occur long before the refinancing was completed.

Similarly, the phrase "as specified under" referenced the refinance provisions without identifying them as conditions. Husband's equity award was not conditional upon Wife's refinancing, and Wife's payment to him was not a condition for something else. Moreover, the term "condition precedent" was "glaringly absent" from this provision, yet was used in other portions of the decree when dividing certain marital business interests.

Thus, contrary to Husband's assertions, the divorce decree plainly and unambiguously awarded the marital residence immediately and unconditionally to Wife. Because the redivision of the residence was barred by law, the appellate court ordered that Husband take nothing on his redivision claim. Husband's appeal regarding the turnover application was mooted and dismissed.

Withholding Order Could Not Be Used To Enforce Contractual Support Payments; Court Could Not Render Judgment Based Solely On Attorney Argument.

91. *Aguilar v. Aguilar*, No. 04-24-00161-CV, 2025 WL 1512197 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (05-28-2025).

Facts: During their divorce, the parties reached a settlement agreement providing that Husband would pay $600 monthly to Wife "as spousal maintenance" for two years. The final decree incorporated this agreement. Five years later, Wife filed an enforcement, asserting Husband had not paid any of the maintenance and asking the court to hold husband in contempt and to enter a wage withholding order.

After a non-evidentiary hearing, the court advised the parties of its intended ruling but further advised that if they could reach an agreement, the court would sign a judgment on their agreement. The parties initially filed a Rule 11 agreement for a lump-sum payment, but Husband subsequently filed an answer before an order was signed. Thus, the court signed an order finding Husband in contempt, awarding Wife a money judgment and attorney's fees, and granting Wife's request for a withholding order. Husband filed a petition for writ of mandamus challenging the contempt findings. The appellate court agreed with Husband that the parties' agreement for "maintenance" was not court-ordered Chapter 8 maintenance and could not be enforced by contempt. *See In re Aguilar*, No. 04-22-00222-CV, 2025 WL 262449, at *1 (Tex. App.—San Antonio Jan. 22, 2025, orig. proceeding) (mem. op.). Pursuant to the mandamus ruling, the trial court vacated its contempt findings. Separately, Husband appealed the money judgment and issuance of the wage withholding order.

Holding: Vacated and Dismissed in Part; Reversed and Remanded in Part.

Opinion: The appellate court noted its mandamus holding that a court-approved voluntary obligation to make monthly payments to a former spouse is not court-ordered spousal maintenance. Thus, just as the obligation could not be enforced with contempt, it could not be enforced with a wage withholding order unless the parties agreed to that form of enforcement. Thus, that order was vacated.

The trial court did not conduct an evidentiary hearing, and Wife did not file a motion for summary judgment. Although the parties filed a Rule 11 agreement, Husband's subsequent answer revoked his agreement, making the case "contested" rather than agreed. In his answer, Husband raised affirmative defenses and asked the court to reconsider its intended ruling, indicating a lack of agreement to that ruling. Further, that intended ruling was conditional upon the parties not settling, so it was not a present rendition. Thus, Husband's answer was timely, in that it revoked his agreement before any final rendition. Wife did not pursue a breach of contract action regarding the Rule 11 agreement.

The appellate court assumed, without deciding, that Wife's initial motion for enforcement was a breach of contract action regarding Husband's failure to make payments as agreed in the divorce decree. The trial court erred in resolving Wife's claims without conducting an evidentiary hearing.

Finally, Husband asked the appellate court to render judgment in his favor because the record contained no evidence to support her claims. While there were no sworn witnesses, Husband's attorney unequivocally conceded that Husband was aware of the agreement but had only made payments "here and there." Further, his limitation defenses only applied to some of the allegedly unpaid payments. While those statements could have supported a finding that Husband was barred from disputing some of the allegations, those statements alone could not support the court's judgment.

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.

92. ***In re Kay***, 715 S.W.3d 747 (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.

93. *Chase v. Chase*, No. 01-23-00501-CV, 2025 WL 1738304 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (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.

94. *Kozinn v. Kozinn*, No. 03-23-00378-CV, 2025 WL 1748191 (Tex. App.—Austin 2025, no pet.) (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.

95. *Canady v. Canady*, No. 03-24-00318-CV, 2025 WL 1759008 (Tex. App.—Austin 2025, no pet.) (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.

Wife's Interpretation Of Decree Ignored Confirmation Of Husband's Separate Property And Rendered Meaningless The Provision Excepting That Separate Property From The Cash In Her Control.

96. *In re Marriage of Lane*, No. 07-24-00231-CV, 2025 WL 2309270 (Tex. App.—Amarillo 2025, pet. denied) (mem. op.) (08-11-2025).

Facts: Before marriage Husband had an interest in a company where he worked for over three decades. Husband sold the business for almost $2 million. When Wife filed for divorce, she withdrew a significant portion of these funds to support her children. She repaid some but not all of the withdrawn funds.

The parties signed an MSA that was incorporated into the final decree of divorce, which awarded Wife certain items and cash in her control "SAVE AND EXCEPT" funds received by Husband from the sale of the company. The decree included a confirmation of Husband's separate property interest in those sale proceeds. However, at the time of divorce, the sale proceeds were in Wife's control, and she argued the decree thus awarded them to her.

Husband petitioned for enforcement. Wife countered with her own enforcement petition, asserting Husband owed her money under other provisions in the decree. Husband asserted he would pay Wife what was due to her after she turned over his separate property funds. Husband testified that the value of the net sale proceeds was not included in the decree because that amount was "known" to the parties. At the enforcement hearing, an expert testified and applied the community-out-first tracing method to determine the amount Wife owed Husband. The trial court offset the amounts owed to each party and rendered a judgment requiring Wife to pay Husband about $150,000. Wife appealed.

Holding: Affirmed.

Opinion: Wife argued the trial court lacked subject matter jurisdiction to substantively alter the decree and that res judicata barred the relitigation of separate property. Although the better practice would have been to specify within the MSA the exact amount at the time the MSA was executed, the parties agreed that "all" funds from the sale were Husband's separate property. The delayed determination of that amount did not alter the character of the property or change the property division. Husband's enforcement suit was not a relitigation of the decree or a collateral attack on it. Wife's interpretation of the decree ignored the "SAVE AND EXCEPT" provision and attempted to render that provision meaningless. Moreover, Wife's interpretation asked the court to divest Husband of his separate property.

Wife alternatively argued the trial court erred in explicitly finding the decree included a patent ambiguity. She argued the trial court impermissibly allowed extraneous evidence of the parties' intentions to create an ambiguity. A judgment only contains a patent ambiguity when the ambiguity is evident on the face of the judgment. A latent ambiguity arises when a facially unambiguous document is applied to the subject matter and an ambiguity appears by reason of some collateral matter. Extraneous evidence is needed to determine the existence of a latent ambiguity. Here, the decree was facially unambiguous. The alleged ambiguity asserted by Wife was the lack of a specific award of the proceeds in the section detailing the property awarded to Husband. However, Wife's assertion lacked merit because the proceeds were confirmed as Husband's separate property within the decree. Thus, although the trial court erred in characterizing the ambiguity as patent instead of latent, that error did not harm Wife and did not require reversal.

Proposed QDRO Signed As Agreed To Form Only Did Not Constitute A Rule 11 Agreement; Post-Divorce Suit To Divide Property Governed By Chapter 9, Not Chapter 7.

97. *Saunders v. Hartley*, No. 14-24-00575-CV, 2025 WL 2355814 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (08-14-2025).

Facts: Before marriage, Wife lived on property purchased by her parents for her. Husband moved in with Wife after they married. A few years later, the couple purchased the property from Wife's parents, making the property community property. When the parties were divorcing, the property was placed on the market for sale. Although the decree indicated the parties agreed to a property division, no agreement was attached to the decree. Husband stated that the parties had oral agreements regarding certain retirement accounts and the property purchased from Wife's parents. After the divorce was finalized and the property was sold, Husband presented Wife a check that purported to reflect her share of their agreement. Wife refused to accept the check and filed a petition for post-divorce division of property. After a bench trial, the court asked the parties to present the court with a proposed QDRO. However, upon review of the QDRO, the court determined the proposed order did not reflect the court's intent in the final decree of divorce. The court edited the proposed order before signing it and issued a final order in the post-divorce suit. Wife appealed, and Husband cross-appealed.

Holding: Affirmed.

Opinion: A QDRO is a species of post-divorce enforcement, and the trial court retains jurisdiction to enforce its own orders. The QDRO may not alter the property division of the divorce.

Wife first argued the QDRO signed by the trial court did not comply with the Family Code. In support, Wife cited Section 7.003, which addresses the division of retirement benefits in a divorce. However, this suit was a post-divorce division, which was governed by Chapter 9, not Chapter 7.

Wife next argued because the court allowed the parties to complete a proposed QDRO, that action created a Rule 11 agreement. Wife asserted that because the proposed QDRO was written, signed by the parties, and filed with the court, the proposed QDRO constituted a valid Rule 11 agreement. However, the attorneys signed the agreement as agreed to in form only. Wife signed the proposed order to indicate her agreement as to form and content. Husband only "signed" the agreement through his counsel. Nothing about the signatures on the proposed QDRO indicated an intent by both parties to be bound to the order.

Next, contrary to Wife's assertion, attorney's fees in a Chapter 9 enforcement suit are discretionary. Wife was not entitled to an award of attorney's fees.

Through a cross-appeal, Husband complained of the disproportionate award to Wife of the assets not previously divided. Chapter 9 permits the court to divide undivided assets in a manner it deems to be just and right. Husband first appeared to argue that because the property had been sold before the post-divorce division suit, the trial court lacked jurisdiction to divide it. However, the question was not whether the property existed at the time of the Chapter 9 suit but whether it existed at the time of divorce—and whether it was included in the divorce decree's property division. The parties did not dispute that the property existed as part of the community estate at the time of divorce. Thus, the proceeds of the sale of that property were also community property.

Husband also argued Wife was estopped from seeking more than 50% of the proceeds of the sale of the property because she had previously agreed pursuant to the "Seller Proceeds Instructions," which provided that each party would receive 50% of the net proceeds. However, Husband failed to establish that document was a contract. Additionally, the trial court could have considered the *Murff* factors in determining what constituted a just and right division.

Wife Failed To Present Grounds In Rule 91a Motion To Support Dismissing Husband's Post-Divorce Petition To Divide Undivided Community Property.

98. *Serna v. Serna*, No. 13-24-00449-CV, 2025 WL 2416756 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (08-21-2025).

Facts: Husband filed a suit for a post-divorce division of undivided community property and included a claim for fraud on the community. The property in question was real property in Colorado, and Husband asserted it was unaddressed by the divorce decree because the parties agreed to divide it between themselves later. About 15 years after divorce, Wife informed Husband that she would not follow the agreement and transferred the property to a third party.

In response to Husband's post-divorce petition, Wife filed a Texas Rule of Civil Procedure 91a motion to dismiss. The trial court granted Wife's motion, and Husband appealed.

Holding: Reversed and Remanded.

Opinion: Wife asserted that Husband failed to reference Texas Family Code Sectio 9.201 (post-divorce divisions) or Texas Civil Practices and Remedies Code Section 37.003 (declaratory judgments) in his petition. However, when special exceptions are not filed, the court construes petitions liberally in favor of the pleader. Husband's pleading asked the trial court to declare the property as community property and divide it 50/50 between the parties. Husband also sought reasonable attorney's fees. Given Husband's pleading, the declaratory judgment statute, and the division procedure of the Family Code, an attorney of reasonable competence could have ascertained the nature and basic issues of Husband's claims.

Wife also argued Husband's suit failed because under Colorado law, the property would have been separate property. While Texas courts lack jurisdiction to adjudicate title to land outside the state, Texas courts may enforce an in personam obligation by ordering a party to convey land located in another state. Additionally, in a Texas divorce, characterization is not based on the law applicable in the property's location. Instead, out-of-state property acquired by a spouse during the marriage—even when it would be considered separate property under that state's laws—is community property if it "would have been community property [had the acquiring spouse been] domiciled in [Texas] at the time of the acquisition."

Wife further argued Husband's claim was barred because his suit was filed over 14 years after the divorce. However, Wife did not argue that Husband's claim was barred by any statute of limitations or raise that claim as an affirmative defense in her answer. Regardless, even if she had raised a statute of limitations defense, the limitations period would have been tolled until "the date a former spouse unequivocally repudiates the existence of the ownership interest of the other former spouse and communicates that repudiation to the other former spouse."

Finally, Wife asserted on appeal that Husband's claim was barred by res judicata. However, she did not make that argument to the trial court, so it could not have served as the basis for granting her Rule 91a motion. Moreover, caselaw is clear that res judicata in not implicated when a party seeks post-decree division of property that was not adjudicated in the final divorce decree.

Because Wife failed to present any basis for granting her Rule 91a motion, the trial court erred in dismissing Husband's suit.

Wife Granted Money Judgment Instead Of Vehicle Because Award Of Vehicle No Longer Adequate Remedy; No Error In Valuing Vehicle Slightly Less Than Wife's Proposed Value Range Because Wife Had Not Seen The Vehicle In Quite Some Time.

99. *Buipham v. Nguyen*, No. 14-23-00553-CV, 2025 WL 2487103 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (08-29-2025).

Facts: After the trial court signed a divorce decree, the appellate court affirmed the decree. In the decree, Husband was required to turn over to Wife Social Security payments for the benefit of the Child within three days of receipt. Subsequently, in a suit to enforce the decree, Wife asserted Husband failed to turnover of the Social Security payments, a vehicle awarded to her, and attorney's fees as ordered. Although the Social Security payments were eventually redirected to Wife, a delay in accomplishing that transition resulted in Wife not receiving over $10,000 in payments that she asserted were due to her under the decree. In addition to seeking money judgments for the Social Security payments and attorney's fees, Wife asserted that the turnover of the vehicle was no longer adequate and asked for a money judgment for the vehicle as well. Wife further sought an award of attorney's fees in the enforcement action. Husband generally denied Wife's allegations and argued he lacked the ability to pay the amounts ordered and had no property to be sold or to otherwise cover the judgments.

After a hearing, the court ordered Husband to pay Wife a money judgment in lieu of the vehicle, assessed a $500 fine against Husband, and awarded Wife less than a quarter of the attorney's fees she asked for in the enforcement suit. The trial court otherwise denied all relief not expressly granted. Wife appealed.

Holding: Affirmed.

Opinion: Wife complained of the trial court's failure to award her judgment regarding the Social Security payments. However, in the court's findings, it noted that the decree was not enforceable on that point because it did not specify a date by which the funds had to be directed to Wife. Further, Wife began receiving payments before the decree was signed.

Wife also challenged the failure to award her a judgment for the unpaid attorney's fees awarded in the divorce. At the enforcement hearing, Wife testified that she had received no money for attorney's fees from either Husband or her trial attorney. Wife offered a document with a single sentence: "There are no records of any payment received from [Husband]." There was no other information on the document. Wife also argued that Husband invoked his Fifth Amendment privilege when asked about the fees, which would have supported an inference he had not paid. However, the trial court found that the document was insufficient. The trial court did not abuse its discretion in finding the scant evidence offered by Wife to be insufficient to support her claim.

Wife next challenged the valuation of the vehicle awarded her. Wife testified to a range of values ($3600 to $5600) for the vehicle and explained she could not be more specific because she was unaware of the condition of the vehicle. Husband did not object or provide a competing value. The trial court granted a judgment for slightly less than the lowest value in the range provided by Wife ($3500). Here, although the trial court awarded a judgment for just outside the range of values, the court may have rationally discounted that range based on the fact Wife had not seen the vehicle for some time.

Finally, Wife complained of the trial court only awarding her less than a fourth of the fees sought in the enforcement proceeding. Wife cited no legal authority to support her claim that she was entitled to additional fees.

Husband Could Not Unilaterally Determine Amount Of Good And Sufficient Supersedeas Bond To Preclude Enforcement Of Divorce Decree Pending Appeal; Trial Court Required To Conduct Hearing To Determine Appropriate Amount.

100. *Curtis v. Laplante*, No. 04-24-00801-CV, 2025 WL 2610457 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (09-10-2025).

Facts: Husband filed a notice of appeal from a divorce decree. Husband unilaterally filed a supersedeas bond of $35,000 to preclude enforcement of the decree. Wife subsequently filed an application for a turnover order, in which she noted Husband's attempt to supersede the judgment but asserted Husband's attempt failed to meet the statutory requirements. Husband did not seek a hearing on the bond, and trial court had not determined or approved the type or amount of security Husband was required to post. The trial court granted Wife's motion and ordered Husband to vacate the real property at issue in the enforcement.

Husband filed in the appellate court a motion for temporary orders to set supersedeas bond. Wife responded that the appellate court should deny Husband's motions for failure to execute the proper steps to supersede enforcement. Alternatively, Wife asked the appellate court to remand the issue to the trial court for a determination of the appropriate type and amount of security.

Holding: Motion for Temporary Orders to Set Supersedeas Bond Granted

Opinion: A judgment debtor may supersede a judgment by filing with the trial court clerk a good and sufficient bond. When the judgment orders recovery as an interest in real property, the trial court does not have discretion to refuse supersedeas.

Pursuant to a 2024 amendment to the Rules of Appellate Procedure, Husband's filing of the bond was effective upon filing. However, it remained subject to challenge. Because Husband unilaterally filed the bond before requesting an evidentiary hearing to set a sufficient amount, the amount filed was not in an amount required by the Rules. The issue though was a matter of

sufficiency of the bond, rather than its validity. When a posted bond is insufficient, the Rules permit modification of the amount. Therefore, the appellate court granted Husband's motion to set the amount for the bond and ordered the trial court to conduct an evidentiary hearing.

Husband Granted Summary Judgment In His Suit For Declaratory Judgment Regarding Amounts Due To Wife Pursuant To Their Five-Year-Old AID.

101. *Nichols v. Nichols*, No. 03-23-00733-CV, 2025 WL 2933605 (Tex. App.—Austin 2025, no pet.) (mem. op.) (10-16-2025).

Facts: About 15 years ago, the parties began the dissolution of their 18-year marriage. After a few years, they signed a "Binding Settlement Agreement" that valued the community estate at a bit over $12 million. It took another four years to finalize the divorce with an Agreed Final Decree that referenced the Binding Settlement Agreement and an Agreement Incident to Divorce ("AID"). The AID was not filed with the court, but copies were kept by each of the parties' attorneys. The decree provided that in the event of conflicts, the AID would control. Around the same time the decree was signed, the parties signed two addenda to the AID, and the second addendum provided precise sums owned by Husband to Wife instead of the percentages outlined in the AID and Binding Settlement Agreement.

Five years after the divorce, Husband sought a declaratory judgment to clarify certain terms of the parties' agreements, including caps on the amounts he owed to Wife. Wife filed a general denial and asserted claims for fraud and fraudulent inducement. Husband responded with his own affirmative defenses. After discovery, Husband moved for summary judgment, which the trial court granted. Husband was awarded attorney's fees, and that award was used to offset in part the amount due to Wife. After a final judgment based on the summary judgment was signed, Wife appealed.

Holding: Affirmed.

Opinion: On appeal, Wife asserted the portions of the parties' agreement on which the trial court relied in granting a summary judgment were ambiguous, creating a genuine issue of material fact. Summary judgment is not the proper vehicle for resolving disputes about an ambiguous contract, but it may resolve a dispute about an unambiguous one. While extrinsic evidence of the parties' intent is not admissible to create an ambiguity, the contract may be read in light of the circumstances surrounding its execution to determine whether an ambiguity exists.

Wife asserted the trial court erred in finding the agreement imposed a cap on the dollar amount she could receive. The court analyzed the agreement's description of percentages awarded to the parties, amounts to be withheld for taxes, and applicable tax rates to be applied to Wife's shares. Based on the language used, punctuation, and sentence structures, Wife's interpretations of the AID lacked merit. Additionally, the second addendum signed by the parties plainly stated that Wife was owed a sum certain.

Wife additionally challenged a "waiver of fees" that impacted the amount due to her and complained that the court's findings were based solely on Husband's self-serving declaration. Husband asserted that the company in question waived fees based on business reasons having nothing to do with the AID. On appeal, Wife complained that Husband's statements were not supported by any business records or meeting minutes. However, she did not object in the trial court to Husband's declaration, which was the undisputed sworn testimony of a person with personal knowledge.

In the trial court, Husband moved for summary judgment on Wife's claims of fraud. Husband asserted the evidence conclusively established any reliance by Wife on Husband's misrepresentations was not justifiable. While typically a question of fact, unjustifiable reliance can be shown when the person alleging fraud has actual knowledge that a statement is false.

Here, during negotiations, Husband provided a framework of values to assist with negotiations. However, neither party knew the actual values of the companies in question, which is why they agreed to percentage splits rather than specific values. While some values were listed in the AID, the AID made clear that any values were estimated and not precise. Wife knew at the time of negotiations that the actual values and tax liabilities of the various entities were all unknown. During discovery in the divorce, Wife repeatedly requested tax returns, but the copies provided to her were unsigned and not verifiable. Wife knew that she did not have accurate tax returns but nevertheless signed the AID.

Temporary Injunction In Property Enforcement Reversed For Failing To Satisfy Requirements For Injunctive Relief.

102. *A.W.E. v. D.M.F.N.*, No. 05-25-00076-CV, 2025 WL 2966475 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (10-21-2025).

Facts: Wife appealed the divorce decree, which was affirmed by the appellate court. Additionally, Wife appealed a judgment from a separate civil suit she filed against Husband alleging breach of fiduciary duty and fraud. That appeal was still pending at the time of this opinion. Separately, Husband filed a post-decree Chapter 9 enforcement suit in the trial court. Husband obtained a temporary restraining order, an order appointing a receiver to sell the parties' companies, and other temporary injunctions against Wife. Subsequently, after a hearing on Husband's amended application for injunctions, the trial court—in an 8-page order—prohibited Wife from filing lawsuits, in or outside Texas, against the company without first discussing the merits of her claims with the board of directors to give them a chance to investigate the basis of the suit. Wife filed an interlocutory appeal.

Holding: Reversed and Rendered.

Opinion: Wife asserted the trial court lacked authority to prevent her from filing federal lawsuits; impermissibly waived a bond; failed to meet the legal requirements to impose the injunction; made findings not supported by the evidence; and issued an injunction that was overbroad and lacked requisite specificity.

A Texas state court may not enjoin a party from filing or otherwise abridging the right of a party to file in personam actions in federal courts. Because the injunction did not distinguish between state and federal lawsuits, the order was void to the extent it enjoined Wife from filing an in personam action in federal court.

Contrary to Husband's assertion, Rule 693a (allowing the waiver of a bond in divorce proceedings) did not apply because the underlying action was not a divorce but an enforcement of a property division. Thus, the trial court could not issue the injunction without a bond.

Further, the appellate court agreed with Wife that the injunction lacked requisite specificity. For example, FedEx used to be one of the company's clients, but Wife was unsure whether it still was. Under the injunction, if Wife were in a car accident with a FedEx truck, she might not be able to file a lawsuit regarding that accident that had nothing to do with the company identified in the divorce decree.

Finally, the record did not show that the company's value would be irreparably harmed if the injunction were not issued, and there was no evidence Husband lacked an adequate remedy at law. Although Husband expressed concerns about a delay of a sale impacting the proceeds, "irreparable" harm is not that which can be adequately compensated in damages.

Husband Could Not Be Found In Immediate Contempt For Violating Clarified Order That Was Necessary Because The Decree Was Not Specific Enough To Be Enforceable By Contempt.

103. *In re Le*, No. 05-25-00019-CV, 2025 WL 3027413 (Tex. App.—Dallas 2025, orig. proceeding) (mem. op.) (10-29-2025).

Facts: The parties' divorce decree awarded Husband the marital residence and ordered him to pay Wife $190k for her interest within 90 days. Wife transferred ownership of the residence to Husband, but he did not transfer the funds to her. Thus, Wife filed a petition to enforce the decree and to clarify the decree if it was not specific enough to be enforced by contempt. At the hearing on Wife's enforcement, she acknowledged the decree failed to specify where Husband was to send payment. Husband claimed his failure to pay Wife was due to his inability to locate her. The court signed an order clarifying the decree to require payment be made to Wife's attorney's office and found Husband guilty of contempt. The court ordered Husband be confined but suspended commitment on condition that Husband pay the amount owed to Wife. Husband petitioned for writ of mandamus, asserting the portion of the clarification order finding him in contempt was void.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: An alleged contemnor must have knowledge or notice of the underlying order, and the order must be enforceable by contempt before the alleged contemnor may be found in contempt. A party cannot be held in contempt for violating a court order of which he had no knowledge, as willful disobedience is a necessary element of contempt. Further, a court may not give retroactive effect to a clarifying order in such a way as to subject a party immediately to contempt.

Here, Wife did not expressly ask for a contempt finding, and the court did not indicate during the hearing that contempt was a potential outcome. Rather, the court found the decree was not specific enough to be enforceable by contempt. The court erred in finding Husband in contempt without providing adequate notice or a reasonable time to comply with the clarified order.

~~**Husband Not Entitled to Temporary Injunctive Relief Because Allegations of Irreparable Injuries Were Vague and Speculative; Receivership Appointment Vacated Because Order Impermissibly Modified Property Division by Stripping Wife's Rights Granted in Decree.**~~

~~104. *A.W.E. v. D.M.F.N.*, No. 05-24-00507-CV, 2025 WL 3530958 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (12-09-2025).~~

Withdrawn and superseded by A.W.E. v. D.M.F.N., No. 05-24-00507-CV, 2026 WL 116799 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (on reh'g) (01-15-2026). See February Caselaw Update (January cases). Additional issue addressed: receivership sought prematurely per decree's plain language.

Wife Did Not Need to Join Company as a Party in Enforcement Action Seeking to Recover Her Interest from Husband's Profits from the Sale of That Company.

105. *Perry v. Perry*, No. 09-24-00342-CV, 2025 WL 3546579 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (12-11-2025).

Facts: After learning Husband was about to sell a company without distributing to Wife any proceeds, Wife filed a Chapter 9 enforcement suit to enforce provisions of their divorce decree. Wife sought to enforce both the distribution of sales proceeds and an unpaid award of attorney's fees from the divorce. She requested the appointment of a receiver and a clarification order if necessary. At the hearing on Wife's petition, Husband argued he had not received adequate notice and that the company had not been served with the enforcement petition. Wife countered that she was not seeking affirmative relief from the company but

from Husband. Wife explained that Husband had a one-third interest in the company, and she was entitled to half of that third upon sale. Wife acknowledged she had filed a lis pendens on the real property owned by the company. Husband testified that he had no money and that no distributions had been made from the company to him since the divorce. Husband explained he had appealed the decree, and Wife had made no prior efforts to enforce the attorney's fee award. One of the other owners of the company stated that the company had been listed for sale, there were no offers yet, and the lis pendens was making the sale difficult. Husband's attorney argued that the jump from no demand letters to a motion to appoint a receiver was extreme. The trial court disagreed with Husband's characterization and described the parties' divorce as one of the most frustrating it had heard in the past 16 years. The trial court granted Wife's requested relief, and Husband appealed.

Holding: Affirmed.

Opinion: Husband first argued the trial court erred in granting Wife a hearing because he only received 8 days' notice, rather than 10 days. Failure to give 10 days' notice does not render the proceeding void unless the lack of notice amounted to a denial of constitutional due process. Here, Husband was represented by counsel; his counsel cross-examined Wife's witnesses; he presented his own witnesses, and he testified extensively. He asked for a continuance because the company had not been served, but he did not argue that he lacked time to prepare for the hearing. On appeal, he complained of lack of notice but made no specific allegation regarding how he was prejudiced.

Husband next argued the court erred in granting a hearing and in granting Wife's requested relief because she failed to serve the company, which Husband claimed was a "necessary party" to the enforcement because of Wife's filing of a lis pendens and her request to have a receiver take property owned by the company. Husband was the "respondent" in Wife's suit to enforce the divorce decree. Nothing in the Family Code required Wife to serve any third party. The decree awarded Wife a half interest in Husband's share of the proceeds. The company did not claim an interest in Wife's share, and the proceeding did not impair the company's ability to sell or protect its property. The receivership order did not give the receiver any right to the company's property, only to the property in which Husband had an interest.

SAPCR:
Procedure and Jurisdiction

Mandamus Relief Granted To Vacate Contempt Order And Temporary Orders Changing The Person With The Exclusive Right To Designate The Child's Primary Residence Because No Evidence Offered—Only Attorney Argument.

106. *In re Salazar*, No. 04-24-00542-CV, 2025 WL 470393 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (02-12-2025).

Facts: A final decree of divorce appointed Mother the exclusive right to designate the Children's primary residence and granted Father an equalization judgment to be paid by a date certain. If Mother did not pay by that date, the marital residence awarded to Wife would be sold, and a portion of the proceeds would be distributed to Father to satisfy the equalization judgment.

Almost a year after the deadline passed, Father filed a motion for enforcement regarding the equalization judgment. He did not ask that the house be sold, but he did ask that Mother be held in contempt. About nine months later, he filed a modification suit, seeking, in part, the exclusive right to designate the Children's primary residence and reduced the previously existing geographic restriction.

The trial court heard both of Father's motions together. Father's attorney explained the enforcement motion, but Father did not testify. Mother testified that the house was not marketable. Father's attorney explained that Father did not contest Mother continuing to be the primary parent for their 15- and 17-year-olds. Father was concerned about their youngest Child, who Father alleged was left alone frequently while Mother worked and the other two Children were out. No evidence was presented via sworn testimony or otherwise.

The trial court signed a contempt order, which found Mother in contempt, ordered the house be sold for the first bone fide offer that met or exceeded 95% of the listed price, and awarded Father attorney's fees in the enforcement. Additionally, the court signed temporary orders giving Father the exclusive right to designate the primary residence of the youngest Child without a geographic restriction. Mother sought mandamus and emergency relief from the appellate court. The appellate court granted an emergency stay of both orders pending a resolution of the mandamus proceeding. Father filed no response to Mother's petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: The contempt motion was not sworn and did not include an affidavit or other evidence to support its allegations. The court's finding was based solely on the arguments of Father's counsel. Although Father's counsel asked the court whether it would like to hear testimony, the trial judge told the attorney to "just kind of go over each" request. Nothing indicated that Father's counsel had personal knowledge of any of the allegations. Thus, the contempt order was not supported by competent evidence.

Father's petition to modify was not accompanied by an affidavit to support an allegation that the youngest Child's present circumstances would significantly impair her physical health or emotional development. Thus, the trial court should have declined a hearing on temporary orders to change the person with the exclusive right to designate her primary residence. Although this

error could have been cured with sufficient evidence being presented at the hearing, no evidence was presented at all—much less significant impairment evidence.

Trial Court's Denial Of Mother's "Eleventh-Hour" Request To Appear By Zoom Insufficient Basis To Set Aside Default Judgment.

107. *In re A.C.*, No. 09-22-00439-CV, 2025 WL 4498536 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (01-23-2025).

Facts: The OAG filed a suit to modify Father's child support obligation. Father filed a counter petition in the SAPCR asking for the exclusive right to designate the Children's primary residence. Additionally, Father filed a motion to enforce possession. Mother filed a motion to transfer venue and sought to reduce Father's periods of possession.

On the morning of the final hearing, Mother contacted the court by telephone stating she was under the impression that she could appear by Zoom. The court responded that "was never the case." Mother failed to appear, and after hearing testimony from Father and his wife, the court signed a default order. The parties remained joint managing conservators, Father was granted the exclusive right to designate the Children's primary residence, and Mother was ordered to pay child support. The trial court denied Mother's motion to set aside the judgment, and she appealed.

Holding: Affirmed.

Opinion: Relying on Rule 21d, Mother asserted she had good cause to attend remotely because she had no transportation and no money to hire an attorney. Additionally, the court had allowed her to attend other hearings remotely. Rule 21d allows remote appearances but does not require them. A party who objects to the required method of attendance must do so within a reasonable time after receiving notice. Mother did not do so. She waited until the morning of the hearing to inquire about attending remotely. Mother failed to preserve her complaint for review by failing to timely object; however, even if the appellate court were to review the issue, the trial court did not abuse its discretion in denying Mother's "eleventh-hour request."

In Mother's *Craddock* motion for new trial, she failed to explain why she believed she had good cause to appear remotely, did not explain how her failure to attend was a mistake or accident, and did not include facts indicating that granting the motion would not cause undue delay or injury to Father.

Grandmother Failed To Establish Standing; Mother Entitled To Mandamus Relief And Dismissal Of Grandmother's Intervention.

108. *In re A.G.*, No. 02-24-00548-CV, 2025 WL 294159 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (01-24-2025).

Facts: Mother and Father were joint managing conservators of their two Children until Father's death. Before Father's death, an injunction had been imposed preventing Mother's husband from being present during Mother's periods of possession due to abuse allegations. Days after Father's death, Father's step-father ("Grandfather") filed a petition in intervention seeking possession or access. Grandfather's wife ("Grandmother") joined the intervention, but by the time of the mandamus proceeding, Grandfather was no longer a party. Mother's above-referenced husband (now "Ex-Husband") also intervened, resulting in the prior injunction being rewritten to prevent Mother from allowing the Children to contact Ex-Husband.

Grandmother sought to be named the Children's sole managing conservator. Mother filed a plea to the jurisdiction, challenging Grandmother's standing. After hearing evidence, the court held that Grandmother and Grandfather (despite Grandfather no longer being a party) had standing and denied Mother's plea. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Grandmother had alleged standing under Family Code Sections 102.003(a)(11) and (13); 102.004; and 153.432.

Grandmother lacked standing under subsection (a)(11) because it requires the party to have resided with the Child for six months. Although Grandmother "visited" the Child "almost daily" for over a year, she did not reside with the Child. Grandmother lacked standing under subsection (a)(13) because that statute requires both parents to be deceased. Mother was alive.

To establish standing under Section 102.004, Grandmother was required to present satisfactory proof of significant impairment. Grandmother asserted the Children did not receive proper psychiatric help and that her requests to attend counseling with the Children were refused. Mother explained that the Children participated in group grief counseling that did not allow grandparents to attend. One of the Children received one-on-one counseling for five months before the therapist recommended group therapy. Grandmother did not ask to attend the one-on-one counseling while it was occurring. Grandmother additionally complained that Mother did not regularly exercise visitation while Father was alive and that the Children returned in the same clothes they left in and did not shower over the weekend. Mother denied these allegations. Grandmother further complained that Mother prevented Father's family from having access to the Children after his death. Mother again denied this allegation and stated that at least one member of Father's family texted one of the Children daily. Mother had not blocked anyone's numbers or told the Children not to contact anyone. Grandmother's primary fears seemed to be centered on possible exposure to Ex-Husband. However, Mother and Ex-Husband were no longer married. The Children had no contact with him for over a year, and Mother's contacts with him were limited to discussions about the case.

Parental irresponsibility, poor judgment, and an unstable or chaotic lifestyle may support a finding of significant impairment, but only if those findings are directly related to a specific risk to the child that exists when the petition is filed. Grandmother failed to identify any specific risk and failed to overcome the fit-parent presumption.

To establish standing under 153.432, Grandmother was required to attach an affidavit with supporting facts to show that denial of possession would significantly impair the Children's physical health or emotional well-being. Grandmother's speculative testimony that denial of access "may" cause harm if they were given "proper psychiatric help" was insufficient. There was no evidence of the Children suffering harm, nor was there any evidence of a present threat of harm.

Incarcerated Father Denied Due Process Because He Did Not Receive Notice Of Final Hearing.

109. *In re J.A.*, No. 10-23-00197-CV, 2025 WL 341845 (Tex. App.—Waco 2025, no pet.) (mem. op.) (01-30-2025).

Facts: TDFPS initiated a SAPCR that included a request for termination. Father was imprisoned shortly thereafter. Within the same suit, the OAG filed a petition to establish paternity, and an order was signed requesting Father's appearance at the final hearing by telephone. At the paternity hearing's outset, Father stated he had no notice of the hearing and did not know what it was going to be about. He orally requested a continuance, but the trial court denied the request, stating Father had notice of everything for which he was supposed to receive notice.

Despite the denial of the continuance, the court gave Father ten days to mail in certain documents Father wished to introduce. Ten days after that hearing, Father filed a written motion for continuance complaining again of lack of notice. Father attached a request he had sent to the prison mailroom asking if Father had received any mail in the month leading up to the hearing and the response that there was "nothing found." Additionally, Father attached an affidavit averring he had no knowledge of an order setting the hearing and stated that he needed to conduct discovery to have been prepared for the hearing and identified certain witnesses he would have called. About a week later, the motion for continuance was "dismissed without action."

A few days after that dismissal, the final hearing continued. Although the final paternity order stated Father announced "ready," no such acknowledgment was located in the record. The trial court found Father was the biological father, but it did not order him to pay support. Father appealed, arguing lack of notice that deprived him of due process.

Holding: Reversed and Remanded.

Opinion: A party who has made an appearance is entitled to notice of a trial setting. If the party has no email, notice may be served by mail. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any person showing service of a notice is prima facie evidence of the fact of service. Compliance with Rule 21a creates a rebuttable presumption of effective notice. However, evidence of non-receipt negates that presumption. Receipt of notice can be of particular importance when incarcerated persons are involved because they require an intermediary to receive and distribute their mail.

Here, Father denied receiving notice and provided documentation showing no record of notice was received. Even if the trial judge disbelieved Father's initial unsworn statements at the first hearing, that disbelief would not provide affirmative evidence that service occurred. Further, the order setting the hearing did not contain a certificate of service or any other indication it was served on Father. The record contained no notice of trial. Neither the court's verbal assertion nor its recitation in the final order that notice was sent complied with Rule 21a.

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.

110. *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.

111. *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.

Despite The Issue Not Arising Until After Final Trial, Texas Lacked UCCJEA Jurisdiction Over Child, And Court Erred In Failing To Sever And Dismiss The Child-Related Issues From The Parties' Divorce.

112. *In re Jenkins*, No. 04-24-00873-CV, 2025 WL 702830 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (03-05-2025).

Facts: Father was stationed in Japan when the Child was born there. Mother, Father, and the Child were still living in Japan when Father filed a petition for divorce in Texas. Mother filed a counterpetition and then moved with the Child to Philadelphia. The parties reached a partial mediated settlement agreement but could not agree on a geographic restriction on the Child's residence or on travel costs associated with visitation.

After the conclusion of a final hearing, Mother hired a new attorney, who filed a motion to sever and dismiss, asserting Texas lacked subject-matter jurisdiction over the Child-related matters. Father asserted, via argument only, that he was precluded from filing suit in Japan due to military restrictions. Mother advised the court, also via argument only, that she had filed a suit in Philadelphia, were she and the Child reside. The court denied Mother's motion and found it also had emergency UCCJEA jurisdiction. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Father bore the burden of proof on jurisdictional facts, but he failed to file an affidavit or verified pleading setting forth facts relating to where the Child lived in the five years preceding the suit. Mother filed an affidavit, albeit after final trial but before a final order, demonstrating the Child had only lived in Japan until moving to Philadelphia after the suit was filed. Under those facts, Texas could only take home-state jurisdiction if no other state had home-state jurisdiction or if all courts with jurisdiction had declined jurisdiction. There was no evidence that Japan had declined jurisdiction. Even if the trial court correctly assumed temporary emergency jurisdiction, the scope of that jurisdiction had passed. Moreover, Pennsylvania may have acquired home state jurisdiction before Mother filed her petition there.

Fit-Parent Presumption Overcome With Evidence Of Mother's Drug Use, The Child Feeling Traumatized, And Mother's Inability To Protect The Child From Domestic Violence.

113. *In re K.R.S.*, No. 11-24-00048-CV, 2025 WL 792878 (Tex. App.—Eastland 2025, pet. denied) (mem. op.) (03-13-2025).

Facts: After Mother failed a drug test, the Child was removed and placed with his paternal Grandmother. Mother went to rehabilitation for a month and picked up the Child when she was released. Grandmother filed a suit seeking sole managing conservatorship of the Child. Father did not participate in the suit. After a hearing, the court appointed Grandmother sole managing conservator and appointed the parents as possessory conservators. Mother was awarded visitation conditioned on drug testing and abstinence from illegal drug use. Mother was given a stair-step possession order, and Father was awarded no visitation. Mother appealed.

Holding: Affirmed

Opinion: At the outset, Mother asserted that the trial court impermissibly relied on recollections from a temporary orders hearing. Noting that a court may not judicially notice testimony taken at a prior hearing unless the testimony is admitted into evidence at the subsequent hearing, the court limited its review to only the evidence admitted at the final hearing.

Mother argued that the trial court's significant impairment finding was based on nothing more than surmise and was against the great weight and preponderance of the evidence. However, the trial court heard testimony that the Child tested positive for drugs in her care. Despite negative drug tests, Mother had a pattern of using drugs when she was stressed. Mother admitted to using drugs less than a year before the final hearing. The Child was exposed to domestic violence, and Mother acknowledged she lacked the ability to protect her children from Father. The Child had been traumatized by Mother leaving him alone and recalling a time when Mother provided food for the Child's sibling but not for the Child. Additionally, there was evidence Mother experienced suicidal thoughts.

Default Paternity Order Reversed Because Failure To Give Alleged Father Notice Of Reset Final Hearing Deprived Him Of Due Process.

114. *In re E.G.*, No. 05-24-00481-CV, 2025 WL 823869 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (03-14-2025).

Facts: Alleged Father was served with a suit to establish the parent-child relationship. Alleged Father did not file an answer, but he did appear pro se at a virtual hearing, at which the court ordered DNA testing. The DNA-testing order also included a notice that a final hearing would be held a bit over 2 months later. However, the final hearing was conducted more than two months after that stated date, with no hearing occurring on the date for which Father received notice. Nothing in the record indicated Alleged Father was apprised of the actual final hearing date. The trial court signed a default order adjudicating Alleged Father as the Child's father, and he timely filed a restricted appeal.

Holding: Reversed and Remanded.

Opinion: Texas Rule of Civil Procedure 245 requires reasonable notice of a reset final hearing in a contested matter. Failure to provide this notice violates a parties' due process and warrants a new trial. Thus, without notice, Alleged Father was deprived of due process and entitled to a new trial.

Texas Lacked Jurisdiction Over Child-Custody Matters Because Child Was Born In Illinois After The Filing For Divorce, The Child Had Never Been To Texas, And Illinois Had Not Declined Jurisdiction.

115. *In re M.Z.*, No. 02-25-00100-CV, 2025 WL 1278684 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (05-02-2025).

Facts: Mother and Father married in Texas, and Mother became pregnant shortly after they married. However, before the Child was born, the parties separated, and Mother moved to Illinois to be with her family, and she filed for divorce. Father filed for divorce in Texas, alleging Mother's current residence was Illinois. The Child was born after both petitions were filed. Although Father referenced the Child in his petition, Mother did not in hers. Father sought to restrict the Child's residence to a single county in Texas.

Mother did not answer or appear in Father's suit, and a default decree was rendered. Mother subsequently filed a special appearance and in the alternative, motion to set aside the default judgment. Mother asserted Texas lacked subject matter jurisdiction over the Child pursuant to the UCCJEA. Mother further asserted that her failure to answer or appear was a result of accident or mistake because she was served with notice of Father's suit on the day the Child was born. The Texas trial court set aside the default but "accept[ed] jurisdiction over this matter." Mother filed a counter petition for divorce in Texas. A temporary order gave primary care to Mother with limited supervised visitation for Father in Chicago. Both parties sought a de novo review of the temporary orders. At the end of the de novo hearing, the court restricted the Child's residence to that county in Texas because the parties were married there, and the Child was conceived there.

Mother objected to Father's proposed temporary orders on UCCJEA grounds and informed the court that a hearing was set in Illinois. The Texas trial court signed the temporary orders over Mother's objection, and she sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Because the parties filed before the Child's birth, neither Texas nor Illinois had jurisdiction over the Child in either divorce. Any premature child-custody claim would have become live at the time of the Child's birth—the same time her home state was established. At the time the child-custody proceeding became live in the Texas divorce, Illinois was the Child's home state. Texas could have had jurisdiction if no other state was the Child's home state and if the Child and her parents had significant connections with Texas and there was substantial evidence regarding the Child in Texas. The Child had not lived in or traveled to Texas. Further, there was no evidence Illinois declined jurisdiction. Texas could not exercise jurisdiction without a determination from Illinois. Thus, the Texas trial court was directed to communicate promptly with the Illinois court. Without a decision by the Illinois court to decline jurisdiction, the Texas court must dismiss the suit.

Trial Court Erred In Denying Mother's Original SAPCR Without Including Any Of The Provisions Required By The Family Code, E.g., Failing To Appoint Anyone As The Child's Conservator.

116. ***In re E.N.E.P.***, __ S.W.3d __, No. 04-24-00239-CV, 2025 WL 1318034 (Tex. App.—San Antonio 2025, no pet.) (05-07-2025).

Facts: Mother and Father lived together in Honduras, where the Child was born. Mother moved to the U.S., while the Child stayed with Mother's niece. Father did not provide for the Child and eventually met another woman, whom he married and with whom he had a family. After a few years, the Child moved to the U.S. to live with Mother.

Mother filed an original suit affecting the parent-child relationship, alleging Father should not be appointed as a conservator or have possession of the Child. Mother filed affidavits from both herself and the Child in support of Mother's requested relief. Father signed a waivers of service in Spanish and English. After conducting a final hearing through an interpreter, the trial court signed an order denying Mother's petition. In subsequent findings, the court stated that Mother's testimony was inconsistent with her affidavits. Mother appealed.

Holding: Reversed and Remanded.

Opinion: The appellate court could not determine whether the trial court intended the written order denying Mother's requested relief was a final appealable order. The appellate court abated the appeal and asked for clarification from the trial court. Although the trial court responded to the appellate court's request for clarification, the appellate court was still unclear as to whether the trial court intended the order to be final and, thus, addressed that question before considering the merits of Mother's appeal.

Citing *In re R.R.K.*, 590 S.W.3d 535 (Tex. 2019), the court noted that the Family Code sets forth the requirements for a final order in a SAPCR. Here, the trial court's order, in full, provided:

> On May 3, 2023, [Mother's] Petition for Conservatorship in Suit Affecting the Parent-Child Relationship to be [sic] considered and after hearing evidence and the accompanying exhibits, this Court is of the opinion that [Mother's] Petition for Conservatorship in Suit Affecting the Parent-Child Relationship should be DENIED.
>
> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that [Mother's] Petition for Conservatorship in Suit Affecting the Parent-Child Relationship is in all respects DENIED. All relief not expressly granted is denied.

The appellate court noted: (1) the relief sought by Mother was at issue at the final trial; (2) Father filed no responsive pleadings; and (3) nothing indicated claims were to be severed or withheld from the ruling. The order contained a Mother Hubbard clause and purported to dispose of all claims and parties. Thus, it was a final, appealable order, and the appellate court had jurisdiction to consider the appeal.

However, despite being a final, appealable order, the trial court failed to render an order that satisfied any of the mandatory requirements of the Family Code. For example, it did not include the parties' contact information, appoint someone as managing conservator, or include statutory warnings. The trial court erred by rendering an order that wholly failed to comply with the Family Code.

Temporary Orders Signed After Motion To Recuse Was Filed Were Void Because Judge Had No Authority To Act Before First Addressing The Motion To Recuse.

117. *In re Gold*, No. 04-25-00085-CV, 2025 WL 1318808 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (05-07-2025).

Facts: A few days after a temporary orders hearing in a SAPCR, Father filed a motion to recuse the judge. Rather than granting the recusal or referring the recusal to the regional presiding judge, the trial judge signed temporary orders. A week later, the regional presiding judge assigned a new judge to the case. Father sought mandamus relief. Neither Mother nor the trial judge filed a response.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Texas Rule of Civil Procedure 18a(f)(l) provides: "Regardless of whether the motion [to recuse] complies with this rule, the respondent judge, within three business days after the motion is filed, must either: (A) sign and file with the clerk an order of recusal or disqualification; or (B) sign and file with the clerk an order referring the motion to the regional presiding judge." The trial judge is not permitted to take any other action until the motion to recuse has been decided, except for good cause. The "good cause" requirement must concern the need to act at a specific time, not the merits of the motion to recuse.

Because the mandamus record provided no basis to support a "good cause" finding, the trial judge erred in signing the temporary orders before the motion to recuse had been addressed.

Mother Entitled To New Trial Because Her Failure To Attend Final Hearing Was Not Intentional Or The Result Of Conscious Indifference.

118. *Leal v. Lopez*, No. 11-24-00015-CV, 2025 WL 1335315 (Tex. App.—Eastland 2025, pet. denied) (mem. op.) (05-08-2025).

Facts: Father filed for divorce. During the course of the proceedings, Mother had four different attorneys and was intermittently pro se. Mother spoke Spanish and required an interpreter in court. At a "prove up" hearing, at which Mother appeared pro se, it became apparent that Mother had never seen the final decree before arriving to court that day. The court continued the hearing and orally gave the parties a new trial date in about a month. No written notice of the final hearing was provided. Mother then hired a new attorney. Mother told the new attorney about the date, but the attorney was unable to confirm that date with the court and presumed that it would be reset with a formal notice.

The court held a final hearing on the date it had orally provided. Father and his attorney appeared, but neither Mother nor her attorney appeared. The court announced that it would grant all of Father's requested relief. Thus, the trial court granted the divorce, appointed the parties joint managing conservator's of their Child's residence, restricted that residence to two counties, imposed a standard possession order, ordered Father to pay child support, and divided the community estate.

Mother filed a motion for new trial, asserting she did not receive "proper notice" of the final hearing. Mother additionally testified that Father had been abusive throughout the relationship, there were pending criminal charges, and Father was a danger to the Child. The trial court denied Mother's motion, and Mother appealed.

Holding: Reversed and Remanded.

Opinion: Mother argued that because she did not receive "proper notice" of the final trial date, she was only required to establish the first *Craddock* prong—that her failure to appeal was not intentional or the result of conscious indifference—to show she was entitled to a new trial. Generally, to satisfy this prong, the movant must only show, "some excuse, although not necessarily a good one." Additionally, the court must accept uncontroverted facts as true.

Mother's attorney explained that he failed to appear because he received no notice; he believed the final hearing would be reset; he received no confirmation from the trial court about the scheduled date; and there was a lapse in communication regarding whether the hearing would proceed. Mother testified about two different dates she thought the hearing could occur and stated she never intended to avoid appearing. Even the trial court stated on the record that it sounded like a mistake that neither Mother nor her attorney appeared. Thus, because Mother and her attorney's testimony provided some excuse that was uncontroverted, she satisfied *Craddock's* first prong and was entitled to a new trial.

Moreover, Mother's testimony about Father's violent tendencies would apply to the *Holley* factors in a meritorious defense to Father's claims. Further, Mother's attorney offered to personally reimburse Father for the attorney's fees incurred in preparing for and in participating in the final trial and new trial hearing. Father did not testify that granting a new trial would negatively affect his ability to present the merits of his case.

Trial Court Required To Sever Divorce From SAPCR And Dismiss SAPCR Because North Carolina Was The Children's Home State Under The UCCJEA.

119. *In re Bloom*, No. 04-25-00115-CV, 2025 WL 1452571 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (05-21-2025).

Facts: Mother filed a petition for divorce in Texas. Father filed an answer subject to a plea to the jurisdiction, asserting in part that Texas lacked jurisdiction because North Carolina was the Children's home state. After the trial court denied Father's plea, he sought mandamus relief. The appellate court initially stayed proceedings but later lifted the stay for the sole purpose of a conference between the Texas and North Carolina courts. After that conference, it was determined that North Carolina was the state with jurisdiction over the Children, but Texas had jurisdiction over the divorce.

Subsequently, the court rendered an order making the jurisdictional findings. Mother asked the appellate court to dismiss Father's mandamus proceeding, but Father argued the trial court's order was insufficient to grant his requested relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: The appellate court agreed with Father. While the subsequent order addressed jurisdiction, it did not set aside the order denying Father's plea to the jurisdiction. The court was instructed to vacate the denial of Father's plea with respect to the parties' Children, sever the divorce proceeding from the SAPCR, and dismiss the SAPCR.

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.

120. *In re A.B.*, No. 02-24-00264-CV, 2025 WL 1668332 (Tex. App.—Fort Worth 2025, no pet.) (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.

121. *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.

Father's Nonsuit Had No Effect On Mother's Pending Claim For Attorney's Fees.

122. *Wright v. Womack*, No. 06-24-00081-CV, 2025 WL 1833399 (Tex. App.—Texarkana 2025, no pet.) (mem. op.) (07-03-2025).

Facts: An agreed order gave Mother the exclusive right to designate the Child's primary residence. Subsequently, Mother filed enforcement suits regarding possession and child support, the case was transferred to another court due to a judicial recusal, child support was modified, the case was transferred to another county based on the Child's residence, and a temporary order in another enforcement suit was rendered denying Father any contact with the Child until further order of the court.

A few months after the entry of that latest temporary order, Father filed a suit in the second of the three courts, alleging that all orders entered after the transfer to the new county were void and should be vacated. Mother filed a general denial and request for attorney's fees. Mother additionally filed a motion for summary judgment, asserting all Father's claims were barred by res judicata. Before the hearing on the summary judgment could be conducted, Father nonsuited all his claims. The trial court rendered judgment for Mother and awarded her attorney's fees. Father requested findings, but none were issued. Father appealed pro se.

Holding: Affirmed.

Opinion: Among other complaints, Father asserted the trial court erred in failing to issue findings despite his timely request for findings and notice of past due findings. However, no guesswork was required to determine the trial court's reasoning and did not prevent Father from presenting his appeal. Thus, any error was harmless.

Father additionally complained of the award of attorney's fees despite his nonsuit. A nonsuit cannot prejudice the right of any adverse party to be heard on a pending claim for affirmative relief, and a nonsuit has no effect on any motion for sanctions or attorney's fees.

Father Entitled To "Reasonable Notice" (Not Necessarily 45 Days') Before Reset Final Trial Because It Was Not A First Setting.

123. *In re J.A.M.*, No. 05-24-00155-CV, 2025 WL 1909395 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (07-09-2025).

Facts: In a suit to determine Father's paternity of the Child, Mother sought child support and a family violence finding. Father asked the court to terminate his parental rights and not impose any child support on him. The OAG stated that it would be in the Child's best interest to have two parents. The trial court granted Mother's requested relief, and Father appealed pro se.

Holding: Affirmed

Opinion: Father argued that he was deprived due process because he did not receive 45 days' notice before the final trial. Because the trial was reset twice, Father was entitled to "reasonable notice," not a minimum time period. Father did not establish he did not receive reasonable notice of the reset final trial.

Requirement To Conduct De Novo Review Hearing Within 30 Days Is A Mandatory, But Not A Jurisdictional, Requirement.

124. *In re T.A.*, No. 02-24-00509-CV, 2025 WL 2005512 (Tex. App.—Fort Worth 2025, pet. denied) (mem. op.) (07-17-2025).

Facts: The OAG initiated a modification suit, and the parties agreed to temporary orders before an associate judge. Six months later, Father filed a request for de novo review of the associate judge's ruling. No de novo hearing was conducted. The district judge subsequently conducted a final trial and rendered its ruling. Father appealed.

Holding: Affirmed.

Opinion: In his first issue, identifying himself as a sovereign citizen, Father claimed the trial court lacked personal jurisdiction over him. This argument lacked merit and was inadequately briefed.

Next, Father complained about the trial court's failure to conduct his de novo review hearing within 30 days after his request. The 30-day deadline, while mandatory, is not jurisdictional. The court did not lose jurisdiction to consider the request for a de novo hearing after the expiration of 30 days.

Finally, Father complained that the trial court did not have plenary power to render final judgment because the temporary orders became final 105 days after they were signed, and the trial court's plenary power expired at that time. While Father's failure to timely request a de novo review of the temporary ordered led to the associate judge's temporary order becoming an enforceable temporary order, it was a merely a temporary order and not rendered after a final trial on the merits of the suit—it did not dispose of all parties and claims. The temporary order specifically noted that certain findings were being reserved for trial.

Wife's Death During Divorce Deprived Trial Court Of Any Subsequent Orders In That Proceeding, And Grandmother Could Not Intervene After Wife's Death; However, Grandmother Could File New SAPCR If She Could Establish Standing.

125. *In re Friedman*, No. 03-25-00228-CV, 2025 WL 2087209 (Tex. App.—Austin 2025, orig. proceeding) (mem. op.) (07-25-2025).

Facts: Due to lack of supporting documents attached to Husband's petition, the facts stated in the court's opinion were taken from pleadings and Husband's petition but were not to be binding in any future proceeding in either the trial court or appellate court.

Wife and the Child moved out of the marital residence to live with Wife's mother ("Grandmother"). Wife obtained a protective order, Husband filed for divorce, and Wife responded with a counterpetition. Both spouses alleged family violence, and Wife asserted Husband had abused the Child. A protective order may have been obtained by Wife in Maryland, but Husband denied the existence of any such order. Wife's attorney filed a suggestion of Wife's death in the open suits. Subsequently, Grandmother filed a SAPCR. After further proceedings and orders, Husband filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditional Granted in Part; Denied in Part.

Opinion: Husband's pro se mandamus appendix was voluminous, but it failed to include necessary documents, including some of the orders he was attempting to challenge in the mandamus proceeding. Grandmother's decision not to respond did not mitigate the petition's inadequacies. The appellate court cannot grant a writ of mandamus without offering the other party an opportunity to respond to the petition, but a response is not mandatory. Additionally, Husband cited a case that could not be located by the court.

"However, because of the gravity of the issues presented [the appellate court took] judicial notice of the order file-stamped by the trial court and attached to [Husband's] initial mandamus petition that was received but not filed in this cause." An appellate court can take judicial notice of facts that a trial judge could properly have judicially noticed and facts necessary to assess the appellate court's jurisdiction. A trial court is presumed to have taken judicial notice of its own records.

In his mandamus petition, Husband requested, among other requests, (1) all orders for enforcement and custody, including any orders in Grandmother's SAPCR be vacated for being void for lack of jurisdiction; (2) Grandmother be found to lack standing to file her SAPCR; and (3) find that Grandmother's "unlawful" possession of the Child could not create jurisdiction under the UCCJEA.

The death of either party to a divorce action prior to entry of a decree withdraws the court's subject-matter jurisdiction over the divorce action. A child's relatives cannot rely on a divorce action as a vehicle for seeking custody after the death of one of the parent-parties. Even if Grandmother could file her own independent SAPCR, she could not intervene in the divorce after Wife's death. Thus, as a matter of law, Wife's death deprived the trial court of jurisdiction over the divorce and that SAPCR, and any order issued after Wife's death—other than a dismissal order—was void.

However, Wife's death did not bar Grandmother from filing her own SAPCR, did not end the application for protective order sought on the Child's behalf because it was sought in a separate cause of action, and did not bar Grandmother from intervening in the existing application for protective order. The Child herself was considered an applicant for the protective order. Wife's death did not render void any orders issued in Grandmother's separate SAPCR, and the record provided by Husband did not provide sufficient information for the appellate court to determine whether Grandmother established standing or to review Husband's allegations of fraud.

Temporary Orders Hearing Transcript Could Not Be Relied Upon During Appellate Review Because Transcript Not Admitted As An Exhibit At Final Trial.

126. *In re C.L.M.*, No. 01-23-00919-CV, 2025 WL 2165184 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (07-31-2025).

Facts: The final trial in a SAPCR was conducted two years after the entry of temporary orders that appointed the parents joint managing conservators and required them to communicate via OurFamilyWizard ("OFW"). At the trial's outset, the court instructed the parties to refresh its memory clearly, not "beat a dead horse" with events occurring before temporary orders, and focus on what had occurred since the temporary orders. Neither party objected to this instruction or requested additional time for trial.

The parents did not coparent well. Mother had been diagnosed with bipolar disorder but did not consistently take medication. She communicated with Father outside of OFW despite court orders and spoke derogatorily about Father and his family. Mother testified that Father was controlling, had cheated on her, and once took her to obtain an abortion against her wishes. Mother testified she was the Child's primary caregiver. Father requested sole managing conservatorship, primarily because he was concerned about rights to make medical decisions. Father believed Mother did not consistently take the Child to appointments and did not communicate well with Father about appointments. Additionally, Father alleged Mother had threatened him with physical violence.

Most of the trial evidence was presented during Mother's case in chief. When Father began his case in chief, there was little time left, and the court indicated that it had clearly gotten the picture of the parties' inability to communicate. Father introduced testimony from his mother and then closed his case without requesting more time.

In its ruling, the court complimented Mother on improvements she had made since temporary orders, declined to find any family violence, appointed the parties joint managing conservators, and gave Mother the exclusive rights to determine the Child's primary residence and make educational decisions. Mother was ordered to continue participating therapy and taking prescribed medication. Father appealed.

Holding: Affirmed.

Opinion: In his appellate brief, Father cited to a transcript of a temporary orders hearing and affidavits attached to his pleadings. Mother moved to strike all of those references because they were not admitted as exhibits at trial. Testimony taken at a previous trial cannot be considered by a trial judge in a subsequent trial unless it is admitted at that subsequent trial. Thus, the temporary orders hearing transcript could not be considered on appeal.

Father argued that the affidavits could be considered on appeal because the trial court took judicial notice of its file. However, while the trial court could take judicial notice of the fact that Father filed affidavits, the court could not take judicial notice of the truth of any factual statements or allegations included in Father's pleadings or affidavits.

Mother additionally moved to strike Father's references to a timeline he created. Father asserted the timeline could be considered because the trial court admitted the exhibit as a shorthand rendition of Father's testimony. The trial court only admitted the timeline as a demonstrative aid. Because of that characterization, under the Rules of Evidence, the timeline bore no probative value, and the trial court could not have relied upon it when it issued its judgment.

Father first challenged the trial court's failure to find family violence, which would have rebutted the presumption that it would be in the Child's best interest to appoint Mother as a managing conservator. However, this question is reviewed for an abuse of discretion, and contrary to Father's assertion, the evidence was not "overwhelmingly" in favor of a family violence finding.

Father next argued the trial court's appointment of Mother as joint managing conservator with exclusive rights would significantly impair the Child's physical health or emotional development. However, applying the abuse-of-discretion standard, and considering the *Holley* factors, the evidence was sufficient to support the trial court's judgment.

Finally, although Father complained that the trial judge showed bias against him, he failed to identify any evidence of "deep-seated favoritism or antagonism that would make fair judgment impossible."

Mother's Requested Trial Amendment To Address Unpleaded-For Adult-Disabled Child Support Denied Because Allowing Amendment Would Have Been Prejudicial On Its Face Against Father.

127. *Chibuogwu v. Chibuogwu*, No. 14-24-00488-CV, 2025 WL 2450492 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (08-26-2025).

Facts: Father filed for a divorce. Mother answered and did not plead for adult disabled child support. The parties reached an informal settlement agreement for most issues and tried the remaining issues to the bench. As part of the agreement read into the record, Father had agreed to provide health insurance for the parties' 27-year-old child who had a mental health disability. Mother then replied that she believed that the parties had agreed the adult child's social security payments would continue "to be extended," but Father disagreed that any agreement had been reached regarding child support. On the record, the court invited Father to try by consent the issue of adult disabled child support, but Father would not agree to the trial amendment. At the hearing's conclusion, the court rendered a judgment that did not address child support. Mother's motions for reconsideration and new trial were denied, and she appealed pro se.

Holding: Affirmed.

Opinion: Texas Rule of Civil Procedure 66 allows trial amendments when the amendment would not prejudice the opposing party's action or defense on the merits. A court has discretion to deny a trial amendment adding a new cause of action if the opposing party objects and it appears that the new matter was known to the party seeking the amendment, or by reasonable diligence, it could have been known.

By the time of trial, the case had been pending for 15 months. Mother's pleadings did not raise the child-support claim, and Father opposed it. The requested trial amendment was prejudicial on its face. Mother could have timely pleaded her claim well in advance of trial. Moreover, if Mother could meet her burden of proof, nothing would prevent her from filing another suit to seek the relief.

Mother's Periodic Visits With The Child To The State Of The Child's Birth Did Not Change The Fact That Mother And The Child Moved To Texas, Making Texas The Child's Home State.

128. *In re D.A.M.*, No. 07-24-00327-CV, 2025 WL 2496247 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (08-29-2025).

Facts: Mother filed an original petition in a SAPCR. Father responded asserting Texas lacked jurisdiction because the Child lived in Indiana. Mother filed an amended petition asserting the Texas Court additionally had emergency jurisdiction pursuant to the UCCJEA.

Father argued the Child had only been in Texas 29 days and was born in Indiana, making Indiana the Child's home state. The Child had not been in either state for six consecutive months. Indiana declined jurisdiction. The Child also visited California for a week. The trial court denied Father's plea to the jurisdiction and, after a final trial, appointed Mother as the Child's sole managing conservator. Father appealed.

Holding: Affirmed.

Opinion: Father asserted Texas lacked subject matter jurisdiction because Texas was not the Child's home state. Father argued that visits to Indiana and California disrupted the consecutive six-month period to establish Texas as the Child's home state. Father asserted that because the Child was born in Indiana, it remained the Child's home state.

Father did not dispute that Mother and the Child moved to Texas more than a year before Mother initiated her suit. Although the Child periodically visited Indiana during that time period, the Child's residence was in Texas. "[T]ime spent away from a state during a temporary absence is counted as time in the state for the purposes of determining a child's 'home state.'" Mother had no intention to return to Indiana.

Because No Record Was Made Of The Trial Court's Interview With The Child, The Court Of Appeals Was Required To Presume That The Evidence Received During That Interview Supported The Judgment.

129. *In re A.K.M.*, No. 05-24-00153-CV, 2025 WL 2723280 (Tex. App.—Dallas 2025, pet. filed) (mem. op.) (on reh'g) (09-24-2025).

Facts: When the Child was about 7-years-old, the trial court rendered an order establishing Father's paternity and giving Father the exclusive right to designate the Child's primary residence. Three years later, after the Child made an outcry against Father about extreme corporal punishment, Mother filed an application for a temporary restraining order and a petition to modify the parent-child relationship. Father filed a counterpetition. The parties reached a Rule 11 agreement that gave Mother the exclusive right to designate the Child's primary residence and gave Father a limited possession schedule. However, a few months later, with the aid of new counsel, Father revoked his agreement. The trial court nevertheless signed temporary orders based on the agreement. By the time of trial, the Child was 14-years old. The trial court signed a final order appointing the parties joint managing conservators, with Mother having the exclusive right to designate the Child's primary residence. Father appealed pro se.

Holding: Affirmed.

Opinion: Father first challenged the finding of a material and substantial change in circumstances. However, the court did not need to find a material and substantial change in circumstances to give Mother the exclusive right to designate the Child's primary residence because the Child was over the age of 12 and expressed in chambers his desire to live primarily with Mother. Moreover, Father judicially admitted to a material and substantial change through his counterpetition.

Father next argued the evidence was insufficient to support a finding that the modification was in the best interest of the Child. No record was made of the interview with the Child. In the absence of such a record, the court was required to presume that the evidence received during that interview supported the judgment. Moreover, evidence from the family counselor indicated the Child desired to live with Mother, and the counselor testified positively about the Child's relationship with Mother. Although Father denied the accusation, there was evidence that Father had bruised the Child when using a belt for discipline.

Additionally, Father complained of the requirement that he pay child support. Because the court modified possession, it had authority to modify child support. Further, the order was within the Family Code's guidelines.

Father next raised arguments regarding the exclusion of testimony from various witnesses. However, some of the excluded evidence could not have harmed Father because it would have been cumulative of other testimony, and for other complained-of exclusions, Father failed to make an offer of proof.

Father next challenged the entry of the temporary orders after he revoked his agreement. Because the final order mooted the temporary orders, Father's appellate complaint was moot.

Finally, Father complained of the lack of specificity in the trial court's findings of fact and conclusions of law. However, the findings requested by Father were contrary and inconsistent with the original findings. Further, even if Father had been entitled to additional findings, Father was not prevented from presenting his appellate complaints and was not harmed.

Mother Failed To Show Juror Misconduct Because There Was No Evidence That Alleged Misconduct Impacted The Verdict.

130. *In re T.B.P.*, No. 14-24-00229-CV, 2025 WL 2907028 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (10-14-2025).

Facts: Mother and Father each asked for the appointment as their Child's sole managing conservator. A jury found the parents should be appointed joint managing conservators and Mother should have the exclusive right to designate the Child's primary residence with a geographic restriction. Mother appealed

Holding: Affirmed.

Opinion: Mother complained for the first time on appeal that the trial court failed to instruct the jury not to research the case on their own or discuss the case with others, including the other jurors, until instructed otherwise. Father countered on appeal that Mother failed to preserve the issue by failing to raise the complaint in the trial court. The appellate court agreed. When the trial court provided some instruction regarding taking notes and speaking to others, Mother did not object to the instructions given or request further instructions.

Mother additionally complained of the trial court's denial of her motion for new trial based on alleged jury misconduct. Mother had offered an affidavit from one juror stating that another juror had expressed opinions about the case before the jury had begun deliberations. Also, one juror was "on his cell phone constantly," though the affiant did not know what that juror was doing on the phone. Assuming for the sake of argument the statements in the affidavit were evidence of misconduct, there was no evidence of probable injury to Mother. To show probable injury, there must be some indication in the record that the alleged misconduct most likely caused a juror to vote differently than he would otherwise have done on one or more issues vital to the judgment. Unspecified negative comments were insufficient to warrant a new trial where there was no evidence the comment most likely caused the jurors to vote differently than they would have voted otherwise.

~~Attorney's Fee Award Amount Remanded Because Mother Failed To Segregate Fees Incurred For Seeking Protective Order From Fees Incurred In The SAPCR~~.

131. *Harris v. True*, No. 03-25-00127-CV, 2025 WL 2941954 (Tex. App.—Austin 2025, no pet.) (mem. op.) (10-17-2025).

Note: On 12-4-2025, on the parties' joint request, the appellate court issued a supplemental memorandum opinion vacating the portion of its judgment relating to attorney's fees.

Facts: Mother and Father had an on-and-off relationship. Father admitted to being an occasional user of hard or illegal drugs; drinking and driving; and mixing alcohol, cocaine, and energy drinks with his prescription Adderall. When Mother became pregnant, she was hesitant to tell Father because she knew he did not want Children. After learning of the pregnancy, Father accused Mother of taking fertility medications to get pregnant. Initially, the couple tried to make their relationship work but failed. Mother stated that Father did not help much when the Child was an infant. Father complained that Mother did not give him as much access to the Child as he would like. Mother lived in Austin, and Father wanted to move to Dallas where his business was located. Father offered evidence of Soberlink tests to support his assertion that he had gone many months without drugs or alcohol. After a jury trial, Mother was given the exclusive right to designate the Child's primary residence. The court adopted the guardian ad litem's recommended step-up possession order for Father and made Mother the "tiebreaker" for certain rights. Additionally, based in part on evidence Father had impersonated Mother to gain access to medical information, the court imposed permanent injunctions against Father. Finally, the court ordered Father to pay maximum guideline support, awarded retroactive child support, and awarded Mother attorney's fees. Father appealed.

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

Opinion: Father argued the trial court erred in ordering him to pay over $20k in retroactive child support and almost $2000 in retroactive medical and dental support. Father asserted he paid more than that voluntarily during the relevant time, and the trial court failed to credit those payments. The Family Code provides that a court "shall consider" certain factors when determining whether to order retroactive child support, and the trial court's findings included the requisite findings. However, contrary to Father's assertion, there is no requirement for the court to consider actual support or other necessaries for the child. Moreover, Father did not present any evidence showing that the award would place a financial burden on him or his family.

~~Father additionally challenged the award of attorney's fees to Mother of over $90k for trial fees and $15k for appellate fees. Father asserted insufficient evidence supported the awards and that Mother failed to segregate fees relating to the SAPCR from fees relating to her seeking a protective order. Although Father argued Mother failed to put on live testimony regarding fees, Father had agreed to that manner of presentation. Further, Mother's evidence regarding both the incurred trial fees and expected appellate fees satisfied the requirements laid out by the Texas Supreme Court in *Rohrmoos*. However, Mother failed to segregate the protective order fees from the SAPCR fees. Because the trial court did not find Father had committed family violence and did not issue a protective order, Mother could not recover fees for those services. Therefore, that issue was reversed for the trial court to correct the amount of attorney's fees awarded.~~

Next, contrary to Father's assertion, ample evidence supported deviating from the standard possession order, including Father harassing conduct towards Mother, lack of specific plans for housing or schooling for the Child, and past use of "hard or illegal drugs." To the extent Father offered evidence supporting his position on appeal, the trial court did not abuse its discretion in determining the modified possession order was in Child's best interest.

Father further challenged the award to Mother of certain exclusive rights and the designation of Mother as "tiebreaker" for decisions regarding educational, psychological, and psychiatric decisions. Mother had made most of the decisions for the Child since birth and provided the Child's health insurance. Mother had specific plans for the Child, while Father remained uncertain. Further, the parents had difficulty communicating but generally agreed on decisions regarding medical care and education. The trial court did not abuse its discretion in determining how to allocate rights and duties.

Finally, Father asserted the court abused its discretion by enjoining him from certain conduct, including allowing the Child to be cared for by certain people and recording, stalking, or impersonating Mother. However, the appellate court noted that it had previously held that permanent injunctions in family law are permissible when the injunctions are in the child's best interest. Sufficient evidence supported the trial court's determination that the injunctive relief was in the Child's best interest.

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

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

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

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

Holding: Affirmed.

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

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

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

Stepmother Lacked Standing to Amend Her Counterpetition for Divorce to Include a SAPCR Because She Did Not Share a Residence with the Child in the 90 Days Immediately Preceding Her Amended Petition.

133. *In re P.R.*, No. 02-25-00543-CV, 2025 WL 3559018 (Tex. App.—Fort Worth 2025, orig. proceeding [pet. filed]) (mem. op.) (12-11-2025).

Facts: Mother and Father were married, but Mother died shortly after the Child was born. Not long after that, Father married Stepmother, but she moved out of the marital residence about 4 years later. Father petitioned for divorce and asserted there were no children of the marriage. Stepmother filed a similar counterpetition; however, she later amended it to seek conservatorship of the Child. Father challenged Stepmother's standing to make that request.

At a hearing on Stepmother's standing, the undisputed evidence showed Stepmother provided actual care, control, and possession of the Child and acted as the Child's mother for years. Father initially obtained a protective order after filing for divorce to prevent Stepmother from seeing the Child, but he later allowed Stepmother to see the Child. During that time, Stepmother cared for the Child, took her to school and doctor's appointments, and kept the Child overnight with Father's permission. However, after a few months, Father stopped allowing overnight visits. The trial court determined Stepmother satisfied the requirements of Texas Family Code Section 102.003(a)(9) and denied Father's plea to the jurisdiction. The court appointed the parties joint managing conservators. Father sought mandamus relief.

Holding: Writ of Mandamus Conditional Granted.

Opinion: At the time of filing, the prior version of the statute applied, requiring "actual" care, control, and possession for at least six months ending not more than 90 days preceding the petition. Although Stepmother had actual care, control, and possession of the Child and acted as a mother to the Child, she did not share a principal residence with the Child within the 90 days of her

petition. Father argued that lack of a shared residence defeated Stepmother's claim of standing. "Stepmother acknowledge[d] that at the time she first filed the SAPCR, she had not shared a principal residence with [the Child] within no more than 90 days before the SAPCR's filing." Stepmother argued the relation-back doctrine should have applied, making the date of filing the date of her original counterpetition for divorce, despite not having any SAPCR-related pleadings in that counterpetition.

Family Code Section 101.031 defines "suit" as an action under "this" title (Title 5 SAPCRs). The time requirements of Section 102.003 are measured by when a "suit" is filed. Even if Father may have anticipated a future suit involving the Child, Stepmother's initial counterpetition did not constitute a Title 5 suit—only her amended counterpetition did. Thus, the timeframe for determining standing in the SAPCR had to be calculated based on her amended counterpetition and could not relate back to the original counterpetition for divorce.

Stepmother argued that she did not initially include the Child in her original counterpetition due to alleged erroneous advice of prior counsel. Regardless, the courts are bound by the statutory framework with respect to standing in SAPCRs, and evidence of a close relationship between Stepmother and the Child cannot provide a basis for ignoring the Legislature's intent. Contrary to Stepmother's claim of an unjust result, at the time of the hearing, Father had not restricted all Stepmother's access.

Mother Entitled to Restricted Appeal and New Trial Because No Evidence of Proper Service Appeared in the Record.

134. *In re G.K.*, No. 02-25-00420-CV, 2025 WL 3558969 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (12-11-2025).

Facts: Mother and Father were not represented by attorneys at trial or on appeal. Father sought to modify the prior SAPCR order because Mother had accepted a job in the Democratic Republic of Congo and expressed a desire to move there with the Child. Father sought "full custody." Father's petition did not include a certificate of service or request citation be served on Mother. The record did not include a return of service on or answer from Mother. Mother did file multiple motions, including a demand to dismiss Father's motion to find her in contempt.

About three weeks after he filed his petition, Father moved to require Mother to designate an agent for service or to waive service. The court did not rule on that motion, but it did sign an order denying international travel on certain days. Subsequently, Father moved for final hearing and a default order, asserting Mother had moved and had constructively abandoned the Child. This motion also contained no certificate of service. Father also filed a motion asking the OAG be served with notice and requested the OAG's intervention with respect to child support. That motion had no certificate of service indicating Mother had been served. At trial, Father alleged Mother knew of the proceedings but offered no evidence to substantiate that claim. The trial court signed Father's proposed default order that day.

Four months later, Mother filed a notice of restricted appeal.

Holding: Reversed and Remanded.

Opinion: To prevail on a restricted appeal, an appellant must establish that: (1) it filed notice of the restricted appeal within six months after the judgment was signed; (2) it was a party to the underlying lawsuit; (3) it did not participate in the hearing that resulted in the judgment complained of and did not timely file any postjudgment motions or requests for findings of fact and conclusions of law; and (4) error is apparent on the face of the record.

Although Mother filed a post-judgment motion to set aside the default order, that motion was not timely filed. Father attached emails to his appellee's brief to support his appellate argument that Mother had actual knowledge of the trial court proceedings. However, documents attached to an appellate brief cannot be considered by the appellate court if those documents were not in the appellate record. Mother was entitled to proper service, and the trial court was required to obtain personal jurisdiction over Mother before signing a binding judgment. The record here contained no return of citation, and there are no presumptions in favor of valid issuance, service, and return of citation.

Even if Mother's motions could be construed as a general appearance, there was no evidence Mother was served with notice of the final hearing. No evidence showed the motion requesting the OAG's involvement was served on Mother. Failure to provide Mother with adequate service deprived her of her due process right to appear and present her case.

Father's Self-Diagnosed Purported Injury on Date of Trial Insufficient to Show His Choice Not to Appear Was Not an Act of Conscious Indifference, Particularly When He Did Not Request a Continuance or Ask to Appear Remotely.

135. *Nitz v. Bouffard*, No. 03-25-00205-CV, 2025 WL 3558565 (Tex. App.—Austin 2025, no pet.) (mem. op.) (12-12-2025).

Facts: The Child's parents had been involved in litigation for a large portion of her life, resulting in 3 prior final orders before the most recent modification suit filed by Mother. Father had been previously ordered to submit to Soberlink testing five times a day per the parties' agreement, and Mother alleged he was no longer complying with that requirement. On the day of the final hearing, Father (pro se) sent an email to the court administrator advising that he was injured and unable to attend the hearing. The email was discussed at the beginning of the hearing. The trial court nevertheless signed a final default order, modifying possession and child support. Father hired a new attorney, who filed a *Craddock* motion for new trial to which no supporting affidavit or other evidence was attached. At a hearing on the motion, Father asserted that he had fallen from a ladder and rebroken his tailbone. Father rested and took some codeine that he had on hand but did not go to a doctor. He acknowledged that he had not requested

the hearing be reset. In denying the motion, the court found Father's failure to appear was a result of conscious indifference. Father appealed.

Holding: Affirmed.

Opinion: Father first asserted he did not receive proper notice of the final trial. The final setting at which Father failed to appear was not the first setting. Father had received more than 45 days' notice of the initial setting. That hearing was reset, and Father received 12 days' notice of the reset hearing. Rule of Civil Procedure 245 only requires 45 days' notice of the first setting. Notice of a reset final hearing must be "reasonable." Nothing in the record indicated the 12 days' notice was inadequate. Additionally, when setting the new date via email with Mother's counsel and the trial court, Father never asserted he was entitled to 45 days' notice or said he needed more time to hire counsel. When asked about the date at the new trial hearing, Father said he planned to attend and represent himself at the reset final hearing. Father failed to show he lacked adequate notice.

Father next argued he was entitled to a new trial under *Craddock* and that his failure to appear was not the result of conscious indifference. Father offered no medical evidence to support his self-diagnosis of a broken tailbone. Father said he could walk after the fall. He explained that he began feeling better but could not sit on anything flat. He did not move for a continuance or ask to appear remotely. Based on Father's testimony, the trial court could have reasonably concluded Father's purported injury was not so severe that it rendered him unable to attend the hearing or that even if it did, Father had the ability to ask for a continuance or appear remotely but chose not to do so.

Child Support Review Case Remanded for a New Trial Because No Record Made, and There Was No Indication Father Waived the Making of a Record.

136. *In re D.Z.C.*, No. 04-24-00565-CV, 2025 WL 3650390 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (12-17-2025).

Facts: After an evidentiary hearing, the court signed an order in a child-support review initiated by the OAG. Father appealed.

After a clerk's record was filed, but before a reporter's record was filed, Father filed an appellant's brief. The appellate court reached out to Father to determine whether he wished for the appeal to be considered without a reporter's record. Father then detailed his efforts to obtain a reporter's record. The court coordinator had informed him that the audio recording of that day had been reviewed, and no record of Father's case was found. The OAG then responded that if this were true, Father would be entitled to a new trial. However, the OAG could not confirm whether a recording of the trial existed.

The appellate court then ordered the court coordinator to file a response. That response indicated that proceedings that day were made by Zoom, and recordings were generally kept through that application. However, that day, a visiting judge was presiding, and no record was made.

Holding: Reversed and Remanded.

Opinion: The Family Code requires a record be made of contested hearings unless the making of a record is waived by the parties. Here, the court's findings indicated a record was made, but the coordinator confirmed that was not the case. Nothing in the clerk's record suggested Father waived the making of a record, and the OAG did not assert otherwise. Because this error probably prevented Father from properly presenting his case on appeal, the case had to be remanded for a new hearing.

Girlfriend Lost Standing in Pending SAPCR Because Her Amended Petition with Supporting Affidavit Was Insufficient to Satisfy the New Family Code Section 102.0031.

137. *In re S.N.*, No. 02-25-00525-CV, 2025 WL 3713587 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (12-22-2025).

Facts: During their relationship, Mother and Girlfriend each adopted children and gave the other conservatorship rights to certain children each had adopted. Later, the Child was placed in Mother and Girlfriend's home because, in part, he was a sibling of one of Mother's adopted children. When Mother and Girlfriend broke up, they agreed to a possession schedule for the previously adopted children, and the Child followed the same schedule. About 6 months after the breakup, Mother adopted the Child.

Girlfriend filed suit to be appointed the Child's sole managing conservator. Despite the lawsuit, Mother and Girlfriend continued following the agreed possession schedule for a few years until Mother terminated Girlfriend's visitations with the Child.

On September 1, 2025, the new statute requiring affidavits from nonparents (Section 102.0031) became effective and applied to pending litigation. Thus, Girlfriend amended her petition and attached a supporting affidavit. Mother filed a motion to dismiss, alleging Girlfriend's affidavit was insufficient to support the requested relief. After the trial court denied the motion to dismiss, Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: When standing has been conferred by statute, the statute itself provides the proper framework for a standing analysis. The new Section 102.0031 requires a nonparent to attach to her petition a supporting affidavit that contains facts to support an

allegation that denying the relief sought would significantly impair the child's physical health or emotional development. If the affidavit is insufficient, the court "shall" deny the relief sought and dismiss the suit.

Girlfriend's affidavit described her relationship with the Child, concerns that the Child blamed himself for the parties' breakup, and concerns that Mother's choice to withhold the Child from Girlfriend was detrimental the Child's wellbeing. The appellate court reviewed the affidavit in light of the numerous opinions addressing significant impairment in the context of grandparent-access suits because the statutory language is nearly identical. Because the statements in Girlfriend's affidavit were conclusory and would fail in the grandparent-access context, the affidavit also failed here.

Although Girlfriend noted that the appellate court previously found in favor of her in standing arguments, those prior opinions were issued before the legislative change. A party may lose standing while a case is pending. Further, contrary to Girlfriend's assertions, the new legislative change did not intend to codify Justice Lehrmann's concurrence in *In re C.J.C.*, 603 S.W.3d 804 (Tex. 2020) (orig. proceeding) but to codify the majority opinion in that case. Additionally, *C.J.C.* did not concern standing.

Grandmother Had Standing Under Former Section 102.003(a)(11) [Deleted by Recent Legislative Amendment].

138. *In re C.A.S.*, No. 14-24-00721-CV, 2025 WL 3764020 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (12-30-2025).

Facts: Maternal Grandmother filed an original SAPCR shortly after Mother's death. Grandmother sought joint managing conservatorship with Grandmother having the exclusive right to designate the Children's primary residence. Grandmother alternatively sought possession and access. Grandmother relied on the former version of Texas Family Code Section 102.009(a)(3) for standing (requiring "actual" care instead of "exclusive"). Father moved to dismiss Grandmother's petition and argued she lacked standing under Section 102.004. Grandmother amended her petition to include claims of standing under Section 102.004 and 102.003(a)(11) which was similar to (a)(9) but included a provision for if the Child's parent was deceased. Subsection (a)(11) was subsequently removed by the Legislature.

After being discharged from rehab, Mother moved in with Grandmother because Father refused to let Mother return to his home. When Mother died from an overdose, Father retook possession of the Children and allowed Grandmother some visitation. Father did not dispute Grandmother's timeline, but he argued Mother had possession of the Children while living with Grandmother, depriving Grandmother of standing under Subsection (a)(9). Father further argued that Grandmother failed to show significant impairment in the Children's present circumstances and, thus, lacked standing under Section 102.004. Father did not address standing under Section (a)(11). The trial court granted Father's motion to dismiss without issuing findings. Grandmother appealed.

Holding: Reversed and Remanded.

Opinion: In the absence of any explicit findings, the trial court implicitly found Grandmother lacked standing under all three statutory provisions. On appeal, Grandmother only argued the trial court erred in finding she lacked standing under Section 102.003(a)(11). Under that section, Grandmother was required to prove: (1) that she resided with both the Children and the Mother for at least six months, (2) that she filed her petition no later than ninety days after that period of cohabitation had ended, and (3) that the Mother was deceased at the time that the petition was filed. The facts to determine the answers to those questions were not intertwined with the merits of Grandmother's petition. Because the relevant jurisdictional evidence was undisputed, the trial court erred in dismissing Grandmother's suit.

SAPCR: DISCOVERY

Sanctions Improperly Excessive Because Lesser Sanctions Not Considered And Some Of The Sanctions Were Not Related To The Sanctionable Conduct.

139. *Orsinger v. Orsinger*, No. 03-23-00664-CV, 2025 WL 3038066 (Tex. App.—Austin 2025, no pet.) (mem. op.) (10-31-2025).

Facts: The parties' agreed divorce decree set Father's child-support obligation for about a year. After that date, his obligation would be based on his monthly net resources for the next year, as determined by binding arbitration. Father was required to pay 30% of his monthly net resources with a cap of $3500, and he was required to provide Mother with copies of his W-2 and paystubs as well as any other documents reflecting income earned. The parties were to file an agreed order with a precise child-support obligation once his net resources were determined. The deadline for the subsequent agreed order passed, and Father's payments became sporadic.

The OAG filed a motion for clarification and modification, and Mother filed a cross-petition to modify child support. Mother made discovery requests and later sought to compel responses. The court granted Mother's motion to compel, awarded attorney's fees, but probated the award pending Father's compliance. Mother filed a second motion to compel that resulted in "123 counts of criminal contempt and sentenced him to 170 days in jail for each count, to be served concurrently. The court held that [Father] could suspend the commitment for those counts for ten years if he paid to [Mother] $7,860 in attorney's fees and $248.78 in expenses associated with prosecuting the enforcement action. If [Father] did not suspend his confinement by paying the fees

and expenses by the deadline, he could purge himself of civil contempt by paying those amounts." Additionally, the court barred Father from presenting evidence on certain topics and concluded that it would be taken as fact that Father's income was significantly less than what it should be due to intentional un- or underemployment. Father appealed.

Holding: Reversed and Remanded

Opinion: Although Father appealed the contempt findings, such orders are only reviewed by petition for writ of habeas corpus (if the contemnor is jailed) or writ of mandamus (if the contemnor is not jailed). The appellate court lacked jurisdiction over the appeal of the contempt findings and dismissed that portion of his appeal.

Father next challenged the imposition of death penalty sanctions. Although an appellate court generally does not have jurisdiction over discovery sanctions, it could consider the sanctions as part of its review of the award for attorney's fees.

The trial court issued a first order compelling discovery. Subsequently, when it found Father had continued to fail to comply with that order, a second order was issued, which was the subject of this appeal. The appellate court overruled some of Father's evidence-sufficiency complaints and sustained others. The first order compelled him to produce information for each month he paid child support, including his net resources for that month and how much he paid in child support that month. Father asserted that his providing annualized information was sufficient because Mother could just divide the numbers by 12. The appellate court disagreed and held that the trial court did not abuse its discretion in finding Father failed to comply with the first order.

However, Mother had also sought Father's credit report. Father provided a screen printout with limited data including a statement that he lacked enough credit history to generate a FICO score. Mother argued the report was suspect in its brevity. Suspicion is not proof, and the trial court abused its discretion by concluding this production was inadequate.

Father also failed to produce tax returns and supporting documentation. When asked whether he filed his taxes, Father pleaded his Fifth Amendment privilege. There was no evidence the requested documents existed or were in Father's possession. The trial court abused its discretion in finding Father failed to provide adequate responsive material concerning the request for tax documentation.

While the trial court did not strike Father's pleadings, it did prohibit him from introducing evidence regarding whether he paid or overpaid his child support obligation or any offsets that should be applied. Additionally, the court ordered that it would be taken as established that Father was intentionally un- or underemployed. These sanctions were excessive at this stage of the litigation. Lesser sanctions were not properly considered. The only sanction imposed in the first order was an attorney's fee award of less than $1000. Father offered some discovery that was insufficiently specific, but that did not support the excessive sanctions. "[Father's] refusal to comply with the monthly calculation and explanation requirements of Interrogatory 6 is more problematic because his appellate argument shows that his non-compliance is rooted in something other than misunderstanding or a need for clarification; however, his dismissive appellate argument was not before the trial court when it imposed the sanction." Finally, the finding that Father was un- or underemployed did not directly relate to the discovery abuse and was improper.

Because some of Father's issues were sustained, the attorney's fee award was remanded for further proceedings.

SAPCR:
Temporary Orders

Mother Failed To Present Evidence To Support Modification Of Temporary Orders By Failing To Offer Any Evidence Of How The Requested Modification Was For The Safety And Welfare Of The Children.

140. *In re Adam*, No. 07-25-00209-CV, 2025 WL 2426308 (Tex. App.—Amarillo 2025, orig. proceeding) (mem. op.) (08-21-2025).

Facts: After temporary orders were issued in the parties' divorce proceeding, Mother filed a motion to modify those temporary orders to facilitate her move with the Children to New York. Mother wished to pursue a medical fellowship selected after completing a residency with Texas Tech. Mother rented housing in New York before the hearing on her motion. After the trial court granted her request, Father petitioned for mandamus relief. The appellate court issued a temporary order pending the outcome of the mandamus proceeding staying the trial court's new temporary order to the extent it allowed her to move to New York with the Children without geographic restriction; however, Mother refused to return to Texas with the Children regardless of the appellate court's order.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Father argued the trial court erred in amending its prior temporary order contrary to the provisions of Texas Family Code Section 105.001(a), which requires the moving party to show that the requested modification of a temporary order is for the safety and the welfare of the Children. Here, Mother sought to modify the order because she desired to further her own medical career by moving to New York. The Children were not under threat or otherwise in jeopardy.

In her response to the mandamus petition, Mother asserted that the trial court could have based its order on Father's alleged "unhealthy cultural training." However, the court was not permitted to delve into matters of theological controversy. Moreover, there was no testimony that Father's faith posed actual or imminent danger to the safety and welfare of any child. Parents have the right to guide a child's cultural and religious journey, and in the absence of evidence of imminent harm, Wife's

argument invited the court to overstep the boundaries of Section 105.001. Finally, no evidence supported an inference that Mother's desire to move was based on Father's religious beliefs.

Mother offered no evidence that she was unable to earn a good income where she lived before moving to New York. In fact, Mother could earn in Texas about 3-5 times what the New York fellowship was paying her.

In sum, modification of temporary orders under Section 105.001(a) requires proof that the relief sought is for the safety and welfare of the child, and no other purpose. It also requires proof that the child's safety and welfare face immediate threat that the relief ameliorates. Because Mother failed to produce any such evidence, the trial court erred in modifying the temporary orders.

SAPCR:
ALTERNATIVE DISPUTE RESOLUTION

Father's Post-MSA Discovery That Mother Allegedly Lied In MSA Negotiations Did Not Constitute A Material And Substantial Change To Support Modification Of The Order Based On The MSA.

141. *In re P.J.*, No. 02-24-00236-CV, 2025 WL 807494 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (03-13-2025).

Facts: Mother and Father had one Child. They obtained a final SAPCR order when the Child was about 6 years old, but Father filed a petition to modify that order less than a year later. That modification suit resulted in an MSA that gave Father the exclusive right to designate the Child's primary residence and imposed restrictions on Mother, including prohibiting her from consuming alcohol within 12 hours of her possession of the Child and submitting to drug tests requested by Father up to once a quarter. The MSA also provided that neither parent would pay child support to the other. About a month after the order was signed on the MSA, Father again moved to modify, claiming Mother had lied to him about pre-MSA events. Father sought sole managing conservatorship.

In the subsequent proceedings, the court admonished Mother not to introduce the Child to paramours. After Mother ignored that admonishment, she claimed to not know what "paramour" meant, and the court subsequently amended temporary orders to include the provision in writing. Father claimed that Mother, as a hairdresser, knew how to avoid getting a positive drug screening from hair samples and had faked test results. Mother's estranged husband testified about Mother's drug use and mistreatment of the Child and said that Mother had left a loaded gun in the Child's room on more than one occasion. Mother testified that she earned between $40k and $60k, but her estranged husband said Mother could earn as much as $200,000 a year. Father said Mother wasted her money on tattoos and drugs. Father additionally said Mother had only paid $600 of the temporary child support she had been ordered to pay during the pendency of the modification.

After the final bench trial, the court appointed Father sole managing conservator and ordered Mother to pay child support and child support arrearages. Mother appealed.

Holding: Reversed and Remanded.

Opinion: Mother argued there was insufficient evidence to support a material and substantial change to support either a modification of custody or child support, and there was insufficient evidence to support the amount the court found her to be in child-support arrears.

Father argued that his discovery of Mother's false statements regarding her parental fitness and the Child's circumstances constituted a material and substantial change. However, this argument amounted to an attack on the MSA's validity, and a modification proceeding is not the proper vehicle for such an attack. Father was required to establish an actual material and substantial change in circumstances"—in reality, not just his awareness or understanding of reality." Father discovery that circumstances were not what he thought was not equivalent to an actual change in circumstances.

Father additionally pointed to post-MSA events to support his assertion of changed circumstances. Father asserted Mother did not exercise her midweek possession consistently; however, there was no evidence whether she did so before the MSA. Father also noted injuries the Child suffered while under supervised possession with Mother; however, he failed to explain why an injury constituted a change in the Child's circumstances or Mother's fitness. Father complained of Mother introducing the Child to her boyfriend in violation of the court's oral order. Violating a court's directive does not equate to a material and substantial change for the purpose of a modification. Finally, Father asserted Mother failed two drug tests. However, Mother had a prescription for amphetamine, and other than Father's allegations, there was no evidence or expert testimony supporting an allegation that test results were faked. Further, there was no evidence that any alleged drug use impacted the Child. Accordingly, there was no evidence to support a material and substantial change as a ground for modifying custody.

Similarly, Father did not argue at trial that Mother's income had changed. He simply alleged what he believed her current income was.

Finally, although Mother acknowledged that she had not fully complied with the temporary orders for child support, she did not know the exact amount of payments she had missed, and Father produced no evidence of an amount. Further, although the court found Mother in arrears for medical support, that topic was not addressed.

Final Order Void Because Mother Withdrew Consent From Agreement Made On The Record In Open Court And Because Court Did Not Make Present Rendition Accepting The Agreement As The Judgment Of The Court.

142. *In re M.E.B.*, No. 14-23-00928-CV, 2025 WL 899846 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (03-25-2025).

Facts: Father filed a SAPCR asking for an adjudication of his parentage and for sole managing conservatorship of the Child. Mother filed a counter-petition, but she was incarcerated at the time of trial. At trial, the court asked if the parties could reach an agreement. The court advised Mother that she could seek a full-blown trial on the merits but cautioned she would be unlikely to get her requested relief of unsupervised visitation because she had been involved in a drug deal that resulted in shots fired with the Child in the car with Mother. Mother stated that she would agree to supervision, Father being named sole managing conservator, and a child support obligation to begin after her release from incarceration. The trial court did not render judgment but instructed Father's attorney to draft an order. When Mother was presented with a written order, she refused to sign, stating that after seeing it in writing, she no longer thought it was in her Child's best interest. She notified the court of her withdrawal of consent. Regardless, the court signed Father's proposed order, and Mother appealed.

Holding: Reversed and Remanded.

Opinion: An agreed judgment rendered after a party has withdrawn consent is void. Judgment is rendered when the decision is officially announced in open court, by memorandum filed with the clerk, or otherwise announced publicly. Regardless of the method used, the language must reflect the judge's present declaration of a decision. The transcript did not reflect the trial judge's acceptance of the parties' agreement or reflect a present rendition of judgment. The court's docket sheet did not indicate that a decision had been made; it only stated that Father's attorney would take the future action of drafting an order. Because Mother withdrew her consent before judgment was rendered, the order was void.

Without Transcript Of An Interview With The Children, Appellate Court Could Not Determine Whether Trial Court Had Reason To Believe Family-Violence Exception May Have Supported A Best Interest Analysis Before Rendering Judgment On MSA.

143. *In re Ortiz*, No. 13-25-00143-CV, 2025 WL 1174620 (Tex. App.—Corpus Christi–Edinburg 2025, orig. proceeding) (mem. op.) (04-22-2025).

Facts: A divorce decree included orders for the parties two Children. Father filed a modification suit, and the parties signed a mediated settlement agreement. Subsequently, the court signed an order stating that it had conferred with the Children and sealed certain documents. The court ordered the guardian ad litem to advise the court as to the appropriate time to continue the conference with the Children. Mother filed a motion to strike the order that the Children appear for an in-chambers conference. Mother asserted that because an MSA had been signed and because there were no allegations of family violence, a conference with the Children would be inappropriate. The trial court held Mother's motion was moot because—due to delays in the efiling system—the court was unaware of the motion until after the scheduled time to interview the Children. Mother moved to sign a final order. The trial court set the hearing on the motion to sign but sua sponte reset it for more than 3 months later. Mother sought mandamus relief.

Holding: Writ of Mandamus Denied in Part and Conditionally Granted in Part.

Opinion: Mother argued the trial court abused its discretion in not entering judgment on the MSA and in ordering the in-chambers interview. When the appellate court requested responses to Mother's petition, the guardian ad litem advised he concurred with Mother's arguments. Father did not file a response.

The MSA complied with the Family Code's prerequisites to entitle to the parties to judgment on the MSA. By the time of the reset hearing, Mother's motion to enter would be pending for 7 months. The appellate court agreed with Mother's contentions regarding an undue delay in a ruling. However, the trial court was privy to evidence that was not before the appellate court in the mandamus proceeding (the sealed documents and first conference with the Children). The trial court must determine on the evidence before it whether the statutory exception applied to the parties' entitlement to judgment on the MSA.

Mother additionally argued that the trial court erred in refusing to make a record of the interview with the Children. However, the request for an interview was not denied but was determined to be moot. There was no evidence that the trial court would not grant Mother's request in the event of another interview with the Children.

Because Provisions Of Rule 11 Agreement Were Dependent Covenants, Father Was Excused From His Violation Of Prohibition Against Filing A Modification Suit Because Mother Violated Father's Right To Possession Of The Child; Sanction Award Against Mother's Attorney Reversed Because Order Did Not Include Requisite Findings.

144. *In re S.G.B.*, No. 05-23-00684-CV, 2025 WL 1284653 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (on reh'g) (05-02-2025).

Facts: In a modification suit, Mother and Father signed a Rule 11 agreement that required Father's possession to be supervised, required the parties to attempt counseling before litigation, prohibited Father from attempting to eliminate the supervision requirement until after the Child turned 16 years old, prohibited Mother from seeking jail time as punishment for failure to pay child support, and provided that if either party violated the agreement that party would pay the other's attorney's fees and costs regardless of the outcome of litigation.

Father filed a modification suit before the Child was 16 and without attempting counseling first because Mother had allegedly failed to release possession of the Child as agreed. Mother responded with a counterclaim alleging family violence against Father and requesting sole managing conservatorship. Father alleged Mother had repudiated the agreement and raised affirmative defenses.

During a jury trial, Mother's counsel violated an order in limine regarding the alleged family violence. The trial court granted a mistrial, and Father sought sanctions against Mother's attorney. In the second jury trial, the charge included a question on Father's affirmative defenses. The court overruled Mother's objections to the question's inclusion. Mother alleged her breaches (failure to surrender possession) were independent covenants from the provisions Father breached. The jury found father failed to comply with the agreement, but his failure was excused.

A bench trial resolved remaining issues, including Father's request for sanctions. The court found Mother's counsel willfully and intentionally violated the in limine order and ordered counsel to pay Father's attorney's fees of just under $5000. Mother and her trial counsel appealed.

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

Opinion: On appeal, Mother again complained of the inclusion of the question regarding Father's affirmative defenses. A prerequisite to the remedy of excuse of performance is that covenants in a contract must be mutually dependent clauses. Mother argued they were independent clauses. Whether a covenant is dependent or independent depends on the parties' intention at the time the contract is made. Generally, when a covenant goes only to part of the consideration on both sides and a breach may be compensated for in damages, it is to be regarded as an independent covenant, unless this is contrary to the expressed intent of the parties. However, if the intent is not discernable from the contract's language, the question must be resolved through a question of equity and fairness. Courts presume dependence rather than independence because such a construction ordinarily prevents one party from having the benefit of his contract without performing his own obligations.

Here, the contract did not specify whether the provisions were independent or dependent. The appellate court reasoned that the parties likely would not have entered the contract without the provisions regarding Father's possession. Thus, Mother's obligations regarding surrendering the Child were mutually dependent with Father's obligations regarding future lawsuits. Therefore, the trial court did not err in including the charge question regarding Father's affirmative defense.

The appellate court additionally rejected Mother's complaints that the evidence was insufficient to establish Father's affirmative defense and that Father failed to provide fair notice of his claim that she breached the agreement.

Mother further contended the trial court erred in not submitting to the jury a question regarding whether Father committed family violence. However, before trial, Father stipulated to conservatorship. Thus, there were no conservatorship questions to present to the jury and no reason to submit to the jury the question of whether there had been a history or pattern of family violence.

In response to Mother's counsel's appellate challenge to the sanctions order, Father argued that Mother's counsel was required to bring a separate appeal. However, the notice of appeal stated that Mother's counsel was joining her in the appeal as "a person affected by the orders." Thus, counsel was permitted to present the issue in the same appeal.

Because the trial court failed to make the necessary findings to support the sanctions order, that portion of the order was reversed. Although the order included a finding that Mother's counsel intentionally and willfully violated the order, the order did not include a finding of bad faith or that the conduct significantly interfered with the court's legitimate exercise of its core functions.

Reported Opinion Concurring in Denial of Rehearing En Banc: (J. Rossini)[1]
In re S.B.G., __ S.W.3d __, No. 05-23-00684-CV, 2025 WL 2022061 (Tex. App.—Dallas 2025, no pet.) (07-18-2025).

In the majority's review of Mother's complaint regarding the inclusion of Father's affirmative defenses to the jury, the majority noted that the charge tracked the pattern jury charge. "Given this, [the majority could]not conclude the trial court abused its discretion. However, tracking the pattern jury charge does not support a conclusion the trial court did not abuse its discretion.

Although pattern jury charges are often a helpful guide, they are not binding. They are nothing more than a guide. Accordingly, it was neither helpful nor correct to imply that a court does not abuse its discretion if it follow a pattern jury charge. Here, because the majority went on to find that any error did not cause harm, the holding did not rest exclusively on the implied authority of the patter jury charge. "Neither bench nor bar are assisted by this court's repeated incorrect implication that pattern jury charges are authoritative. They are not."

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

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

[1] The summary of this concurrence was not included in a previous monthly update.

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

In a subsequent modification proceeding, Mother stated that she had moved out of Grandparents' home and that Grandmother had become more controlling since Mother and Father's divorce. Mother moved in with her boyfriend, whom she later married. Grandparents intervened in the modification suit seeking to be named sole managing conservators of the Children. Father had no affirmative pleading in the suit. After trial but before the written order was signed, Grandparents moved for entry of an order on the MSA signed during the divorce proceeding. The trial court declined to include the MSA's terms. In the final written order, Grandparents were released from any obligation to provide health insurance, their requests for conservatorship and possession were denied, and multiple injunctions were entered against Grandparents to prevent them from contacting the Children. Grandparents appealed.

Holding: Affirmed

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

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

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

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

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

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

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

Finally, Grandparents argued the evidence was insufficient to support a fit-parent finding. Because there is a presumption of fitness, Grandparents bore the burden of overcoming that presumption. However, Grandparents' allegations were not supported by the evidence, and there was evidence to reflect Mother had legitimate reasons to disassociate herself and her Children

from Grandparents. Contrary to Grandparents assertions, the record reflected the Children were more than adequately cared for by their parents.

SAPCR: PARENTAGE

Wife Entitled To Mandamus Relief From Order Granting Alleged Father's Oral Request At Discovery Hearing For Adjudication Of Parentage Without 45 Days' Notice To Wife.

146. *In re C.B.*, No. 02-25-00026-CV, 2025 WL 728233 (Tex. App.—Fort Worth 2025, orig. proceeding [mand. denied]) (mem. op.) (03-06-2025).

Facts: During a same-sex marriage between Mother and Wife, Mother became pregnant and had a Child. Both women were listed as parents on the Child's birth certificate. Three years later, Mother filed for divorce. In an amended petition, Mother denied Wife's parentage of the Child and named a man as the alleged biological father. A temporary order required Wife to pay child support and awarded her an expanded standard visitation schedule. Alleged Father filed a petition in intervention seeking genetic testing and an adjudication of his paternity. Wife opposed this request, and an amicus attorney was appointed. However, the court later dismissed the amicus and ordered genetic testing, which established that Alleged Father was the biological father.

At a hearing on a motion to compel discovery, Alleged Father presented the genetic testing results and orally requested an order adjudicating him as the Child's father. Wife opposed the request, asserting it was an issue for final trial, and she was entitled to adequate notice. The trial court signed an order adjudicating Alleged Father as the Child's father, and Wife sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted in Part

Opinion: Wife first challenged the order requiring genetic testing. Wife did not seek mandamus relief until six months after the trial court signed the genetic testing order—and nearly eight months after the relief was orally granted. The test was performed two months after the oral ruling. Wife could have sought a stay to prevent the testing, but she did not do so. Moreover, Wife agreed to permit the test results to be entered into evidence. Wife offered no explanation for her delay. Therefore, Wife was not entitled to mandamus relief in her challenge to the genetic testing order due to the delay in seeking relief.

Wife next argued the trial court erred in granting Alleged Father's oral request for an order adjudicating his parentage. Rule of Civil Procedure 245 requires reasonable notice of not less than 45 days for a first trial setting. There is a rebuttable presumption the trial court complied with this Rule. The record was clear that the only matters to be heard at the hearing was Wife's motion to compel, and Alleged Father's motions for a protective order and a bifurcation of the divorce and SAPCR. By adjudicating Alleged Father as the Child's father, the court, in effect, tried a contested case without notice. Further, because Wife lacked an adequate remedy by appeal, she was entitled to mandamus relief. The trial court was directed to set a new hearing on the adjudication of Alleged Father's paternity with reasonable notice to all parties.

Four-Year Statute Of Limitations On Paternity Suit Did Not Apply When Child Had No Presumed Father.

147. *In re A.M.S.*, No. 05-24-00862-CV, 2025 WL 1458308 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (05-21-2025).

Facts: Biological Father and his wife entered into a polyamorous relationship with Girlfriend. Girlfriend became pregnant and had a child. Biological Father and his wife learned Girlfriend was a registered sex offender and had many mental illness diagnoses, and they broke up with Girlfriend. Meanwhile, Girlfriend was also in a relationship with Husband and his wife. Just before breaking up with Biological Father and his wife, Girlfriend became pregnant with the Child the subject of this suit. Girlfriend said she did not know who the father was. Girlfriend was arrested for a parole violation, and the Child was born while Girlfriend was in prison. Husband and his wife took possession of the Child. Later, they legally adopted Girlfriend to facilitate Girlfriend's visitations with the Child while Girlfriend was incarcerated.

Later, Girlfriend and Husband and his wife reached an agreement in which Husband and his wife were named joint managing conservators with Girlfriend. Later that year, Biological Father learned he was the Child's biological father and sought to adjudicate his parentage. Husband argued Biological Father's suit was barred by the statute of limitations. The trial court found in favor of Biological Father, who was confirmed by genetic testing to be the Child's biological father. A child custody evaluation recommended Biological Father be appointed sole managing conservator. After a bench trial that included evidence of circumstances at both households, the court appointed Biological Father as sole managing conservator. Husband appealed.

Holding: Affirmed.

Opinion: Husband first argued that Biological Father's petition was insufficient to show he had standing. Although Biological Father did not reference the relevant statute, he identified himself as "a man whose paternity is to be adjudicated" and requested genetic testing. The pleading was sufficient to demonstrate Biological Father's standing

Husband next argued that Biological Father's suit was barred by the four-year statute of limitations. However, that limitation only applies when a child has a presumed father. There is no limitation when a child has no presumed, acknowledged, or adjudicated father. Husband and Girlfriend were never married. Additionally, a prior unchallenged court order (the agreed order for joint managing conservatorship) found Husband was not the presumed father. In his live pleading, Husband asserted he was the Child's maternal grandfather (because he adopted Girlfriend).

Finally, Husband argued the court abused its discretion in removing him and his wife as joint managing conservators because the removal was not in the Child's best interest. He further argued that the fit-parent presumption did not apply because Biological Father had voluntarily relinquished care, control, and possession of the Child to a nonparent for a period of one year or more. Tex. Fam. Code § 153.373. However, the question of voluntarily relinquishment was never raised in or addressed by the trial court.

Without addressing the fit-parent presumption, the court concluded there was sufficient evidence to support the ruling. Husband's home lacked privacy due to many rooms being rented out regularly on Craigslist and cameras being present in every room except one bathroom. Moreover, there was evidence that Husband and Girlfriend's relationship was unhealthy, with Girlfriend trying to get away from Husband by going to a shelter and Husband making things so hard on Girlfriend that she "had to go back." Contrarily, Biological Father's home, while not perfect, was appropriate for the Child, and Biological Father showed he had adequately cared for the Child's older sibling.

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

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

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

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

Holding: Reversed and Remanded.

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

SAPCR: CONSERVATORSHIP

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.

149. *In re S.S.*, No. 05-23-00928-CV, 2025 WL 593671 (Tex. App.—Dallas 2025, no pet.) (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.

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

Facts: Mother—a citizen of Croatia and Cypress, resident of Monaco and Austria, 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.

151. *Schilling v. Farmer-Schilling*, No. 14-23-00177-CV, 2025 WL 630662 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (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.

Grandmother Failed To Show Abuse Of Discretion In Appointing Grandmother And Mother As Joint Managing Conservators, Rather Than Appointing Grandmother As Sole Managing Conservator.

152. *In re Z.R.G.*, No. 05-23-00218-CV, 2025 WL 699728 (Tex. App.—Dallas no pet.) (mem. op.) (03-04-2025).

Facts: Mother filed a suit against Father for sole managing conservatorship, and paternal Grandmother intervened. Father was in jail and did not participate in the underlying proceedings. At a bench trial, an amicus testified that Mother had made poor choices, but he did not believe her possession of the Children needed to be supervised. The amicus was concerned about Grandmother's refusal to believe Father committed family violence. Evidence suggested Mother exposed the Children to domestic violence and a drug-related shooting, used illegal drugs, and physically and sexually abused the Children. The court appointed Mother and Grandmother joint managing conservators with Mother having the exclusive right to designate the Children's primary residence. Father was appointed a possessory conservator with visitation to be supervised by Grandmother. Grandmother appealed.

Holding: Affirmed.

Opinion: Grandmother asserted that because she overcame the fit-parent presumption, the trial court erred in failing to appoint her as the Child's sole managing conservator. Conservatorship decisions are reviewed for an abuse of discretion, and Grandmother had the burden to prove the trial court lacked sufficient evidence upon which to exercise its discretion. Grandmother failed to do so.

Evidence Supported 50/50 Possession Order; Trial Court's Decision To Appoint Parties Joint Managing Conservators Despite Wife's Allegations Of Abuse Did Not Create Inference That Court Found Wife Not To Be Credible Witness.

153. *In re L.C.W.*, No. 05-23-00815-CV, 2025 WL 823874 (Tex. App.—Dallas 2025, pet. denied) (mem. op.) (03-14-2025).

Facts: Wife and Husband were married for five years and had one Child. Husband filed for divorce on the grounds of insupportability, adultery, and cruel treatment. Wife countered on the grounds of insupportability and cruel treatment. After a final bench trial, the court appointed the parties joint managing conservators with a 50/50 possession schedule, confirmed as Wife's separate property certain percentages on funds in specified accounts, and awarded Wife the marital residence. Husband appealed.

Although Husband filed a request for findings, he did not file a notice of past-due findings, none were issued, and he did not complain about a lack of findings on appeal.

Holding: Affirmed.

Opinion: Husband first complained that the trial court erred in "deviating from the standard possession schedule and not giving [him] primary custody." Acknowledging Wife's allegations of family violence, Husband contended that the trial court must not have found Wife's evidence credible if the court appointed him as a managing conservator.

Because the Family Code does not use the term "primary custody," the appellate court interpreted Husband's argument as an assertion that the trial court should have appointed Mother a possessory conservator for the purpose of following the Code's standard possession order. Both parties offered evidence of the other's alleged misdeeds, including Husband's assertion that Wife sometimes put her work ahead of the Child, and Wife's claim that Husband sexually assaulted her in front of the Child. Wife stated she did not immediately report the assault due to embarrassment and cultural inhibitions. She ultimately dropped the criminal case against Husband because she knew she had to coparent with Husband for the rest of the Child's life and did not want him to go to jail. Husband's medical notes showed that he drank four to six beers to help him feel happier and not suicidal; it was difficult for him to do work, take care of things at home, and get along with other people; he became easily annoyed or irritable nearly every day; and he experienced panic-like symptoms and avoided being in public. Husband would lock himself in a room but come out every few hours to accuse Wife of having affairs. Wife testified that Husband had not contributed towards household expenses for years. The child custody evaluator stated that Mother seemed more attuned to the Child's needs. Given the totality of the evidence, the trial court did not err in rendering a 50/50 possession order.

Husband next argued the trial court erred in confirming portions of certain accounts as Wife's separate property instead of including the accounts in the just and right division of the community estate. Wife retained experts to trace the accounts, but

Husband presented those experts' reports as trial exhibits. Husband also offered his own expert's report. Wife's experts' reports traced the accounts using community-out-first and clearinghouse principles and specified Wife's separate property interest in each account. Husband failed to point to any substantive trial evidence disputing Wife's tracing evidence or showing any changes to the accounts in the window between the completion of the reports and the date of trial. Thus, the court did not err in confirming the funds as Wife's separate property.

Finally, Husband argued the trial court erred in confirming the marital residence as Wife's separate property. However, the court "awarded" the residence to Wife as part of the just and right division of the community estate; it did not "confirm" the residence as separate property. Thus, the appellate court construed Husband's argument as a complaint that awarding Wife the residence resulted in an unjust division of the community estate. Husband failed to point to any facts tending to show the trial court abused its discretion in the property division, and in reviewing the record in light of the *Murff* factors, the court found no abuse of discretion.

Trial Court Not Required To Find Family Violence If It Did Not Find Mother's Testimony Credible.

154. *Sylvester v. Nilsson*, No. 14-24-00124-CV, 2025 WL 1232063 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (04-29-2025).

Facts: Mother and Father had two Children. Father filed for divorce. Both spouses sought a protective order against the other, alleging family violence. The trial court granted Father's application and denied Mother's. The appellate court affirmed Mother's appeal of that protective order. Subsequently, the trial court conducted a bench trial in the divorce. The court appointed Father the Children's sole managing conservator and appointed Mother a possessory conservator with supervised visitation. Mother appealed.
Holding: Affirmed.

Opinion: Both parents testified regarding claims of violence committed by the other. The trial court is the sole judge of the weight and credibility of the evidence. If it does not find credible evidence of a history of domestic violence, it is not barred by the Family Code Section 153.004 (regarding managing conservatorship and family violence). Here, the trial court could have reasonably determined Mother's testimony was not credible.

Although The Evidence Supported Appointing Father As The Child's Sole Managing Conservator And Limiting Mother's Access, The Possession Order Failed To Define Mother's Therapy Goals And Impermissibly Allowed Father To Act As A Gatekeeper To Mother's Potential Reintegration With The Child.

155. *In re I.P.P.*, No. 05-23-01152-CV, 2025 WL 1284654 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (05-02-2025).

Facts: Mother and Father had a Child but did not marry each other. By the time of the jury trial in the modification suit, the Child was 11 years old, and Father had married Wife. Significant evidence showed Mother encouraged the Child to make false accusations against Father, Mother took the Child to many unnecessary doctor's appointments in an effort to build a case against Father, both parents directly involved the Child in their disputes, and the Child had a good relationship with Wife. Among other disturbing facts, the parents exchanged extremely argumentative texts. Father texted the Child to assure her that Mother was a liar and that Father was going to protect the Child in court. Mother encouraged the Child to claim that Father had a gun at the Child's school. The Child's allegations against Father did not use language of a 9-year-old and sounded—to various professionals—as if the Child was repeating something an adult told her to say.

After temporary orders gave Father primary custody and restricted Mother's access, the Child's mental health improved, and she began performing better in school. The jury found that appointing Father as the sole managing conservator would be in the Child's best interest. The trial court signed an order in conformity with the jury's verdict and conditioned Mother's supervised access on her participation in therapy. Mother appealed.

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

Opinion: Mother challenged the sufficiency of the evidence to support appointing Father as the Child's sole managing conservator and in denying her unsupervised access to the Child. Mother did not assert that no material and substantial change had occurred; she only argued that the modification was not in the Child's best interest.

Noting that the jury was tasked with a difficult decision given both parents' inability to effectively co-parent and keep the Child out of their disputes, the court held that in applying the *Holley* factors, the evidence was sufficient to support the jury's conservatorship determination.

Regarding access, Mother only challenged the specific finding that granting her unsupervised access to the Child would not be in the Child's best interest. Because Mother did not challenge any of the other extensive findings supporting the challenged finding, those unchallenged findings were binding on the appellate court. Moreover, reviewing the same *Holley* factors and relevant evidence as above, the evidence supported a finding that Mother should not have unsupervised access to the Child.

Mother next argued that the trial court abused its discretion by failing to sufficiently define an enforceable possession schedule. The order required Mother to first undergo psychological treatment. If she complied, she would get twice monthly supervised access to the Child. However, the order further gave: (1) the psychologist the authority to determine, without court intervention, that Mother could be foreclosed unsupervised access; and (2) Father the authority to determine whether Mother's psychologist and the Child's therapist could meet to develop a reintegration plan for Mother and the Child. Mother argued the first of these two provisions did not clearly state what she was required to accomplish in therapy, and the second provision improperly delegated decision-making to Father. The appellate court agreed with Mother.

The provision giving the Mother's psychologist authority to determine whether Mother would have access to the Child was remanded for the trial court to detail guidelines for Mother's therapeutic goals. The provision giving Father absolute discretion to determine whether Mother could have a path towards reintegration impermissibly allowed Father to act as a gatekeeper.

Appointment Of Father As Sole Managing Conservator Reversed Due To Trial Judge's Biased And Irrelevant Comments About The Judge's Gun Ownership, Extensive Evidence Of Father's Acts Of Family Violence, And Lack Of Evidence Regarding The Parties Ability To Make Shared Decisions Or Put The Children First.

156. ***In re Marriage of Bryant***, 715 S.W.3d 451 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (05-15-2025).

Facts: Mother and Father had two Children together, and Mother had a third child from a prior marriage.

Mother had previously filed for divorce and alleged Father had choked her. However, she later recanted the allegation explaining Father convinced her she was remembering incorrectly due to pregnancy hormones.

In the current divorce proceeding, Mother stated she now believed Father had in fact choked her. Mother alleged Father had committed multiple acts of domestic violence against her, which Father denied. Just before the divorce was filed, while the family was getting ready for bed, Mother heard a loud slapping sound from the other room, where Father was changing the middle Child's diaper. When Mother entered the room, she found the child coughing, choking, and with welts on his bottom and blood on his lip. Father claimed that the Child had been kicking him, so Father popped him on the bottom. When Mother took the Child to the bathroom, the Child vomited fecal matter. The Child said it came from Father's finger. Mother called law enforcement. Father was arrested but released on bond. A police officer reported finding fecal matter in the bathtub.

Father was arrested for stalking, but he claimed he thought Mother had moved when he drove by her house. CPS investigated the fecal matter incident and determined abuse had occurred. Mother filed police reports regarding Father's abuse and sought a protective order. The trial court denied the protective order but ordered the Children be exchanged at a sheriff's office. At trial, Father introduced evidence that the DA's office had declined to investigate the abuse, and a grand jury no billed charges from the alleged stalking incident.

Mother did not want to exclude Father from the Children's lives or put him in jail, but she believed he needed anger management counseling. She testified that the parties had used the court-appointed communication phone app to coordinate visitation exchanges and discuss medications, appointments, and other matters regarding the Children. The trial court signed a final decree appointing Father as sole managing conservator. Mother appealed.

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

Opinion: Mother first argued the trial court abused its discretion in appointing Father as the Children's sole managing conservator when Father did not plead for that relief, and the issue was not tried by consent. Father responded that because conservatorship was at issue, he was not required to specifically plead for sole managing conservatorship.

Mother cited authority in which trial courts were reversed for appointing a party as sole managing conservator without pleading for that relief. However, the cited cases were all modification proceedings, and this was a divorce with no prior orders for the parties' Children. In an original suit for orders affecting the parent-child relationship asking for conservatorship orders, the court is tasked with appointing the parents as joint managing conservators or with appointing one parent as sole managing conservator based on the Children's best interest. To hold otherwise would contradict Texas Family Code Section 153.002's requirement for the court to always consider the best interest of the Child.

Mother next argued the trial court abused its discretion in appointing Father as the Children's sole managing conservator because the ruling was arbitrary and unreasonable in light of the evidence presented. Mother further argued that the trial court displayed bias in its conduct throughout trial.

An appellant may raise the issue of judicial bias for the first time on appeal if it is "of such nature and extent as to deny due process of law." A trial court may consider a party's recantation of violence and a grand jury's determination to no-bill a complaint when assessing that party's truthfulness. Yet, recantation of family violence is "not an uncommon phenomenon" in family law cases. And, a no-bill does not mean that an incident did not occur. Further, a party may raise the issue of bias for the first time on appeal—even if no recusal was sought—if the facts showing bias come from an extrajudicial source.

Here, the trial court explicitly found Mother was not a credible witness, she lacked the ability to give first priority to the welfare of the Children and reach decisions with Father, and the evidence did not establish Father had a history or pattern of family violence. The trial court based its conservatorship determination on Mother's recantation, her pursuit of criminal charges, and the grand jury's no bill. There was no other evidence that would have supported a finding that Mother did not give first priority to the Children.

"The record [was] indicative of troubling comments by the trial court." Generally, trial judges should not question witnesses due to the appearance of an abandonment of the role as a neutral and unbiased factfinder. Yet, in a bench trial, the court has

leeway to question witnesses so long as the questioning is relevant, and the judge's impartiality is not affected. Here, the trial court questioned every witness, and most questions centered on the investigation of abuse and Mother's truthfulness. The trial court's questions focused more on Mother's conduct in a prior case rather than whether she acted in the best interest of her Children. When a police investigator testified about Father being in possession of two handguns when he was arrested for stalking, the trial court said, "Do you want to know how many handguns are in my vehicle, Counsel?" Mother's attorney pointed out that the trial judge did not have a stalking offense or charge, and the court replied, "Not yet."

The trial court's remarks as a whole were more than mere "expressions of impatience, dissatisfaction, annoyance, and even anger." The judge actively inserted himself into the proceedings with the firearm comment and implicitly threatened about his potential for stalking. The trial judge engaged in a back-and-forth with the Child's therapist because the therapist referred to Father as a "perpetrator," but the judge believed that CPS's finding of violence was at best inconsistent with the DA's finding that no violence would be prosecuted. The judge said that the DA determined CPS "was wrong." While adversarial questioning alone would not rise to the level of bias, the questioning in combination with the firearms comment and potential stalking charges and repeated indications that accusations not leading to criminal charges are unfounded indicates the judge was not acting as an impartial factfinder. Further, the firearms comment by the judge was not relevant to the issue before the court and constituted an "extrajudicial source" showing the judge's bias against Mother.

Moreover, Mother argued the conduct was not a matter of recusal but went to the abuse of discretion and sufficiency of the evidence issues. The overwhelming weight of the evidence did not support the trial court's finding that Mother could not give first priority to the Children. Contrary to the findings, the evidence showed Mother and Father cooperating in many decisions regarding the Children despite the criminal complaints. Further, there was a plethora of evidence that Father committed family violence, including photos, audio recordings, and testimony from independent witnesses.

Noting that the judge had since retired, the appellate court remanded the proceeding for a new trial with the new factfinder to determine whether the parents should be appointed joint managing conservators or if one or the other should be appointed a sole managing conservator.

Trial Court Was Not Required To Follow Child-Custody Evaluator's Recommendation Because Other Evidence Supported Judgment.

157. ***In re O.L.P.***, 722 S.W.3d 481 (Tex. App.—San Antonio 2025, no pet.) (05-21-2025).

Facts: Father was in the military and was stationed in Germany. After Mother became pregnant, Father returned to Texas, while Mother stayed in Germany. Shortly after the Child was born, Mother returned to Texas to live. While Mother was vacationing in Germany with the Child, she and Father decided the marriage was insupportable. Mother initially refused to leave Germany but later returned with the Child. However, she then went back to Germany, leaving the Child in Father's care. The parties reached an agreement regarding visitation; however, at trial, the primary dispute was which parent would have the exclusive right to designate the Child's primary residence. The child-custody evaluator recommended appointing Mother. Father testified that the evaluator overlooked many issues regarding Mother's mental health. Father testified about the life he created for the Child and about Mother's poor decisions regarding the Child. Mother allegedly let the Child play with a gun. She began dating quickly after separating from Father and introduced the Child to her new boyfriend after only a month of dating. By the time of trial, Mother had a new baby with her boyfriend. Mother claimed Father did not assist her with caring for the Child while the three of them lived as a family. Mother testified about the Child's good relationships with extended family in Germany. The trial court noted that both parents were good parents and advised the parties that neither would have the relationship with the Child that they wanted if they refused to live in the same country. Ultimately, the court gave Father the exclusive right to designate the Child's primary residence unless Father was deployed for duty exceeding 21 days. Mother appealed.

Holding: Affirmed

Opinion: First, contrary to Mother's assertion, the trial court was not required to follow the child-custody evaluator's recommendation. Ample evidence existed to support the trial court's decision.

Mother argued that she was the sole provider since birth. However, although Mother was the primary caregiver during the Child's infancy, after Mother left for Germany, Father's role in the Child's life increased, and the evidence showed Father and the Child shared a strong bond. Mother argued that she had a large family in Germany. But, Father had a support system in Texas of the Child's godfather, the godfather's family, and other friends and neighbors. Despite Mother's assertion that the military made Father's life unstable, evidence showed Father had stabilized his life and job in Texas. Moreover, contrary to Mother's argument that the Child would spend an excessive amount of time in daycare, Father completed his workdays around 3:30 p.m. Overall, in her appellate complaint, Mother cited evidence that would support her argument but did not credit the evidence supporting the judgment. Because the appellate standard of review was abuse-of-discretion, and because evidence supported the judgment, the trial court did not abuse its discretion in giving Father the exclusive right to designate the Child's primary residence.

Mother Invited The "Error" Of Appointing The Parties As Joint Managing Conservators Despite Her Allegations Of Family Violence.

158. *In re Marriage of Fraker and Schubert*, No. 13-23-00340-CV, 2025 WL 2080605 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (07-24-2025).

Facts: The parties were married for less than two years and had one Child. Mother alleged family violence against Father. The divorce proceedings spanned five years. Mother initially denied Father access to the Child. Later, the parties agreed to Father having limited supervised possession. After a contested hearing, the Court granted Father limited unsupervised possession. The parties later agreed to a something close to a standard possession order for Father. A child-custody evaluator cited evidence that Mother was attempting to alienate the Child from Father and initially recommended joint managing conservatorship with Father having expanded standard visitation. However, in an updated report, the evaluator recommended that Father be the primary conservator, with Mother having an expanded standard visitation schedule. The trial court appointed the parties joint managing conservators, granted Father the exclusive right to designate the child's primary residence, and awarded Mother a standard possession order. Mother appealed with the aid of counsel.

Holding: Affirmed.

Opinion: In a single, multifarious issue, Mother asserted the trial court abused its discretion in giving Father the exclusive right to designate the Child's primary residence. Mother first complained about the appointment of the parties as joint managing conservators despite alleged evidence of family violence. However, Mother testified at trial that joint managing conservatorship would be appropriate and requested the same in her requested relief at trial. She, thus, invited the error and did not preserve the issue for appellate review.

Mother additionally challenged the evaluator's testimony. However, Mother's appellate complaints were not preserved because she did not raise objections at trial. Mother complained of the legal sufficiency of the evaluator's report because some of the underlying evidence regarding family violence was allegedly unfounded. Even if the court assumed this to be the case, the evaluator had many other concerns about Mother that shaped the evaluator's ultimate opinion, and some of those concerns were based on undisputed facts.

Mother's Aggressive Communication Behaviors And Inability To Effectively Coparent Supported Giving Father The Exclusive Right To Designate The Child's Primary Residence.

159. *Urbina v. Rangel*, No. 03-23-00449-CV, 2025 WL 2087207 (Tex. App.—Austin 2025, no pet.) (mem. op.) (07-25-2025).

Facts: Mother and Father had one Child during their relationship. The OAG initiated a SAPCR to appoint conservators and order child support. Father filed an original answer and counter-petition. At final trial, the court found Mother had twice violated the temporary orders regarding exchanges of information. The final order appointed the parents as joint managing conservators, gave Father the exclusive right to designate the Child's primary residence, ordered Mother to pay child support, and permanently enjoined either party from having the Child around unsecured firearms and from bringing firearms to exchanges of the Child. Mother appealed pro se, challenging all of these provisions except the appointment of the parties as joint managing conservators.

Holding: Affirmed in Part; Dismissed in Part.

Opinion: In temporary orders, Mother had the exclusive right to designate the Child's primary residence and received child support from Father. Mother argued the trial court "switched" custody based solely on email exchanges.

The Child's aunt testified to witnessing Mother slap the six-year-old Child in the face for lying and described the punishment as being disproportionate to the infraction. Mother sent threatening emails to the aunt when she learned of the aunt's intent to testify. Father also complained of Mother's heavy-handed discipline. Father described incidents of violence by Mother against him, including one that left him with a scar. Mother's aggressive communication behavior made coparenting difficult and increased legal fees in the SAPCR. Mother refused to turnover possession at least once and said she carried a gun with her to protect herself from Father.

Contrary to Mother's assertion, because this was an original SAPCR proceeding, the trial court was not required to find a material and substantial change before rendering a final order that differed from the temporary order. At a prior hearing, the court warned Mother that she needed to change her communication style because it affected her ability to coparent and would negatively impact the Child's wellbeing. Mother appeared to be unwilling to make positive changes. The trial court did not abuse its discretion in "switching" custody.

Mother challenged the firearm restrictions as violating her Second Amendment rights. However, the U.S. Supreme Court has already found such restrictions to be constitutional. *United States v. Rahimi*, 602 U.S. 680 (2024).

Mother further challenged the calculation of child support because the low-income guidelines should have been applied to her. Mother testified that she made $15 per hour and worked a maximum of 20 hours per work because that was all her job allowed. On cross-examination, she acknowledged to having an associate's and bachelor's degree and could work full time. Mother testified she would rather be with her daughter. The trial court could have determined Mother was intentionally underemployed.

Mother additionally challenged an award of attorney's fees to Father. However, the evidence supported the award, and the Family Code permits the award of fees in a SAPCR.

Evidence Supported Conservatorship Orders.

160. *Parson v. Parson*, No. 11-24-00104-CV, 2025 WL 2933613 (Tex. App.—Eastland 2025, no pet.) (mem. op.) (10-16-2025).

Facts: The parents were married for only a couple of years before filing for divorce. Both had histories of drug use but had tested negative consistently during the divorce proceedings. Father had a history of alcohol abuse but had recently been attending Alcoholics Anonymous meetings. Mother moved with the Child to Mississippi without notice shortly before the divorce was initiated in Texas. Both accused the other of having a messy home while claiming their own home was clean. Father had been discharged from the military during the marriage after a positive test for cocaine. Mother asserted that Father and his family used racist slurs towards her because she was Black. Mother admitted to attempting to commit suicide in her teens and other acts of self-harm. She asserted she had not cut herself in years. Both parents relied on their respective parents for assistance in caring for the Child. Mother's parents were Jehovah Witnesses and spent hours with the Child at church, where there was no childcare. Father's father had a felony DWI. Mother had no driver's license but sometimes drove the family when Father was intoxicated.

The final decree gave Father the exclusive right to designate the Child's primary residence and issued findings stating that it had considered Mother's abrupt move, the work schedules of each parent, family support, parental cooperation, and living arrangements. It specifically noted that race and religion did not factor into the decision. Mother appealed.

Holding: Affirmed.

Opinion: Mother challenged the Court's decision to give Father the exclusive right to designate the Child's primary residence. Although there was conflicting evidence regarding the varying faults of the parents, the trial court's decision was not an abuse of discretion.

Mother next argued the trial court improperly considered her parents' religious faith when making a conservatorship determination. During trial, Mother did not object to any testimony regarding her family's religious views and practices. Further, there was no indication the trial court relied on the religious views or practices of either party in reaching its decision.

Mother's Argumentative Behavior Upon Hearing Court's Oral Ruling Supported Changing The Ruling From Joint Managing Conservatorship To Father Having Sole Managing Conservatorship.

161. *Gleason v. Heidemeyer*, No. 03-25-00100-CV, 2025 WL 2989176 (Tex. App.—Austin 2025, no pet.) (mem. op.) (10-24-2025).

Facts: Father filed a petition for divorce and request for temporary restraining order with an attached affidavit describing an assault by Mother against him that resulted in criminal charges against Mother. Father described other incidents, including Mother attempting to take the Children out of daycare, threatening to take the Children and not return them, and sending Father's family threating text messages. Throughout the divorce proceedings, Mother was combative and uncooperative. She failed to abide by the rules relating to her supervised access with the Children and did not attend many of her scheduled visitations. The guardian ad litem was unsure whether Mother did not understand the court orders or whether Mother's behavior was indicative of mental-health issues. The guardian ad litem recommended Father be given sole managing conservatorship and Mother have a step-up possession schedule.

At the trial's conclusion, the court stated it was appointing the parents joint managing conservators but advised Mother she had a lot of work to do to repair her relationship with her Children. Mother initially stated she understood, but as the details of the ruling were set out, Mother became argumentative with the court. After stating an intention not to communicate with Father, she left the courtroom. The trial court then decided to grant Father's request for sole managing conservatorship. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court abused its discretion in naming Father as the Children's sole managing conservator, requiring Mother to complete psychological testing, and requiring Mother's access to the Children be supervised.

Acknowledging the Family Code's requirement to consider whether family violence occurred, Mother asserted that her arrest for assault was a "minor incident" and implied that it should not have been considered because Father paid the bond for her release, and she continued to share parenting time with Father after the assault. However, Father disputed Mother's claim about shared parenting time. Additionally, in his supporting affidavit attached to his pleading, Father described the "minor incident" that involved the police coming to his house twice, Mother cracking the glass of Father's front door, and Mother throwing lawn decorations at Father causing him to bleed. Mother attempted to physically attack Father's sister, and the Children were at Father's home during the event. Further, Father cited another incident of family violence in which Mother left bite marks, scratch marks, and a bruise on the back of Father's head. Father noted there were "quite a few" other incidents of violence towards him.

Additionally, Mother failed to regularly exercise her periods of possession during the case, and she failed to follow the rules about visitation, including the requirements to bring a diaper bag and show up on time. Mother was unable to communicate effectively with Father and refused to consistently use AppClose as instructed by the court. The guardian ad litem stated that she usually recommended joint managing conservatorship but recommended sole managing conservatorship in this case because of the communication difficulties between the parents.

Next, Mother complained of the court changing its ruling about conservatorship after Mother became upset and left the courtroom. However, the trial court did not abuse its discretion by viewing Mother's subsequent argumentativeness with the trial court, followed by her abrupt departure from the courtroom before the end of the proceedings, as indicative of her inability to be an effective joint managing conservator.

With respect to the psychological evaluation, one was ordered during the proceedings, but Mother never complied. Evidence suggested Mother's behavior could be indicative of mental-health issues. Thus, the court did not err in requiring Mother to complete an evaluation.

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

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

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

Holding: Affirmed.

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

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

Finally, Mother challenged the just and right division of the community estate. Mother's argument was based on her allegations that Father hid cash. Mother argued that without evidence of the amount of cash he hid, the court could not make a just and right division. However, the trial court found most of her testimony was unbelievable. Based on the information before the court, the division was approximately 52/48 in Father's favor. Evidence showed Mother made false police and CPS reports against Father causing unnecessary and expensive testing. Father paid nearly all the litigation and professional costs. Father paid support for Mother during the divorce and provided health insurance for himself and the Children. Mother did not show the division was so unjust and unfair as to constitute an abuse of discretion.

SAPCR: Possession

Evidence Sufficient To Support Award To Mother Of Marital Residence, Granting Father A Non-Expanded Standard Possession Order, And Ordering Father To Pay Maximum Guideline Child Support.

163. *In re Marriage of Peralta*, No. 05-23-00217-CV, 2025 WL 251339 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (01-21-2025).

Facts: A divorce decree awarded Mother the marital residence, appointed the parties joint managing conservators of their two Children, granted Mother the exclusive right to designate the Children's primary residence, awarded Father a non-expanded standard possession order, and ordered Father to pay maximum guideline monthly child support to Mother. Father appealed.

Holding: Affirmed.

Opinion: Father asserted the trial court erred in not granting him expanded standard possession as that was presumptively in the best interest of the Children. Contrary to Father's assertion, the trial court was not required to make a written finding before deviating from the Family Code's standard possession order. Additionally, the evidence supported granting Father less than the expanded standard possession order. After Father's periods of possession, the Children were sleepy, malnourished, and sick with fever, headaches, body aches, and a stomach virus, resulting in poor performances at school. Father failed to take the Children to soccer practices and did not respond to Mother's communications regarding the Children. Additionally, there was evidence of family violence by Father, although Mother did not make an allegation of that in her pleadings or seek that his periods of possession be supervised.

Father further challenged the amount of his child-support obligation because it failed to consider his business expenses when computing his net resources. Mother produced bank statements showing Father's income from two jewelry stores, and she testified there were additional cash sales that were not accounted for in the bank statements. The trial court was free to take Mother's evidence as more credible than Father's.

Father finally challenged the award of the marital residence to Mother. Father asserted Mother and her sister purchased the home together with the intent that Mother and Father would own half, and Mother's sister and husband would own half. The community estate included many assets. Each party was awarded a jewelry store, with Father receiving the more profitable one. Further, there was evidence that Father disposed of assets during the divorce and refused to obey court orders requiring the return of those assets.

Father Not Entitled To Greater Possession Time Merely Because Jury Found He Should Have The Exclusive Right To Designate The Children's Primary Residence.

164. ***Gopalan v. Marsh***, 706 S.W.3d 650 (Tex. App.—Austin 2025, pet. pending) (mem. op.) (01-23-2025).

Facts: Mother and Father purchased a residence about a year after they married, and the source of funds for that purchase was disputed during their divorce proceedings. After an 8-day jury trial, the jury determined Father should have the exclusive right to designate the primary residence of the parties' two Children and that the residence was property of mixed character, with each party and the community estate having a percent interest. Subsequently, the trial court granted Mother's motion for JNOV, finding Father failed to overcome the community property presumption and awarded the residence to Mother. The final order appointed the parties joint managing conservators and gave Father the exclusive right to designate the Children's primary residence, but it gave many other exclusive rights to Mother and imposed a bond on Father of $250,000 before he could travel internationally with the Children. The court also ordered Father to pay Mother monthly child support and gave Father a possession order awarding him less time than a standard possession order would. Father's possession time would increase upon completion of joint therapy. Father appealed.

Holding: Affirmed.

Majority Opinion: (C.J. Byrne, J. Theofanis)

Father argued that the trial court's order contravened the jury verdict finding he should have the exclusive right to designate the Children's primary residence by failing to make him the "primary" parent and by not awarding him more possession time than that awarded to Mother. However, nothing in the Family Code defines "primary" parent, nothing ties the right to determine a child's primary residence to possession time, and the Code prohibits a jury from determining possession time. Further, the evidence, reviewed under an abuse-of-discretion standard, supported the trial court's possession order. For example, Father refused to take one of the Children to summer activities and was reportedly aggressive with the Child about that decision. The trial court's order was consistent with the verdict and the Family Code.

Similarly, Father argued the trial court erred in—despite the jury's finding he should be the "primary" conservator—granting Mother the exclusive rights to consent to medical and psychological treatment, educational decisions, and to apply and keep the Children's passports. Although Father raised constitutionality challenges in his brief, a decree granting certain exclusive rights to one fit parent is not unconstitutional and is permitted by the Family Code. Evidence here showed the parents had difficulty making decisions together, supporting the court's decision to give one person those exclusive rights.

Father additionally challenged the imposition that he post a bond before traveling internationally with the Children. Father had strong ties with India, which country is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Father argued the trial court's reliance on this fact was insensitive, given his presence in the U.S. for the prior 24 years. He challenged the trial court's finding as one evoking racial stereotypes. Father further argued that the amount of the bond was exorbitant. The Family Code provides a list of factors to consider when there may be risk of international abduction, including whether a parent has strong cultural ties to a country that is not a member of the Hague. The Code permits requiring a bond to offset the costs of recovering the child. Further, Mother testified that Father had threatened to take the Children away and that he lacked sufficient financial reasons to stay in the U.S. Despite the large amount of the bond, $250,000 was less than the $1.12 million Father claimed he had already incurred in litigating the current suit. Moreover, Father earned an annual income exceeding $500,000. Finally, the bond did not prohibit Father from travelling with the Children, and the state had a compelling interesting in protecting the Children from international abduction. The bond was not imposed because Father was Indian but because he had threatened to take the Children to India.

Father next complained of the trial court granting him the exclusive right to designate the Children's primary residence while also requiring he pay monthly child support to Mother. Father earned roughly 12 times the amount Mother earned annually, and her monthly expenses exceeded her monthly income. Based on the record, the trial court did not err in ordering Father to pay child support to Mother.

Father further complained that the trial court erred in its characterization of a residence. The jury found Father had a 5.95% interest in the residence, but the trial court granted a JNOV finding Father failed to meet the standard for clear and convincing evidence to overcome the community-property presumption. Father claimed at trial to have used funds from a pre-marriage 401(k) to make the down-payment on the residence. However, Father was unable to obtain statements dating back to the relevant time period. Additionally, Father did not establish that his 401(k) had not commingled with community funds before the purchase of the residence. Without any documentary evidence to support Father's testimony, his testimony amounted to no more than a scintilla of evidence, and the record was legally insufficient to support the jury's separate-property finding.

Concurring and Dissenting Opinion: (J. Triana)

The jury's verdict should carry with it implications for the amount of possession time entitled to a person with the exclusive right to designate a child's primary residence. By definition, a primary residence is the principal, or most important, residence. For a residence to be the most important, the child should live there at least half, if not more, of the time. This would also be consistent with the IRS's definitions relating to deductions. If the parent with the right to determine the primary residence does not get to choose where the child lives at least half of the time, then what right have they been given? The right to choose where the parent who has possession for most of the time lives? That would be an absurd result.

Additionally, the majority incorrectly applied the no-evidence standard to Father's characterization issue. The appellate court was limited to reviewing only the evidence supporting the verdict and was required to disregard all evidence to the contrary. Father's testimony was uncontroverted, and the trial court erred in ignoring the jury's determination.

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.

165. *In re S.C.T.*, No. 09-23-00044-CV, 2025 WL 635082 (Tex. App.—Beaumont 2025, pet. denied) (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.

Husband Could Not Challenge Valuations On Appeal Without Offering Competing Values At Trial; Cash Bond Requirement Before International Travel To Non-Hague Country Reasonable Given Risk Of International Abduction.

166. *In re Marriage of Dajani and Qaimari*, No. 05-24-00335-CV, 2025 WL 875374 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (03-20-2025).

Facts: After a bench trial in a divorce with Children, the court awarded Husband property in Jordan, required both parties to post a bond seven days before travelling to any country that is not a U.S. Hague Convention Treaty Partner, and awarded Husband a large sum of cash in the division of the community estate. Husband appealed.

Holding: Affirmed.

Opinion: Husband first challenged the award of the Jordan property without evidence of its value and for awarding him cash without evidence the cash existed. Husband complained that the only evidence was provided by Wife, was out of date, and was inaccurate. The party complaining of the division has the burden to show the division was so unjust and unfair as to constitute an abuse of discretion. A party who does not provide any value cannot, on appeal, complain of the lack of information in dividing the community estate. Wife offered a valuation of the property in Jordan, and although Husband contested the valuation, he offered no alternative value. Wife offered a photograph of the cash awarded to Husband and testified that Husband kept it in a backpack to which she was not allowed access. The trial court was free to take Wife's testimony and evidence as more credible than Husband's.

Husband additionally challenged the bond requirement associated with international travel. If credible evidence indicates a potential risk of the international abduction of a child, the court must determine whether it is necessary to take measures to protect the Child. Here, there was evidence that both parties had strong connections to Jordan, which was not a party to the Hague. Both parties traveled there regularly. Evidence showed a Jordian court was unlikely to recognize a U.S. court order regarding the Children and that women did not have the same rights as they would in the U.S. Further, both parties had taken the Children out of state without notice to the other party and that custody orders were not always adhered to. Father argued the bond amount of $500,000 was arbitrary but cited no caselaw to support an assertion that this amount was excessive or outside the norms in this type of situation.

Week-On-Week-Off Visitation Schedule Did Not Contravene Jury Verdict Giving Father The Exclusive Right To Designate The Children's Primary Residence.

167. *Puligundla v. Madipuri*, No. 14-23-00743-CV, 2025 WL 1232344 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (04-29-2025).

Facts: Although the spouses had agreed to some issues before trial, their divorce jury trial spanned 8 days. Both parties alleged fraud, Father sought a divorce on the ground of adultery, and Mother sought a divorce on the ground of cruelty. The jury found Mother committed adultery, Father had not committed cruelty, and both parties committed fraud on the community. The jury further concluded Father should have the exclusive right to determine the Children's primary residence. After a final decree was signed, Father appealed.

Holding: Affirmed.

Opinion: Father challenged the trial court's week-on-week-off possession order because it contravened the jury's determination that he have the exclusive right to designate the Children's primary residence. Father argued the order effectively established two residences for the Children, rendering his exclusive right as having no practical effect.

The appellate court agreed that there can only be one "primary" residence; however, it disagreed with Father's contention that the judgment contravened the verdict. Father relied on a Corpus Christi case that found a week-on-week-off visitation schedule for parents who lived 240 miles away from each other effectively established two residences and contravened the jury's verdict. Here, however, the parties lived approximately 4 miles from each other. The Houston court chose to follow Dallas's precedent in finding no requirement in the Family Code requires one joint managing conservator to be given more possession time than the other because of a particular jury finding.

Next, contrary to Father's assertion the evidence was sufficient to support the trial court's determination that a 50/50 possession schedule was in the Children's best interest. To the extent that the parties offered conflicting evidence, the trial court was in the best position to resolve those conflicts.

Finally, Father argued the trial court erred in its division of the marital estate. The property division need not be equal, but it must be equitable. The court may consider the *Murff* factors in reaching this determination. The court here considered the parties' fraud and the earning power of the spouses. Although Father asserted Mother refused to work, the evidence showed that she had forfeited work to care for the Children. Further, the court was not required to consider or give weight to Mother's adultery.

Evidence Of Father's Negative Parenting Tactics Supported Deviating From The Parties Agreed Parenting Plan Temporarily Followed Pending Trial.

168. *Zachery v. Zachery*, No. 04-24-00531-CV, 2025 WL 2408550 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (08-20-2025).

Facts: Mother and Father were married for twenty years and had three minor Children at the time of trial. After a bench trial, the court granted the divorce on the ground of cruelty, named both parents joint managing conservators, and gave Mother many exclusive rights to the Children. Father was granted a standard possession schedule for two of the Children, but access to the oldest teenage daughter was dependent on Father completing reunification therapy. Father appealed, pro se.

Holding: Affirmed.

Opinion: Father first argued that the trial court erred in granting Mother certain exclusive rights regarding the care of the Children. The trial court interviewed the Children, but no record was made by agreement of the parties. Additionally, ample testimony showed Father's parenting tactics negatively affected his relationship with three of his daughters, two of whom were adults, leading to him having never met two of his grandchildren. His oldest minor daughter attended therapy with Father but had refused to have overnight visitation with Father for the year leading up to trial. At trial, Mother testified that the previously agreed-to parenting plan was no longer working and was not in the best interest of the Children. The trial court, as factfinder, did not abuse its discretion in determining Mother was the more credible witness and in making orders for the Children accordingly.

Father next argued the trial court erred in awarding Wife a disproportionate share of the community estate. The divorce was granted on the ground of Husband's cruelty. Husband's fault in the breakup of the marriage, in addition to the other *Murff* factors could have been considered in the court's just and right division. Regardless, contrary to Husband's assertion, the decree appeared to divide the assets relatively equally between the parties.

Husband's Agreement As To Form Waived Appellate Complaints; However, Decree's Reference To "Attached" Possession Schedule That Was Not Actually Attached Reversed For Correction Of That Mistake.

169. *In re Marriage of Adeyemo*, No. 05-24-00405-CV, 2025 WL 2452284 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (08-25-2025).

Facts: Husband and Wife were married for about 15 years and had two Children. Wife obtained a protective order against Husband and filed for divorce a month later, seeking a divorce on the grounds of insupportability and cruelty. Husband countersued for a divorce on no-fault grounds. After a bench trial, Wife filed a motion to sign her proposed decree. Husband objected to provisions in her proposed decree relating to the grounds for divorce and insurance provisions for the Children. He did not

raise any objections regarding the property division, the requirement his access to the Children be supervised, or his child-support obligation.

The signed decree referenced an "attached" supervised visitation order for Husband, but no possession schedule was attached. Both parties signed the decree as "approved and consented to as to both form and substance." Husband appealed.

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

Opinion: Husband challenged a money judgment to Wife as part of the property division and the amount of his child support obligation. In the absence of a record from the motion to enter hearing, there was no evidence to controvert Husband's signature showing he approved the decree as to substance and, thus, waived his right to appeal.

Husband also challenged the supervised visitation order because no order was attached to the decree. In the absence of the attachment, Husband argued he would be unable to enforce his rights, which effectively denied him all access to the Children. Because the parties approved and consented to the decree as to form and substance, they agreed to Husband having supervised visitation. Wife admitted in her appellee's brief that her attorney neglected to present a drafted order for supervised visitation at the hearing on the motion to sign. "Even an agreed decree may be reformed for mutual mistake." Due to that mutual mistake, Husband did not waive his appellate issue. Further, the trial court found that it would be in the best interest of the Children for Father to have supervised access at the county visitation center.

Wife argued that Husband was thwarting the entry of the supervised visitation order, but the record did not reflect Wife attempted to present the order to the trial court, with or without Husband's consent. Husband's consent to the order was not required so long as the order reflected the trial court's ruling. The trial court abused its discretion in entering a decree that effectively denied Husband all access to the Children when the record revealed that was not the intended result.

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.

170. *In re J.T.L.*, No. 14-23-00741-CV, 2025 WL 409044 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (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 job 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.

Without Finding Of Net Resources Or Stated Reasons For Deviating From Guidelines, Above-Guideline Child Support Reversed.

171. *Cash v. Rodriguez*, No. 03-23-00270-CV, 2025 WL 920382 (Tex. App.—Austin 2025, no pet.) (mem. op.) (03-27-2025).

Facts: About one month after the entry of an agreed order in a SAPCR, Mother filed a petition to modify, asserting she was extremely concerned about the safety and well-being of the Children; Father "continue[d] to let a deviant" around the Children; and despite several outcries to therapists, doctors, and other public officials, Mother's concerns were being ignored. Father filed a counterpetition seeking sole managing conservatorship asserting Mother was engaging in parental alienation and coaching

the Children to make false accusations about Father. After a trial, at which experts testified, the Court granted Father's requested relief. Mother appealed.

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

Opinion: The trial court stated its basis for its conservatorship determination was Mother's attempts to brainwash the Children against Father and his family, interference with the Children's therapy, and inability to provide a stable home. Mother did not challenge these findings on appeal but instead cited testimony that would have supported her requested relief. Mother did not show how the trial court incorrectly applied the law. Because there was some evidence to support the judgment, there was no abuse of discretion. Similarly, there was sufficient evidence to support the requirement that Mother's visitation be supervised, that she complete a psychological evaluation, and that she attend a high-conflict parenting class.

However, the court abused its discretion in ordering Mother to pay $400 a month in child support because that amount exceeded 25% of her net available resources. The court found that Mother earned $1574.63 a month and did not pay rent. Mother offered evidence that her net monthly resources after social security taxes and Medicare were $1385.25. The court made no finding of Mother's "net resources." Assuming the court found that deviation from guidelines was appropriate, it did not make the requisite findings to support that deviation.

UIFSA Required Court To Permit Mother To Testify Electronically At Child-Support Trial Because Mother Lived In Hawaii.

172. *In re A.M.G.J.*, No. 13-24-00084-CV, 2025 WL 1186320 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (04-24-2025).

Facts: Mother and Father dated in Texas, and Mother became pregnant. Although they lived together briefly, Mother moved to Hawaii before the Child was born. A Hawaiian court gave Mother primary custody and ordered Father to pay child support. Father appealed that order, and the Hawaiian appellate court affirmed the custody portion of the order but reversed the finding of paternity and support provisions because the trial court lacked personal jurisdiction over Father. More than 5 years later, Father initiated a suit in Texas to establish paternity and support provisions. Mother filed a counterpetition seeking maximum guideline support from Father.

Before trial commenced, the court denied Mother's motion to continue "based on lack of discovery." The court additionally denied her request to appear remotely because she failed to give prior notice of the request pursuant to Texas Rule of Civil Procedure 21(d). At the trial conclusion, the court ordered Father to pay maximum guideline support and denied Mother's request for support in excess of the guidelines. Mother appealed.

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

Opinion: Mother first argued that the trial court erred in refusing to permit her to appear remotely. Mother argued the court incorrectly relied on Rule 21(d), and her remote appearance was permitted under the Uniform Interstate Family Support Act ("UIFSA"). Father responded claiming that Mother waived this argument by failing to raise it to the trial court.

To preserve error, an appellant must make a timely, specific objection, and obtain an adverse ruling. "Magic words" are not required. Reference to a rule or statute help to clarify an objection, but an objection is not defective merely because it does not cite specific legal authority. Before trial commenced, in support of her motion for continuance, Mother's counsel explained that Mother and the Child lived in Hawaii and the prior order was entered there. After the denial of the continuance, Mother's counsel asked that Mother be permitted to testify remotely because she lived in Hawaii. Mother's counsel re-urged the request during the cross examination of Father because Mother needed to testify about her employment status and income. These objections were sufficient to preserve Mother's complaint for appeal.

Under UIFSA, a trial court must allow "a party or witness residing outside" of Texas "to testify … by telephone, audiovisual means, or other electronic means." Here, it was undisputed that Mother submitted to Texas's jurisdiction in Texas by filing a counterpetition and that she lived outside of Texas. UIFSA applied, and the trial court erred in refusing to permit Mother to testify electronically.

The provision of the order adjudicating Father's paternity was affirmed.

Father's Monthly Expenses Could Not Serve As Basis For Assessing His Net Available Resources For Child Support.

173. *Mitchell v. Young*, No. 02-24-00292-CV, 2025 WL 1909327 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (07-10-2025).

Facts: Father and Mother married and had a Child the following year. Father was 34 years older than Mother and had multiple advanced degrees, including being a licensed medical doctor and licensed attorney. Mother was a nurse. After about 5 years of marriage and 40 years practicing medicine, Father lost his job as a physician and did not regain employment. Shortly after that, Mother filed for divorce, and Father counter-petitioned.

At a bench trial, the appointed counselor recommended appointing a professional to be a tiebreaker due to a power struggle between the parents and inability to effectively coparent. Father had a history of diagnosing, treating, and prescribing medicine for the Child without consulting Mother or the Child's pediatrician.

A CPA testified as to Father's resources and expenses. Despite having multiple degrees, including a law license, Father claimed to not be able to find employment. He worked odd jobs, including taking a personal injury case and treating medical patients out of his home, but claimed to have no income.

The court appointed the parties joint managing conservators and entered a 50/50 possession schedule. Mother was granted the exclusive rights to designate the Child's primary residence and to make medical and educational decisions. Father was ordered to pay $1250 a month in child support. Father appealed.

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

Opinion: Father asserted there was insufficient evidence to support the trial court's finding of his net resources when assessing his child support obligation. The trial court determined that because Father's net expenses were $7670.09, his monthly resources were $7670.09. Although the CPA testified that Father had $598,000 in a number of bank accounts and six real properties, there was no evidence regarding Father's liquidity, the valuations of his businesses, or the dividends or withdrawals from his various bank accounts. Thus, there was nothing in the record supporting an implied finding based on Father's assets. There was no evidence showing how Father paid his expenses. "Was he paying his expenses from interest and dividends or from return of principal or capital?" "Was Father receiving funds from retirement accounts, withdrawing from savings, obtaining dividends from investment or bank accounts, or existing on credit cards and loans?" Mother offered no evidence of Father's resources. The trial court erred in equating expenses to resources.

Mother argued that the evidence supported an intentional-unemployment finding, but even if true, that alone did not provide any evidentiary basis for assigning a number to Father's net available resources.

Father additionally complained of the court granting Mother exclusive rights. The evidence established that the parents could not reach agreements on many important issues, including education and medical decisions. The Family Code tasked the court with assigning rights and duties. Father did not establish any abuse of discretion.

No Evidence Supported Conditions And Restrictions On Father Obtaining Unsupervised Possession Of The Children Notwithstanding No Record Being Made Of Interviews In Chambers With The Children.

174. *Gillette v. Gillette*, No. 03-24-00485-CV, 2025 WL 1942949 (Tex. App.—Austin 2025, no pet.) (mem. op.) (07-16-2025).

Facts: During their divorce, Mother and Father could not agree on a possession schedule for their teenage Children. Father had not had a job in years, and Mother was the primary provider and caregiver. The Children's relationship with Father was strained, but it had gotten better during the divorce. Mother believed that was because the temporary orders required Father to set aside time for the Children. Mother advised the court that the Children did not oppose seeing Father but did not want a standard possession schedule. The court agreed to interview the Children and asked the parties if they wanted to make a record of the interviews. The parties declined a record. Ultimately, the court signed a final order giving Father a less-than-standard possession schedule and required him to meet certain requirements before having unsupervised possession of the Children. Father appealed.

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

Opinion: Father argued Mother's pleadings did not put him on notice that she sought less than standard possession. The parties could not agree on a possession schedule. Father's pleading stated a belief that the parents would agree to a possession order, but if they could not agree, he asked the court to make orders for possession. The pleadings were sufficient to put Father on notice that he would receive a possession schedule that was determined to be in the Children's best interest.

Father additionally argued that no evidence supported supervised visits until he completed anger management and battering intervention classes, or to give the Children complete discretion as to his possession time. The parties waived the making of a record of the court's interviews with the Children. Thus, to some extent the appellate court was required to presume the information gathered in those interviews supported the final order. However, no legal authority supports taking the child's desires to the extreme of giving the child complete discretion over possession. Mother testified that the Children were comfortable with seeing Father two weekends a month and their relationship with Father had improved. Mother did not testify that the Children had been or would be in danger with Father, and she agreed to appointing him a joint managing conservator. There was no evidence of a history or pattern of neglect or physical abuse of Mother or the Children. The trial court abused its discretion in placing the restrictions on Father's periods of possession.

Evidence Of Gross Receipts Received By Father's Business Insufficient To Support Order Setting Maximum Guideline Child Support.

175. *Ly v. Nguyen*, No. 03-23-00535-CV, 2025 WL 2677889 (Tex. App.—Austin 2025, no pet.) (mem. op.) (09-19-2025).

Facts: At the trial in their divorce, Father and Mother offered vastly different testimony regarding debts and the purchase of real property, and each presented an expert witness regarding valuation of certain real property. Ultimately, in addition to dividing property, the court appointed the parties joint managing conservators of their Child, gave Mother the exclusive right to designate the Child's primary residence, and ordered Father to pay monthly child support. Father appealed.

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

Opinion: Although Father requested findings of fact, his request was filed 4 days late. Thus, the trial court did not abuse its discretion in not issuing findings. Additionally, Father's motion for new trial was denied by operation of law on the 75th day after the decree was signed. Thus, the trial court did not err in "failing" to rule on his motion for new trial.

Father challenged the trial court's alleged failure to consider the fact that certain real property was located in a floodplain in its determination of the value of that property. Both parties offered competing evidence of value. The differences in valuation could have been due to market fluctuations, the dates of evaluations, the valuation or lack thereof of an attached garage, the floodplain issue, the fact that the property's basement had once flooded, and the disputed mortgage balance. Due to the lack of findings of fact and the existence of multiple factors that could have influenced the trial court's valuation, the appellate court could not say that the trial court failed to consider the effect of the property's location in the floodplain.

Father complained the trial court failed to account for all of the parties' debts. However, only Mother's claimed debts were undisputed. Mother claimed no knowledge of many of the debts identified by Father. The trial court may have decided that neither party proved the amount of marital debt owed. It may have determined that it was just and right to accord debts to Father that Mother did not know existed. It may have decided to allocate more debts to Father than to Mother because Father was awarded the business, and much of the debt was business related. It may have concluded that the award of the business and other assets balanced any imbalance in the distribution of debts. Father failed to show that the overall division was so unjust and unfair as to constitute an abuse of discretion.

Finally, Father challenged the amount of his child support obligation. Father was ordered to pay maximum guideline support, but he asserted the evidence was insufficient to support the court's calculation of his net resources. Father offered gross receipts from the prior four years totaling between $150k and $250k; however, he asserted his net profits ranged from $13k to 22k. Mother claimed Father's annual wages exceeded $200k before he started working for himself. Although Father's gross receipts always exceeded $150k, no evidence challenged Father's claimed expenses he used to calculate his net profits. Mother's testimony that Father could regain his former employment was speculative and did not account for offsets that would be incurred if he shut down his current business. The record was insufficient to support the trial court's calculation of Father's net resources but did not provide sufficient evidence for the appellate court to render a new child support obligation. Thus, the issue was remanded for further proceedings.

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

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

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

Holding: Affirmed.

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

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

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

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

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

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

Holding: Affirmed in Part; Reversed in Part.

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

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

Finally, Husband complained of the order's requirement that he pay all ad valorem taxes on real property awarded to Wife. In the allocation of debts section, Husband was ordered to pay all taxes, etc. on property awarded to Wife. However, the exact same provision later provided that Wife was ordered to pay all taxes awarded to Wife. The conflicting language created an ambiguity regarding who was required to pay past-due ad valorem taxes and was remanded for clarification.

SAPCR: MODIFICATION

Parties' Inability To Communicate Or Coparent Supported Granting Mother Exclusive Rights To Make Decisions And Changing Possession Schedule From 50/50 To A Modified Standard Possession Schedule.

178. *In re B.M.*, No. 02-24-00035-CV, 2025 WL 211330 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (01-16-2025).

Facts: A divorce decree appointed the parents joint managing conservators and granted them a week-on/week-off possession schedule. Because Father was interfering with her periods of possession and not co-parenting well, Mother sought to modify the order to obtain the exclusive right to enroll the Child in school and to change Father's periods of possession to an expanded standard possession order. Father counter-petitioned, also seeking to modify conservatorship and possession. After a final hearing, the trial court granted Mother exclusive rights, including decisions about the Child's medical and education, and awarded Father a modified standard possession order. The trial court denied Father's motion for reconsideration and his request to reopen the evidence. Father appealed.

Holding: Affirmed.

Opinion: Father argued the modification of possession was not tied to changed circumstances and challenged the finding of fact regarding the parties' lack of communication and inability to cooperate or co-parent because Father alleged those issues existed at the time of divorce and were not a changed circumstance. However, Father failed to challenge the other findings that support changing the possession schedule, including Father's failure to abide by court orders regarding electronic communication and his disparaging comments to Mother in front of the Child.

Father next argued that because he was a pilot, a standard possession order was inappropriate and unworkable and asserted that the trial court erred in not maintaining the 50/50 possession schedule. However, Father had asked in his counter-petition that Mother have expanded standard possession. Despite his pleading, at trial, Father asked for a 50/50 schedule and offered no explanation for the discrepancy. Moreover, Father failed to put on any evidence regarding any unworkability during trial. On appeal, Father failed to acknowledge extensive evidence to support the modification, including: Mother was in counseling, but Father was not; the Child's therapist testified that the parents' disputes were causing the Child stress; Father discussed litigation with the Child; Father refused to take the Child to events during his periods of possession; Mother believed a more stable schedule would be in the Child's best interest; a psychological evaluation showed Father had anger and irritability issues and was abusive; and Father failed to tell Mother about camps in which he enrolled the Child and failed to respond to her on OurFamilyWizard.

Father further argued about the court granting Mother exclusive rights. However, Father again ignored evidence to support the findings and did not challenge all of the findings of fact that supported the order.

Finally, Father complained of the court's denial of his motion to reopen the evidence. Father sought to put on additional evidence to show how the standard possession order was unworkable and that he had started individual counseling. The trial court permitted Father to make an offer of proof. Father was on notice of the issues being tried, and the trial court could have determined that Father had not exercised due diligence in starting counseling. The psychological evaluation recommended counseling, and Father failed to seek it until nearly a year later.

Child's Therapist's Testimony Regarding Reports Of Abuse From Child Sufficient To Support Finding Mother Engaged In A History Or Pattern Of Abuse.

179. *Hoffman v. Hoffman*, No. 03-24-00141-CV, 2025 WL 270613 (Tex. App.—Austin 2025, no pet.) (mem. op.) (01-23-2025).

Facts: A final order had appointed Mother and Father as joint managing conservators of the Child, with Mother having the exclusive right to designate the Child's primary residence without a geographical restriction. After the Child was transported to the hospital for injuries in Colorado while in Mother's possession, a CPS case was initiated there. Mother and Father signed a Rule 11 agreement that Father would have possession of the Child until the CPS case was resolved. Father's understanding was that the parties would return to court at that time, but Mother believed the Child would be returned to her after the CPS case concluded. Colorado dismissed the case, and Father stated he understood the basis for the dismissal to be the Child's placement with him.

After the dismissal, Mother arranged for a visitation with the Child, at which Father sent his girlfriend to supervise. Mother attempted to place the Child in her car to go to the park, and Father's girlfriend resisted, believing that a supervision requirement was still in place. The police were called, and the girlfriend recorded the incident. The Child was heard to be screaming to be let out of Mother's car.

At a final trial in a modification suit, the video of the above incident was admitted. Additionally, the Child's therapist testified that the Child was extremely fearful of being kidnapped by Mother and reported being punched and slapped often by Mother. The court granted Father the exclusive right to designate the Child's primary residence and granted Mother an extremely limited possession order. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court erred in finding she had engaged in a history or pattern of child abuse because the Colorado CPS investigation had been summarily dismissed. However, Mother ignored that the Child's therapist had testified that the Child reported multiple instances of abuse while in Mother's care. Thus, some substantive and probative evidence supported the finding.

Mother additionally argued the trial court erred by failing to enforce the parties' Rule 11 agreement. Father responded that Mother never filed a motion to enforce the Rule 11, and thus, the issue was not preserved for appellate review. The appellate court agreed with Father.

Father Granted Exclusive Right To Designate Child's Primary Residence Because He Provided More Stability And Support With The Child's Education.

180. *Chavarria v. Rodriguez*, No. 03-22-00716-CV, 2025 WL 352188 (Tex. App.—Austin 2025, no pet.) (mem. op.) (01-31-2025).

Facts: Mother and Father had been appointed joint managing conservators of their Child, with Mother having the exclusive right to designate the Child's primary residence. About six years later, Father filed a modification suit, alleging Mother had a history or pattern of child neglect. The seven-year-old Child had been found wandering around unsupervised while looking for help for Mother. Mother had attempted suicide, and the Child was aware of the attempt. CPS placed the Child with a family friend, and Father was not notified. Father was concerned because the Child had been returned to Mother's care without supervision.

In response to Father's suit, Mother asked to be named the sole managing conservator. However, the court signed agreed temporary orders providing the Child would remain in Father's possession for a time and then would return to Mother's care. Father's child support obligation would be abated while the Child was in his care. After a final hearing, the court continued the appointment of the parents as joint managing conservators but granted Father the exclusive right to designate the Child's primary residence. It terminated Father's child support obligation, ordered Mother to pay child support, and granted Mother unsupervised access to the Child under a standard possession order. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court erred in granting Father the exclusive right to designate the Child's primary residence. She argued the court abused its discretion in finding a material and substantial change and that the change was not in the Child's best interest.

Because Mother asked for the court to appoint her as a sole managing conservator, she judicially admitted to a material and substantial change to support modifying conservatorship. Thus, she could not complain on appeal about the sufficiency of the evidence to support that finding. In addition to the facts above, Father said that there had been difficulties exchanging the Child because Mother was often sick or lacked transportation. Mother also had a history of seizures and a stroke, which Father believed posed a risk to the Child's safety. Mother failed to keep the Child up to date with medical needs, including shots, glasses, and dental needs, despite Father providing medical insurance. The Child had attended five schools in 2 years and had 36 absences, 23 of which were unexcused. Additionally, the Child was behind in school and had failed a recent standardized test. During the time the Child stayed with Father, Father and his wife helped find programs to help the Child with school, and she loved school.

Mother denied being suicidal and stated she did not work because she was applying for disability. Mother did not believe the Child was delayed academically and attributed any difficulties to learning disabilities, not Mother's frequent moves. Mother stated she had been in a stable home for more than five months. Considering the evidence as a whole, the trial court did not abuse its discretion in granting Father the exclusive right to designate the Child's primary residence.

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.

181. *Cobb v. Dennis*, No. 03-23-00511-CV, 2025 WL 608321 (Tex. App.—Austin 2025, no pet.) (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.

Evidence Supported Modification To Give Father The Exclusive Right To Designate The Children's Primary Residence; Mother Failed To Show That Decision Was Based On Judicial Prejudice Against Mother's Transgender Partner.

182. *In re O.S.*, No. 02-23-00158-CV, 2025 WL 728107 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (03-06-2025).

Facts: Shortly after Mother and Father's divorce 2014, Mother and Partner began a relationship; however, they broke up for a period during which time Mother remarried and separated from new Husband. "Although Partner self-identified as a female, multiple witnesses—including both Partner and Mother—testified that 'legally, [Partner's] a male.' [The appellate court] therefore use[d] male pronouns for Partner to avoid confusion." After leaving Husband, Mother and Partner resumed their relationship, and Partner moved into Mother's home.

The 2014 divorce decree appointed the parents joint managing conservators, with Mother having the exclusive right to designate the Children's primary residence, but educational and medical decisions were given to the parents independently.

The decree also contained a morality clause regarding an intimate unmarried partner staying the night when the Children were present.

Father sought to be appointed the person with the exclusive rights to designate the Children's primary residence and to make educational and medical decisions. Mother counter-petitioned seeking the exclusive right regarding educational and medical decisions. Father alleged Mother failed to consistently surrender the Children, and he complained of Mother's medical and education decisions and of Partner's influence on the Children.

Mother and Father each discussed ailments suffered by the Children, with Mother characterizing them as normal childhood illnesses and injuries, and Father characterizing them as examples of Mother's negligence. Father asserted that Mother homeschooling one of the Children caused that Child to fall behind in school. Mother explained that while living in Utah, that state advised taking extra precautions for children with ADHD. Mother re-enrolled the Child in public school as soon as possible.

Partner had previously worked in the sex industry. Mother questioned the sincerity of Father's concern regarding that issue, given Mother and Father met at a BDSM event, and Father used to work on the production of BDSM videos. Also, although Father and his wife were not genetically related, Mother asserted Father's wife was his niece by marriage. Partner suffered from PTSD and did not take medication consistently. Partner no longer took medication for borderline personality disorder believing Partner had been cured. Father also expressed concerns about Partner's aggressive political posts on social media. Partner described the posts as merely an example of a very dark sense of humor. However, Partner had made serious Facebook posts attacking Father as a fascist and using other similar terms. Father asserted those posts led to more than a hundred calls to Father's job until he was fired. Mother claimed not to follow the social media posts.

After a bench trial, the court granted Father's requested relief. Mother appealed.

Holding: Affirmed.

Opinion: Mother complained of the trial court's finding that a material and substantial change in circumstances supported modification. However, Mother filed a counterpetition judicially admitting to such a change. Moreover, Mother only challenged on appeal two of the trial court's findings supporting a material and substantial change. She failed to address the other identified bases for the finding.

Mother additionally argued the modification was not in the Children's best interest. Mother argued the modification decision was based on Partner's online "pro-transgender content," and the trial court's decision violated Partner's right to freedom of speech. However, the court heard contradictory evidence during the bench trial and, as the finder of fact, was charged with the duty of resolving factual discrepancies. Although Partner characterized most of the posts as tongue-in-cheek jokes, at least one post had the real-world consequence of Father losing his job. Moreover, there was evidence to support the trial court's decision that had nothing to do with Partner's posts.

Mother challenged the trial court's time limitations and other rules regarding witnesses. However, Mother failed to preserve those issues for appeal. Even if she had made timely objections, she failed to make any offers of proof or bills of exception regarding what she would have proffered if given more time.

Mother finally challenged the court's denial of her motion for new trial based on her claim of new evidence. Mother acknowledged the evidence was not newly discovered. The court allowed Mother a hearing to present her claims. Most of Mother's evidence was inadmissible for lack of relevancy or other reasons having nothing to do with the due diligence requirement for new evidence. The trial court did not abuse its discretion in denying the motion for new trial.

Request To Modify Geographic Restriction To Prevent Mother's Move Across Texas Was Denied Because Father Failed To Show That Modification Would Be In The Best Interest Of The Children.

183. *In re M.E.R.*, No. 11-23-00263-CV, 2025 WL 714722 (Tex. App.—Eastland 2025, no pet.) (mem. op.) (03-06-2025).

Facts: The prior order gave Mother the exclusive right to designate the Children's primary residence in Texas. The parties lived in Midland at the time of that order; however, according to Mother, the choice to live there was due to her work for Chevron, it was intended to be temporary, and Father knew Mother intended to move to Houston next for her job. When Mother received a promotion that required a move to Houston, she notified Father and the trial court. Father filed a petition to modify to change the geographic restriction on the Children's residence to only Midland and to have travel expenses associated with visitation allocated between the parties. Mother filed a counterpetition seeking to be named sole managing conservator, with Father's possession being supervised.

The trial court denied both parties' modification petitions, and Father appealed.

Holding: Affirmed.

Opinion: Without addressing whether Mother's move constituted a material and substantial change or whether Mother's counterpetition constituted a judicial admission of a material and substantial change, the appellate court found that Father failed to show that the trial court erred in finding that modification was not in the best interest of the Children.

The trial court found that Mother had a good-faith motive for moving to Houston, and Father did not challenge that finding. Further, there was some evidence that Father had the ability to relocate to Houston and had the ability to take time off work to accommodate his travel to see the Children. His current employer could potentially transfer Father to Houston, and Father had job skills that would give him opportunities should he seek new employment. In reviewing the *Holley* and *Lenz* factors, the

evidence was sufficient to support a decision not to alter the geographic restriction on Mother's right to determine the Children's primary residence.

Additionally, the trial court found that Father offered no credible evidence to support his claim that travel to Houston would cost him $1000 a trip, and Father failed to challenge that finding on appeal.

Mother Not Entitled To Interim Attorney's Fees In Modification Suit Because She Failed To Establish Connection Between Requested Fees And The "Safety And Welfare" Of The Child.

184. *In re Perkins*, No. 14-24-00720-CV, 2025 WL 868530 (Tex. App.—Houston [14th Dist.] 2025, orig. proceeding) (mem. op.) (03-20-2025).

Facts: Since the Child was born, several orders had been rendered. Father moved to modify a prior order based on an MSA. The trial court granted Mother's no evidence MSJ and dismissed Father's claims. Father appealed that decision, and the appellate court remanded the trial court's ruling. During the pendency of that appeal, Father sought clarification of the prior order based on the MSA. The court referred that issue to arbitration as required by the prior order. A few months after a final order was rendered in the remanded suit, Father filed another motion to modify seeking sole managing conservatorship among other modifications. Mother filed a motion for interim attorney's fees, noting dismissals, nonsuits, and appeals. Mother stated she had been involved in constant litigation for the prior three years and had already incurred over $20,000 in attorney's fees. Because Father had requested a jury trial in the present suit, Mother's attorney estimated fees exceeding $100,000. After a hearing, the court ordered Father to pay $90,000 in interim fees. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother stated that she had concerns for the Child's emotional well-being. The Child was aware of the suit because Mother and the Child were in the car in the parking lot for the Child's basketball game when Mother was served with citation. Father had been resisting complying with discovery requests. Mother stated she had no more funds to pay for attorneys, was afraid her attorney would need to withdraw, and she did not believe it was in her best interest to represent herself in a jury trial. Mother stated that the Child would be devastated if Mother lost the suit because she could not afford an attorney. She believed the fees were necessary to protect the Child's best interest. Father said he did not have $90,000 to pay to Mother's attorney. Mother's attorney testified as to the reasonableness of her fees, her associate's fees, and her paralegal's fees and outlined matters that would need to be addressed in the case. Mother stated that serving her with citation in the Child's presence traumatized the Child, and granting Father's requested relief regarding possession would negatively impact the Child's well-being. Mother had not filed a counterpetition raising any safety or wellness concerns.

Texas Family Code Section 105.001(a) authorizes temporary orders, including interim attorney's fees, that are for the "safety and welfare" of the Child. Although the trial court included a finding in its order that the fees were ordered for the Child's safety and welfare, there was no evidence to support such a finding. Mother's motion did not raise any concerns about the Child's welfare, safety, or specific needs. When asked why she sought fees, Mother stated she could not afford representation and that proceeding without representation would not be beneficial to her or her son. Neither her motion nor her testimony established a connection between the necessity for interim fees and the safety and welfare of the Child.

Trial Court Had Jurisdiction To Consider Divorce With Children Pending Appeal Of SAPCR, But Evidence Insufficient To Support Default Divorce Decree.

185. *Kom v. Kom*, No. 08-24-00022-CV, 2025 WL 1057731 (Tex. App.—El Paso 2025, pet. denied) (mem. op.) (04-08-2025).

Facts: While married, Father filed an original suit affecting the parent-child relationship but did not seek a divorce. After a final order addressed conservatorship, possession, and child support, Father appealed. After the appellate court affirmed the trial court's decision, Father petition the Texas Supreme Court for review, but that court denied review.

Meanwhile, before the appellate court decided the first appeal, Mother filed an original petition for divorce. Father, pro se, filed a motion to dismiss the divorce because of his pending appeal. Father alleged that the trial court could not consider the child-related issues while his appeal was pending. The trial court held a final hearing, at which Mother and the attorney general appeared. Father did not appear, despite having been served with the Zoom information for the hearing. Mother was the sole witness. After the trial court signed a default divorce decree that included provisions for the Children, Father appealed.

Holding: Reversed and Remanded.

Opinion: To support his assertion that the trial court lacked jurisdiction, Father cited *In re E.W.N.*, 482 S.W.3d 150 (Tex. App.—El Paso 2015, no pet.). In that case, a father had appealed to the Fort Worth Court of Appeals, but the appeal was transferred to Amarillo. While the appeal was pending, the father filed a petition to modify. The trial court granted the mother's motion to dismiss, in which she argued the appellate court had "exclusive" jurisdiction over the entire case. Father appealed that dismissal to the Fort Worth court, and that appeal was transferred to El Paso. The Amarillo appeal was affirmed before the El Paso appeal was decided, and the El Paso court held that the trial court did not err in dismissing the modification pending the appeal.

A few years later, a similar case was appealed to the Fort Worth court, *In re Reardon*, 514 S.W.3d 919 (Tex. App—Fort Worth 2017, orig. proceeding), and that appeal was not transferred to another appellate court. The Fort Worth court held it was not bound by El Paso's precedent, even if that earlier appeal originated in Fort Worth. By analyzing the Family Code's statutory scheme, it held that a trial court did not lose jurisdiction over a modification during the pendency of an appeal.

Here, the dismissal was granted before the El Paso court was able to review the *Reardon* analysis in any subsequent appeal, so *E.W.N.* remained precedent inEl Paso. Regardless, the facts here differ from *E.W.N.* because the suit Father sought to dismiss was a divorce, not just a suit affecting the parent-child relationship.

Nevertheless, the evidence Mother offered to support the default judgment was conclusory and insufficient to support a default divorce decree. Mother's testimony to support appointing her sole managing conservator was limited to a short complaint regarding Father's lack of involvement. The testimony was not "substantive and probative" evidence to meet the burden for appointment as a sole managing conservator. Although Mother offered a financial information statement and some information about income, she offered no evidence of the value of the community estate. Finally, although Mother offered evidence to support an award of attorney's fees, that too was reversed in light of the reversal of the just and right division of the community estate.

Father's Motion To Modify Filed 30-Days After Prior Modification Order Considered A New Suit Because It Sought To Modify Child Support, Which Was Not Modified In The Prior Order.

186. *LaValle v. LaValle*, No. 14-24-00091-CV, 2025 WL 1036527 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (04-08-2025).

Facts: After the parties' divorce, Mother filed a petition to modify conservatorship and possession. The trial court signed an order based on the parties' agreement. Thirty days later, Father filed a "motion" to modify the parent-child relationship, seeking to modify child support. Father alleged that a material and substantial change had occurred since the order signed 30-days earlier. After a bench trial, the court determined no material and substantial change had occurred, denied Father's requested relief, and awarded Mother $1500 in attorney's fees. Father appealed.

Holding: Affirmed.

Opinion: Father argued the trial court lacked jurisdiction over his modification suit because he filed his motion to modify child support less than 30 days after the trial court signed a final order in Mother's modification suit. No legal authority supported this assertion. The statute authorizing a modification of child support requires only that a material and substantial change had occurred since the prior order or agreement. Additionally, the request must be made in good faith and not for the purpose of harassment. The trial court had subject matter jurisdiction to hear and rule on Father's motion.

Mother argued that the appellate court lacked jurisdiction because Father's notice of appeal was untimely. Father timely requested findings of fact and filed his notice of appeal 90 days after the order. Mother incorrectly argued Texas Rule of Civil Procedure 296 was inapplicable to child-support modification suits and, thus, a request for findings did not extend appellate deadlines. An appeal from a child support suit is the same as in any other civil matter, and Father's notice of appeal was timely.

In his appellate brief, Father characterized his motion as a motion to modify, correct, or reform a judgment under Rule 329b. However, Mother's modification suit did not seek to modify child support, and the final order disposing of Mother's modification suit expressly held that the child support provisions from the divorce decree remained in effect. The trial court correctly treated Father's motion as a petition initiating a new suit rather than a motion to modify the final order in Mother's modification suit.

Father argued on appeal that the relevant period for examining whether a material and substantial change occurred began at the signing of the final divorce decree. However, in his motion to modify, he alleged a material and substantial change had occurred since the final order in Mother's modification suit (in the last 30 days). The evidence at trial focused on that 30-day window. Given that Father represented to the trial court that the relevant period was that 30-day window and that the evidence focused on that window, Father invited the error and could not complain about it on appeal.

Finally, Father complained of the attorney fee award to Mother. Father failed to establish a material and substantial change and could not clearly testify as to when certain events occurred, including when he signed a lease for a new apartment. Mother testified she incurred an additional $1500 in attorney's fees to prepare for and participate in the bench trial on Father's motion. Moreover, contrary to Father's assertion, the Family Code Section entitled "Frivolous Filing of Suit for Modification" (Section 156.005) does not require an explicit finding that the modification suit was filed frivolously or designed to harass a party. Further, the lack of an explicit finding did not prevent Father from presenting this issue on appeal. And, regardless, trial courts have discretion to award fees in suits affecting the parent-child relationship regardless of frivolousness.

No Evidence Supported Unenforceable "Teenager Provision" Granting Possession Only As Agreed.

187. *Stone v. Stone*, No. 03-23-00801-CV, 2025 WL 1141178 (Tex. App.—Austin 2025, no pet.) (mem. op.) (04-18-2025).

Facts: Mother had the exclusive right to designate the primary residence of the parties' teenage Children. Mother was accepted into a graduate program in Portugal and sought to move there with the Children, which would require removing the geographic restriction on the Children's primary residence. Father counterpetitioned, seeking the exclusive right to designate the Children's

primary residence. The final order included a "teenager provision," allowing visitation by agreement and explicitly prohibited the parties from moving to hold the other in contempt for failing to follow the possession order. No evidence in the record indicated Mother had agreed to that provision. Mother appealed.

Holding: Reversed and Remanded.

Opinion: A court must specify or expressly state in an order the times and conditions of possession and access unless a party shows good cause why specific orders would not be in the best interest of the child. While an "as agreed" possession order is severe, it is not a total denial of the right to possession. However, such a severe restriction should be limited to drastic situations.

Here, Father presented no evidence of physical or emotional endangerment. The Children expressed a desire in a conference with the judge to continue visitation with Mother. Yet, to the extent the trial court relied on the Children's desires to support its prohibition against the parties moving for contempt in the future, that reliance was error. "No legal authority ... [supports taking] consideration of a child's desires to the extreme of granting that child—no matter how mature—complete discretion over possession by a parent." Further, Father offered no evidence to show that having no specific terms for Mother's possession would be in the Children's best interest. The trial court admonished Father to communicate and cooperate better with Mother, which supported the need for specific orders, rather than the absence of them. Finally, the trial court must maintain authority to enforce its orders by contempt. The trial court abused its discretion by issuing the vague teenager provision that was unenforceable by contempt.

Father's Failure To Submit To Drug Screening Supported Final Modification Order Conditioning His Access To The Child On Future Negative Test Results.

188. *In re J.L.*, No. 13-24-00068-CV, 2025 WL 1186318 (Tex. App.—Corpus Christi–Edinburg 2025, no pet.) (mem. op.) (04-24-2025).

Facts: Mother and Father had been appointed joint managing conservators with Mother having the exclusive right to designate the Child's primary residence and Father paying child support. Less than two months after that order was rendered, Mother moved to modify, asserting Father needed to be screened for drug use. Father responded with a counterpetition alleging the Child had made a sexual abuse outcry accusing a member of Mother's family. The abuse was ruled out, and Father failed to appear for drug testing as ordered. After a trial, Mother was appointed sole managing conservator, and Father was given a stair-step visitation schedule that began with supervised possession and drug testing. Additionally, the court increased Father's child support obligation and began requiring Father pay for the Child's health insurance. Father appealed.

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

Opinion: Father first complained of the increased child support and the new requirement for him to pay for health insurance because he asserted the evidence was insufficient to establish a material and substantial change to his income since the prior order.

No evidence of Father's income was offered, so the court was required to presume Father earned a minimum wage and worked 40 hours a week. The ordered child support exceeded the amount based on that presumption, and there were no findings explaining a basis for deviating from the Family Code's guidelines. The trial court abused its discretion by increasing Father's child-support obligation.

Similarly, there was no evidence of Father's income or of the Child's insurance to support imposing the obligation on Father to pay the Child's insurance premiums. The trial court abused its discretion in ordering Father to pay for the Child's health insurance.

Father next complained that the trial court abused its discretion regarding the conservatorship modification. Father argued the court failed to take his indigence into consideration when it ordered drug testing. However, Father did not make that argument to the trial court and did not preserve it for appeal.

Father further argued the court erred in punishing him for not taking the drug test. There was some evidence that Father had previously appeared in court while under the influence of drugs. The temporary court order required Father to submit to drug testing and further provided that if he failed to get tested, his access to the Child would be suspended until further order of the court. However, despite failing to get tested, Father attempted to sign the Child out of school and appeared to have recently used drugs at that time. The trial court did not abuse its discretion in conditioning Father's access to the Child on negative drug test results.

Supervised Possession For Mother Appropriate Because She Believed And Acted Upon "Awesomely Manipulative" Child's Multiple False Allegations Against Father; However, Attorney's Fee Award Remanded Because Insufficient Evidence Hourly Rates Were Reasonable.

189. *In re M.Z.K.E.*, No. 09-23-00367-CV, 2025 WL 1186308 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (04-24-2025).

Facts: About five years after a divorce decree appointed the parents as joint managing conservators, Mother moved to modify the parent-child relationship. During that 5-year period, multiple allegations of abuse were alleged against Father; however, all the allegations were ruled out as not being credible. CPS indicated the allegations were malicious and false. According to the testifying therapist, the Child manipulated Mother into believing the stories, and Mother had become enmeshed with the Child to the extent that Mother could not see the lies for what they were. The Child's stories were inconsistent and not credible. SANE examinations showed no evidence of abuse. Mother refused referrals to seek therapy. The therapist expressed concern for the Child's development in the absence of intervention. He said that in the approximately 1500 family or child custody lawsuits in which he had worked, he had never seen a child as precocious and as awesomely manipulative as this 10-year-old Child.

The trial court appointed Father as sole managing conservator and Mother as a possessory conservator with supervised access to the Child. Mother was ordered to participate in psychological treatment, and both parents were required to participate in counseling. Additionally, the court awarded Father a judgment for approximately $250,000 in attorney's fees. Mother appealed.

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

Opinion: Mother argued the evidence was insufficient to support imposing a supervision requirement on her visitation periods with the Child. Mother challenged the trial court's explicit findings of the credibility of Father's and the therapist's testimony. The appellate court interpreted Mother's challenge as to being one to the implicit finding that she coached or was involved in, complicit in, the false allegations with the purpose of alienating the Child from Father. Mother failed to request additional or amended findings to include this implicit finding. Thus, the appellate court lacked a basis to challenge a finding the trial court did *not* make. Further, Mother did not challenge other specific findings that supported the trial court's supervision requirement, including Mother's long history of making allegations against Father that were not credible and that Mother's enmeshment with the Child was emotionally harmful to the Child.

Mother additionally challenged the attorney's fee award. Father's attorney testified about how long he had been licensed and stated that the hours billed were reasonable based on his level of experience and that of his staff. The billing statements were admitted into evidence showing who did what work at what rate and when. Additionally, Father's attorney explained that Mother's attorney created extra work by not providing documents timely, and the documents provided were difficult to understand. On cross-examination, Father's attorney acknowledged that his fees were in the top 3% but were appropriate for his level of experience. Father's attorney provided little detail about the other employees who worked on Father's case. Although the testimony was uncontroverted, it fell short of establishing that the hourly rates charged by Father's attorney and his staff were not excessive or extreme; were in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation; and reflected the reasonable prevailing market rate. Thus, the issue of attorney's fees was remanded for further proceedings.

Mother's Testimony Regarding Circumstances At Time Of Prior Order Was Sufficient Without The Need For Supporting Financial Documentation; Father's Claim Of Extraordinary Monthly Expenses Was Insufficient To Rebut Presumption Guideline Support Was Reasonable.

190. *In re S.A.L.*, No. 03-24-00609-CV, 2025 WL 1270686 (Tex. App.—Austin 2025, pet. denied) (mem. op.) (05-02-2025).

Facts: When the parties were married, Father worked as an attorney making $65k per year. Father left that job to return to school for a master's in education and to get a teaching certificate. Father was in school at the time of the divorce, and the parties agreed that neither would be obligated to pay child support. Later, the parties agreed to a modification of child support based on Father's starting salary as a teacher. A few years after that, the OAG initiated a suit to modify child support. Mother and Father participated pro se. Father had obtained a new job as an attorney, and the trial court found his net monthly resources were between $8k and $9k and ordered him to pay guideline child support. Father appealed, pro se.

Holding: Affirmed.

Opinion: Father first argued that Mother failed to establish a material and substantial change because the only evidence offered regarding his financial circumstances at the time of the agreed modified order was Mother's unsupported testimony. Mother testified that Father had told her about his plans for his education. She explained that she agreed to child support based on Father's potential income as a teacher because she could not afford to go to trial and because she presumed Father was going to be a teacher. She looked up the base salaries for teachers in that area, and child support was based on that information. The trial court had overruled Father's objections of speculation and lacks foundation. The appellate court held the trial court did not abuse its discretion in overruling Father's objections. Contrary to Father's argument, the evidence to support the trial court's finding of a material and substantial change did not need to be in the form of financial documents.

Father next argued the amount of child support ordered imposed a financial hardship on him and exceeded his ability to pay. At trial, Father testified about his monthly expenses, which included dry cleaning and occasional $300 meals associated with him being an attorney. However, Father did not challenge the trial court's finding of his net monthly resources, and Father was ordered to pay guideline support, which is presumptively reasonable. The trial court could have reasonably found that some of Father's listed expenses were not "the necessary expenses of living and earning a living."

Father additionally complained of the trial court's order for retroactive child support. However, the court had the authority to begin Father's obligation as of the earliest possible date after service and appearance of the parties in the modification suit.

Mother's Move Within The Geographic Restriction On The Children's Residence And Decision To Change The Children's School During The Summer Break Did Not Violate The Standing Orders Imposed By Father's Post-Move Modification Suit.

191. *In re Hita*, No. 04-24-00544-CV, 2025 WL 1392148 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (05-14-2025).

Facts: After the parties divorced, Mother wished to move with the Children to a new school district. Pursuant to the decree, Mother notified Father of the move. After the move, Mother kept the Children enrolled in their initial school district until the end of the school year, which required her to drive 40 minutes each direction from the new home to the Children's school. During the following summer, Mother began the process of enrolling the Children in the new school district. Father filed a motion to modify and motion to enforce, alleging Mother had "disenrolled" the Children from the school they had been attending for years. Father did not offer any details about Mother's move in his motion. After a non-evidentiary hearing, at which Father offered no evidence the Children were still eligible to attend school in the initial school district, the trial court ordered Mother to enroll the Children in their old school. Mother sought mandamus relief and obtained an emergency order staying the trial court's order pending the outcome of her mandamus action.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Father asserted that Mother's move violated the trial court's standing order. However, the standing order provided that "it is not intended to affect or circumvent prior orders" for the Children. Further, Texas Family Code Section 156.006 prohibits the trial court from rendering temporary orders that have the effect of creating or modifying a geographic restriction in the absence of certain exceptions.

The appellate court agreed with its sister courts that imposing a restriction on the Children's school district implicated Section 156.006. Mother had the exclusive right to designate the Children's primary residence with a geographic restriction to a certain county and contiguous counties. Mother's move was to a new residence within that geographic restriction. Whether Father lived in the initial school district was irrelevant. The trial court made no finding that any exception in 156.006 applied.

Mother did not violate the standing order because her decision to change the Children's school during the summer did not "disrupt" or "withdraw" the Children from the school they were "presently attending." To hold otherwise would disallow parents from enrolling a child in a middle school after the completion of elementary school without a court order.

Mother's Evidence Of Recently Emancipated Child's Worsening Disabilities And Events Leading To The Child Suffering PTSD Constituted At Least A Scintilla Of Evidence Of A Material And Substantial Change Precluding No-Evidence Motion For Summary Judgment.

192. *Lee v. Lee*, No. 14-24-00286-CV, 2025 WL 1408899 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (05-15-2025).

Facts: Mother filed a suit to modify the child-support obligations of the parties' divorce decree and asserted that Father should be ordered to pay child support for an "indefinite period of time" because one of the Children was disabled. Six months later, Father filed a no-evidence motion for summary judgment, arguing there was no evidence of a material and substantial change to warrant modification. The trial court granted summary judgment, and Mother appealed.

Holding: Reversed and Remanded.

Opinion: Mother argued the trial court erred because she presented a genuine issue of material fact. At the time of divorce, the Child had already been diagnosed with ADHD inattentive type, Autism Spectrum Disorder, apraxia, developmental disorder, Language Disorder, Specific Learning Disorders, and Borderline Intellectual Functioning. Additionally, the Child historically suffered from seizures due to epilepsy. Mother introduced her own declaration, expert reports, and medical, psychological, and financial records showing that since the divorce, the Child had been sexually abused and verbally manipulated in participating in a "terroristic threat." The Child was removed from school and suffered from PTSD. Mother asserted the Child's disabilities had worsened.

Father argued he was no longer legally required to support the Child and indicated that he intended to support the Child in whatever way he deemed appropriate. Mother was the Child's primary caretaker, and despite the Child turning 18 years old, the Child continued to live with Mother and could not live independently. Mother would have to pay increased costs once Father stopped paying his legal obligation for child support.

Mother presented at least a scintilla of evidence regarding a material and substantial change, and the trial court erred in granting Father's no-evidence motion for summary judgment.

Without Hearing Any Evidence Regarding The Best Interest Of The Child, The Trial Court Erred By Resolving Drafting Disputes In Attempt To Enter "Agreed" Final Order.

193. ***In re L.I.A.-N.***, 722 S.W.3d 475 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (05-21-2025).

Facts: Father sought to modify the possession and access schedule for the parties' Child. No evidentiary hearings were held. At a hearing, the parties' attorneys read the parties' agreement into the record.

> Father to have possession and access per the Texas Family Code Standard Possession Order for zero to 50 miles, 50 to 100, over 100, and holiday provisions with all elections. Parties to alternate Easter weekend possession each year. When the parties live within zero to 50 miles, holiday exchanges will be school to school. Mom to always have 21 days in the summer. … When exchanges are not at school, parent not in possession of the child will pick up from parent in possession.

At the hearing's conclusion, the trial court orally approved the agreement and rendered it an order of the court.

Subsequently, the parties presented proposed final orders at two separate hearings on their motions to enter. The parties disputed whether Father was in fact entitled to "all" elections for exchange times. Mother did not include school-to-school exchanges if the parties lived more than 50 miles from each other, but Father did. Mother asserted that weekends extended by a holiday when the parents were more than 100 miles apart would end Monday evening instead of Tuesday morning. Father objected to a provision included by Mother in which he would be responsible for taking the Child to Mother's residence if Mother moved farther than 100 miles away from him. The court mostly agreed with Mother and signed an order finding that "the parties agree that the provisions in these orders…," were in alignment with their agreed parenting plan, and were in the Child's best interest. Neither party, nor their attorneys, signed the order. Father appealed.

Holding: Reversed and Remanded.

Opinion: Father argued the trial court erred by entering an order that deviated from the parties' agreement without taking any evidence. Mother argued the trial court acted within its discretion.

The parties read a high-level agreement into the record and recognized that drafting the order could give rise to further disputes. In the process of drafting, it became apparent that each parent had their own view of what they agreed to. "While it [was] clear the parties initially thought they had an agreement, once they got into the details of a full and final judgment in compliance with the relevant Texas Family Code provisions, it became apparent that they had never achieved a meeting of the minds, each intending a different meaning of the words, 'all elections.'"

The Family Code requires that an agreed parenting plan exist, and then, if the parenting plan is in the child's best interest, the court may render an order in accordance with the agreed plan. Here, the court acted arbitrarily by deciding the drafting dispute without an agreement or evidence regarding the best interest of the child.

Father's Spouse's Contributions Towards Father's Living Expenses Could Be Considered In Determining Father's Net Resources Because The Trial Court Found Father Was Intentionally Unemployed.

194. *In re A.E.C.*, No. 08-24-00333-CV, 2025 WL 1533758 (Tex. App.—El Paso 2025, no pet.) (mem. op.) (05-29-2025).

Facts: The domestic relations office filed an enforcement against Father for unpaid child support. Father responded with a petition to decrease his child support obligation, and Mother filed a petition to increase Father's child support obligation.

At trial, Father testified that he had quit his job as an account manager and began working construction in Mexico. Husband lived in El Paso and commuted to Juarez for work. He testified that his income was around $17,500 but most of that was not reported to the Mexican government. The trial court continued the hearing, asking for Father to return with tax reports and his accountant. At the continued hearing, Father's accountant did not appear, and the parties argued about the authenticity of the Mexican documents. Father testified about his living situation with his new wife and his expenses. The trial court signed an order finding Father in arrears, reducing his monthly child support obligation, and ordering him to pay an additional monthly amount towards his arrears until paid. Additionally, the court ordered Father to pay monthly medical support. Although his base support obligation was reduced, with the medical and arrearage payments, he was required to pay slightly more each month. Father appealed.

In its findings, the trial court found Father had intentionally underreported his income, was intentionally unemployed, and failed to produce sufficient information for the court to determine his net resources. It found his claimed annual income to be not credible given his failure to produce tax returns, his admission to not reporting cash transactions, his company's sales revenue exceeding $100k, his inability to answer basic financial questions, his testimony that he was college educated and held an architecture degree, and evidence that he and his Wife had taken 19 vacation since the divorce to places in Europe, Mexico, and the US at great expense. The court also noted "extra money" Father had in his pocket due to his wife and son-in-law paying the entirety of the mortgage and most of Father's living expenses. The court based the net resources on Father's earning potential rather than his reported income.

Holding: Affirmed.

Opinion: Husband argued the trial court erred by imputing additional monthly income based on his new spouse's and stepson's contributions to joint living expenses.

Generally, courts are not allowed to consider a new spouse's income when assessing a parent's net resources. However, because of the intentional unemployment finding, the court was required to consider Father's ability to provide for the Child based on the financial resources available to him. "[I]f the obligee presents evidence that the obligor has intentionally or voluntarily reduced his earnings or earning potential, then the best interest of the child may dictate that the resources of a non-obligor spouse should be considered in deciding whether to vary from the guidelines."

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

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

196. *In re L.K.M.*, No. 07-24-00138-CV, 2025 WL 1671898 (Tex. App.—Amarillo 2025, no pet.) (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.

197. *Bento v. Green*, No. 14-23-00587-CV, 2025 WL 1765510 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (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.

Evidence Supported Denying Mother's Petition To Modify The Parent-Child Relationship.

198. *In re A.R.-M.B.*, No. 09-24-00195-CV, 2025 WL 1912002 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (07-10-2025).

Facts: Mother filed a petition to modify, asking for the exclusive right to designate the Child's primary residence and make educational decisions, to change the exchange location to a mid-point between Mother's and Father's residences, to terminate her child-support obligation, and to require Father to pay child support. After an evidentiary hearing with multiple witnesses, the trial court denied Mother's requested relief, and she appealed.

Holding: Affirmed.

Opinion: At trial, Mother admitted she had not attended any of the Child's school activities, and she made no efforts to have the school notify her after it denied her request to be put on "paperwork." Although Mother alleged she had concerns about the Child's food, medical care, and phone usage, she had not talked to Father about those concerns. Mother acknowledged to being behind on her $150 monthly child support obligation, and that she was once $5000 behind. Mother testified that she was married, got a divorce, but was now "common-law married" to her ex-husband. Mother acknowledged she once asked Father what had to be done to sign over her parental rights to the Child. Mother had instructed the Child to delete their text messages. Mother

was often late to exchanges of the Child and once failed to return the Child, requiring Father to file a habeas petition for the Child's return.

Mother Showed She Had Financial Opportunities In South Carolina That Would Allow Her To Better Care For The Children, And She Would Continue To Aid In Father Having Access To The Children, So Having No Geographic Restriction On The Children's Residence Was Appropriate.

199. *Hughes v. Hughes*, No. 04-24-00453-CV, 2025 WL 2058072 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (07-23-2025).

Facts: During the parties' marriage, Mother stayed at home with their Children. During the divorce proceeding, Father failed to make multiple payments on the mortgage for the marital residence, and the water was shut off for nonpayment. Mother's father helped Mother financially for several months. Once the marital residence was sold, Mother lived with friends. She obtained a job at a daycare that included the benefit of reduced childcare costs. At trial, Mother explained that she wanted to move to South Carolina, where she could earn a better living and better support the Children. She had an aunt with a large home who lived there and could let Mother and the Children live with her. The aunt also offered free childcare while Mother worked. The aunt's home was in a top school district. Mother had job leads already, and one of the leads would increase her annual salary by about $20k. Mother believed the Children could maintain a relationship with Father even if they moved because the airline tickets were inexpensive, and Mother would still occasionally travel to Texas to visit friends and family. Mother also found potential jobs for Father in North Carolina if he ever wanted to move to that state.

By the time of trial, Father was in arrears on child and spousal support. After separation, Father made numerous discretionary purchases, including that of a motorcycle. Father was living with a girlfriend and contributed to their shared housing and groceries. Father had moved about a three-hour drive from the small community in which the family lived because of gossip around the community.

The trial court granted Mother the exclusive right to designate the Children's primary residence without a geographic restriction. Father appealed, pro se.

Holding:

Opinion: Father argued the trial court abused its discretion in not imposing a geographic restriction on the Children's primary residence. When determining whether to impose a geographic restriction, the court considers the *Lenz* factors: (1) the reasons for and against the move, including the parents' good faith motives in requesting or opposing it; (2) health, education, and leisure opportunities; (3) the degree of economic, emotional, and educational enhancement for the custodial parent and the children; (4) the effect on extended family relationships; (5) accommodation of the children's special needs or talents; (6) the effect on visitation and communication with the non-custodial parent to maintain a full and continuous relationship with the children; (7) the possibility of a visitation schedule allowing the continuation of a meaningful relationship between the non-custodial parent and the children; and (8) the ability of the non-custodial parent to relocate. In applying these factors to the evidence presented at trial, the court did not abuse its discretion in choosing not to impose a geographic restriction.

Evidence Of Mother's Refusal To Follow Orders, Suicidal Ideations, Inability To Coparent, And Doctor Shopping Supported Imposing Supervision Requirement On Her Periods Of Possession.

200. *In re E.K.D.*, No. 07-24-00342-CV, 2025 WL 2078700 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (07-23-2025).

Facts: Nevada rendered an order giving the parents "joint legal custody" with a week-on/week-off possession schedule and a "mutual behavior order." Father filed a petition to modify, seeking the exclusive rights to designate the Child's residence and to make education and medical decisions. Mother filed a counterpetition seeking similar relief. After a four-day bench trial, spanning six months, the court appointed the parents joint managing conservators and granted Father the exclusive right to designate the Child's primary residence. Mother was given supervised possession and ordered to pay child support. Mother appealed with the aid of counsel.

Holding: Affirmed.

Opinion: Mother complained that the trial court based its supervised visitation requirement on Mother's violations of court orders rather than on the best interest of the Child. Mother violated court orders about two dozen times. Some violations were minor, such as failing to timely provide a new address. Others were more significant, such as going out of state, refusing to turn over the Child, and making demeaning remarks about Father via electronic communications with the Child. Mother also refused to identify herself at a hearing and sent ex parte communications to the court through social media. Mother filed multiple filings, including a "Writ of Divinia" and a notice that Mother had placed the Child into a trust. Mother testified that she agreed to follow court orders when they were in the best interest of the Child. She believed the Nevada order violated due process and was illegal, which is why she did not believe she needed to follow it. Additionally, the evidence showed Mother had suicidal ideations and exhibited paranoid beliefs about being followed and monitored, engaged in "doctor shopping" without consulting Father, and

attempted to take the Child from Father's car without a supervisor being present, upsetting the Child. The evidence supported imposing a supervised visitation requirement.

Mother additionally complained of the trial court's imposition of maximum guideline child support. Mother testified that she received income from her father's business and refused to provide trust documents, bank records, or other financial information despite discovery requests and a court order compelling production. Mother reported $7000 in monthly expenses for rent, car payments, and therapy alone, which far exceeded her claim that she only received $2000 to $4000 monthly from her father. Any error would have been the fault of Mother refusing to provide the necessary information to appropriately set child support.

Mother Determined To Be A Vexatious Litigant For Filing Pro Se Modification Petition 3 Weeks After Prior Final Order And Then Filing 16 Additional Motions In The New Suit.

201. *In re E.K.D.*, No. 07-25-00153-CV, 2025 WL 2078701 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (07-23-2025).

Facts: Three weeks after a final order in another modification suit (that Mother appealed) [see above], Mother filed a new pro se petition to modify. Over the next two months, Mother filed 16 additional motions and pleadings. She filed a declaration of inability to pay costs, alleging no income, over $8k in monthly expenses, about $2k in assets, and over $100k in debt. Father moved to declare Mother a vexatious litigant. At that hearing, the court asked Mother to provide evidence to support her inability to pay. Mother first claimed she was not afforded notice of this request and then claimed the court lacked jurisdiction over her. Based on Mother's refusal to provide proof of her financial resources, the court ordered Mother to pay costs. The court granted Father's motion to declare Mother a vexatious litigant and required Mother to post a security bond or face dismissal with prejudice on her pending motions. The order prohibited Mother from filing new pleadings for affirmative relief without first obtaining permission from the local administrative judge. Mother appealed pro se.

Holding: Affirmed.

Opinion: Father argued the appellate court lacked jurisdiction over the appeal because the vexatious litigant order was interlocutory. However, the Austin court of appeals has held that interlocutory appeals from prefiling orders designating a person as a vexatious litigant are permissible, and this case was transferred to Amarillo from the Austin court.

A court may designate a plaintiff as vexatious if the plaintiff has either: (1) commenced, prosecuted, or maintained five litigations as a pro se litigant in seven years with additional necessary findings; or (2) after a litigation has been finally determined against the plaintiff, repeatedly relitigated or attempted to relitigate the same issues against the same defendant. Contrary to Mother's assertion, the vexatious litigant scheme does not violate due process.

Mother argued that because attorneys have absolute immunity for actions undertaken while representing clients, parents appearing pro se should have similar immunity when acting in their child's best interest. First, the prefiling order did not prevent Mother from filing; it just required her to obtain permission first. Second, Mother misunderstood attorney immunity. Attorney immunity protects against civil liability to third parties, not against court authority over attorneys.

Mother next argued that her actions did not meet the definition of the vexatious litigant statute. However, Mother commenced a modification proceeding and maintained litigation through repeated motions to reconsider, stay enforcement, or declare orders void.

Mother finally argued that the trial court erred in denying her statement of inability to pay costs. Contrary to Mother's assertion, the trial court provided Mother with notice and asked her to bring documentation supporting her indigency affidavit. Mother refused to provide documentation. Mother's affidavit also included the contradictory claim that she had $8000 in expenses with no income. The trial court did not abuse its discretion in finding Mother had the ability to pay if "she really wanted to and made a good-faith effort to do so."

Default Order Denying Father All Possession Reversed Because It Was Not Supported By Mother's Pleadings; However, Mother's Evidence At Trial Supported Appointing Her The Child's Sole Managing Conservator.

202. *Edgley v. Ragland*, No. 01-23-00537-CV, 2025 WL 2076887 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (07-24-2025).

Facts: A modification order appointed the parties joint managing conservators and gave Mother the exclusive right to designate the Child's primary residence. Less than two months later, Mother filed a new modification petition, seeking sole managing conservatorship, a requirement that Father's periods of possession be supervised, and an increase to Father's child-support obligation. Father responded with a counterpetition and an allegation of family violence. He also sought sole managing conservatorship, supervised possession for Mother, and child support.

Father failed to appear at the final trial. The court signed a default order appointing Mother as the Child's sole managing conservator and did not appoint Father as a possessory conservator. The court ordered that Father have no possession of or access to the Child and ordered Father to pay child support. Father appealed.

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

Opinion: Father asserted the trial court erred in ordering that he have no possession of or access to the Child when Wife did not ask for that relief in her petition. Although a party's pleadings are to be construed liberally, a default order must be supported by the pleadings. Mother did request sole managing conservatorship, but she did not request that Father be entirely denied possession. In fact, her petition asked that the parties be granted certain rights "during their respective periods of possession." Thus, the trial court erred in order Father have no possession or access because that was not supported by the parties' pleadings.

Father next argued the evidence was legally and factually insufficient to support appointing Mother the sole managing conservator. While the evidence at trial did not address every *Holley* factor, Mother did offer evidence to support the judgment. Father had secreted the Child from her for months, and Mother was not even able to talk to the Child on the telephone for a period of time. Father failed to show up for exchanges when it was Mother's time to pick up the Child. Additionally, Father failed to comply with temporary orders in this modification suit. Mother expressed concerns about Father moving often and engaging in alienation behavior. Father did not challenge the findings that he violated court orders, failed to appear at hearings, denied the amicus attorney access to the Child, and refused to co-parent with Mother. He also did not refute that law enforcement was involved in returning the Child to Mother. The evidence and unchallenged findings supported the appointment of Mother as sole managing conservator.

Evidence Of Father's Failure To Exercise Visitation, Resulting In Increased Child-Care Costs To Mother, Supported Increasing Father's Child Support Obligation.

203. *In re K.A.N.*, No. 05-24-00670-CV, 2025 WL 2308878 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (08-11-2025).

Facts: Five years after entry of an agreed order in a SAPCR, Mother filed a modification petition. Among other requests, Mother sought an increase in Father's child support obligation and alleged Father was underemployed or hiding his true employment status. Father filed a counter-petition that, among other requests, sought a reduction of his child support obligation.

At the bench trial, Mother testified about Father's failure to exercise his periods of possession, which increased her expenses. For example, when Father failed to pick up the Child for Thanksgiving vacation, Mother enrolled the Child in a swimming program. Father claimed to be unemployed.

Father had four younger children with another woman. He stayed at home with those children while looking for work. He was in a car accident and had difficulty finding work. Father had been receiving unemployment, but it ran out.

At the trial's conclusion, the court indicated it had issues with Father's credibility and the timeline of events as presented by Father. The court signed a final order increasing Father's child-support obligation. Father appealed.

Holding: Affirmed.

Opinion: In his first issue, Father argued that Mother failed to meet her burden to establish a material and substantial change because she did not offer historical evidence of the parties' financial circumstances. In his second issue, Father argued his unemployment constituted a material and substantial change in circumstances.

Contrary to Father's argument, the material and substantial change need not necessarily be a change in the financial condition of one of the parties; it can involve something else, such as a change in custody of the child. Here, Mother's alleged change in circumstances was the fact that Father had only exercised a small fraction of his visitation in the years since the original order. As a result, the Child was with Mother much more often than contemplated in the original order. This resulted in increased expenses for her, including the cost of camps over school breaks and babysitters. Father saw the Child only during the summers, and there was no evidence Father planned to see him more frequently in the future.

Father did not present documentation to support his claims regarding unemployment benefits or medical restrictions on his ability to work. The crash report from the car accident showed Father told the police officer he did not need medical attention. Father was fired weeks before the car accident. The trial court found Father not to be a credible witness.

The evidence supported the findings that a material and substantial change warranted increasing child support and not reducing it.

Father further complained the trial court erred in deviating from the child support guidelines. The Family Code permits deviating from the guidelines upon consideration of 1) the age and needs of the child, 2) the amount of time of possession of and access to the child, and 3) child-care expenses incurred by either party to maintain gainful employment. Father did not establish the trial court abused its broad discretion in deviating from the guidelines.

Evidence Supported Removing Grandmother As Possessory Conservator And Terminating Her Periods Of Possession.

204. *In re H.M.*, No. 07-25-00135-CV, 2025 WL 2962024 (Tex. App.—Amarillo 2025, no pet.) (mem. op.) (10-20-2025).

Facts: After a hearing on an original SAPCR, the court signed an order appointing the parents as joint managing conservators and paternal Grandmother as a possessory conservator. The possession schedule somewhat split a standard possession order between Father and Grandmother, with Grandmother having more time than Father, and Father's access being supervised with no overnights.

About a year and a half later, Mother filed a petition to modify the possession schedule, asking to give Father an expanded standard possession schedule, remove Grandmother as a conservator, and terminate Grandmother's periods of possession. Father filed a pro se general denial, but at trial, he stated his general agreement with Mother's proposed modification. The trial court granted Mother's requested relief, and Grandmother appealed.

Holding: Affirmed.

Opinion: Grandmother challenged the sufficiency of the evidence to support findings of a material and substantial change in circumstances and that the modification was in the Child's best interest. Grandmother asserted that any perceived change was contemplated by the prior order.

At the time of the prior order, there was a no-contact order between Mother and Father due to a pending criminal case against Father. Father was unemployed and had limited, supervised access to the Child. Grandmother supervised Father's periods of possession. The Child was three years old and not in school.

At the time of trial in the modification proceeding, Father's criminal charges were resolved, and he had a job. The Child was five years old and in kindergarten. Father had been exercising unsupervised possession because Mother allowed Father access to the Child upon request. Mother and Father's communications and relationship had improved. Mother described the relationship as "healthy." They were able to respectfully schedule visitations. The Child was happy when returning from visitations with Father, and Mother felt comfortable exchanging the Child with Father.

Grandmother did not think either parent was fit to raise the Child and described Father as hostile and volatile. Grandmother described her relationship with Father as toxic.

Mother noted that when Grandmother attended doctors' visits, Grandmother asked so many questions that it took away from Mother and Father's time to visit with the doctors. Mother also disagreed with some of Grandmother's decisions regarding medical care. Mother described Grandmother as overly involved and overbearing.

The Child appeared to be doing well with increased happiness and confidence due to Father's stability and his parents' improved relationship. The Child seemed to be benefiting from increased time with his Father.

Grandmother's assertion that the change was anticipated was based on the trial court's admonishment in the original ruling stating the parents could come back to court after they "got [their] things together." Grandmother argued that the parents' parenting skills improving was, thus, an anticipated change. The appellate court declined to interpret those comments as preventing future modification.

Grandmother also argued that Father did not plead for affirmative relief and that Mother lacked standing to request affirmative relief on his behalf. However, Mother's requests were not solely to benefit Father but to benefit the Child. Mother sought an order that allowed the Child to spend more quality time with his parents, without Grandmother's interference or oversight.

Evidence Supported Modifying Possession And Expanding The Geographic Restriction On The Child's Residence.

205. *In re J.R.J.*, No. 06-25-00008-CV, 2025 WL 2962029 (Tex. App.—Texarkana 2025, no pet.) (mem. op.) (10-21-2025).

Facts: The parties' divorce decree named them joint managing conservators of their Child and gave them a week-on/week-off possession schedule. No monthly child support was ordered, but Mother was required to pay Father $25 per month for cash medical support.

When Mother married a man who had a child from a prior relationship, Mother filed a motion to modify, seeking a possession schedule to allow the step-children to be on the same schedule and facilitate a relationship between them. Additionally, Mother asked to change her medical support obligation because Father had let the Child's insurance lapse, and Mother started providing coverage for the Child. Mother further requested Father be ordered to pay monthly child support and that the geographic restriction on the Child's residence be expanded to include counties contiguous to the existing single-county restriction. After hearing evidence, the court granted Mother's requested relief. Father appealed.

Holding: Affirmed.

Opinion: Father argued no evidence supported a finding that a material and substantial change had occurred. Mother remarried. Father violated the decree, forcing Mother to obtain private health insurance with the Child before she found a job that would provide coverage. Ample evidence supported the finding.

Father additionally challenged the expansion of the geographic restriction, asserting it was not in the Child's best interest. Altering the possession schedule would be better for the Child because she would be able to spend more time with her step-brother. Mother and her new husband were looking for a bigger house so the Child could have her own room. While the Child was already attending a good school, the one where Mother wanted to enroll the Child offered more extracurricular activities to assist with her possible autism and to help build her social skills. No evidence was presented to show that the move would have any effect on the Child's familial relationships with Father or extended family. Father did not argue he could not relocate to be closer to the Child. The evidence was sufficient to support the trial court's decision.

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

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

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

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

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

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

Holding: Affirmed.

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

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

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

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

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

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

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

Holding: Writ of Mandamus Conditionally Granted.

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

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

Evidence That Both Parents Changed Job Schedules, Remarried, and Had More Children, in Addition to the Child's Brain-Tumor Diagnosis, Supported Finding Material and Substantial Change in Circumstances.

208. *In re P.R.M.*, No. 14-24-00809-CV, 2025 WL 3677317 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (12-18-2025).

Facts: The parties' divorce decree granted Father weekend possession of their one-year-old Child every weekend so long as her resided within 100 miles of Mother. If he moved farther away, he would have possession on the first, third, and fifth weekends of each month. At the time of divorce, Father lived 12 miles away from Mother.

Subsequently, both parties remarried and had more children. Father moved to a new home about 70 miles from Mother. After Father refused to agree to a new custody arrangement proposed by Mother, she filed a modification suit. In support of her claim of changed circumstances, Mother asserted she used to work every weekend but no longer did, Father used to be available every weekend but had become a firefighter with a firefighter's work schedule, the Child had missed out on weekend social activities due to the existing possession schedule, and the Child had been recently diagnosed with a brain tumor requiring multiple weekly appointments. The trial court found a material and substantial change existed and gave Father possession more akin to a standard possession order. Father appealed.

Holding: Affirmed.

Opinion: Father first asserted that no material and substantial change existed, but if it did, the change was anticipated. Due to the parties' work schedules at the time of divorce, giving Father possession every weekend made sense. However, both parties' schedules had changed. Additionally, the increased distance between the parties' homes meant the Child had to spend at least 3 hours in the car every weekend. Because of the Child's tumor diagnosis, Mother spent most of her time with the Child during the week taking the Child to medical appointments and did not get the opportunity to enjoy time or relax with the Child. Although Father argued that his move was anticipated, and the other changes were not material, the "combined force of evidence" supported the trial court's finding of a material and substantial change in circumstances.

Father next argued that the new possession schedule bore no relationship to the change in circumstances. There is no statutory requirement that the requested modification be specifically tailored to the change in circumstances. However, to the extent Father's argument could be construed as one challenging the sufficiency of the evidence to support the best-interest finding, the appellate court disagreed.

No Abuse of Discretion in Imposing a 2-2-3-3 Possession Schedule When the Parties' Homes Were 35 Miles Apart.

209. *In re A.L.K.*, No. 08-23-00347-CV, 2025 WL 3760587 (Tex. App.—El Paso 2025, no pet.) (mem. op.) (12-29-2025).

Facts: The parties met and had a Child in El Paso and then moved to Austin. When they separated, Mother and the Child moved back to El Paso. Pursuant to their divorce decree, Mother had the exclusive right to designate the Child's primary residence without a geographic restriction and to make educational decisions. A few years later, Father remarried and moved to El Paso. Mother married a man who lived in Georgia, and they had a child that was born in El Paso.

Father filed a modification suit and asserted the Child's present environment might endanger the Child's physical health or significantly impair the Child's emotional development. Father asked for the exclusive right to designate the Child's primary residence and make educational decisions, restrict the Child's residence to El Paso, grant Mother possession pursuant to a standard possession order or a schedule deemed appropriate by a family therapist, and reduce Father's child support obligation. Mother filed a counterpetition seeking to increase Father's child support obligation.

After a final hearing, the trial court restricted the Child's residence to El Paso, gave Father the right to make educational decisions after conferring with Mother, terminated child support, issued a 2-2-3-3 possession schedule, and gave each party a right of first refusal for possession. Mother kept the exclusive right to designate the Child's primary residence. Mother appealed.

Holding: Affirmed.

Opinion: Mother first challenged the trial court's finding of a material and substantial change. Both parties had remarried. Mother had a new Child. Mother's new husband lived in Georgia, and Mother intended to move there. Father met his burden of establishing a material and substantial change.

Mother additionally challenged the finding that the modified order was in the Child's best interest. In the trial court, both parties offered evidence regarding the Child's current school and alternative options. The court expressed concerns about the amount of time the Child spent travelling to and from school and suggested the parties choose a school at a midpoint between them but left the ultimate decision to Father. Applying the abuse of discretion standard, the trial court did not abuse its discretion in reaching its decision that Father should be the decision maker regarding the Child's education if the parents could not agree.

Mother further challenged the imposition of a 50/50 possession schedule when neither party requested one. Mother asserted the order was not in the Child's best interest because Father moved to El Paso two months before the final hearing and chose a home 35 miles from Mother's. Father asked for a standard possession schedule or one "deemed appropriate by a family therapist." No legal authority required a more specific request. Mother was on notice the trial court could alter the possession schedule. Mother did not cite any authority to support a claim that a 50/50 schedule was an abuse of discretion based on the 35-mile distance between the parties.

SAPCR:
Enforcement of Possession / Conservatorship

Commitment Order In Contempt Proceeding Void Because Trial Court Failed To Admonish Mother Of Her Right To Counsel.

210. *In re Andrews*, No. 03-25-00163-CV, 2025 WL 1056802 (Tex. App.—Austin 2025, orig. proceeding) (mem. op.) (04-09-2025).

Facts: The court found Mother had violated provisions of a prior Nevada custody order and sentenced her to confinement but suspended Mother's commitment. Subsequently, Father moved to revoke the suspension on Mother's confinement and to declare Mother a vexatious litigant. At the hearing on Father's motion, Mother appeared pro se and objected throughout to due process violations, including her right to an attorney, right to be heard, right to have a jury, and right to clear and convincing evidence. The trial court denied Mother's statement of inability to pay court costs. Mother stated that she did not have an attorney because she could not afford one. The court admonished Mother of her Fifth Amendment rights because she was "representing herself," which she invoked. After finding Mother violated the terms of the suspension of the order for commitment, the court committed Mother to confinement. Mother filed a petition for writ of habeas corpus.

Holding: Writ of Habeas Corpus Granted.

Opinion: The charges against Mother sought confinement, and Mother was in fact confined. Texas Family Code Section 157.163 requires a court to inform an unrepresented litigant of her right to counsel when incarceration is a possible outcome. Father argued Mother showed that she was aware of her right to counsel when she made her due-process objections. However, Mother's objection regarding her right to counsel was made among a list of many other inapplicable rights. The record did not reflect Mother understood her right to counsel, and the trial court did not admonish Mother of her right to counsel. In the absence of this admonishment, the order revoking the suspension of Mother's commitment was void.

An Ambiguity Existed As To Whether Provisions Following "Notwithstanding … Above" Was Enforceable When Read In Conjunction With "Above" Provision, So The "Notwithstanding" Provision Could Not Be Enforced By Contempt, And Trial Court Did Not Err In Signing A Clarification Order.

211. *In re H.W.*, No. 02-24-00275-CV, 2025 WL 1271925 (Tex. App.—Fort Worth 2025, pet. filed) (mem. op.) (05-01-2025).

Facts: Father filed a petition to enforce possession orders for one of the parties' Children. The trial court denied Father's motion and signed a clarification order to clarify Father's access to the Child.

The order sought to be enforced provided Father's visitation schedule for weekends and holidays affected by distance. Then, the order stated that Father's visitation with the Child would be conditioned on the Child's desire to see Father, and Mother would not interfere with any agreement between Father and the Child. The order then laid out Father's possession schedule for holidays unaffected by distance and began with "Notwithstanding the periods of possession of [Father] and [Mother] as ordered herein above …" Nothing in that section conditioned Father's periods of possession detailed in that section.

In the enforcement proceeding, Father argued he was entitled to possession for the holidays unaffected by distance "notwithstanding" any other provisions of the order. Mother argued that she was not required to surrender the Child in the absence of an express agreement from the Child. The trial court agreed with Mother, held the prior order was ambiguous, and rendered a clarification order conditioning all of Father's access to the Child on the Child's agreement. The merits of Father's enforcement were not addressed, given the ambiguity. Father appealed.

Holding: Affirmed.

Majority Opinion: (C.J. Sudderth, J. Kerr)

Father was correct that the "notwithstanding" language would generally control over any conflicting provisions preceding that clause. However, here, the preceding provision stated that the parties agreed to deviate from the standard possession schedule. Some of the order tracked the standard possession schedule, but some provisions did not. When reading the possession order as a whole, the language created an ambiguity.

Father argued the clarification order impermissibly changed the prior order by making a substantive change to the order in an enforcement proceeding. However, having determined the prior order contained an ambiguity, the trial court had authority to clarify the order to make it enforceable by contempt—which was relief sought by Father in his enforcement petition.

Dissenting Opinion: (J. Wallach)

When interpreting an agreed order, the courts apply the general rules of contract construction. An ambiguity does not exist merely because the parties disagree about the order's meaning. "Courts have recognized that when parties use such 'notwithstanding' language in a contract, 'they contemplate the possibility that other parts of their contract may conflict with that paragraph, and they agree that this paragraph must be given effect regardless of the contrary provisions of the contract.'" Thus, Father was entitled to possession during the holidays unaffected by distance as provided by the unambiguous language of the prior order.

Contempt Order Void For Trial Court's Failure To Admonish Pro Se Father Of His Right To Counsel When Mother Sought Confinement.

212. *In re Inmon*, No. 03-24-00753-CV, 2025 WL 1839918 (Tex. App.—Austin 2025, orig. proceeding) (mem. op.) (on reh'g) (07-03-2025).

Facts: Father initiated a suit to modify the divorce decree, requesting changes to visitation times with the parties' only Child. Mother sought to enforce the decree. After a hearing on both motions, the trial court concluded Father violated the standing order by engaging in improper conversations about the lawsuit with the Child. The court awarded Mother $35,000 in attorney's fees. After Father failed to pay the fees, Mother filed a petition to enforce payment of the fee award and asked for a contempt finding with punishment of confinement and fines.

The court held Father in criminal and civil contempt. For the criminal contempt, Father was to be confined for 180 days for each violation of (1) discussing the lawsuit with the Child and (2) failing to pay the ordered attorney's fees. For the civil contempt, he was ordered to be confined until the attorney's fees plus interest were paid in full. The sentence was suspended if Father paid the attorney's fees by a time and date certain. When Father did not pay, he was arrested and confined.

Father filed a petition for writ of habeas corpus, which was denied without opinion. Father obtained a new attorney, who filed a motion for reconsideration and, for the first time, asserted the trial court failed to admonish Father of his right to counsel and privilege against self-incrimination, and Father was not personally served with the petition. The appellate court granted the motion for reconsideration. Mother did not file a response.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: In the absence of a knowing and intelligent waiver by a party of his right to counsel, made on the record, the trial court has no authority to hold the party in contempt. Father was not represented by counsel at the hearing. At the start of the hearing, Mother confirmed that she was seeking confinement, but not in excess of 180 days. The court stated that obviated the need for a jury trial. No further admonishments were made. The trial court failed to fulfill its statutory duty to admonish Father of his right to counsel on the record.

Because that issue was dispositive, the appellate court did not address Father's remaining issues.

Provision Regarding Exchanges Of Child Clarified In Enforcement Suit Because The Provision Was Not Specific Enough To Be Enforceable By Contempt; However, Provision Regarding Electronic Communication Was Clear And Unambiguous And, Thus, Could Not Be "Clarified" In Enforcement Proceeding.

213. *In re A.N.I.*, No. 04-24-00389-CV, 2025 WL 2331544 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (08-13-2025).

Facts: Father filed a suit to enforce a SAPCR because Mother failed to pay child support, failed to show up to exchanges of the Child, and denied Father electronic access to the Child. Only Mother and Father's attorney testified; Father did not testify. Mother

acknowledged she had not paid all of her child support obligation but asserted financial circumstances prevented her from being able to pay as ordered. She also testified about her decision to change the platform used for electronic access. The court denied Father's motion to enforce and his requested attorney's fees but purportedly clarified some provisions of the prior order. Father appealed.

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

Opinion: Father argued that (1) the court failed to make a finding that the altered provisions were ambiguous; (2) the altered provisions were not ambiguous and could not be clarified; and (3) the clarification impermissibly modified the prior order.

A court may clarify a prior judgment if the order is not specific enough to be enforced by contempt. The only basis for clarifying a prior order is when a provision is ambiguous and non-specific. A substantive change made by a clarification order is not enforceable. Here, the prior order required the parties to be present at exchanges, identified the addresses for exchanges, and allowed the parties to designate a competent adult to pick up or return the Child. The clarified order required adults to remain in their vehicles, allow the Child to walk from one vehicle to the other if safe to do so, and refrain from harassing or threatening behavior. Father argued the clarified order modified the prior order by allowing a competent adult to replace the parent at the exchange.

Father invited the error by asking the trial court to clarify the prior order if it was not specific enough to enforce by contempt. Regardless, the appellate court held that the provisions from the prior order were non-specific and ambiguous. The prior order stated that visitation would be forfeited if a parent failed to show up. Mother testified that the term was supposed to forfeit visitation if the parent picking up failed to show up, not if the dropping off parent failed to show up. Father argued that he should not have to deal with Mother's parents at exchanges. The appellate court concluded that the prior provisions did not spell out the details of compliance in clear, specific, and unambiguous terms so that Mother would readily know exactly what duties or obligations were imposed on her. Moreover, Father did not argue in the trial court that the clarification order modified the prior order with respect to exchanges and could not raise that issue for the first time on appeal.

Father next argued the court erred in modifying his electronic access. The prior order provided:

> Each parent shall have video contact daily during periods longer than a weekend beginning at 8:00 p.m. and ending at 8:15 p.m. During the weekends, the video contact shall be on Saturday.

and the clarification order provided:

> On Tuesdays, Thursdays, and Saturdays of each month, the parent who is not in possession of the child shall be entitled to electronic communication with the child between 8:00 p.m. and 8:15 p.m. on each of those specific days.

The prior order clearly provided daily communication, while the modified order only provided visitation 3 times a week. The prior order was clear, specific, and unambiguous and not subject to clarification.

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

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

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

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

Holding: Affirmed in Part; Dismissed in Part.

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

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

Father Could Not Be Confined For Contempt On The Ground That He Did Not Pay Temporary Interim Attorney's Fees Because A Person Cannot Be Imprisoned For Failure To Pay A Debt.

215. *In re Hidalgo*, No. 14-25-00338-CV, 2025 WL 1805814 (Tex. App.—Houston [14th Dist.] 2025, orig. proceeding) (mem. op.) (07-01-2025).

Facts: In a divorce suit, Father was ordered to pay child support, spousal support, and interim attorney's fees. Three months later, the court signed an order finding Father failed to pay the interim fees. Subsequently, Mother filed a motion for enforcement, asserting Father had missed support payments and asking the court to hold Father in contempt and sentence him to confinement. After a hearing, the court held Father in contempt for failing to pay child support, spousal support, and interim attorney's fees. Father was sentenced to serve 180 days in the county jail. Father filed a petition for writ of habeas corpus.

Holding: Writ of Habeas Corpus Conditionally Granted.

Opinion: Father contended the contempt order was void because it was issued in violation of his right to due process and the constitution's prohibition against imprisonment for failure to pay a debt.

Here, the contempt order did not attach the underlying order or include the language of the provisions Father allegedly violated. The contempt order only vaguely referenced that temporary orders for support and fees existed. Additionally, the order contradicted itself by stating in one place that Husband violated the order by failing to make 5 child support payments and 4 spousal support payments but elsewhere in the order, it only referred to 2 missed child support payments and 1 spousal support payment. Further, the contempt finding based on Father's failure to pay interim attorney's fees was void because the constitution prohibits imprisonment for a debt. The appellate court held that because the trial court imposed one punishment for all the contempt findings, and because some of the contempt findings were void, the entire contempt order was void.

Contempt Order Void For Including Violations For Non-Payment Of Attorney's Fees Not Classified As Child Support And For Non-Payment Of Support Obligations Allegedly Missed After Mother's Petition Was Filed.

216. *In re Anderson*, No. 07-25-00221-CV, 2025 WL 2490068 (Tex. App.—Amarillo 2025, orig. proceeding) (mem. op.) (08-28-2025).

Facts: Mother filed a suit to enforce child support. After a hearing, the court found Father failed to make multiple payments of child support, retroactive child support, medical support, dental support, and attorney's fees. The court totaled the amount due and ordered that Father had to pay more than double that amount to purge civil contempt and avoid jail. The additional moneys included interest on the support arrearages, missed support payments after Mother's enforcement petition, and attorney's fees for the current proceeding. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: A contempt order that imposes a single penalty for multiple violations is void in its entirety if at least one violation is invalid. The appellate court noted in a footnote: "Had the commitment order identified a discrete penalty for each failure to comply, our result might be different. And, of course, nothing prevents the trial court from issuing a new commitment order that imposes a different civil contempt sentence on different terms. It is unnecessary to decide the validity of such an order today." (citations omitted).

Father did not challenge the contempt violations regarding the unpaid support. He did challenge the court's order subjecting him to incarceration for failure to pay attorney's fees that were not expressly designated for child-support collection and the lack of notice for the alleged violations after Mother's petition.

When attorney's fees are rendered simply as a judgment enforceable as a debt, those fees are not enforceable by imprisonment. When attorney's fees are awarded pursuant to Chapter 157 of the Family Code as additional child support, those fees are not considered a debt and may be enforced by contempt. Because the fees here were awarded in a prior modification suit, they were only enforceable as a debt, and the trial court erred in conditioning Father's imprisonment on payment of the fees.

Before a court may impose contempt for conduct occurring outside the judge's presence, due process requires the alleged contemnor receive notice of the allegations. An enforcement petition must include each date of alleged contempt. Father could not be found in contempt for nonpayment of support payments not specified in Mother's enforcement petition.

Because one or more of the violations were invalid, the entire contempt order was void.

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

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

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

Holding: Affirmed.

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

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

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

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

SAPCR:
Removal of Child / Termination of Parental Rights

Mother 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.

218. ***In re X.M.B.E.***, 706 S.W.3d 714 (Tex. App.—Eastland 2025, no pet.) (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.

TDFPS's Pre-Petition Efforts To Place The Child With Relatives Of The Incarcerated Parents Satisfied The Requirement To Make Reasonable Efforts To Return The Child.

219. ***In re M.N.M.***, 708 S.W.3d 321 (Tex. App.—Eastland 2025, pet. denied) (03-06-2025).

Facts: Mother's and Father's rights to another child had been terminated on endangerment grounds within one year before the current suit. The Child in this suit was removed because she tested positive for drugs at birth. The Child was returned to Mother and Father—who lived with the Child's paternal great grandmother—on condition that the great grandmother would supervise possession. However, the Child was removed again after the great grandmother failed to supervise, and the parents were arrested for shoplifting. The Child was then placed with his maternal grandmother. However, maternal grandmother was not a suitable placement due to her criminal history. The caseworker worked with the parents for a short while, but did not arrange for the parents to complete their services after incarceration. The Child was placed with a foster family who wanted to adopt her. After a trial, the court terminated the parents' parental rights on TFC 161.001(b)(E, M, and N) grounds. The parents appealed.

Holding: Affirmed.

Opinion: Mother and Father challenged the trial court's 161.001(f) finding that TDFPS made reasonable efforts to return the Child before the final hearing.

The trial court terminated on the grounds of 161.001(b)(1)(E), (M) and (N), and the parents did not challenge those grounds for termination. Subsection N is commonly referred to as the "constructive abandonment" ground and requires a finding that "the department made reasonable efforts to return the child … and … a continuing danger remains" in the parents' home. Subsection (f) was enacted after the existence of Subsection N, and it presumed that Legislature enacted the new provision with full knowledge of the existing law. Thus, notwithstanding this language's similarity to Subsection (f), courts must not interpret a statute in a manner that renders any part or provision meaningless.

Here, TDFPS implemented a family service plan, which is generally considered a reasonable effort to return the child to the parent. The issue is whether TDFPS made reasonable efforts, not ideal efforts. Implementation of a service plan is not "absolutely required" to show reasonable efforts to return a child. Courts have found that incarceration or deportation can excuse TDFPS's choice not to make a service plan, if TDFPS attempted to place the child with the parent's relatives.

Although the parents argued that the court should have focused on only efforts made between the date of the filing of the petition for termination and the final trial, the appellate court held that the statute was not so restrictive. Efforts made before filing the petition could be considered. Further, the question was not limited to whether TDFPS was the temporary managing conservator. The children may be placed in foster care with the goal of returning the children to their home.

The appellate court noted that an incarcerated person cannot be expected to complete every requirement of a service plan while in custody, but many evaluations, classes, and assessments can be achieved with a caseworker's assistance. Here, although the caseworker did not assist in completing the parents' service plan, the caseworker did maintain contact with the parents and searched for relatives with whom to place the Child.

Further, the reasonableness of TDFPS's reunification efforts must be viewed in light of the parents' efforts. Mother and Father failed to acquire a legal source of income and safe housing, continued testing positive for various drugs, and did not engage in counseling. The parents had other children removed from their care recently. The Child here tested positive for marijuana, and Mother and Father violated orders requiring their possession of the Child to be supervised. Mother and Father's incarceration rendered them physically unable to care for the Child, and their potential family members were eliminated as safe placement options.

Order Dismissing TDFPS's Suit Based On Notice Of Nonsuit Was Not Final Because It Did Not Clearly Render Judgment On Mother And Father's Motions For Sanctions Against TDFPS.

220. ***In re C.K.M.***, 709 S.W.3d 613 (Tex. 2025) (03-14-2025).

Facts: TDFPS initiated a SAPCR that required Mother and Father to participate in services. Almost a year later, TDFPS filed a separate petition to terminate Mother and Father's parental rights. Mother filed an answer, moved to consolidate the two suits, filed counterpetitions seeking sole managing conservatorship, and filed a motion for sanctions, asserting TDFPS's claims were frivolous and brought in bad faith. Father filed his own answer, counterpetition, and motion for sanctions. In response, TDFPS moved to nonsuit its claims. The trial court stated it was required to grant the nonsuit and expressed frustration with TDFPS. The court further stated an intent to conduct a separate sanctions hearing.

About a month after signing the dismissal order, the court conducted the sanctions hearing. Roughly a week later, it signed the order granting sanctions. TDFPS appealed the sanctions order, arguing the trial court had lost plenary power by the time it signed the order. The appellate court dismissed the appeal and vacated the sanctions order as void. Father petitioned the Texas Supreme Court for review.

Holding: Appeal Dismissed; Remanded to Trial Court.

Opinion: Generally, the appellate courts only have jurisdiction to review appeals of final orders. An order is final if (1) it disposes of all then-pending claims and parties or (2) it unmistakably states that it is a final judgment as to all claims and parties. TDFPS argued the judgment was final because it clearly expressed an intent to dismiss all pending claims and parties and enter a final judgment.

To constitute a final judgment under the "second method" of reviewing judgments, the intent to dispose of the case must be unequivocally expressed in the words of the order itself. It must leave no doubt about the court's intention. Here, the order did not state that it was final or that it disposed of all claims and parties. It did not contain a Mother Hubbard clause or language authorizing its enforcement or execution. There was no decretal language except for a provision that the attorney ad litem was relieved of all duties.

TDFPS argued, and the appellate court agreed, that the order was final because it directed the court clerk to remove "this cause" from the court's docket and notify the parties that "this cause is hereby dismissed." TDFPS argued that "this cause" necessarily referred to the entire consolidated case, including counterclaims and motions filed by all parties. However, the title of the order only referred to TDFPS's motion to terminate, the introductory paragraph stated only that the specific request "was heard," and the only relief granted was to terminate temporary orders and relieve the attorney ad litem of duties. The dismissal order lacked the necessary "host of indica" of finality, and use of the word "cause" did not unequivocally express the court's intent to enter a final judgment. The trial court retained plenary power when it signed the sanctions order.

Mother Waived Appellate Review Of Endangerment Grounds Because She Only Challenged Subsection D On Appeal And Did Not Address Subsection E.

221. ***In re M.N.R.***, 719 S.W.3d 647 (Tex. App.—San Antonio 2025, pet. denied) (04-23-2025).

Facts: After a report and investigation, TDFPS found reason to believe that Mother's boyfriend abused the two-year-old Child. Mother believed her boyfriend's claim that the Child fell off the bed multiple times and refused to leave her boyfriend. After a trial, the court terminated Mother's rights on both endangerment grounds (subsections D and E) and found that termination of her parental rights was in the Child's best interest. Father was appointed sole managing conservator. Mother appealed.

Holding: Affirmed.

Opinion: The Texas Supreme Court has held that if a parent's parental rights are terminated on endangerment grounds, an appellant challenging those grounds is entitled to a review of the endangerment finding(s) even if termination could be supported on other non-endangerment grounds. This requirement is necessary because the parent could be susceptible to future terminations under subsection (M), which permits termination if a parent's rights have been previously terminated on endangerment grounds.

Although Mother stated in her issues-presented that she was appealing both endangerment grounds, her brief only addressed subsection D—not subsection E. Noting a split of authority on the question, the San Antonio court held that Mother was not entitled to appellate review of whether the evidence supported the subsection E finding due to her failure to adequately brief the issue. Further, even if the court found reason to reverse the subsection D finding, Mother would still be at risk of a future termination on ground M. Thus, because Mother failed to challenge the subsection E finding, the court declined to review whether the evidence supported the subsection D finding. Additionally, the evidence supported a finding that termination was in the Child's best interest.

No Evidence Supported Default Property Division; However, Mother Presented Sufficient Evidence To Support Termination Of Father's Parental Rights.

222. *Isam v. Isam*, No. 03-23-00299-CV, 2025 WL 1196004 (Tex. App.—Austin 2025, no pet.) (mem. op.) (04-25-2025).

Facts: Mother and Father had four Children. Mother filed a petition for divorce. A guardian ad litem drafted a graduated possession schedule that took into consideration Father's drug-related arrest. Father did not make many efforts to see the Children. Father did not pay child support, and Mother received government assistance to provide for the Children.

Father refused to participate in settlement negotiations until obtaining information about Mother's retirement account with the Texas Teacher's Retirement System. Father did not explain why he had failed to take a hair follicle test as ordered. In a second amended petition, Mother sought to terminate Father's parental rights based on voluntary abandonment, endangerment, and failure to financially support the Children.

Father failed to appear at trial. Father explained in his appellant's brief that he personally was unaware of the trial because his attorney had become uncommunicative. However, the record showed that notice of hearing was properly served on Father's attorney of record.

At trial, Mother testified about Father's failures to visit the Children, his lack of unemployment throughout the marriage, and his failure to provide financial support. Father used and sold drugs and had a lengthy criminal history that included felony charges. Mother also testified about Father's mental health and his repeated threats to kill himself. Additionally, Mother testified Father had physically abused her and placed a tracking device on her vehicle. A photo of Father tying belts together to hang himself and a suicide letter from Father were admitted into evidence. Father was emotionally abusive to the Children and threatened to hit them with a belt. He backhanded one of the Children in the face. None of the Children desired a relationship with Father.

At the hearing's conclusion, the court granted the divorce, divided the community estate, and terminated Father's parental rights. Father appealed.

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

Opinion: Father first complained that the evidence was insufficient to support the property division. Mother did not respond to that issue in her appellee's brief. Mother sought a just and right division of the community estate and filed a proposed property division. Mother did not provide a net value of the estate or values for the assets to be awarded to either party. She provided no supporting documentation, appraisals, or financial records. Without evidence, the trial court had no basis on which to make an informed decision on how to equitably divide the community estate and erred in doing so.

Father next challenged the termination of his parental rights. Father argued the evidence failed to satisfy the "clear and convincing" burden to support that termination was in the Children best interest or that he abandoned, endangered, or failed to financially support the Children. The appellate court reviewed the evidence under the applicable standard of review and affirmed the termination on endangerment grounds.

★★★ Texas Supreme Court ★★★

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

223. ***In re N.L.S.***, 715 S.W.3d 760 (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.

224. ***In re A.C.P.***, 719 S.W.3d 679 (Tex. App.—San Antonio 2025, no pet.) (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 with a memorandum opinion. *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.

Earlier Memorandum Majority Opinion: (J. Meza) (opinion from which TDFPS sought reconsideration)
In re A.C.P., No. 04-24-00653-CV, 2025 WL 900127 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (03-25-2025).

The Children were injured on two separate occasions by wild animals. If Mother was not aware of the danger before the first incident, she was or should have been by the second. Thus, the evidence supported the endangerment finding. However, TDFPS presented scant evidence regarding Mother's current living conditions and failed to present legally sufficient evidence that termination would be in the Children's best interest.

Earlier Reported Concurring Opinion: (J. Brissette)
In re A.C.P., 719 S.W.3d 645 (Tex. App.—San Antonio 2025, no pet.) (03-25-2025).

TDFPS "sought to terminate on flimsy facts." It treated "termination as a foregone conclusion." The appellate role is to determine whether sufficient evidence supported the judgment, not to determine whether abuse or neglect occurred." "[A]ffirming despite the State's failure to create the necessary record creates a very dangerous precedent—one that would only further enable a system that seems to have become numb to the import of what is at stake." While TDFPS and the trial court may have been familiar with what they may have seen as an open-and-shut case, the appellate review was limited to what was presented and admitted at trial, which was insufficient to support termination.

Earlier Reported Concurring and Dissenting Opinion: (J. McCray)
In re A.C.P., 719 S.W.3d 645 (Tex. App.—San Antonio 2025, no pet.) (03-25-2025).

The majority should have deferred to the trial court's credibility determinations and found TDFPS satisfied its burden to prove termination was in the Children's best interest.

Opinion Dissenting to the Denial of En Banc Reconsideration: (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.

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

Evidence Of Mother's Drug Use, Refusal To Participate In Court Ordered Services, And Lessening Involvement As Case Progressed Supported Termination Of Her Parental Rights.

226. ***In re C.C.***, 720 S.W.3d 41 (Tex. App.—Texarkana 2025, no pet.) (07-30-2025).

Facts: The trial court terminated Mother's parental rights on the grounds of endangerment (D and E), disobeying order facilitating investigation of abuse or neglect (I), and use of a controlled substance (P) and found termination was in the Child's best interest. Mother appealed.

Holding: Affirmed.

Opinion: Mother did not challenge the ground P finding, that she engaged in an endangering use of a controlled substance, but she did challenge the sufficiency of the evidence to support all the other bases for termination. Because a termination on grounds D and E has consequences in future termination proceeding, the appellate court was required to review whether the evidence supported those endangerment findings.

Mother initially would not let TDFPS enter her home. She acknowledged use of marijuana. Mother unenrolled the Child from school, explaining the Child had head lice. TDFPS gave Wife a kit to treat the lice, yet two weeks later, the Child was still not in school. Mother did not complete services and could not provide stable housing. When in Mother's possession, the Child was spending time with other children who frequently got in trouble. Mother could not afford to buy her own house, but the

children of the person she chose to live with were a concern to TDFPS. Mother wanted those children to help babysit when she went to work. Mother did not participate in counseling because she felt it was not necessary. Mother tested positive for both cocaine and marijuana and failed to take many subsequent drug tests. Although Mother complained of transportation issues, she never asked for help with transportation to services. Mother started parenting classes but did not complete them. As the case progressed, Mother became less involved. Mother did not respond to phone calls or show an interest in the Child. The Child was thriving in foster care. Because the evidence supported an endangerment finding, the court was not required to address the ground I (disobeying the order facilitating investigation) finding.

Further, in reviewing the *Holley* factors, the evidence supported a finding that termination was in the Child's best interest.

Grandmother Not Authorized Under Family Code To Seek To Have Father's Indigency Status Reconsidered In Termination Suit Filed By TDFPS.

227. *In re D.D.*, No. 02-25-00335-CV, 2025 WL 2177180 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (07-31-2025).

Facts: TDFPS filed a suit to terminate Father's parental rights. The trial court found Father to be indigent and appointed counsel to represent Father. The Child's maternal Grandmother intervened in the suit. After a jury trial, the court appointed Grandmother as the sole managing conservator and Father as a possessory conservator. The trial court appointed appellate counsel to represent Father, and that counsel filed a notice of appeal on Father's behalf. Grandmother filed a motion to find Father was not indigent. After a hearing, the trial court found Father was no longer indigent and discharged the appointed appellate counsel. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: In its response, TDFPS argued neither the trial court nor Grandmother was authorized to have Father's indigency reconsidered, and the trial court erred in discharging Father's appellate counsel. Grandmother acknowledged she was not a proper party to challenge the indigency but argued Father's appellate complaint failed because he failed to provide a record of the indigency hearing. Grandmother argued that in the absence of the record, the appellate court should assume the trial court found good cause to support the discharge.

The trial court based its decision strictly on the finding Father was no longer indigent; it made no good cause finding. The Family Code did not authority Grandmother to challenge the indigency finding in a termination suit filed by a governmental entity because she is not a "parent." Because the hearing was not authorized, the transcript was not necessary for the appellate court to resolve Father's petition.

Further, Father would not have an adequate remedy by appeal because he would be deprived of appellate counsel at a critical stage of the appeal.

Father Preserved Legal-Sufficiency Challenge To Jury Verdict By Filing Motion For JNOV; However He Failed To Preserve A Factual-Sufficiency Challenge Because He Failed To File A Motion For New Trial.

228. *In re Z.D.*, No. 02-25-00114-CV, 2025 WL 2177389 (Tex. App.—Fort Worth 2025, pet. denied) (mem. op.) (07-31-2025).

Facts: TDFPS filed a suit to terminate the parental rights of three children. Father was the father of the youngest Child, who was only a few months old. The Child's maternal Grandmother filed an intervention. A jury found it would be in all three children's best interest for Grandmother to be appointed as their sole managing conservator. After the verdict, Grandmother and Father reached an agreement regarding Father's possessory conservatorship of the Child. The trial court refused to accept the agreement unless Father waived his right to appeal. Father declined to waive that right. The trial court signed an order appointing Father as a possessory conservator with independent rights and granted him an expanded standard possession order that was required to be supervised by Father's mother. Father was additionally required to submit to period drug testing. Father appealed.

Holding: Affirmed.

Opinion: In his final issue, Father argued the evidence was legally and factually insufficient to support the verdict appointing Grandmother as sole managing conservator. Because Father filed a motion for judgment notwithstanding the verdict, he preserved his legal-sufficiency challenge. However, Father failed to preserve his factual-sufficiency challenge because he failed to file a motion for new trial.

When reviewing a jury verdict for legal sufficiency, the appellate court will affirm the judgment if more than a scintilla of evidence supported the verdict. Father tested positive more than once for methamphetamine. Drug use can endanger a child. Additional evidence was admitted regarding Father's drug use and inability to stop using drugs. The evidence was legally sufficient to support the verdict.

Father complained of the trial court's number of allowed preemptory strikes in selecting the jury. While he objected before voir dire, he did not object while exercising his strikes. His objection was premature and did not preserve the issue for appellate review.

Father further argued the trial court erred in requiring Father to waive his right to appeal as a condition of his agreement with Grandmother. However, presuming there was error, Father failed to show how he was harmed. Father did not show how the agreement was different from what the trial court actually ordered.

Finally, Father complained of the supervision requirement associated with his periods of possession. Based on Father's use of drugs and failure to stop using drugs, the trial court did not err in requiring supervised visitation.

Mother's Severe Mental Illness Diagnosis Combined With Her Refusal To Complete Service-Plan Treatment Requirements Constituted A Material Failure To Comply And Supported Termination Based On Subsection O.

229. ***In re J.Z.A.***, 720 S.W.3d 558 (Tex. App.—El Paso 2025, no pet.) (07-31-2025).

Facts: In its petition to terminate Mother's parental rights, TDFPS listed six predicate grounds. In its affidavit, TDFPS expressed concerns regarding drug use and untreated mental health issues. At trial, TDFPS relied solely on Subsection O (failure to comply with court orders). Mother orally requested a continuance, claiming the need for more time to complete services. The continuance was denied. A psychiatrist diagnosed Mother with bipolar disorder. While Mother could be "normal" between episodes, she could be "quite dangerous" at other times. After trial, the court terminated Mother's parental rights. The court found that the termination was not based on evidence Mother was economically disadvantaged. Mother failed to show she made a good faith effort to comply with the order. Mother appealed.

Holding: Affirmed

Opinion: Mother challenged the legal and factual sufficiency to support both the ground-O predicate finding and the best-interest finding.

The Family Code details a single affirmative defense that can be raised in response to a subsection O allegation. The parent must prove, by a preponderance of the evidence, that she was unable to comply with the court-ordered service plan, she made a good faith effort to comply, and her failure to comply was not attributable to any fault of her own. The Supreme Court has held that a parent's failure to complete a requirement of a service plan may be sufficient to support termination so long as the requirement is specific and material.

Mother failed to comply with many provisions relating to her mental health. For example, Mother did not follow up to obtain medication to treat her mental health diagnosis and testified that she did not want to take the medication. Mother failed to begin recommended psychiatric treatment and care. Mother ignored the psychologist's recommendation that she undergo a psychiatric evaluation. The appellate court disagreed with Mother's appellate arguments that the recommendations were vague or nonspecific. The recommendations for care and medication intended to give Mother a chance at providing a safe and healthy environment was neither trivial nor immaterial. It was neither vague nor unwritten. While Mother completed portions of the service plan, she failed to complete material requirements. Thus, Mother's argument that she substantially complied failed.

The court recognized the harshness of terminating the parental rights of an individual with mental illness who had complied with many service plan requirements. However, in this case, Mother's mental illness was so severe that psychiatric treatment and care were the only path for her to safely and successfully parent her Child on an ongoing basis.

Finally, in reviewing the *Holley* factors, evidence supported that termination was in the best interest of the Child.

Evidence Insufficient To Support Predicate Grounds For Termination; Mother Did Not Abandon The Child But Maintained Contact Through Letters While Imprisoned, And Mother Complied With The Safety Plan Despite Caseworker's Claim To The Contrary.

230. ***In re G.M.M.***, 721 S.W.3d 679 (Tex. App.—San Antonio 2025, no pet. h.) (08-27-2025).

Facts: TDFPS initiated a termination suit. After a two-day trial, the court terminated Mother's parental rights based on grounds N (abandonment) and O (failure to follow court order). The court highlighted its issue with Mother being incarcerated without a scheduled release date and the active no-contact order with the grandmother with whom the Child had been placed. However, neither of those points served as support for termination on grounds N or O. Although Mother wrote the Child 25 letters while incarcerated, the trial court found that to be insufficient contact with the Child. As support for ground O, the court found Mother failed to engage in individual counseling before incarceration. Mother appealed.

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

Opinion: To terminate parental rights under subsection (N), TDFPS must establish that (1) the child has been in the permanent or temporary managing conservatorship of TDFPS for not less than six months; (2) it has made reasonable efforts to return the child to the parent; (3) the parent has not regularly visited or maintained significant contact with the child; and (4) the parent has demonstrated an inability to provide the child with a safe environment. Mother argued she visited the Child regularly before incarceration and maintained contact via letters thereafter. Mother attended almost every single virtual visit with the Child. In-person visits were difficult to schedule due to the distance between Mother's home and the Child's placement. There was no evidence Mother failed to attend a scheduled in-person visit. Mother's letters to the Child were appropriate, loving, and positive. The evidence was legally insufficient to support termination under ground N.

To terminate under ground O, the court must find that (1) the parent failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child (2) who has been in permanent or temporary managing conservatorship of TDFPS for not less than nine months, and (3) as a result of the child's removal from the parent under Chapter 262 of the Family Code for the abuse or neglect of the child. Here, the service plan required Mother to actively engage with counseling until discharged and to follow the therapist's recommendations. Mother failed to engage in counseling with the specific service provider identified by name in the plan. However, Mother engaged in individual counseling once a week while working through the Texas Substance Abuse Felony Punishment Facility ("SAFP"). Mother testified that she learned a lot through therapy. Mother's caseworker acknowledged Mother's participation but asserted Mother failed to comply with the plan because the therapy did not address Mother's mental health issue. The plan admitted into evidence did not specify that Mother's mental health needed to be addressed. Because Mother engaged in, regularly attended, and actively participated in individual counseling to successfully complete SAFP, the evidence was legally insufficient to support termination under ground O.

Because the evidence to support the predicate grounds for termination was legally insufficient, the court did not address the trial court's best interest finding and reversed the order terminating Mother's parental rights. However, the order was affirmed in all other respects, including the unchallenged finding naming TDFPS as the Child's managing conservator.

Order Granting New Trial After Jury Trial Was Clear Abuse Of Discretion Because Trial Court Failed To Provide Reasons To Assure The Parties It Had Reached Decision After Careful Consideration; No Evidence Supported Finding Any Outside Influence Altered Jury's Deliberations.

231. ***In re R.E.S.***, 725 S.W.3d 471 (Tex. App.—El Paso 2025, orig. proceeding) (09-15-2025).

Facts: After being released from prison, Father filed a petition to modify the parent-child relationship. A previous order had appointed Father and Mother as joint managing conservators, with Mother having the exclusive right to designate the Child's primary residence. However, at the time of Father's release, the Child had been living with Maternal Uncle and Aunt for three years. Aunt and Uncle learned of Father's release by way of his petition and intervened in the modification suit, seeking to terminate Father's parental rights. Mother voluntarily relinquished her rights.

At a jury trial, testimony was heard from Father, his wife, Aunt, Uncle, Mother, and a CPS investigator. Evidence was offered of Father's criminal history and drug use, Mother's drug use, the Child's initial removal from the parents, and the Child's agreed placement with Aunt and Uncle. The jury found that the evidence supported terminating Father's parental rights on endangerment grounds and that termination was in the Child's best interest.

Father then filed a motion for judgment notwithstanding the verdict ("JNOV") and a motion for new trial ("MNT"). In the JNOV, Father challenged the sufficiency of the evidence and asserted that an inconsistent juror poll warranted setting aside the verdict. In his MNT, Father made the same challenges and additionally alleged juror misconduct and bailiff misconduct. In support of the MNT, Father offered affidavits from himself and from three jurors.

After a hearing that relied solely on legal argument and the juror affidavits, the trial court denied Father's JNOV but granted the MNT, finding the evidence was legally and factually insufficient to support the jury's findings and that newly discovered evidence of misconduct warranted a new trial. Aunt and Uncle filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: The Texas Supreme Court has held mandamus relief is appropriate when a trial court erroneously issues a new-trial order. Thus, the appellate court reviewed only whether the order was a clear abuse of discretion.

Jury trials are a cornerstone of our constitutional system for resolving disputes. Trial courts may only disregard a jury's verdict when doing so is clearly supported by sound reasons. The trial court is required to provide litigants with an understandable, reasonably specific explanation for setting aside a jury verdict. The reasons given must be legally appropriate and specific enough to indicate the court did not simply parrot a pro forma template but articulated reasons based on the particular facts of the case at hand.

In their petition for writ of mandamus, Aunt and Uncle first challenged the trial court's finding that the evidence was insufficient to support the jury's verdict. While a parent's rights to the companionship, care, custody, and management of his child is far more precious than any property right, the child must not be sacrificed merely to preserve that right. Additionally, mere recitation of a legal standard will not suffice to support an order disregarding a jury verdict. Here, in its order granting Father's motion, the court provided its reasoning for the order but failed to consider the evidence as a whole and instead merely recited isolated and disputed pieces of evidence that would support Father's position, while ignoring evidence that would support the jury's verdict. Further, the trial court focused solely on evidence regarding the Child's best interest and did not address the evidence supporting the endangerment finding.

The trial court's stated bases with respect to the sufficiency of the evidence did not amount to a cogent and reasonably specific explanation and did not provide the parties with assurance that the jury's decision was set aside only after careful thought and for valid reasons. Thus, the trial court clearly abused its discretion to the extent it disregarded the verdict based on the sufficiency of the evidence to support termination.

Aunt and Uncle next challenged the trial court's granting of a new trial based on alleged juror or bailiff misconduct. They argued Father presented no admissible evidence to support his claim. To warrant a new trial on grounds of juror or bailiff misconduct, the complaining party has the burden to prove: (1) there was misconduct; (2) it was material; and (3) it probably caused

injury. Both the Rules of Civil Procedure and Rules of Evidence bar jurors from testifying about deliberations or internal mental processes, except when outside influence is shown.

In its order granting the new trial, the court identified the following as misconduct: improper consideration of specialized knowledge and personal experiences; confusion regarding the jury charge; a discrepancy between the jury charge and jury poll; pressure on the jurors from each other and the bailiff; the bailiff refusing to allow a break; and allegations of post-trial witness tampering.

At the outset, none of the following could support the new-trial order: the jurors' consideration of specialized knowledge and personal experiences; confusion regarding the jury charge; and the discrepancy between the jury charge and jury poll. The first would not be considered "outside" influence. Next, the Supreme Court has made clear that juror confusion cannot support granting a new trial. Finally, the alleged discrepancy was based on the fact that 11 jurors claimed in open court to support the verdict, while only 10 signed the charge. Because the verdict could be supported by 10 jurors, the discrepancy could not serve as a basis for granting a new trial.

In the trial court's order, it identified certain acts by the bailiff that supported granting a new trial; however, the only evidence at the hearing on the motion for new trial was the three juror affidavits, and those affidavits did not mention the acts listed in the trial court's order. No evidence supported the finding that the bailiff denied the jurors a break. Additionally, where a bailiff's statement is neutral and not the type of information that would influence the verdict, that statement cannot be considered an outside influence on the jury. Finally, one juror noted that an investigator left a voicemail for the juror after trial. A post-trial contact could not have influenced the juror's verdict or altered the outcome of deliberations. Accordingly, the trial court clearly abused its discretion in granting a new trial based on alleged juror or bailiff misconduct.

Family Code Limitation Providing Affidavit Of Voluntary Relinquishment Can Only Be Challenged With Evidence Of Fraud, Duress, Or Coercion Is Additional Limitation To Bill Of Review Procedure, Not A Replacement For Traditional Bill of Review Procedure.

232. ***In re D.M.W.***, __ S.W.3d __, No. 05-25-00534-CV, 2025 WL 2821557 (Tex. App.—Dallas 2025, pet. filed) (10-03-2025).

Facts: In a mediation involving Mother, TDFPS, and the adoptive parents, Mother agreed to voluntarily relinquish her parental rights to two of her five Children. That MSA also provided Mother would have monthly visitation until the relinquishment. In a second mediation, the parties created a possibility for Mother to have some contact with the Children after adoption. Subsequently, Mother's parental rights were terminated based on her signing an affidavit of voluntary relinquishment.

Thereafter, the adoptive family cancelled many of Mother's visitations with Children for various reasons. Later, the Children were removed from the adoptive parents' home due to an allegation of child-pornography against the adoptive father. Because Mother's visitations were conditioned by the MSA on the Children's placement with the adoptive family, TDFPS argued Mother no longer had a right to visitation.

Mother filed a petition for bill of review, asserting the adoptive father fraudulently induced Mother into signing the affidavits of voluntary relinquishment because the adoptive father failed to disclose his addiction to child pornography. The trial court denied Mother's petition, and she appealed.

Holding: Affirmed.

Opinion: To support a petition for bill of review, the petitioner must show: (1) a meritorious claim or defense; (2) the party was prevented from asserting her claim or defense by the fraud, accident, or wrongful act of her opponent or by official mistake; and (3) the party was prevented from asserting her claim or defense through no fault or negligence on her own part. Additionally, the Family Code provides that an affidavit of voluntary relinquishment may be challenged only if the affidavit was obtained through fraud, duress, or coercion.

Mother argued that if she satisfied the Family Code requirements regarding fraud, duress, or coercion, she was entitled to a bill of review. Mother further asserted that the fraud could have been committed by anyone, not just the opposing party in the underlying termination case. TDFPS countered that the Family Code could not supplant the traditional elements of a bill of review and that, rather, the Family Code imposed an additional requirement on someone challenging a termination judgment based on an affidavit of voluntary relinquishment.

The actual language of the statute provides that a challenge to the affidavit "is limited to" claims of fraud, duress, or coercion. Mother's view asked the court to replace "is limited to" with the idea that her challenge "must be sustained" if the petitioner establishes fraud, duress, or coercion. Mother's interpretation asked the court to ignore settled law and rewrite the text of the legislature's choice. Moreover, the Family Code section cited by Mother did not address the other two elements of a bill of review.

★★★ TEXAS SUPREME COURT ★★★

In Parental-Termination Cases, A Court May Not Terminate Parental Rights In The Face Of An Unequivocal And Unrepudiated Statement Made By Someone Speaking On TDFPS's Behalf That Withdraws Termination As A Requested Form Of Relief.

233. ***D.V. v. TDFPS***, 722 S.W.3d 854 (Tex. 2025) (10-31-2025).

Facts: The TDFPS representative twice stated at trial that TDFPS sought to restrict but not terminate Mother's parental rights. The trial court nevertheless terminated Mother's parental rights. She appealed, and TDFPS argued on appeal that it had not abandoned its pleaded request for termination. The appellate court affirmed. Mother petitioned the Texas Supreme Court for review.

Holding: Reversed and Rendered.

Opinion: When affirming the trial court's decision, the appellate court opined, "[i]n interpreting stipulations, courts consider the language used 'and the surrounding circumstances, including the state of the pleadings, the allegations made therein, and the attitudes of the parties toward the issue.'" The appellate court identified the case's larger "context" as including the termination recommendations from the CASA volunteer and attorney ad litem; the presentation of evidence that would support termination; the request by Mother's counsel not to terminate; and the statements abandoning termination coming not from TDFPS's counsel but its designated representative. Accordingly, the court "agree[d] with" TDFPS's contention that, given this "context," the statements expressly withdrawing termination as TDFPS's requested relief did not have the effect of doing so.

Without opining as to whether this approach would be appropriate in an ordinary civil suit, the Supreme Court held it was inadequate in a parental-termination case. Claims can be formally abandoned. But a claim may also be abandoned by stipulation, so that "[w]hen parties stipulate that only certain questions will be tried, all others are thereby waived." The question here, then, was simply whether the statements by TDFPS's designated representative amount to the TDFPS's unequivocal abandonment of termination as a requested remedy. The representative clearly stated it wished to "limit and restrict" Mother's rights and to "limit [Mother's] rights to parent non-conservator." The TDFPS representative unequivocally presented those statements as being for TDFPS and were not her personal views.

CASA's statement could not be imputed as TDFPS's. Father did not seek termination of Mother's rights. While evidence at trial could have supported termination, it also could have supported restricting Mother's parental rights. It would be bizarre to restore termination as an option because Mother's counsel asked the court not to terminate. With respect to the reliance on TDFPS's representative, rather than its counsel, stating TDFPS was not seeking termination: the point of having a designated representative of TDFPS was for that representative to apprise the court of TDFPS's position. When TDFPS's counsel asked for the representative of TDFPS's position and received an answer, counsel did not make any effort to countermand that answer. Finally, TDFPS's reliance on its live pleading was not persuasive because its live pleading also requested termination of Father's parental rights, yet at trial, it openly advocated for Father to be given full authority over the Child. "In other words, it is hard to give much weight to what the live pleading says about termination when *in this very case* the live pleading demanded a termination that the department had undisputedly abandoned." (emphasis in original).

The Supreme Court rendered Mother's rights were not terminated and remanded for the trial court to render judgment consistent with this opinion and resolve any remaining issues.

Evidence Supported Jury Verdict In Favor Of Terminating Father's Parental Rights.

234. ***In re K.-K.J.B.***, __ S.W.3d __, No. 04-25-00489-CV, 2025 WL 3223754 (Tex. App.—San Antonio 2025, no pet.) (11-19-2025).

Facts: TDFPS petitioned to terminate Mother and Father's parental rights. A jury did not find in favor of termination of Father's parental rights. However, TDFPS was named as the Child's permanent managing conservator.

TDFPS later moved to modify and again sought to terminate Father's parental rights. This time, a jury found in favor of termination. A final order terminated Father's parental rights based on grounds of endangerment, abandonment, drug use, and failure to follow court orders. Father appealed.

Holding: Affirmed.

Opinion: Father challenged the legal and factual sufficiency of the evidence supporting termination. The Child was a non-verbal autistic child with special needs. Although Father testified to a willingness to improve his parenting abilities, he did not complete the court-ordered parenting course and failed to engage with the specialized training. Father was informed of the Child's need for ligament surgery, but Father failed to speak with the doctor about it. Without knowledge of the recommended recovery time, Father removed the Child's leg braces because they "had probably been on too long." Although Father's visits with the Child were loving and appropriate, he missed 15 of them, and a caseworker expressed concerns about Father's ability to understand the Child's needs. Father also failed to bring necessary supplies to visitations. When Father's visits became more erratic and aggressive, he was ordered to undergo a drug test, and the results were positive. Father had some evidence of a criminal history. Father did not have stable housing or employment.

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

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

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

Holding: Affirmed.

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

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

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

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

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

FAMILY VIOLENCE / PROTECTIVE ORDERS

Testimonial Evidence Supported Protective Order, So Girlfriend Could Not Show Admission Of Video Evidence Was Harmful Error.

236. *Johnson v. Vernon*, No. 05-24-00179-CV, 2025 WL 303953 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (01-27-2025).

Facts: Boyfriend and girlfriend broke off their marriage engagement but continued to live together for years. However, Boyfriend ultimately gave girlfriend a written eviction notice. Girlfriend became angry and hit boyfriend multiple times, including on the fistula on his arm where he received dialysis treatment. She then yelled "bleed out, mother f***er." Boyfriend called 911, and Girlfriend was arrested for assault on an elderly disabled man.

At a protective order hearing, in addition to testimony, the State introduced five videos Boyfriend had made during the incident on his phone. The court granted a one-year protective order. Girlfriend appealed.

Holding: Affirmed.

Opinion: Girlfriend argued the admission of the videos were not relevant and if they were, their probative value was outweighed by the danger of unfair prejudice. Even if the court erred in admitting the videos, the testimony supported the protective order. Girlfriend failed to show that the admission of the videos probably caused the rendition of an improper judgment; i.e., she failed to show that any error was harmful.

TEXAS SUPREME COURT

Lifetime Protective Order Prohibiting All Contact Between Mother And The Children Reversed For Not Applying The Clear And Convincing Evidentiary Standard.

237. ***Stary v. Ethridge***, 712 S.W.3d 584 (Tex. 2025) (05-02-2025).

Facts: Mother and Father divorced and shared custody of their three Children. Subsequently, Mother was arrested for felony injury to a child, but that criminal case was dismissed about three years later.

A week after Mother's arrest (well before the dismissal of the criminal suit), Father applied for a protective order exceeding two years based on the felony. After an evidentiary hearing, the trial court found Mother committed family violence that would be a felony if charged. Based on that finding, the court rendered a protective order to last for Mother's lifetime. The order prohibited Mother from contacting or communicating directly with the Children or from being within 100 yards of a place where Mother knew the Children would be.

Mother filed a motion for new trial asserting the order amounted to a termination of her parental rights without due process. After the new trial was denied, she appealed, asserting that the clear and convincing evidentiary standard should have been applied. The appellate court affirmed, holding that the lifetime protective order was not equivalent to termination and did not require clear and convincing evidence. Mother petitioned the Texas Supreme Court for review.

Holding: Reversed and Remanded to Trial Court.

Opinion: Mother argued the trial court violated her constitutional right to due process by prohibiting all contact with her Children for her lifetime without clear and convincing evidence to support its underlying findings. She argued the order deprived her of her fundamental right to make decisions concerning the care, custody, and control of her Children and was tantamount to a termination of her parental rights without the heightened burden of proof.

The parties agreed that the right to make decisions concerning the care, custody, and control of one's children is a fundamental right. Accordingly, the court first addressed whether the protective order deprived Mother of that right, and if so, whether the trial court failed to provide Mother due process in doing so. The Supreme Court decided that "[w]hen parents are barred from being present in their children's lives, they lose an integral component of their authority and their ability to carry out their duty to ensure their children's well-being. A parent cannot parent without presence." Although, as the appellate court noted, Mother retained other rights, including the right to receive information concerning the Children's welfare, retention of those rights did not absolve the protective order from its removal of the paramount element of presence in Mother's relationship with her Children.

A parental-rights termination case requires clear and convincing evidence. To determine whether that heightened standard should apply to protective orders prohibiting a parent's contact with her children for more than two years, the court considered: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.

The US Supreme Court has held that protective orders that prohibit contact for over two years "break the ties between a parent and child." This protective order goes further by continuing the prohibition after the Children reach maturity. The amicus attorney appointed to defend the judgment noted that a parent may twice seek review of a protective order, unlike termination orders. However, the opportunity for two reviews does not erase the fundamental similarity of these orders imposing a "unique kind of deprivation" of a parent's fundamental right. A heightened burden of proof reflects the importance of the interest at stake and the significant length of deprivation of that interest. The government's interest too is best served by reducing the risk of the erroneous deprivation of parental rights.

Thus, the court held that a trial court must find that clear and convincing evidence support the imposition of a protective order prohibiting all contact between a parent and her children for a period exceeding two years. Because it was unclear from the record whether the evidence presented would have satisfied that burden, the "most prudent course" was to remand the case to the trial court for a new hearing.

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.

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

239. *Kanady v. Chan*, No. 01-23-00399-CV, 2025 WL 1710292 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (on reh'g) (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.

240. ***In re Glenny***, 722 S.W.3d 216 (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."

Orders For Conservatorship, Possession, And Support Struck Because Mother Filed Only An Application For Protective Order And The Additional SAPCR Issues Were Not Tried By Consent.

241. *Mendoza v. Frazer*, No. 01-23-00896-CV, 2025 WL 2212079 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (08-05-2025).

Facts: Mother filed an application for a protective order against Father based on allegations of family violence and stalking for the protection of Mother and the Child. At the hearing, Mother testified about daily violence while they lived together and Father's homicidal and suicidal ideations. Father owned firearms that he kept loaded, and he set them out to be visible during arguments with Mother. After Father was evicted from Mother's home, Mother often caught him around her when he had no reason to be near her, and he refused to "stop following her." Other witnesses testified about interactions between the parties, including Father throwing a TV across the room towards Mother while she was holding the Child.

After the trial, the court entered a protective order and additionally rendered conservatorship orders, appointing the parties joint managing conservators with Mother having the exclusive right to designate the Child's primary residence with a geographic restriction. The court also made orders for possession and child support. Mother filed a motion to modify the order and a motion for new trial, seeking to set aside the additional SAPCR orders because those orders did not conform to her pleadings. After the court denied those motions, Mother appealed.

Holding: Affirmed as Modified.

Opinion: Mother's application for a protective order did not request any orders regarding conservatorship, possession, or support. Those issues were not tried by consent. The entirety of the hearing was focused on Mother and Father's relationship, Mother's allegations against Father, and Father's behaviors before and after his eviction from Mother's home. The appellate court, thus, deleted the SAPCR orders and otherwise affirmed the protective order.

Evidence Supported Denial Of Mother's Application For Protective Order.

242. *J.G. v. M.G.*, No. 02-24-00496-CV, 2025 WL 2264197 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (08-07-2025).

Facts: During their divorce, Mother sought a protective order against Father. The court simultaneously conducted a hearing on Mother's protective order and a hearing for temporary orders in the divorce proceeding. The court denied the protective order and rendered temporary orders that included a supervision requirement for Father's periods of visitation with the parties' four Children. Despite denying Mother's protective order, the court extended certain injunctions of the emergency ex parte protective order but made the injunctions mutual. Mother appealed the denial of the protective order.

Holding: Affirmed.

Opinion: Mother and Father offered different versions of events. Mother asserted that Father intentionally caused her phone to strike her, which constituted family violence. Father admitted he tried to take Mother's phone but let go when he realized she was not going to let go. Because Mother was pulling on the phone, when Father let go, the phone struck her in the face. The trial judge stated on the record that it found neither party to be credible. The court could have reasonably determined that "Father did not know, nor should he have known, that Mother would find that particular contact to be offensive or provocative at that time."

"Our holding should not be read to hold that a person's grabbing a phone from someone's hand can never constitute family violence or that it is insufficient evidence of such an allegation. Rather, our holding is limited specifically to the facts of this case in light of the applicable standard of review."

Protective Order Could Extend Protection To Applicant's Adult Children Based On The Finding That The Applicant Was Entitled To A Protective Order Under The Code Of Criminal Procedure.

243. *K.B. v. E.B.*, No. 02-24-00481-CV, 2025 WL 2264196 (Tex. App.—Fort Worth 2025, pet. denied) (mem. op.) (08-07-2025).

Facts: Husband and Wife divorced about 14 years ago. The decree prohibited Husband from communicating with Wife except through her attorney and from contacting the parties' Children except as set out in a supervised possession order. Two years after the divorce, Husband was sentenced to 10 years' confinement for stalking Wife. Just after Husband was sentenced, the divorce court extended the protective order for 10 years.

About a week after the protective order's expiration, the DA's office applied for a new protective order. Husband, still incarcerated, represented himself. After a hearing, the trial court entered a 50-year protective order. Husband appealed pro se.

Holding: Affirmed.

Opinion: Among other complaints, Husband argued the protective order should not have included the parties' Children because they were now adults. Once the trial court makes the requisite finding to issue a protective order, the Code of Criminal Procedure authorizes the order to include any member of the applicant's family or household. Wife asked for the order to protect her family. The appellate court noted the recent holding in *Stary v. Ethridge*, 712 S.W.3d 584 (Tex. 2025), requiring a significant impairment finding to ban all contact between a parent and child. However, the appellate court declined to extend that holding to adult Children.

Regardless Of Which Version Of The Statute Applied, Evidence Supported A Finding That Family Violence Was Likely To Reoccur.

244. *D.R. v. C.R.*, No. 04-23-00931-CV, 2025 WL 2331484 (Tex. App.—San Antonio 2025, no pet.) (mem. op.) (08-13-2025).

Facts: Over the course of a lengthy divorce proceeding, Mother had to file more than one habeas petition to have the Children returned to her from Father. After one forced return, someone shot at Mother and her boyfriend. Mother had no proof that Father was the shooter, but she could not think of anyone else who would have wanted to commit that act. Mother presented photographs of injuries sustained by Father. She also reported that Father harassed her with repeated phone calls from unknown numbers. The child custody evaluator reported seeing Father in possession of seven cell phones. The child custody evaluator also expressed concerns about family violence. Ultimately, the trial court signed a final protective order, and Father appealed.

Holding: Affirmed.

Opinion: In the appeal, the parties disputed whether the recent amendment to the protective-order statute applied, namely whether Mother was required to establish the likelihood of future violence. While the court noted that another appellate court held that the amendment would apply to an order rendered after September 1, 2023, this appellant court was reluctant to apply the amendment to a case that was tried before September 1 but rendered after. Regardless, because the evidence supported both a finding that family violence had a occurred and a finding that family violence was likely to reoccur in the future, the order was affirmed.

Attorney's Fee Award Reversed In Protective-Order Proceeding Because There Was No Statutory Ground To Support The Award.

245. *Landa v. Rogers*, No. 14-24-00168-CV, 2025 WL 2399149 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (08-19-2025).

Facts: Mother filed for a protective order from Father on the Child's behalf, alleging family violence. Mother also filed an affidavit of indigency. Father answered and sought attorney's fees because the application was frivolously filed or designed to harass. After a hearing, the trial court denied the application and awarded Father fees. Despite Mother's request, no findings were issued. Mother appealed.

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

Opinion: In Texas, a party generally may not recover attorney's fees unless authorized by statute or contract. Additionally, the party seeking to recover attorney's fees carries the burden of proof, and the party must demonstrate that the fees are reasonable and necessary.

The trial court did not specify in the order the basis for the fee award, but it orally cited Section 92.001 at the hearing. Although Mother did not raise an objection at trial, she preserved her complaint about reliance on the statute because she timely requested findings regarding the fee award and timely filed a notice of past-due findings. Section 92.001 does not authorize the award of attorney's fees. Moreover, that section applies when a person reports family violence in bad faith to a local law enforcement agency, which Mother did not do. Additionally, Section 81.005 could not serve as the basis for the fee award because the court did not find Mother had committed family violence, which is required by that section.

Failure To Include Requisite Findings In Protective Order Corrected By Appellate Court Because Findings Were Made In Trial Court's Oral Rendition And The Requisite Findings Were Supported By Sufficient Evidence.

246. ***Garza v. Renteria***, __ S.W.3d __, No. 14-24-00079-CV, 2025 WL 2413260 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (08-21-2025).

Facts: Ex-Girlfriend and Husband previously dated. Ex-Girlfriend and Wife were third cousins. Husband alleged Ex-Girlfriend had been abusive and aggressive towards him and his children and had made threats, including blackmail and extortion. Additionally, Ex-Girlfriend harassed and threatened Husband and Husband's former employers. Husband was terminated after Ex-Girlfriend posted a link to a pornographic website on Husband's employer's Facebook page and sent the link directly to all the

employees. Although Husband obtained an ex parte protective order, Ex-Girlfriend violated it by continuing to harass Husband, his family, and his employer. After blocking Ex-Girlfriend's number, Husband received a "ton of messages" from Ex-Girlfriend via unknown numbers.

At the hearing's conclusion, the court orally rendered that it found dating violence under the Family Code based on Ex-Girlfriend and Husband's past relationship. The court also found family violence based on Ex-Girlfriend and Wife's familial relationship. The court granted a 10-year protective order for Husband, Wife, and Husband's children. The court further explained that pursuant to the Code of Criminal Procedure, the court found Ex-Girlfriend was likely to engage in stalking and harassment in the future. However, the written protective order only stated that Ex-Girlfriend had committed dating violence and family violence. Ex-Girlfriend appealed.

Holding: Affirmed as Modified.

Opinion: Ex-Girlfriend argued the protective order failed to include requisite findings to issue a protective order exceeding 2 years, and the evidence was insufficient to support the order.

The Code of Criminal Procedure authorizes a protective order when the respondent engaged in conduct that would qualify as stalking under the Penal Code. When a protective order is issued under the Code of Criminal Procedure, the court must find that (1) probable cause exists to believe that a stalking offense under Penal Code was committed; and (2) the nature of the scheme or course of conduct engaged in by the defendant in committing the offense indicates the defendant is likely in the future to engage in conduct prohibited by Penal Code. Protective orders under the Code of Criminal Procedure may be effective for as long as the duration of the lives of the offender and the victim.

Under the Family Code, a protective order may be effective for longer than 2 years if the court finds the respondent committed an act constituting a felony-level offense involving family violence. That finding must be included in the order if it lasts longer than 2 years.

Although the written order did not include the requisite findings, the oral rendition did. Moreover, the evidence supported the oral findings. Contrary to Ex-Girlfriend's assertion, the evidence was neither conclusory nor insufficient. Thus, the appellate court modified the protective order to include the findings that:

- Probable cause exists to believe that [Ex-Girlfriend] committed the offense of stalking under Penal Code § 42.072, which is a felony-level offense, involving family violence.
- The nature of the scheme or course of conduct engaged in by [Ex-Girlfriend] in committing the offense indicates [Ex-Girlfriend] is likely to engage in stalking in the future.

Evidence That Husband Once Hit Wife With A Closed Fist On The Back Of Her Head Sufficient To Support Family-Violence Finding.

247. *Cole v. Cole*, No. 03-24-00275-CV, 2025 WL 2470212 (Tex. App.—Austin 2025, pet. filed) (mem. op.) (08-28-2025).

Facts: During the pendency of a divorce, the State separately filed for a protective order against Husband on Wife's behalf. After an evidentiary hearing, at which Husband admitted to "conking" Wife on the head, the court issued a protective order. Husband perfected an appeal. Wife then asked the State to terminate the order, and the trial court obliged.

Holding: Affirmed.

Opinion: An appellate court may review whether a protective order was appropriately granted even if it is terminated before the review.

Husband challenged the sufficiency of the evidence to support the finding he committed family violence. Although the trial court stated on the record that Wife's testimony regarding all but the "conking" incident was not credible, it found her testimony regarding that evidence was credible. Wife testified that Husband "conked" her on the back of the head and caused her to see stars. Wife believed he had hit her with a closed fist. When Wife asked what he was doing, Husband said it was something his mother used to do. Wife's testimony was sufficient evidence to support the family-violence finding. To the extent Husband testified the "conk" was just a "boip on the head" that he did only once to stop Wife's violence against him but was also "absolutely a mistake," the court could have disbelieved his testimony.

Husband also raised a constitutional due process claim regarding the time allotted to the parties at the final hearing. However, although Husband received time checks during the hearing, he did not raise any objection

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Testimony Supported Finding That No Family Violence Occurred.

248. *Aderhold v. Bell*, No. 03-24-00258-CV, 2025 WL 2485158 (Tex. App.—Austin 2025, no pet.) (mem. op.) (08-29-2025).

Facts: Mother and Father were divorced and had two Children: Son (14) and Daughter (17). While a separate modification suit was pending, Father sought a protective order on behalf of the Children to protect them from Mother's live-in Boyfriend. Father alleged Boyfriend committed family violence against Daughter, but Mother and Boyfriend denied any violence occurred. One night, the Daughter and a few of her friends had a party with alcohol at Mother's home while Mother and Boyfriend were away.

When Mother and Boyfriend returned, Daughter was away, but evidence of the party remained. Boyfriend yelled at Daughter's friends when they got back to the home.

Boyfriend testified that after Daughter's friends left, Mother and the Children argued, and the Children physically attacked Mother. In an effort to stop the attack, Boyfriend grabbed Daughter and tried to restrain her. The Daughter fell and was bruised. Father was told what happened later, which prompted him to seek the protective order.

Before the final trial, Mother's attorney received a phone call from a concerned parent of one of the Children's friends, who wanted to remain anonymous. That parent said that the Children were playing Mother and Father against each other. Daughter wanted to live with Father because Father let her drink alcohol. The caller said Daughter had admitted to being dishonest about Boyfriend. Mother's attorney offered a recording of the anonymous call, which was admitted alongside the testimony of the legal assistant who took the call. Allegations were made that the anonymous caller was Father's ex-girlfriend, who had broken up with Father because of the ongoing litigation. The ex-girlfriend testified and denied being the caller.

The trial court denied the application for protective order, and Father appealed.`

Holding: Affirmed.

Opinion: Father argued the appellate court could not consider the trial court's findings of fact and conclusions of law because they were issued untimely. The appellate court can consider untimely findings if the appellant does not show injury. Father did not show harm.

Father additionally challenged the sufficiency of the evidence to support the denial of his application. He argued the court erred in failing to find family violence occurred. Daughter had attacked Mother in the past, and Mother and Boyfriend had previously discussed a plan in which Boyfriend would physically remove the Daughter and attempt to deescalate the situation. Mother discussed this plan with Father, and Father did not object. Boyfriend had never been violent or threatened the Children in the years he and Mother had been dating. The testimony supported a reasonable inference that Boyfriend's actions were not a threat to Daughter and did not place her in fear of imminent physical harm.

After Daughter fell, she was told to go to her room, which she did. Daughter did not raise any accusation against Boyfriend regarding the cause of her fall at that time or at breakfast the next day. She just wanted her phone back and complained about Boyfriend yelling at her friends. The trial court found Daughter's statements about the incident were inconsistent, not trustworthy, and were self-contradicted by Daughter, and the evidence supported that finding.

Court Had Authority To Consider Respondent's Request To Modify Protective Order Issued Under Code Of Criminal Procedure.

249. *Tate v. Landa*, No. 01-23-00656-CV, 2025 WL 2697839 (Tex. App.—Houston [1st Dist.] 2025, orig. proceeding) (mem. op.) (supp. op. on reh'g) (09-23-2025).

Facts: Applicant filed an application for a protective order in the family court, alleging family violence and stalking. A month later, the trial court signed a protective order with a finding of stalking. Respondent sought to modify the protective order with respect to firearm possession. After a hearing, the trial court signed an order denying the modification, concluding it lacked power to modify the order.

Respondent filed an appeal, but the appellate court determined it lacked jurisdiction over the appeal because the order was not appealable and could only be challenged by a petition for writ of mandamus.

Respondent then filed a motion for rehearing and asked the appellate court to treat his appeal as a petition for writ of mandamus. Respondent presented arguments that the trial court clearly abused its discretion and that Respondent lacked an adequate remedy by appeal. The State responded, arguing mandamus relief could not be requested in direct appeal.

Holding: Writ of Mandamus Conditionally Granted

Opinion: The Supreme Court of Texas has made clear that, in the interests of time and resources, a party can request mandamus relief in a direct appeal without the need to file a separate document entitled "petition for writ of mandamus." Thus, the appellate court treated Respondent's motion for rehearing as a petition for writ of mandamus.

Because the protective order in question was issued under the Code of Criminal Procedure, Respondent was precluded from moving for a determination of whether there was a continuing need for the protective order. However, he was not precluded from seeking modification under Family Code Section 87.001. Seeking rescission of an order, or a determination of a continuing need for an order, is not the same as seeking modification of the order. They are addressed in different statutory provisions, with different requirements, and they have distinct application and meaning. The provision of the Code of Criminal Procedure providing that it prevails in the event of a conflict between it and the Family Code was not applicable because there was no conflicting language. The trial court could have addressed requests to modify to (1) exclude any item included in the order; or (2) include any item that could have been included in the order.

Wife's Controverted Testimony Alone Insufficient To Require Family Violence Finding.

250. *Olschewsky v. Olschewsky*, No. 03-24-00377-CV, 2025 WL 2797602 (Tex. App.—Austin 2025, no pet.) (mem. op.) (10-02-2025).

Facts: Wife filed an application for a protective order on behalf of herself and the Children under the Family Code. The trial court conducted a final hearing on the protective order at the same time it heard the parties' motions for temporary orders in their divorce proceeding. Husband, Wife, Husband's mother and brother, and a CPS investigator testified. The trial court denied Wife's request for a protective order and found no family violence occurred. Wife appealed the denial of the protective order.

Holding: Affirmed.

Opinion: In a single issue, Wife argued the evidence showed Husband committed four acts of offensive-contact assault and, thus, committed family violence. To the extent Wife's argument relied on her own testimony, the trial court was entitled to disbelieve her. Additionally, Husband testified that Wife was always the aggressor. The court could have reasonably believed Husband's versions of events and that Husband did not know, nor should he have known, that Wife would find that particular contact to be offensive or provocative at that time.

Evidence Supported Denying Protective Order Based On Finding Wife Was Not Credible Witness.

251. *Vest v. Vest*, No. 05-24-00898-CV, 2025 WL 3036667 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (10-30-2025).

Facts: Wife was 77 years old and had been married to Husband for nearly 40 years. Husband was roughly the same age as Wife or older. Wife filed a pro se application for protective order. Wife alleged Husband attacked her, requiring her to seek medical care. Both parties had counsel at trial. Wife acknowledged Husband needed a cane or walker to get around and used an oxygen tank to breathe but nevertheless was capable of harming her. Wife could not remember who assisted her in filling out the pro se application.

Wife's testimony about the attack was inconsistent, particularly in that, she described Husband attacking her from behind, but she suffered a broken tailbone. Husband asserted his Fifth Amendment privilege. The court denied the protective order but entered permanent injunctions prohibiting Husband from committing family violence against Wife or going near her for two years. In its findings, the court stated that Wife's testimony was not credible and found the described injuries were not likely caused by Husband. The court additionally noted Wife's memory gaps and inconsistent testimony. Wife appealed.

Holding: Affirmed.

Opinion: Wife complained her testimony and photographs of her injuries supported a finding of family violence, particularly in light of Husband's failure to controvert her testimony. Specifically, she challenged the court's finding that she was not a credible witness. Witness credibility issues that depend on appearance and demeanor, such as those in this case, cannot be weighed by an appellate court. Moreover, there was evidence to support the trial court's finding, including its ability to observe Husband's physical limitations in court. The court was not required to draw any negative inferences from Husband's invocation of the Fifth Amendment.

Wife additionally challenged the permanent injunctions. "Although the injunctions granted [Wife] much of the relief she sought via protective order, she complains they were improper because there was no liability on any underlying cause of action, a prerequisite to a permanent injunction." Wife did not bring this issue to the trial court's attention and thus waived the issue for appeal.

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

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

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

Although Mother did not press charges, Grandmother was charged with criminal mischief, and Grandmother's pretrial bond prohibited Grandmother from contacting Mother, Mother's husband, and Mother's uncle. The charges resulted in deferred adjudication and community supervision. After Grandmother's community supervision ended, she tried to contact Mother. At that

time Mother was teaching at a private church-affiliated school. Grandmother called the school's principal demanding to have calls returned regarding sex offenders at the church. Grandmother pledged to bring protesters to the school, but she did not follow through. Grandmother appeared at Mother's home uninvited at one of the Children's birthdays acting "angry and irritated." Mother called 911 claiming to be afraid for her and the Children's safety. A similar incident occurred at the school. Additionally, Grandmother entered Mother's home when Mother was absent to leave a letter for Mother. Mother wrote a letter to Grandmother asking to be left alone, but Grandmother again contacted the school about sexual predators. Mother testified that she had PTSD from Grandmother's actions and felt threatened or harassed by Grandmother's behavior.

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

Holding: Affirmed.

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

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

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

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

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

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

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

Holding: En Banc Reconsideration Denied.

Concurring Opinion: (J. Morgan)

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

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

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

"If I were deciding this case in the first instance, I would deny [Respondent's] request for mandamus relief. Mandamus is a discretionary writ. The trial court's reasoning was incorrect in the abstract, but its ruling was the only correct one available.

That's not a matter an appellate court should concern itself with." This case did not meet the standards for en banc reconsideration.

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

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

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

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

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

Holding: Affirmed.

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

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

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

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

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

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

Holding: Affirmed.

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

Biological Mother argued that the termination of the parent-child relationship between her and Biological Daughter also terminated the familial relationship between Biological Daughter and Maternal Grandmother, thereby depriving Biological Daughter from having standing to seek a protective order on Maternal Grandmother's behalf. However, Biological Mother did not deny

Biological Daughter was the biological granddaughter of Maternal Grandmother. Being such, the relationship met the requirements for standing under the Government Code and Family Code.

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

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

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

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

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

Ex-Girlfriend's Inability to Move On After Breakup, Excessive Phone Calls and Text Messages, and Unwelcome Appearance at Ex-Boyfriend's Home Supported Granting 7B Protective Order.

256. *Sattar v. Hazlitt*, No. 01-24-00576-CV, 2025 WL 3636177 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (12-16-2025).

Facts: Boyfriend and Girlfriend dated briefly after meeting through an online app. Girlfriend became pregnant and told Boyfriend about the pregnancy. However, she had a miscarriage. Boyfriend and Girlfriend broke up but remained friends. Boyfriend wanted to support Girlfriend after the miscarriage. Girlfriend kept the fetal tissue in a candy bag in her freezer and named it "Grapeseed."

The parties kept in touch for a few years. When Boyfriend met a new romantic partner, he advised Girlfriend that she needed to move on with her life too. Girlfriend began threatening to tell Boyfriend's family about the miscarriage, pressuring Boyfriend to get back in a relationship with her, and threatening him with a lawsuit. She sent him over 100 text messages, called him dozens of times at inappropriate hours, and showed up unannounced at Boyfriend's home. Girlfriend told Boyfriend's pregnant wife that Girlfriend was Boyfriend's girlfriend. When Girlfriend refused to leave Boyfriend's home, he called the police, who handcuffed her, drove her away, and left her at a nearby Starbucks. Boyfriend applied for a protective order because he felt stalked and harassed. The trial court granted a protective order under Chater 7B of the Texas Code of Criminal Procedure, and Girlfriend appealed.

Holding: Affirmed.

Opinion: Girlfriend challenged the sufficiency of the evidence to support the protective order. There was more than a scintilla of evidence that Boyfriend felt harassed, terrified, intimidated, annoyed, alarmed, tormented, embarrassed, or offended by Girlfriend's conduct and that a reasonable person would feel likewise. Thus, the evidence was legally sufficient to support the protective order. Further, the trial court acted within its discretion in believing Boyfriend's testimony and disbelieving Girlfriend's testimony. Any conflicting evidence in Girlfriend's favor did not render the evidence as being against the great weight and preponderance of the trial court's judgment.

Girlfriend additionally alleged the trial court was biased against her. Given the full context of the trial, any comments by the trial court was not "victim blaming" but an indication the court did not believe Girlfriend was a victim.

MISCELLANEOUS

Therapist Presented Prima Facie Case Of Defamation Sufficient To Support Denial Of Father's Motion To Dismiss Under The TCPA.

257. *Taylor v. Duckworth*, No. 09-24-00003-CV, 2025 WL 243030 (Tex. App.—Beaumont 2025, pet. denied) (mem. op.) (01-16-2025).

Facts: After a modification proceeding ended, Father sued the Child's Therapist for IIED, alleging malicious conduct and that the Therapist and her assistant intentionally and negligently misrepresented facts to the court, damaging Father's relationship with the Child. Father's complaint centered on an affidavit attached to the mother's request for a TRO. Father asserted that the

recantation of events was not truthful. Additionally, Father asserted that the Therapist's testimony at the TRO hearing was false. The Therapist countered Father's IIED suit with a claim for defamation, and Father filed a motion to dismiss the defamation suit under the Texas Citizens Protection Act ("TCPA").

At a hearing on the dismissal motion, the Therapist testified about Father harassing her office in person and via email. Father had requested the Child's records, and the Therapist's office asked to fill out and return forms for access to the records. Instead of filling out forms, Father angrily went to the Therapist's office and lied to the front desk to get access. Father's actions were described as threatening, and the Therapist filed a police report, installed security cameras and new locks, and sent Father a cease-and-desist notice. Later, Father posted online videos about alleged ethical violations. Additionally, Father filed a complaint against the Therapist with the licensing board; however, his complaint was dismissed for lacking merit. After the trial court denied Father's motion to dismiss, he filed an interlocutory appeal.

Holding: Affirmed.

Opinion: The TCPA provides a 3-step process for dismissal. First, the movant must show that the legal action is based on the movant's first amendment rights: speech, petition, or association. If the movant is successful in that first step, the non-movant must present a prima facie case to support her claims. If the non-movant is successful, then the burden shifts back to the movant to establish an affirmative defense by the preponderance of the evidence.

Here, the appellate court divided the statements identified in the Therapist's claim into 5 categories, which all implicated Father's right to petition: (1) Father's statements on social media and TV interviews regarding the Therapist's conduct during Father's custody suit; (2) Father's online statements regarding the Therapist's conduct in other courts; (3) Father's statements at a public meeting for the organization that governs licensing; (4) Father's online statements to the licensing board; and (5) Father's testimony asserting that the Therapist and other professionals engaged in a plot to separate him from his Child. Because the statement implicated Father's right to petition, the TCPA applied, and the burden shifted to the Therapist to present a prima facie case.

To establish defamation, a plaintiff must show: (1) the defendant published a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the required degree of fault, at least amounting to negligence, and (4) damages, unless it is a damages-per-se claim. At the dismissal hearing, the Therapist provided evidence of Father's statements and how those statements negatively impacted her practice. She further identified the amount of revenue she could lose due to Father's statements. Additionally, she described the steps she had to take to counter those statements, including improving her referral sources when she could have been taking cases. The Therapist further noted five colleagues had approached her regarding Father's videos. Father's attack on the Therapist's business or profession constituted defamation per se. The Therapist succeeded in presenting a prima facie case to support her claims.

Finally, because Father failed to fully present any affirmative defense, the trial court did not err in denying his motion to dismiss.

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

258. *Allepalli v. Allepalli*, No. 03-23-00536-CV, 2025 WL 464844 (Tex. App.—Austin 2025, no pet.) (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.

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

Attorney's Fee Award Struck For Insufficient Evidence.

260. *Vo v. Nguyen*, No. 01-23-00559-CV, 2025 WL 1184229 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (04-24-2025).

Facts: Girlfriend sought a protective order against Boyfriend. At the final hearing, when Boyfriend's attorney presented testimony regarding fees, he stated:

> I've been licensed since 1999. I've worked more hours than what I charged on this case but I told [Boyfriend] my total fee would be $6,000. I normally charge at the rate of $350 per hour on these matters.

The trial court orally denied Girlfriend's application and granted Boyfriend an award of $6000 for attorney's fees.

Subsequently, Boyfriend's attorney filed an affidavit in support of the request for fees and attached his billing statement. Over Girlfriend's objections, the trial court signed a written order conforming with the oral ruling. The following day, the court held a hearing on Girlfriend's objections and overruled them. Girlfriend appealed.

Holding: Affirmed as Modified.

Majority Opinion: (J. Gunn, C.J. Adams, J. Guiney)

Girlfriend argued that Boyfriend was not entitled to fees because the evidence was insufficient to support the attorney's fee award. The Family Code authorizes an award of reasonable attorney's fees related to an application for a protective order. However, Boyfriend's attorney's testimony did not identify the particular services performed, when they were performed, the reasonable amount of time required to perform the services, or the reasonable hourly rate for the services. Although the attorney subsequently filed an affidavit with the information, the affidavit was filed the day after the fees were assessed against Girlfriend. The trial court erred in awarding fees, and the judgment was modified to vacate that award.

Concurring Opinion: (J. Gunn)

When a record does not contain enough evidence to uphold a factual finding, the decision whether to render or remand takes place according to well-known rules. The answer often depends on the difference between legal (i.e., no evidence) and factual (i.e., not enough evidence) insufficiency. Some courts have based the question of the language of the statute permitting the fee award had remanded when the fee award is mandatory rather than discretionary. Although this approach minimizes conflicts, it seems unsound. If a party presented zero evidence to support a mandatory award, they should not be given a second bite at the apple.

A case of inadequate detail closely resembles a case of failure to segregate. When a damage award combines recoverable and unrecoverable components, the court typical remands the award for segregation rather than killing the claim. While there should not be a bright line requiring remand every time there is a legal sufficiency problem, but remand should be the preferred result. The question should depend on the state of the record, rather than the happenstance of how the fee statute reads.

Husband Not Entitled To Restricted Appeal Because Husband's Motion For Relief Constituted "Participation" In Decision-Making Event, Notwithstanding A Lack Of Response From Wife Or A Hearing On Husband's Motion.

261. *Miles v. Miles*, No. 05-25-00181-CV, 2025 WL 1208693 (Tex. App.—Dallas 2025, pet. denied [mand. denied]) (mem. op.) (04-25-2025).

Facts: The trial court denied Husband's motion to seal records pursuant to Texas Rule of Civil Procedure 76a. Husband filed a motion for reconsideration 31 days later. Subsequently, but less than 90 days after the initial denial, Husband filed a notice of appeal.

Holding: Appeal Dismissed.

Opinion: The appellate court questioned its jurisdiction. In response, Husband argued that he was entitled to a restricted appeal because there was no hearing on his motion, and thus, he argued he had not participated in the proceedings that resulted in the complained-of judgment.

Participation for the purposes of a restricted appeal does not necessarily require involvement or even attendance at a hearing. The extent of participation is a matter of degree. Here, Husband filed a motion to seal and identified four reasons to support his requested relief. Husband did not request a hearing, and Wife did not respond to Husband's motion. The order reflects that the trial court considered the arguments in Husband's motion. Thus, Husband participated in "the decision-making event" that resulted in the complained-of judgment and was precluded from pursuing a restricted appeal.

Thus, because Husband's motion for reconsideration (which would be construed as a motion for new trial) was filed one day late, the appellate deadlines were not extended, and his notice of appeal was untimely.

Husband's Attorney's Failure To Fully Explain The Contents Of A Divorce Decree Could Not Support Granting A Bill Of Review.

262. *Boyas v. Mena*, No. 14-24-00190-CV, 2025 WL 1523681 (Tex. App.—Houston [14th Dist.] 2025, no pet.) (mem. op.) (05-29-2025).

Facts: Wife filed a petition for divorce, and Husband filed a counterpetition, in which he asserted that he was not the biological father of Wife's Children. Husband identified the alleged father and asked the court to order DNA testing. Husband asserted he had no knowledge that he was not the Children's biological father until the divorce proceeding. After the court granted an order for testing, Wife moved to set aside that order. Husband was not informed of the hearing on that motion, but his attorney appeared on Husband's behalf. The court granted Wife's motion, and no testing was conducted. The parties' reached an MSA in which Wife took a disproportionate share of the community estate. Husband later alleged that he was unaware that the MSA

also contained provisions for child support. He asserted the notary was not present for the signing of a prove-up affidavit, he did not read English, and his attorney did not explain the child-support provisions to him. After the domestic relations office filed a suit to enforce child support, Husband filed a petition for bill of review. Husband's petition was denied, and he appealed.

Holding: Affirmed.

Opinion: While the appellate court expressed sympathy for Husband, it also noted that bills of review are only granted in rare circumstances. Additionally, if Husband's attorney failed to file evidence, attend hearings, or properly advise Husband, Husband had recourses, but not through a bill of review proceeding. Husband was unable to show that the underlying decree was the result of anything other than the fault or negligence of himself or his attorney.

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.

263. *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.

264. *In re Marriage of Hettinger*, No. 13-23-00403-CV, 2025 WL 1701222 (Tex. App.—Corpus Christi–Edinburg 2025, pet. filed) (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.

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

266. *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.

Trial Court Failed To Follow Appellate Mandate To Harmonize Two Provisions Of MSA That Presented Apparent Conflict.

267. *Bouajram v. Bouajram*, No. 02-24-00261-CV, 2025 WL 1909325 (Tex. App.—Fort Worth 2025, no pet.) (mem. op.) (07-10-2025).

Facts: After a final decree was signed, the parties filed cross-appeals. One of the issues on appeal involved a dispute regarding purportedly conflicting provisions in the parties' MSA regarding to taxes. Part 1 stated that each party would be responsible for half the parties' tax obligation through the end of 2019. Part 2 stated that income taxes for 2018 and 2019 would be handled according to IRS regulations. The appellate court reversed and remanded the issue to the trial court with an instruction to sign a new final decree that harmonized the provisions to the extent possible.

On remand, Wife's proposed decree only included the indemnity term through 2017. Husband objected and proposed a decree stating that the indemnity term applied through 2019 but the IRS regulations term controlled to the extent it did not conflict with the indemnity term. The court signed Wife's version, and Husband appealed again.

Holding: Reversed and Rendered.

Opinion: In the first appeal, the appellate court determined that the parties' clear intent was to apply the indemnity term through the end of 2019. By not including that provision in the decree, the trial court failed to follow the appellate court's mandate.

Wife argued "that because there is no need for harmonization absent a conflict between the two terms and because [the appellate court agreed in the first appeal] that the indemnity term and the IRS regulations term can be harmonized, [the appellate court] implicitly determined that these two provisions actually conflict." "But harmonization is a tool courts use to resolve *apparent*, not *actual*, conflicts." Thus, the appellate court provided the trial court with the specific language to replace the erroneous language in the appealed decree.

Mother Permitted To Remain In Father's Separate Property Residence Pending Appeal To Avoid Disruption Of The Children's Living Arrangements.

268. *Schvartz-Poludniewska v. Schvartz*, No. 03-25-00214-CV, 2025 WL 2078184 (Tex. App.—Austin 2025, no pet.) (mem. op.) (07-24-2025).

Facts: The parties' final decree of divorce confirmed the marital residence as Father's separate property and granted him exclusive use and possession of the home beginning not less than 30 days after entry of the decree. Additionally, the parties were appointed joint managing conservators with Mother having the exclusive right to designate the Children's primary residence. Mother appealed the decree.

A week before Mother's deadline to vacate the residence, Father advised her that if she stayed in the residence beyond the deadline, he would consider that action to be trespass. Mother filed a motion in the appellate court to stay the requirement for her vacation of the residence pending the resolution of her appeal. She asserted that Father lived outside the U.S., and it would be in the Children's best interest to allow them to continue residing in the marital residence. A previous order had allowed Mother to remain in the residence under certain conditions, but those provisions were not carried forward to the final decree.

Holding: Motion Granted in Part; Remanded in Part.

Majority Opinion: (per curiam)

Texas Family Code Section 109.002(c) allows the appellate court to suspend enforcement of a non-termination SAPCR order even if the trial court has taken no action to do so or denied a similar request. Father argued that allowing Mother to stay in the home would deprive him of the use and enjoyment of his separate property. However, the portion of the order confirming the property as his separate property was "just as much a portion of the Decree that may be suspended" as any other portion. The appellate court held that suspension would be appropriate because it would keep the Children's living arrangements from being disrupted.

Father next argued Mother should be required to post a supersedeas bond pursuant to Texas Rule of Appellate Procedure 24. However, Family Code Section 109.002 provides a separate judgment-suspension authority, and Rule 24 was not necessary. Finally, Father argued that Section 109.002 requires a "proper showing" to support suspension and alleged Mother had not provided that showing. Preventing disruption to the Children's lives was sufficient to establish a proper showing.

The court next held that if Mother was allowed to reside in the residence, certain requirements should be imposed on her during that period. Because circumstances may have changed since the initial imposition of conditions, the appellate court remanded the issue to the trial court to determine the specific requirements that would be reasonable. The court advised that Mother "should exercise caution in her treatment of the former marital home and its contents while she is residing there during the abatement and remand." It further advised that if the parties believed additional temporary relief was needed, that relief should be sought in the appellate court.

Mother also sought a suspension to prevent turning over certain property to Father as ordered in the property division. However, nothing in Section 109.002 allows the suspension of the property division. Rather, Section 6.709, relating to temporary orders pending appeal in a divorce, imposes deadlines that had already passed. Moreover, Mother did not bring forth a record to show a need to restrain Father from alienating property.

Dissenting Opinion: (J. Ellis)

Mother failed to make a "proper showing" to support staying enforcement of specific portions of the Decree. While judgments for money and property can be superseded with a monetary bond, parties should not be able to avoid operation of a child custody order simply by posting bond. Thus, parties are required to establish a "proper showing" to support why a SAPCR order should be suspended pending appeal. The Family Code includes specific laws for temporary orders pending appeal and gives trial courts the ability to award one spouse exclusive occupancy of the parties' residence pending appeal of a divorce decree. The court must take reasonable steps to ensure the property is protected, which may include setting an amount of security. While the statute relied upon by the majority has no deadline, the statute governing temporary orders pending appeal does have deadlines. Mother missed those deadlines.

No court has extended the statute to the length by which the majority did here. The majority treated Mother's right to use the property as separate from the property division. This treatment divested Father of his fundamental right to use and possess his property and implicated homestead rights.

Moreover, per Father's response to Mother's motion, the oldest Child was close to graduation, and the middle Child was about to attend school in Europe. Mother and the youngest Child would be living alone in a 5-bedroom house with a pool and cabana. And, because the youngest Child attended a private school of Father's choosing, Mother was not zoned to any specific

neighborhood and could live anywhere within the geographic restriction of the decree. Further, depriving Father of the home deprived him of a place to stay when visiting the Children and rental income when he was not in the residence. Mother failed to provide any explanation as to why she could not find another home within her budget, which included over $8000 a month in support from Father. "Inconvenience and expense" do not constitute a "proper showing."

"Mother chose not to avail herself of the relief obtainable under [the temporary orders pending appeal statute] but instead chose to gamble on seeking relief no other court has ever awarded under [the statute relied upon by the majority]. And her gamble has apparently paid off."

Petitioner, With History Of Multiple Criminal Assault Charges, Not Entitled To Name Change Merely Because Charges Did Not Result In Convictions.

269. *In re Name Change of Muhammad*, No. 05-24-00648-CV, 2025 WL 2403704 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (08-19-2025).

Facts: Petitioner filed a pro se petition seeking to change his first name. He asserted he had no criminal record, but he failed to sign his supporting declaration, and the original petition was not verified.

Texas DPS filed a statement that there was no record on file or no record that DPS was legally authorized to produce. A printout showed no criminal history at the Texas DPS for Petitioner. However, the trial court's record also contained an FBI criminal history record showing several criminal charges by the state of Missouri. Petitioner was charged with misdemeanor domestic assault, felony domestic assault, and a misdemeanor charge of endangering the welfare of a child. The record did not show any convictions but did not include the dispositions of all charges.

Petitioner signed and filed a declaration to prove up his requested name change, declaring under penalty of perjury that he did not have an FBI or SID number, had not been charged with a class A or B misdemeanor or felony, and had not been convicted of a felony. A final hearing was conducted, but no record of the hearing was supplied to the appellate court. In his appellate brief, Petitioner acknowledged answering in the negative when asked about whether he had been charged with a crime higher than a misdemeanor. Petitioner claimed not to be aware of the charges until the FBI background check was ordered. On the same day as the hearing, Petitioner filed an amended petition acknowledging the felony charge.

The trial court denied the requested name change but did not state the reason, and Petitioner did not request findings. Petitioner appealed pro se.

Holding: Affirmed.

Opinion: Petitioner argued the trial judge ruled against him due to his arrest history rather than his conviction history. The fact that a petitioner does not have a felony conviction and is not subject to the sex offender registration requirements does not automatically require the trial court to grant the petitioner's request to change his name. Rather, before granting such a request, the trial court must also determine that "the change is in the interest or to the benefit of the petitioner and in the interest of the public." Petitioner failed to establish the trial court abused its discretion. Even in his amended petition, Petitioner failed to disclose his full criminal history.

Temporary Orders Pending Appeal Not Void For Being Signed Before Mother Filed Her Notice Of Appeal; Evidence Supported Awarding Father Attorney's Fees For Defending Against Mother's Motion For Temporary Orders Pending Appeal And Awarding Father Conditional Appellate Attorney's Fees.

270. ***In re A.P.L.***, __ S.W.3d __, No. 01-23-00725-CV, 2025 WL 2412903 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (08-21-2025).

Facts: The parties' agreed final decree of divorce appointed the parents as joint managing conservators, gave Mother the exclusive right to designate the Children's primary residence, provided a possession order that took into consideration the parents' respective religions, and ordered Father to pay child support. If Mother and Father could not make a unified decision on medical, mental-health, or educational needs, tiebreakers specializing in the appropriate field were appointed by the decree. After the divorce, many tiebreakers withdrew from the role due to conflicts between the parties.

Three years after the divorce, Father petitioned to modify the decree based primarily on Mother's alienating behavior. Father sought the exclusive rights to designate the Children's residence and to make medical, mental-health, and educational decisions. Father asked the court to terminate his child support obligation and give Mother a standard possession order.

After a ten-day bench trial that focused heavily on the Children's medical and mental-health issues, as well as co-parenting challenges, the trial court granted Father's requested relief. Mother filed a motion for temporary orders pending appeal, asserting Father was not properly caring for the Children's needs. Father requested appellate attorney's fees, which he claimed were necessary for the Children's safety and welfare during the pendency of the appeal. The trial court denied Mother's motion and granted Father about $100,000 in attorney's fees for responding to the motion and approximately $175,000 in conditional appellate attorney's fees. Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted no material and substantial change supported the modification. Mother correctly noted there was no evidence of abuse, violence, drugs, neglect, or other endangerment. However, these factors are not necessary to establish a material and substantial change. Since the divorce, one Child began struggling with anxiety, focus, and behavior at school, was moved from a more rigorous academic program to a remedial school, and required specific interventions for ADHD. The other Child's needs related to growth-hormone treatments and learning disabilities had evolved. Mother impaired Father's ability to be informed about and contribute to decisions about the Children's needs. Mother disparaged Father in correspondence with the Children's healthcare providers. Mother interfered with Father's relationship with the Children and involved the Children in the parents' disagreements. Mother deprived Father of possession time. While evidence was disputed, the trial court was in the best position to resolve conflicting issues of fact.

Additionally, both parents sought to modify the parties' rights and duties regarding the Children. Thus, Father was not required to present evidence of a material and substantial change to support granting him the exclusive rights to make decisions regarding the Children's medical, mental-health, and educational needs because Mother judicially admitted such a change existed. Further, when parents cannot effectively co-parent, the court may choose to give decision-making rights exclusively to one parent.

Mother additionally argued the court ignored the younger Child's wishes because that Child told the judge in chambers that everything was fine with Mother. However, Mother ignored the older Child's statements regarding Mother making the Child feel bad about herself for gaining weight and the older Child's express desire to spend more time with Father.

Mother further argued the trial court's findings of fact were not specific enough. However, the trial court is only required to make findings on ultimate or controlling issues. Mother's requested additional findings were no more than requests for explanations of the court's ruling and were not required.

Mother challenged the award of attorney's fees in the temporary orders pending appeal via mandamus and appeal. While prior opinions from this appellate court had held that temporary orders pending appeal could not be challenged within the appeal, the legislature subsequently amended the statute to expressly permit the challenge by either mandamus or appeal. Thus, Mother's mandamus proceeding was denied because the issue was addressed in this appeal.

Mother argued the temporary order was void because it was signed before Mother filed her notice of appeal. Mother asserted the statute only allowed the trial court to grant relief after an appeal had been perfected. However, the statute imposes a deadline after which the trial court may not act, not a date that must first pass before the court may act. Nothing in the statute limits the trial court's ability to act only after a notice of appeal is filed.

Mother also challenged the temporary order for ordering non-appellate attorney's fees. Assuming without deciding that the statute only allows appellate attorney's fees, Mother presented no authority to support her argument that the order was "void" for any jurisdictional defect.

Finally, Mother challenged the sufficiency of the evidence to support a finding that the fees were necessary to protect the Children's safety and welfare. In his response to Mother's motion for temporary orders pending appeal, Father asserted there was no threat to the Children to support granting her requested relief. Contrary to Mother's assertion, this was not a judicial admission that the attorney's fees he sought were unnecessary. Additionally, Mother argued Father was financially stable and did not establish he could not provide for the Children's needs in the absence of an award for fees. The modified order gave Father the primary responsibility for caring for the Children, who each required various tutors, therapists, and other specialists. Father testified he was "in debt up to [his] eyeballs," owed more than $200,000 due to the litigation, and his attorney testified that Father would incur another $175,000 to defend the order on appeal. Father testified that he would have to use up savings intended for the Children's education to pay litigation costs, and he was missing payments on the new family home. Thus, the evidence supported a finding that the fees were necessary for the Children's safety and welfare.

Wife's Post-Divorce Suit For Tortious Claims Based On Husband's Actions During Marriage Barred By Res Judicata.

271. *Huang v. Hackbarth*, No. 09-24-00329-CV, 2025 WL 2416830 (Tex. App.—Beaumont 2025, no pet.) (mem. op.) (08-21-2025).

Facts: The parties' marriage lasted about four years, and the divorce proceeding lasted about five years. About two months after a divorce decree was signed based on an MSA, Wife filed an original petition raising claims of sexual assault, IIED, and intrusion of privacy. Wife's claims were based on acts that allegedly occurred during the marriage. She asserted Husband had taken pictures of her without her consent while she was not properly clothed, and she claimed not to have discovered the photos until after the divorce. Husband responded with affirmative defenses of waiver, estoppel, claim preclusion, and res judicata.

Husband moved for summary judgment on the ground of res judicata. As part of his summary judgment evidence, Husband included Wife's divorce pleadings that alleged Husband had committed acts of cruelty and sought a disproportionate division on that ground. Additionally, the parties' MSA purported to release each other from any claims that they may have held against each other. In her initial disclosures and a deposition in the divorce proceeding, Wife claimed Husband sexually assaulted her. During the deposition, Wife said her daughter told her about seeing inappropriate pictures of Wife on Husband's phone.

After considering the pleadings, the court granted Husband's motion for summary judgment and dismissed all of Wife's claims with prejudice. Wife appealed.

Holding: Affirmed.

Opinion: Wife argued that spousal torts are not compulsory claims but were only permissive, so res judicata did not bar her claims in a separate civil suit. The doctrine of res judicata bars a second action by the parties on matters that were "actually litigated in a previous suit, as well as claims 'which, through the exercise of diligence, could have been litigated in a prior suit.'" Res judicata requires proof of three elements: (1) a prior final judgment on the merits by a court of competent jurisdiction, (2) identity of parties (or those in privity with them), and (3) the second action is based on the same claims that were raised or could have been raised in the first lawsuit.

Here, Wife put Husband's tortious conduct at issue in her petitions for divorce, and this was the type of case in which interspousal tort claims should have been joined with the divorce. Wife raised claims of cruelty and family violence in the divorce proceeding. Wife's claims for assault and IIED in the civil suit were based on the same claims that were raised or could have been raised in the divorce proceeding. The trial court correctly found that those claims were barred for res judicata.

With respect to the claim for intrusion of privacy, that claim could have been asserted with the exercise of due diligence. Wife was informed of the inappropriate photos, but Wife did not want to look at them. Wife had access to the photos on the cloud shared by the parties. Even if her claim for intrusion of privacy was not litigated, it could have been. The discovery rule would only apply to injuries that were inherently undiscoverable or that could not be discovered with the use of reasonable diligence.

Despite Husband's Attorney's Concerns, Husband Failed To Preserve Issue Of Mental Incompetency Because No Incompetency Finding Sought, No Guardianship Proceeding Pursued, And Husband Submitted Requested Relief At Trial.

272. *Rodriguez v. Rodriguez*, No. 08-24-00123-CV, 2025 WL 2447563 (Tex. App.—El Paso 2025, no pet.) (mem. op.) (08-25-2025).

Facts: Husband's counsel asked the trial court to order Husband to undergo a mental examination. The court granted the request, Husband was evaluated, and a written report was provided. However, the report was never introduced into evidence and was not made part of the appellate record.

Six months later, at a pretrial conference, Husband's counsel questioned Husband's competency to participate in trial. The trial court advised the parties it would not resolve that issue and that it was ultimately Husband's counsel's issue to address.

Three months after that, the court conducted a final trial. Husband's counsel refused to call Husband to testify, again raising a question of competency. The court explained that the psychiatric evaluation was not the equivalent of a finding of incompetency, and the probate court was the only court to make such a finding. Husband's counsel then stated that he had a list of items Husband wished to keep that had been communicated to Husband's counsel before the psychiatric evaluation. The court rendered a final decree and findings of fact. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the court erred in determining he waived his mental competency issue by adopting a position statement. The findings concluded the competency issue was waived because (1) Husband failed to request a finding he was mentally incompetent; (2) Husband failed to take steps to initiate a guardianship proceeding regarding his competency in the 9-month period between his counsel initially raising the issue and final trial; and (3) Husband submitted a "position statement" detailing how he wished to divide the community estate.

Husband did not dispute that he did not request a finding of incompetence and initiated no guardianship proceeding. Although the position statement reiterated Husband's counsel's belief Husband was not mentally competent, Husband raised no objection to the case being decided on the merits and instead outlined Husband's prior-expressed wishes. Husband offered no reason why the position statement would have been offered for any other purpose than to allow the court to divide the community estate. Further, Husband did not request a continuance or request any other relief relating to his alleged incompetence.

Facts In Supporting Affidavit To Petition In Intervention On Sworn Account Taken As Conclusive Because Defendant-Husband Failed To File A Sworn Denial.

273. *Nanchary v. HH Law Firm, PC*, No. 05-24-00650-CV, 2025 WL 2606628 (Tex. App.—Dallas 2025, no pet.) (mem. op.) (09-08-2025).

Facts: Husband hired Law Firm to represent him in a divorce. The fee agreement required Husband to pay an initial deposit of $7000 and replenish his trust balance whenever the balance fell below $1000. When Husband was notified that replenishment was necessary, he complained about how quickly the initial deposit was used and refused to pay. Then, Husband contacted his credit card company in an attempt to stop payment on the initial $7000 payment. The Law Firm withdrew and subsequently filed a petition in intervention for suit on sworn account to recover unpaid fees and costs. Husband filed a motion to strike the petition, but he did not file a denial under oath. The trial court denied the motion to strike and awarded Law Firm about 75% of the fees and costs sought. After Law Firm filed a motion to reconsider, the trial court awarded the full amount sought plus interest. Husband appealed pro se.

Holding: Affirmed.

Opinion: Husband argued the trial court erred in denying his motion to dismiss the petition in intervention. Texas Rule of Civil Procedure 60 permits interventions subject to be stricken out for sufficient cause shown. A party with a justiciable interest in a pending suit may intervene as a matter of right. In determining whether to strike an intervention, a court may consider whether the intervention will complicate the case by the "excessive multiplication of the issues" and whether the intervention is "almost essential to effectively protect the intervenor's interest." Claims for attorneys' fees arising out of a suit for divorce should generally be resolved in the divorce proceeding because the allotment of fees is part of the just and right division of the community estate.

Husband additionally argued the trial court erred in hearing Law Firm's claims on the same day and time as final trial in the divorce. Husband did not cite any authority to support this argument or show how he was harmed by the trial court's decision.

Husband additionally challenged the sufficiency of Law Firm's pleadings. Texas Rule of Civil Procedure 185 sets out the criteria for a suit on an open account. The plaintiff must prove (1) a sale and delivery of goods or services; (2) the charges on account are just, that is, the prices are charged in accordance with an agreement or, in the absence of agreement, are usual, customary, and reasonable prices; and (3) the amount remains unpaid. The claim must be supported by affidavit.

A suit on a sworn account is not a rule of substantive law. Rather, it "is a rule of procedure regarding the evidence necessary to establish a prima facie right of recovery." An open account "on which a systematic record has been kept and is supported by an affidavit" compliant with rule 185 is prima facie evidence of a claim. The evidentiary presumption can be destroyed when a defendant files a sworn denial that directly addresses the facts in the plaintiff's affidavit.

The affidavits attached to Law Firm's petition identified the "correct" attorney in the title and were signed by that attorney; however, the opening paragraphs identified a different attorney as the one who appeared before the notary. The appellate court construed this complaint to be one attacking the jurats of the affidavits. Husband did not raise any objection regarding this discrepancy in the trial court and waived any appellate complaint regarding the same.

Regardless, when a purported affidavit lacks a jurat, "other evidence must show that it was sworn to before an authorized officer" to satisfy the government code's definition of "affidavit." The introductory paragraphs here were defective. However, other evidence showed the "correct" attorney was the affiant. That attorney was referenced within the body of the affidavits, his name was in the signature blocks, his signature was uncontested, and the affidavits contained a notary signature and stamp. Husband did not dispute that the "correct" attorney was the affiant.

Husband challenged the reasonableness of the fees charged by Law Firm and claimed that no justification was provided as to why the work done was needed. He did not challenge the hourly rate but challenged the work performed. Husband failed to file a sworn denial and that failure conclusively established there was no defense to the suit on sworn account.

Father Ordered To Pay Costs Despite Statement Of Indigency Because He Admitted To Recently Receiving A Loan Of Nearly $100,000 That He Could Have "Rounded Up" To Include Estimated Court Costs.

274. *In re S.V.*, No. 05-23-00324-CV, 2025 WL 2898007 (Tex. App.—Dallas 2025, pet. denied) (mem. op.) (10-10-2025).

Facts: As part of an appeal, Father filed a statement of inability to afford payment of court costs. The appellate court thus ordered the reporter to prepare the record. Shortly thereafter, however, Mother filed in the trial court a challenge to Father's statement. After an evidentiary hearing, the court found Father's statement was not materially true when made, his statement was no longer true in material aspects, and he failed to meet his burden to prove his inability to afford costs. Father filed a notice of appeal, which the appellate court construed as a motion to review the order sustaining Mother's contest.

Holding: Affirmed as Modified.

Opinion: The test for determining indigence is whether the record as a whole shows the declarant proved "by a preponderance of the evidence that the applicant would be unable to pay the costs, or a part thereof, or give security therefor, if he really wanted to and made a good-faith effort to do so." Some factors the court may consider are the declarant's employment history, the value of the party's claim, whether it could afford the basis for security of a loan, and whether the party can secure a bona fide loan to pay the costs. Also, if the declarant owns valuable property that he could dispose of and thereby secure the necessary funds without depriving himself or his family of the necessities of life, he should be required to pay the costs. But the declarant is not required to show that family or friends are unable to pay the costs.

Father became old enough to receive social security benefits before making his statement, but at the Rule 145 hearing, he admitted to not including that income on his statement. Although Father received about $2000 a month for consulting work, in an interrogatory response to Mother he claimed no one owed him money. Father had been in a car accident and sued the other driver and his own insurance carrier. However, his statement did not disclose any settlement amounts, which he later admitted were around $10,000. After the car accident, he replaced his previous car with a brand new car. He later took out a mortgage and used the funds to pay off the new car and all of his credit card debts. He claimed he was able to pay the $3200 monthly mortgage with his social security payments. Because he used the settlement money to pay off his child support arrears, there was no longer any withholding from his social security income for child support. Within the past few years, Father had taken out a $45,000 SBA loan, but he did not include that on his statement of inability to pay costs because he "forgot." Additionally, Father had recently put solar panels on his house, requiring an $18,000 loan.

Father had also filed a petition against Bank of America, in which he alleged he was scammed into depositing money orders and cashier's checks totaling almost $100,000 into various accounts. Father had borrowed money to make these deposits. Mother's counsel asked how Father could borrow almost $100,000 yet not be able to afford a $700 fee for a transcript. When Father was nonresponsive, the court pressured Father to answer. Father admitted he could have rounded up the loan $700 to

have the additional money from the loan to pay for the transcript. The trial court did not abuse its discretion in finding Father could pay costs if he made a good-faith effort to do so.

Father argued that because the appellate court ordered the reporter to prepare the record, the trial court lacked jurisdiction to consider Mother's challenge. However, the appellate order was based on the fact that nothing before the appellate court indicated that Father had been ordered to pay costs. The appellate order did not deprive the trial court of jurisdiction to consider Mother's challenge.

Father next challenged the fact that Mother did not file her challenge within 10 days. Father's argument was based on an outdated version of the rule. There is no deadline.

Finally, Father asserted that no evidence was offered regarding the specific cost of the reporter's record. Father was correct. Thus, the portion of the order referring to the specific amount due to the court reporter was struck and replaced with an order to pay the court reporter in accordance with her specific instructions.

Temporary Orders Pending Appeal Void Because Signed More Than 60 Days After Father's Notice Of Appeal.

275. *In re Simons*, No. 13-25-00458-CV, 2025 WL 2922881 (Tex. App.—Corpus Christi–Edinburg 2025, orig. proceeding) (mem. op.) (10-14-2025).

Facts: After a final decree was signed in a divorce with Children, Father filed a motion for new trial, and Mother filed a motion for temporary orders pending appeal. On the 60th day after the notice of appeal had been filed (which was more than 105 days after the judgment), the court began the hearing on Mother's motion for temporary orders pending appeal. However, that hearing was continued until a date 4 days later. Three days after that, the court signed temporary orders pending appeal that required Father to pay Mother's interim attorney's fees pending appeal. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother requested fees pursuant to Texas Family Code Sections 6.709 (divorce) and 109.001 (SAPCR). Both of those statutes require an order to be signed no later than the 60th day after any eligible party has filed a notice of appeal. Once that deadline passed, the trial court no longer had any authority to sign an order. Thus, the temporary orders pending appeal were void.

Jury Verdict Reversed And Rendered That Appellees Take Nothing For The Civil Claims Of Malicious Prosecution And Abuse Of Process Due To Mother's Seemingly Unfounded Claims Of Child Abuse.

276. *Labrado v. Labrado*, No. 08-24-00220-CV, 2025 WL 3055129 (Tex. App.—El Paso 2025, no pet. h.) (mem. op.) (10-31-2025).

Facts: In Mother's petition to divorce Father, she alleged one of her Children made outcries about Father, Uncle, and Uncle's Girlfriend's children. Uncle owned a Daycare. Mother and Father had two Children, and Uncle was in a relationship with Girlfriend, whose own two children attended the Daycare. Mother sought a restraining order to prevent Father from withdrawing the Children from their school because Mother expressed concerns Father would take the Children to the Daycare and that Girlfriend's children participated in the alleged abuse could be there. Subsequently, Mother obtained ex parte restraining orders against Father and Uncle for the protection of the Child. After investigations, CPS ruled out the allegations.

Father, Uncle, and the Daycare (collectively, "Appellees") sued Mother for malicious prosecution and abuse of process asserting her allegations were false. During the six-day jury trial, Father testified that he had a close relationship with the Children, which was severely harmed by Mother's false reports to CPS, the police department, and trial court. Uncle testified Mother's allegations interfered with his ability to conduct business to the extent that there was a period of time he was prohibited from going to his own Daycare. He also testified about the physical strain and emotional turmoil he suffered as a result of the allegations. Mother was a director of a child abuse clinic, and more than one witness opined Mother may have been coaching the Children. A detective found the Child's outcry not to be credible.

The jury charge presented the jury with the elements of malicious prosecution and an explanation of how immunity could apply to a person when providing testimony in a divorce proceeding. The jury found in favor of Appellees, and the trial court awarded judgments against Mother amounting to nearly $1 million. Mother appealed.

Holding: Reversed and Rendered.

Majority Opinion: (C.J. Mendoza, J. Palafax, J. Soto)

Mother asserted she conclusively established her immunity defense and the evidence was insufficient to supporting findings of malicious prosecution or abuse of process. Appellees' argument at trial was that Mother lacked a good-faith basis to support her claims and, on appeal, argued that the judicial-proceedings privilege only applied to defamation lawsuits. The appellate court disagreed that the scope of the privilege was so limited and instead found the privilege applies to torts other than defamation, including claims for malicious prosecution and abuse of process, "when the essence of the [tortious] claim is that

injury occurred as the result of allegedly false statements made during a judicial proceeding." "The privilege would be lost if the appellant could merely drop the defamation causes of action and creatively replead a new cause of action."

Under the judicial-proceedings privilege, communications made in the due course of a judicial proceeding "will not serve as the basis of a civil action … regardless of the negligence or malice with which they are made." Here, Mother's statements contained in her affidavit were attached to her divorce petition and were, thus, filed in a judicial proceeding. Thus, Appellees' malicious prosecution claim was barred. Additionally, because Mother's statements to CPS and the police were made during quasi-judicial proceedings, the privilege extended to those statements as well.

Abuse of process is the malicious use or misapplication of process to accomplish an ulterior purpose. "It is critical to a cause of action for abuse of process that the process be improperly used after it has been issued." "In other words, the tort assumes that the original issuance of a legal process was justified, but the process itself is subsequently used for a purpose for which it was not intended. Mother's pleadings for restraining orders were for the protection of the Children, which was presumed proper. There was no evidence Mother took any action after obtaining the protective orders that could have been considered abuse of process. Even if she had an ulterior motive for obtaining the orders, there was no evidence on at least one element for the abuse of process claim.

Under their claim for civil malicious prosecution, Appellees had to plead and prove: (1) the institution or continuation of civil proceedings against them; (2) by or at the instance of Mother; (3) malice in the commencement of the proceedings; (4) lack of probable cause for the proceedings; (5) termination of the proceedings in their favor; and (6) special damages. First, there was no evidence Mother initiated the CPS proceedings. The report itself did not name the reporter, and it was undisputed that Mother's brother reported the first outcry. Assuming the jury believed Mother coached the Child to make an outcry, there were many other inferences to be made to satisfy the tortious elements, amounting to no more than surmise and suspicion. Additionally, Appellees did not elaborate on the alleged claims Mother made against them. Further, one investigation began after the Child directly made an outcry to CPS, so there was no evidence that investigation was made at Mother's insistence. Accordingly, the appellate court rendered that Appellees take nothing on their claims.

Concurring and Dissenting Opinion: (J. Soto)

When a jury charge definition is not challenged, appellate courts measure sufficiency of the evidence under the charge's definition, even if it is not the correct definition under the law. Mother did not object to the immunity definition provided to the jury and did not argue on appeal that it was incorrect. The charge provided:

> When a defendant testifies at trial, no civil liability for malicious prosecution may arise from that testimony. Here, the defendant has claimed that she is immune from civil liability based on her testimony in the underlying divorce proceedings, resulting in a restraining order and subsequent protective order.

The majority used caselaw to define the privilege rather than the jury charge, which was an improper review. Mother's statements were not trial testimony but in affidavits attached to pleadings, which, under the charge, were not protected.

Additionally, the question in the malicious prosecution claim was whether Mother initiated an investigation, not that her complaint contained any specific content. Thus, elaboration on the nature of Mother's claims by Appellees was unnecessary. Regardless, the record clearly provided the substance of Mother's claims. Additionally, Uncle provided sufficient testimony to support the extent of his mental anguish to support the jury awards to Uncle. However, Father failed to present any "special injuries" to support his malicious prosecution claim, and it was appropriate to render that he take nothing for that claim.

Award for Conditional Appellate Attorney's Reversed and Rendered as "Take Nothing" Because No Evidence Supported the Amount Requested.

277. *Taylor v. Taylor*, No. 05-24-00544-CV, 2025 WL 3464949 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (12-02-2025).

Facts: The parties cross-petitioned for divorce. Husband also brought a third-party action against Wife's sons regarding civil conspiracy. In temporary orders, the parties agreed to appoint a joint Forensic Accountant. Wife and her attorneys were uncooperative with the Forensic Accountant, so it intervened for unpaid fees and attorney's fees.

Ultimately, the divorce was granted on insupportability. The court granted reimbursement claims against both parties, found Wife committed fraud, and reconstituted the community estate. The court signed a "Final Judgment for Intervenor" that was incorporated into the final decree of divorce. Wife appealed.

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

Opinion: The Forensic Accountant asserted Wife's notice of appeal with respect to it was late because her notice was filed more than 30 days after the Final Judgment for Intervenor was rendered. Wife argued that the deadlines did not begin running until after the final decree of divorce was signed. In general, there can be only one final judgment in a case. A final judgment disposes of all parties and all claims to a case. The intervention judgment did not meet that criteria because it did not dispose of all parties and claims. Despite its title, it was not a final appealable judgment and was only an interlocutory judgment. No order severed the intervenor judgment from the rest of the case, so Wife's timely appeal of the final decree of divorce could also challenge on appeal the intervenor judgment.

Wife challenged the trial court's characterization of certain property. However, Wife introduced the Forensic Accountant's report, and the report was admitted as evidence. The final decree adopted the characterizations in the report. Moreover, Wife offered no evidence to refute the characterizations. Wife could not assign error on appeal to characterizations she sponsored, requested, and never disputed.

Wife additionally challenged the valuation of an unaffixed cabin that sat on Husband's separate-property land. However, Wife offered no evidence of valuation at trial. Thus, she could not complain on appeal that the trial court lacked sufficient information regarding that property's value.

The decree awarded 22 separate reimbursement claims, and Wife challenged 4 of them on appeal. However, Wife failed to challenge those claims at trial, and she endorsed the report that set out the claims. Moreover, contrary to Wife's assertions, the revised statute still allows for reimbursement claims recognized by common law, and none of the claims were excluded by statute.

Wife further challenged the finding she committed fraud and the trial court's reconstitution of the community estate. Husband showed that Wife disposed of his interest in community estate without Husband's knowledge or consent, creating a presumption of fraud and shifting the burden to Wife to show the dispositions were fair. Again, the sums were set forth in the unchallenged report. Additionally, other evidence supported the trial court's findings regarding Wife's fraud.

The trial court awarded the Forensic Accountant a judgment for attorney's fees incurred at trial (split evenly between Husband and Wife) and an additional sum for conditional appellate attorney's fees. While the Forensic Account provided testimonial and documentary evidence to support the amount of already incurred fees, there was no opinion testimony regarding estimated legal expenses on appeal or about any relevant legal experience that could form a basis for an assertion that the estimated amount was reasonable. Thus, the evidence was insufficient to support the award of conditional appellate attorney's fees, and the appellate court rendered the Forensic Accountant take nothing in appellate fees.

Wife also challenged the judgment in favor of the Forensic Accountant. Specifically, Wife challenged the form of the intervenor's pleading. However, the pleading clearly stated Husband and Wife signed a contract for services and the amount of the unpaid fees. Wife filed no special exceptions. An attorney of reasonable competence could, on review of the pleading, ascertain the nature and the basic issues of the controversy. Thus, the Forensic Accountant's pleading was sufficient. Additionally, the issues were tried by consent without objection, and the judgment was supported by the evidence.

Applying a Summary-Judgment Standard of Review to Intervenor's Motion for Declaratory Judgment, Wife Failed to Meet Her Burden to Challenge the Merits of Intervenor's Claims.

280. *Hernandez v. Castano*, No. 01-23-00916-CV, 2025 WL 3768329 (Tex. App.—Houston [1st Dist.] 2025, no pet.) (mem. op.) (12-31-2025).

Facts: Husband filed a petition for divorce. Intervenor filed a petition in intervention asserting Husband was in possession of real property acquired by fraud. While Intervenor was married to her husband, Wife began dating that husband, who purchased property with community funds belonging to Intervenor and her husband. Subsequently, Intervenor's husband built a home on the property and transferred the property to Wife. Meanwhile, Intervenor had been unaware of these actions. When Intervenor divorced her husband, the property was not mentioned in her decree because she was unaware of the property's existence.

In Husband and Wife's divorce proceeding, Intervenor sought a declaratory judgment that the property had been fraudulently transferred and belonged to Intervenor. She cited other litigation to support her claim to the property. Wife filed a motion to strike Intervenor's petition and a motion to abate, citing the other litigation (including a suit to divide undivided community property and a bill of review) that was still pending. The divorce court abated the divorce due to the other pending litigation. Nearly two months later, Intervenor sought to have the abatement lifted due to a resolution one of the other cases. Intervenor asked the divorce court to sign a declaratory judgment that her husband fraudulently transferred the property to hide it from Intervenor and creditors, and Husband and Wife had no title, claim, or interest in the property based on res judicata. In addition to challenging the lift of the abatement, Husband and Wife nonsuited their divorce. The trial court signed a final judgment granting Intervenor's requested relief. Wife appealed.

Holding: Affirmed.

Opinion: Wife asserted the trial court erred in granting Intervenor's relief without reinstating the divorce proceeding. The abatement order stated the abatement would remain in place "until further order of the court." The final judgment itself lifted the abatement.

Wife additionally argued the lifting of the abatement was premature because only one of the two other pending suits was resolved. Generally, if two lawsuits concerning the same subject matter are filed, the court in which the first suit was filed acquires dominant jurisdiction. The divorce court properly abated the divorce while the first-filed property dispute was resolved. Once the property dispute was resolved, it was proper for the divorce court to lift the abatement.

Wife further characterized Intervenor's motion as one for summary judgment for which Wife did not receive 21 days' notice. Intervenor's motion was filed more than two months before the hearing, and the notice of hearing specifically stated it would address the motion to lift the abatement and motion for declaratory judgment. Additionally, a non-movant in a summary judgment proceeding may request a continuance, and Wife did not do so. Finally, Intervenor moved for judgment on the grounds of res judicata and attached findings of fact and conclusions of law from the other proceeding. Wife did not challenge the merits of Intervenor's motion and, thus, did not meet a burden to establish a genuine issue of material fact.