

OCTOBER 2025 CASELAW UPDATE

(Cases from September 1–30, 2025)

Prepared by:

Beth M. Johnson
BETH M. JOHNSON, PLLC
8150 N. Cent. Expy, Ste. 250
Dallas, Texas 75206
(972) 467-5847
beth@bethmjohnson.com



**DIVORCE:
PROCEDURE AND JURISDICTION**

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.

1. *Sargent v. Sargent*, No. 02-24-00470-CV, 2025 WL 2627033 (Tex. App.—Fort Worth 2025, no pet. h.) (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 than 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.

2. *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.

**DIVORCE:
DISCOVERY**

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.

3. *In re R.J.K.*, No. 05-24-00099-CV, 2025 WL 2723277 (Tex. App.—Dallas 2025, no pet. h.) (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:
RETIREMENT BENEFITS**

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

4. *Burgin v. Burgin*, No. 02-24-00504-CV, 2025 WL 2552341 (Tex. App.—Fort Worth 2025, no pet. h.) (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 she relied upon a statute that 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.

**DIVORCE:
ENFORCEMENT OF PROPERTY DIVISION**

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.

5. *Curtis v. Laplante*, No. 04-24-00801-CV, 2025 WL 2610457 (Tex. App.—San Antonio 2025, no pet. h.) (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.



**SAPCR:
PROCEDURE AND JURISDICTION**

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.

6. *In re A.K.M.*, No. 05-24-00153-CV, 2025 WL 2723280 (Tex. App.—Dallas 2025, no pet. h.) (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.

**SAPCR:
CHILD SUPPORT**

Evidence Of Gross Receipts Received By Father's Business Insufficient To Support Order Setting Maximum Guideline Child Support.

7. *Ly v. Nguyen*, No. 03-23-00535-CV, 2025 WL 2677889 (Tex. App.—Austin 2025, no pet. h.) (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.

**SAPCR:
REMOVAL OF CHILD / TERMINATION OF PARENTAL RIGHTS**

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.

8. *In re R.E.S.*, ___ S.W.3d ___, No. 08-24-00350-CV, 2025 WL 2646170 (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 VIOLENCE / PROTECTIVE ORDERS

Court Had Authority To Consider Respondent's Request To Modify Protective Order Issued Under Code Of Criminal Procedure.

9. *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.



MISCELLANEOUS

Facts In Supporting Affidavit To Petition In Intervention On Sworn Account Taken As Conclusive Because Defendant-Husband Failed To File A Sworn Denial.

10. *Nanchary v. HH Lw Firm, PC*, No. 05-24-00650-CV, 2025 WL 2606628 (Tex. App.—Dallas 2025, no pet. h.) (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.

