TAFLS
Texas Academy of Family Law Specialists
FAMILY LAW FORUM

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PREZ SAYS

by Kristal Thomson

As we welcome the long, warm days of summer, I hope each of you finds a moment to recharge—whether that's poolside, in a courtroom, or finally taking your dream vacation. Even just an afternoon off, doing something you enjoy, or finishing errands can help you reinvigorate and refresh.

This season is a good reminder that even in the heat of high-stakes litigation, we're part of a profession rooted in something deeper than the daily grind. At the core of what we do is a commitment to professionalism—not just civility, but the pursuit of excellence and fairness in service of others.

And in an era where the rule of law can feel more like a talking point than a shared value, our work matters more than ever. Lawyers are guardians of the system that underpins our democracy. We must model respect for institutions we serve, commitment to due process, and the courage to stand firm when those values are tested.

So, as you head into summer—whether you're prepping for trial or planning a vacation—I encourage you to reflect on the privilege we share: to be stewards of the law, and professionals in every sense of the word.

Summer also brings a chance to reconnect with colleagues. Judicial fundraisers, meetings, and CLEs are abundant this summer. But don't underestimate the power of inviting a fellow attorney to lunch to debrief about a troublesome case.

They remind us that we are part of a broader community, one that is resilient and resourceful.

To the more experienced attorneys in our organization, don't forget to check in on the next generation of lawyers. Whether you're mentoring a summer clerk, teaching CLE, or just sharing your story with a law student over coffee, your investment in their growth is paramount to the future success of our profession.

At the organizational level, we continue to focus on providing opportunities for our board-certified lawyers to get together for fun and conversation, while also encouraging more family lawyers to take the test and join our ranks. The judiciary, clients, and family law in general benefit from lawyers who take the time and put in the effort to achieve the high goal of board certification.

We cannot wait to see you in San Antonio at Advanced Family Law. That week, we will have the board certification Study Guides available for sale, share information about the 2026 TAFLS Institute, and, as always, enjoy a night celebrating our members and the newest Sam Emison Award winner at the Annual Meeting and Dinner. The dinner is on August 6 at the St. Anthony Hotel, and tickets are on sale on our website.

Thank you for all you do to make board-certified family lawyers shine. Your work matters. Your example matters.

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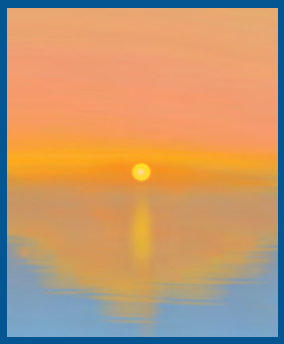

CONTACT THE EDITOR

Please reach out to Lauren Waddell with any contributions or suggestions for upcoming TAFLS newsletters at:

lauren@waddellfamilylaw.com

In this issue, I hope you enjoy a historical TAFLS "gem" which is a letter written by Earle Lilly on April 23, 1984 to members explaining the decision on the official name for TAFLS, planning of the first annual institute in Las Vegas - topics considered were "stress management", "financial tactics", and "child snatching", along with the announcement of the Sam Emison Memorial Award. And, as the Editor of the *TAFLS Family Law Forum*, I have to note that in "other matters," the concept of a periodic newsletter was mentioned. Thank you to "Dean" Lilly and to all the Founders of TAFLS; your efforts are very much appreciated. Also, kudos to Past President Lon Loveless for sharing this TAFLS history with us!

Also, in this newsletter, there is an informative article, *Navigating Jurisdictional Complexities and the Emerging Framework for Guardian-Initiated Divorce in Texas*, written by probate section attorneys at Kean Miller in Houston. Lately, I have had more cases that involve aging clients. I thought many of you could be experiencing this too, so I included an article that addresses some of the issues that could come up in such cases. I hope you find it helpful in your practice.

Last but certainly not least, this issue concludes with Sallee Smyth's *Interesting Cases*. Please read her case summaries involving family law issues for the last few months. Thank you, Sallee, for the time you dedicate to the *Interesting Cases*. It benefits us all!

I look forward to seeing our TAFLS members in San Antonio at the *Advanced Family Law Conference* in August!

If you have any comments about the TAFLS newsletter, you can contact me at lauren@waddellfamilylaw.com.

UPCOMING EVENTS

CLICK HERE TO VIEW AND REGISTER FOR ALL TEXAS BAR CLE EVENTS

Legislative Update 2025: Family Law
MCLE Credit: 3 hrs (.25 ethics)
Live In-Person, Austin
June 27, 2025

Family Law 101: 2025
Live In-Person, San Antonio
August 3, 2025

Advanced Family Law 2025
Live In-Person, San Antonio
August 4-7, 2025

Advanced Family Law
Child Abuse & Neglect Workshop
Live In-Person, San Antonio
August 6, 2025

New Frontiers in Marital Property Law 2025
Live In-Person, Austin
October 16-17, 2025

Handling Your First (or Next) Divorce Case 2025
Live In-Person, Austin
November 7, 2025

Advanced Family Law Drafting 2025
Live In-Person, San Antonio
December 11-12, 2025

CLICK HERE FOR DETAILS AND TO REGISTER FOR THE AFCC/AAML JOINT CONFERENCE

AFCC/AAML JOINT CONFERENCE
2025 Conference on Advanced Issues in Child Custody: Evaluation, Litigation and Settlement
San Francisco, CA | Hilton San Francisco
September 18-20, 2025

Historical Letter written by Earle S. Lilly

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TEXAS BOARD OF LEGAL SPECIALIZATION

April 23, 1984

Dear Member:

On April 14, 1984, a meeting of the executive committee of the "Association" met in San Antonio in conjunction with matters brought to the attention of the association at our August 19, 1983 meeting in San Antonio.

In attendance were present officers of the "Assocation", Earle S. Lilly, Judge Paul Rothermel and Stewart Gagnon, the only officers not present being Curtis Loveless and Ernest J. Browne. The remainder of the executive committee comprised of Jimmy Stewart of San Antonio, Jim Loveless of Fort Worth, Mike Gregory of Denton, and Larry Schwartz of El Paso.

One of the first items of business was the consideration of the "proposed name change" of the group, and after much discussion, including input from members of the association not at the meeting, it was resolved that the level of competence of the individual members of the association as well as the dignity and prestige of the organization warranted a conversion from the rather lack luster word "Association" to the title "Academy". It was likewise resolved that the present name of our organization may be somewhat wordy. The new name of "TEXAS ACADEMY OF FAMILY LAW SPECIALISTS" was adopted.

At the urging of the members of the executive committee, not including the president of the organization, it was decided that the title of "Dean" should replace "President" and similarly, "Dean Elect" should replace the present "Present Elect" title.

The next important matter of business was the appointment of a "by-laws revision committee". Jim Loveless was appointed as chairman of this committee, and Larry Schwartz and Mike Gregory were appointed co-chairman. It was the understanding of the executive committee that the chairman and co-chairman would request several other members of our organization to assist in revising the by-laws of the organization. The purpose of the revisions committee was due to the present goals of our group being far more than a periodic social gathering, but rather a meaningful organization, functioning as a cohesive unit to enhance all areas of family law in this state (coincidently enjoying the process!).

An enlarged executive committee is scheduled to meet on May 4th at 5:00 o'clock p.m. at the Mansion Hotel in Austin, Texas to follow up on the activities of the initial executive committee meeting. All past and present officers and directors of the organization are invited to attend and should contact Earle Lilly or Stewart Gagnon if they should desire to participate in the May 4th meeting. Other members of the organization may desire to attend the meeting. Please contact Linda Lyles at the offices of Piro & Lilly for reservations.

The Academy further resolved that in addition to our annual meeting at the Advanced Family Law Institute (this years meeting to be held in Houston the week of August 20, 1984), we would have an annual institute. The present plans are to structure a "long weekend institute" in Las Vegas, Nevada beginning the evening of November 1, 1984 and continuing through Sunday, November 4th. We are planning an extremely interesting schedule of topics and speakers at both the August meeting and the November meeting. Although many of the details are still in "planning stages", it is anticipated that keynote speakers such as Marvin Mitchelson and Melvin Belli would be receptive to address our group and contacts are presently being made. The topics and speakers will be announced shortly as well as other details of both the August meeting and the November institute. A few of the topics that was thought to be appropriate for the forthcoming gatherings were "stress management", "financial tactics", (including financing the wife's case, attorney's fees, etc.) and some interest was discussed with reference to "child snatching".

The annual dues has been changed to $100.00 per year and dues statements are being sent to all present "Board Certified Attorneys" in Family Law. It is further anticipated that, although the Academy will maintain the minimum requirement of being "Board Certified by the Texas Board of Legal Specialization", that future applicants will be accpeted by invitation through a membership committee.

There has apparently been a great deal of confusion as to the issuance of certificates to the present members, as well as additional confusion as to who is or is not presently a member.

To clarify all confusion, all present members, with or without certificates, and without regard to whether or not the present dues are current, are immediately eligible for membership in the Academy by payment of the annual dues, and the return of the "dues statement" to the secretary of the Academy, Stewart Gagnon. New certificates will be issued at the August meeting to all such persons who have returned their dues statement along with their annual dues. The new certificates will be either laminated or in plaque form.

Finally, an annual memorial award of $1,000.00 to be known as the "Sam Emison Memorial Award" will be given to the person whom the Academy feels has donated the most in the field of family law for the year preceding our annual meeting. The decision as to the recipient will be made through a selection committee of no less than twenty (20) members. The committee will receive written recommendations from all interested persons, including judges and educators throughout the state. For all those who are not familiar with the late Judge Sam Emison of Houston, further announcements will be made at the August meeting regarding this most profound man.

Other matters of business such as periodic newsletters, periodic announcements of developments in family law, the establishment of various subcommittees such as "publication committees", speaker committees, continuing education committees, legislative committees, and the like will be continued at our May 4th meeting as well as the general meeting in August.

Regards,

Earle S. Lilly,
Dean of the Academy

ESL:ll

Navigating Jurisdictional Complexities and the Emerging Framework for Guardian-Initiated Divorce in Texas

By: Scott Seidl, Laurel M. Smith, Rachelle Maldonado, and Jessica B. Bell

Guardianship Law: An Overview

With our aging population, second marriages and the blended families that arise therefrom, both elder law and family law attorneys are witnessing an uptick in divorce proceedings filed by adult children of elderly parents. These divorce filings are often made in an adult child's role as guardian of their parent or as agent under power of attorney. Another correlation between our aging population and the increase in divorce proceedings is an increase in guardianship proceedings being initiated by adult children of elderly parents, or sometimes by the other spouse in retaliation for the filing of the divorce proceeding. While these issues are quite broad and could conceivably consume a multi-day CLE program, this article will focus on the general procedures of guardianships, with an emphasis on subject matter jurisdiction of probate courts when a divorce proceeding overlaps with a guardianship proceeding, and will share practical considerations for family law practitioners to keep in mind when they find themselves in the crosshairs of guardianship law and family law.

The statutory scheme for guardianships can be found in Title 3 of the Texas Estates Code. Notably, Title 3 begins with the purpose of guardianship and the reason it warrants its own section in the Texas Estates Code, which is to "promote and protect the well-being of [an] incapacitated person"[1] Generally speaking, an incapacitated person is defined as someone who is mentally, physically, or legally incompetent.[2] The Texas Estates Code's definition of an incapacitated person also includes minors and adults who are unable to care for their own physical health or manage their own affairs.[3]

A guardianship proceeding over an allegedly incapacitated person, or, in other words, a "proposed ward", can be initiated in one of two ways: (1) by filing an application requesting a guardianship over the proposed ward, or (2) by the court itself after someone has filed an information or doctor's letter regarding the proposed ward. However, guardianship proceedings are typically initiated by the filing of an application by someone close to or involved with the proposed ward.[4] Chapter 1101 of the Texas Estates Code sets forth the pleading requirements for an application for guardianship and essentially provides a checklist of the information required to be included in an application for guardianship. Chapter 1101 also lays out the burdens of proof that the person seeking a guardianship must meet, and the findings that the court must make, to successfully obtain a guardianship over the proposed ward.[5]

Regardless of whether a guardianship proceeding is initiated by the filing of an application or an information letter, another procedural hurdle with guardianships is determining what court has jurisdiction to consider such a case. The Texas Estates Code confers jurisdiction over a guardianship proceeding to "a court exercising original probate jurisdiction." As to which court has original probate jurisdiction,[6] that can vary by county and generally depends on the structure of the court system in the county in which the guardianship will be pending. The first step to answering this question is determining whether the county has a statutory probate court or not. In counties with a statutory probate court, which are typically in larger metropolitan areas of Texas, the statutory probate court possesses exclusive jurisdiction over all guardianship proceedings.[7] Less-populated counties typically do not have a statutory probate court, and instead have a county court and/or a county court at law. In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.[8]

[1] TEX. EST. CODE ANN. § 1001.001.
[2] TEX. EST. CODE ANN. § 1001.003.
[3] TEX. EST. CODE ANN. § 1002.017.
[4] TEX. EST. CODE ANN. § 1101.001 (guardianship proceeding initiated by application); TEX. EST. CODEANN. § 1102.003 (guardianship proceeding initiated by filing an information letter with the court).
[5] TEX. EST. CODE ANN. § 1101.001.
[6] TEX. EST. CODE ANN. § 1022.001.
[7] TEX. EST. CODE ANN. § 1022.005.
[8] TEX. EST. CODE ANN. § 1022.002(a).

In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law.[9]

Subject Matter Jurisdiction: Guardianship v. Divorce

While subject matter jurisdiction for guardianship proceedings is governed by the Texas Estates Code, subject matter jurisdiction for divorce proceedings is governed by the Texas Constitution and the Texas Government Code. Article 5, Section 8 of the Texas Constitution grants district courts original jurisdiction over all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by the Texas Constitution or other law on some other court, tribunal, or administrative body.[10] A divorce proceeding is an in rem action over which the district court has subject matter jurisdiction.[11] However, a divorce proceeding may also proceed in a statutory county court depending on the amount in controversy.[12]

The differences in subject matter jurisdiction between guardianship and divorce proceedings is further complicated by the fact that the courts that handle these cases may vary from county to county. Many counties have specifically designated courts for family law cases in the Government Code.[13] Even if the Government Code does not have a specifically designated family court for a particular county, the district judges are empowered with the authority to adopt rules for the filing of cases, assignment of cases for trial, and the distribution of the work amongst the courts.[14] As a result, district judges may make rules and enter orders amongst themselves to divide cases in a certain manner that they determine is best for judicial efficiency. While this may not be a strictly jurisdictional issue, because all the district courts still retain subject matter jurisdiction as provided by the Texas Constitution, it is a practical consideration for the filing of divorce cases.

These variations in subject matter jurisdiction between divorce and guardianship mean that it is rare for a guardianship and a divorce to be pending in the same court unless the jurisdictional stars align. If the cases were ever in the same court, it would likely be in a smaller county in Texas where there was no statutory probate court to hear the guardianship. For example, a divorce proceeding that is filed within the jurisdictional limits of the statutory county court may be heard alongside a contested guardianship proceeding that is also filed or transferred to that same court. Another example may be in a small county that has no statutory probate court or county court at law exercising original probate jurisdiction, and a guardianship proceeding that becomes contested is transferred to a district court.[15] By contrast, in larger counties that do have statutory probate courts, the guardianships and divorces will never be filed in the same court because the statutory probate court has exclusive jurisdiction of guardianships and divorce cases are always filed in the district courts or a statutory county court.[16]

These nuances in jurisdiction cause understandable confusion for practitioners who are participating in concurrent divorce and guardianship proceedings that involve the same parties. The "first filed" rule, or dominant jurisdiction rule, will not apply when evaluating whether a divorce proceeding versus a guardianship proceeding should proceed first because the two cases involve different disputes and the respective subject matter for each case will often invoke the jurisdiction of different courts.[17]

However, even if the divorce and guardianship are filed in different courts, the Texas Estates Code confers jurisdiction on statutory probate courts to hear matters appertaining to or incident to a guardianship estate.[18] In the case of In re Graham, the parties to the divorce were Richard and Gitta Milton.[19] Analyzing Section 608 of the Probate Code (now Section 1022.007 of the Estates Code), the Texas Supreme Court determined that the divorce was a matter related to Mr. Milton's guardianship estate.[20] As a result, the Court held that the statutory probate court had authority to transfer to itself from a district court a divorce proceeding when one party to the divorce is a ward of the probate court.[21]

[9] TEX. EST. CODE ANN. § 1022.002(b).
[10] TEX. CONST. art. V, § 8; see also TEX. GOV'T CODE ANN. § 24.007.
[11] Blenkle v. Blenkle, 674 S.W.2d 501, 503 (Tex. App—El Paso 1984, no writ).
[12] TEX GOV'T. CODE ANN. § 25.003(c)(1).
[13] *See* TEX. GOV'T CODE ANN. §§ 24.601–24.644.
[14] TEX. GOV'T CODE ANN. § 24.024.
[15] TEX. EST. CODE ANN. § 1022.003.
[16] TEX. EST. CODE ANN. § 1022.005; TEX. CONST. art. V, § 8; TEX. GOV'T. CODE ANN. § 24.007.
[17] *See In re King*, 478 S.W.3d 930, 933 (Tex. App.—Dallas 2015, orig. proceeding) (when a claim asserted in a second suit is outside the jurisdictional limits of the court where the first suit was filed, the first court cannot assert dominant jurisdiction over the claim in the second suit).
[18] TEX. EST. CODE ANN. § 1022.007; In re Graham, 971 S.W.2d 56, 59 (Tex. 1998).
[19] *In re Graham*, 971 S.W.2d at 57.
[20] *Id*. at 60.
[21] *Id*.

Navigating Jurisdictional Complexities and the Emerging Framework for Guardian-Initiated Divorce in Texas, cont'd...

One important distinction to be made about the parties in Graham is that divorce involved a spouse (Richard Milton) who had already been determined by the probate court to be incapacitated and a guardian had been appointed. Cases where a guardianship and a divorce are both pending and a party to a divorce has not been determined to be incapacitated are more complicated. If the guardianship is pending in a statutory probate court, a party may ask for a transfer of the divorce to that court under Section 1022.007 of the Texas Estates Code. However, the transfer request is not guaranteed to be granted, and probate judges are often hesitant to allow the transfer because they do not typically preside over divorces and may be uncomfortable in doing so. Depending on the circumstances, a party may strategically choose to keep the divorce and guardianship separated in their respective courts so that each case may be presided over by a judge with experience in that subject matter. Further, if the proceedings are pending in a county without a statutory probate court, a transfer under Section 1022.007 would not be permitted, and the cases would have to remain segregated in their respective courts.

Texas Enters the Guardian Divorce Debate: How Benavides Set the Stage Without Choosing Sides

Beyond jurisdictional complexities lies an even more fundamental question that has divided courts nationwide: Can a guardian initiate divorce proceedings on behalf of their incapacitated ward? This seemingly straightforward question pits the protection of vulnerable adults against the preservation of personal autonomy in marriage, creating a legal battlefield where the stakes involve both individual liberty and family safety. The Texas Supreme Court finally addressed this contentious issue in *In re Marriage of Benavides*, No. 23-0463, 2025 WL 1197404 (Tex. Apr. 25, 2025)—but rather than choosing sides, the Court outlined an entirely new framework that would ensure protection while leaving the ultimate policy choice to the Legislature.

The *Benavides* Framework: Procedural Innovation Over Policy Choice

The *Benavides* case—featuring a wealthy Laredo patriarch with dementia, his fourth wife, competing inheritance claims, and a daughter seeking to protect her father from alleged exploitation—forced the Court to finally provide clarity. Rather than making the difficult policy choice between protection and autonomy, the Court outlined a sophisticated procedural framework that would govern guardian divorces if such authority exists, requiring two mandatory judicial safeguards.

First, the guardianship court must expressly authorize the guardian to pursue the divorce. General litigation authority is not sufficient—the court must specifically consider and approve divorce proceedings as within the guardian's powers.

Second, both courts must find that divorce serves the ward's best interests. The guardianship court must determine that granting divorce authority promotes the ward's well-being, and the family court must independently conclude that actually granting the divorce is in the ward's best interests and promotes and protects the ward's well-being.

The Court's conditional framework acknowledges compelling arguments on both sides while explicitly refusing to make the ultimate policy choice about whether such authority should exist. The Court explicitly noted that "the Legislature may wish to consider amending the Estates Code or the Family Code to plainly express its policy choice on this issue."[22] Any future guardian divorce petition would need to navigate this two-court, two-finding framework if such authority is established.

The decision's practical requirements would transform guardian divorce practice entirely. Guardians would need to obtain express authorization before filing and build compelling evidence that divorce truly serves the ward's well-being. Courts could not simply apply standard no-fault divorce criteria—they would need to independently evaluate whether dissolution promotes the specific ward's interests.

What This Means Going Forward

Benavides maps the doorway without deciding whether to open it—establishing what procedures would be required if guardian divorces are permitted. Should Texas ultimately permit guardian divorces, family lawyers would need to navigate two courts and meet high evidentiary burdens under the *Benavides* framework. The decision explicitly invites legislative action, urging policymakers to choose between autonomy and protection. Until then, Texas practitioners operate in an uncertain landscape—one where the fundamental question remains unanswered.

[22] *Benavides*, 2025 WL 1197404, at *13.

Practice Guidance, Ethical Considerations, and Conclusion

When guardianship and divorce proceedings are concurrent or intersect with one another, practitioners should carefully consider the order in which they proceed with the divorce or guardianship proceedings to ensure that the constitutional and due process rights of the alleged incapacitated person are protected. In guardianships, the Texas Estates Code requires the appointment of an attorney ad litem to represent the legal interests of the proposed ward in that proceeding.[23] However, the attorney ad litem's authority to represent the proposed ward is limited to the guardianship proceeding, unless the probate court enters an order specifying otherwise. If the proposed ward has hired their own counsel, the probate court will need to conduct a hearing to determine if the proposed ward has the ability to retain their own counsel.[24] The proposed ward's ability to retain their own counsel in the guardianship would also affect their ability to do so in the divorce. The retention and authority of legal representation for the proposed ward in both the guardianship and the divorce proceedings is a crucial issue to determine at the beginning of the proceedings to ensure the proposed ward's due process rights are protected.

Another consideration for practitioners is the proposed ward's ability to enter into agreed orders in the divorce or participate in other negotiations or agreements. Findings related to a party's capacity or incapacity should be handled by the probate court, not the divorce court, and these determinations directly affect the way the divorce proceeds. For example, if a divorce proceeding goes forward with an alleged incapacitated person as a party, the parties and the family court run the risk that orders or agreements entered into by the alleged incapacitated party may be void or voidable. A possible solution is to ask the probate court to appoint a temporary guardian for the alleged incapacitated party with the authority to participate in the divorce proceeding. Alternatively, the divorce could be abated pending a final determination of the need for a guardianship for the proposed ward. If a permanent guardian is appointed, the guardian is the proper party to the divorce on behalf of the proposed ward. Ultimately, the circumstances and the level of incapacity of the proposed ward will be a driving factor as to how to proceed in each individual case.

Other than procedural and practical issues that may arise during guardianship-divorce proceedings, there are also ethical issues when working with a client who may lack capacity. Rule 1.17 of the Texas Disciplinary Rules of Conduct provides that if an attorney reasonably suspects a client to have diminished capacity, the attorney may take reasonably necessary protective action such as seeking the appointment of a guardian or attorney ad litem for the client or submitting an information letter to a court with jurisdiction to initiate a guardianship proceeding for the client. However, practitioners should be warned that transforming your role from advocate to applicant with respect to seeking a guardianship for your client may create a conflict of interest and prohibit continued representation in the divorce proceeding.

Practitioners should also be aware of circumstances when a guardianship or divorce proceeding is used as a tool to retaliate against the other spouse. For example, a client may retain you to divorce his or her spouse and after the divorce proceeding has been initiated, the other spouse files for a guardianship over your client claiming your client lacks capacity to even seek a divorce. Is the spouse retaliating or does your client truly lack capacity?

As the "baby boomer" generation ages and the elderly population increases, practitioners can expect to see an increase in the overlap of guardianships and divorce proceedings, and for some of the circumstances and issues discussed in this article to come across their desk. And as this article highlights, there are procedural nuances to guardianships and divorce proceedings that can become even more complicated when these two practice areas intersect. Although Benavides and Graham provide some guidance for practitioners when they find themselves caught in-between a guardianship and divorce proceeding, there are still jurisdictional and practical issues that these cases do not address. Until such issues are addressed by the legislature or more case law, practitioners should be familiar with the basics of guardianship law in the event a divorce proceeding turns in an issue of one spouse's capacity, or lack thereof.

[23] TEX. EST. CODE ANN.. § 1054.001.
[24] TEX. EST. CODE ANN. § 1054.006.

Interesting Cases

by Sallee S. Smyth

1 **Note: *Ramos v. Marroquin,*** 2025 Tex. App. LEXIS 1392 (Tex. App. – El Paso February 28, 2025) (mem. op.) (Cause No. 08-23-00289-CV) ** original opinion reported in January 2025 Interesting Cases edition has been withdrawn and new opinion issued with the same result involving a spouse's inability to convey homestead property without the joinder of the other spouse.

2 ***Rupinder Singh v. Manpinder Kaur,* 2025 Tex. App. LEXIS 1518 (Tex. App. – Fort Worth March 6, 2025) (mem. op.) (Cause No. 02-24-00023-CV)**

H and W began dating in 2021. W was a US Citizen. H was not, however he had begun an asylum case in 2016 and was permitted to work in the US. W had been previously married for the purposes of assisting her first H secure a green card. While dating H assured W that he would not ask her for such assistance. H and W got engaged in May 2021 and despite his earlier promises, H immediately asked her to meet with immigration counsel in order to assist him in obtaining legal status, something he would need before the parties could travel to India for the ceremonial marriage they had planned. The parties married in the US in a civil ceremony, lived together and made plans for a wedding in India, however H moved out in February 2022. W sought an annulment on the basis of fraud. Trial was before the court who heard evidence from both H and W. The court granted the annulment on the basis of fraud and awarded W $20,000 in attorney fees. H appealed. The COA found that the trial court had discretion to believe that H fraudulently induced W into the marriage by making promises not to seek her assistance with his immigration but thereafter pushing to secure such help. Fraudulent inducement can be found when someone makes a promise at a time they do not intend to comply. Based on the evidence the COA sustained the annulment. However, as to fees the court reversed and remanded. W's attorney called herself to testify at which time H's counsel stipulated to the amount of fees and to the qualifications of W's counsel. W's attorney offered her detailed billing records into evidence. The trial court characterized the stipulation as one to the "reasonableness and necessity" of the fees, not just the amount. The COA disagreed finding that nothing in the record indicated a stipulation to reasonableness or necessity and there was no evidence of the difficulty of the case, the fees customarily charged for similar services, the nature of counsel's relationship with W; counsel's experience, reputation and ability of counsel or whether the fee was fixed or contingent. In the absence of such evidence the COA found the fee award could not be sustained and remanded the issue for a hearing on reasonableness and necessity. COMMENT: Just another example of how precise fee testimony must be and/or what the contents of any stipulation regarding fees must include.

3 ***In re C.B.*, 2025 Tex. App. LEXIS 1519 (Tex. App. – Fort Worth March 6, 2025, orig. proceeding) (mem. op.) (Cause No. 02-25-00026-CV)**

Mother (M) and CB entered into a same-sex marriage in July 2017. During marriage M became pregnant and delivered RBB in November 2018. Both parties were named as parents on the child's birth certificate and raised the child together until 2021 when M filed for divorce. In her original pleading M named CB as a parent of the child but later amended her pleadings, denied CH's parentage, and named CH as the child's biological father. CH filed an answer and asked to be named RBB's father. In February 2022 M and CH agreed to temporary orders obligating CH to pay child support and awarding her rights of possession. CH was not named in these orders. CH thereafter intervened and sought genetic testing and a declaratory judgment that he was the child's father and that CB was not the child's mother. CB objected to the testing and the court appointed an amicus. Thereafter the trial court abated all matters,

Interesting Cases

by Sallee S. Smyth

3 *In re C.B.*, 2025 Tex. App. LEXIS 1519 (Tex. App. – Fort Worth March 6, 2025, orig. proceeding) (mem. op.) (Cause No. 02-25-00026-CV), cont'd...

dismissed the amicus and ordered genetic testing. Those results confirmed CH as the biological father. CH filed a motion to compel discovery and for protective order and sought to sever the SAPCR from the parties' divorce. A hearing was set on 11/21/24. At that hearing the court admitted the testing results by agreement and CH made an oral request to be adjudicated the father and asked the court to dismiss the TO's giving CB rights to the child. The court granted CH's request and CB sought mandamus relief. Regarding the order for genetic testing, the COA denied mandamus based on laches because CB waited 8 months to pursue relief and only complained after the testing and after the results were admitted by agreement. However, as to the orders adjudicating CH father and setting aside the TO's, the COA found that CB did not receive adequate notice that the court would hear those matters on 11/21/24, only finding out on the day of the hearing when CH made his oral motion. Because her due process rights were violated, the COA granted mandamus, ordering the trial court to vacate its prior order and directing the court to set a hearing date on with proper notice to all parties.

4 *In the Interest of S.G.B.*, 2025 Tex. App. LEXIS 1712 (Tex. App. – Dallas March 13, 2025) (mem. op.) (Cause No. 05-23-00684-CV)

M and F entered an agreed SAPCR order in 2018 naming them JMC and giving F a phased in possession schedule until the child turned 4. In 2020 the parties filed a Rule 11 agreement with the court that modified the supervised possession terms until the child was 16. In addition the Rule 11 agreement provided that (1) the parties would make reasonable attempts to resolve disputes without litigation; (2) F would not seek to modify the supervision terms for his access before the child turned 16; (3) M would not seek jail time if enforcing c/s by contempt and (4) if a party breaches they pay the other party's fees regardless of the litigation outcome. In 2022 F filed a petition to modify seeking an expanded SPO. M filed an amended counterclaim asserting a breach of contract claim and also requested modification naming her as SMC. F answered asserting affirmative defenses of release, estoppel, failure of consideration, fraud, illegality, waiver and repudiation of the Rule 11. The case went to a jury and the court issued a limine order precluding evidence of family violence or abuse by F before establishing relevance. M's counsel violated the limine and the court granted a mistrial. Thereafter the court issued notice of its plan to consider contempt and F filed a motion for sanctions. Before a second jury trial F stipulated that M should be named SMC and F named PC and thus there were no other SAPCR jury issues. The court conducted a jury trial on the breach of contract claims and a bench trial on the remaining possession issues. The jury was instructed/questioned on breach of the Rule 11 as well as whether any breach was excused based on several affirmative defenses. M objected to the charge but all of her objections were overruled. The jury found breach but also found excuse. The court signed an order assessing sanctions against counsel for $4800; denying the breach of contract claims; naming M as SMC and granting F an SPO. M filed a notice of appeal as joined by her counsel to complain about the sanction order. Initially the COA addressed M's challenges to the jury instructions/questions. First, M argued that terms of the Rule 11 agreement she had breached (failing to grant possession) were independent from the terms F breached and thus her conduct should not justify an excuse for F's breach. The COA found that the Rule 11 agreement did not expressly specifying whether the parties' promises were dependent or independent but that it should be presumed they were dependent, justifying the court's submission of F's affirmative defense that he was excused from performing because of M's prior violations. The COA overruled M's complaint about the "repudiation" instruction because it tracked the PJC. The COA found that "waiver" was properly submitted as a defense because F offered some evidence that M violated the Rule 11 agreement for almost a year by refusing him possession. M's objection that F failed to properly plead material breach as an affirmative defense was overruled because although M filed special exceptions to F's pleading, she never secured a ruling on them and the COA found that F's "failure of considerations" defense could liberally include M's prior material breach of the Rule 11. Finally, M complained of the court's failure to submit a question on whether F had committed family violence. F's attorney argued that no such question should be submitted because there were no SAPCR issues to be decided by the jury which depended on any such finding. M's attorney argued that it was a fact issue relevant to the court's consideration of possession and disputed facts should go to the jury. The COA found that M's argument on this point was inadequately briefed. As such, all error alleged regarding the jury charge was overruled. M's argument challenging evidence of a material and substantial change was denied based on M's own pleadings which admitted that such a change existed. As to the sanctions against M's counsel, the COA found that the trial court failed to issue all required findings when excising its inherent power, including bad faith by the attorney and conduct which interfered with the court's legitimate exercise of its core functions. Order modifying conservatorship and denying breach of contract affirmed. Order for sanctions against counsel reversed and remanded.

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5 *In the Interest of L.C.W.*, 2025 Tex. App. LEXIS 1778 (Tex. App. – Dallas March 14, 2025) (mem. op.) (Cause No. 05-23-00815-CV)

H and W married in 2015 and had one child. In 2020 H filed for divorce based on adultery and cruel treatment. W filed a counter claim based on cruel treatment. During the marriage, W became the primary wage earner and H had stayed home with the child. The court issued TO naming H as temporary primary JMC with right to establish domicile. Issues at trial surrounding primary conservatorship, W's separate property claims and a division of property. At trial, W sought primary based on various allegations against H re: suicidal thoughts, panic episodes and other mental health concerns. The court appointed evaluator favored M for primary conservator. M retained experts to trace her separate property in five bank and investment accounts. Although she did not call her experts as witnesses, H offered their report into evidence without objection, including 135 pages of itemized transactions as traced. The reports traced the five accounts from the day before marriage through September 2021, using the community-out-first rule and clearing house methods. H hired his own expert who testified and offered some criticisms regarding W's expert reports but otherwise did not point to any gaps in the tracing or changes in the accounts after September 2021. The court ultimately named W as primary JMC; confirmed her s/p claims by awarding her a percentage of the five accounts at her s/p and determining the balance to be c/p. The court awarded W the marital residence as part of the property division. H appealed. The COA found sufficient evidence supporting the court's order regarding conservatorship and found no abuse of discretion in the overall division of the marital estate. The interesting aspect of this Opinion is H's challenge to the s/p findings. On appeal, H did not contend that the tracing was inadequate from date of marriage through September 2021, but instead argued that the tracing was not updated through the date of trial in April 2022, suggesting that the court could not confirm her s/p claims with such a large gap in W's proof. In overruling this issue, the COA's opinion never addresses this 7 month gap but finds that the expert reports and W's testimony was sufficient to satisfy the clear and convincing standard. Further the COA finds that other than some criticisms of the expert reports, H has not pointed in the record to evidence disputing the tracing or showing changes in the funds from the September final tracing amounts. It is not clear from the Opinion how the trial court arrived at the percentage of the accounts that were confirmed as W's separate property or how the trial court treated any mutations, gains or losses within the accounts in the 7 month period between where the tracing reports ended and the date of trial. Ultimately, the COA determined it was reasonable for the trial court to formulate a firm conviction of belief in W's separate property claims. Judgment for divorce affirmed in all respects.

6 *In the Interest of T.M.B.*, 2025 Tex. App. LEXIS 2431 (Tex. App. – Corpus Christi April 10, 2025) (mem. op.) (Cause No. 13-24-00070-CV)

H and W were divorced in 2020 with the decree naming them JMC, H as primary and W paying child support. In addition the decree obligated H to pay W $2300/month in spousal maintenance for 30 months. In February 2021 H filed a petition to terminate his spousal maintenance obligation on the basis that W was cohabitating with someone in a dating or romantic relationship. W filed a counter petition to reduce her child support and thereafter H filed an amended counter petition seeking supervised visitation by W with the children. Trial on these matters was not held until March 2023. The court ultimately signed two separate judgments. The first, found that spousal maintenance should be terminated for the period July 2021 through December 2021 based on W's cohabitation, awarding H $13,800 for the payments he had made during that period. The second judgment denied the c/s modification but granted the request that W's possession be supervised. W appealed both orders. W's challenge to the c/s was sustained finding that the court abused its discretion in denying modification where the evidence established no basis for deviating from the guidelines which established a reduction was proper. W's challenge to orders providing that her visitation with the children would be at H's discretion was likewise reversed finding that orders giving one parent the sole discretion concerning visits was an abuse of discretion. The more compelling part of the Opinion relates to the COA's analysis of TFC 8.056(b), permitting termination of maintenance upon a finding that the obligee is cohabitating with a romantic partner. H's request for termination was based solely upon this statute. Although H filed his request in February 2021, a hearing on this request was not held until March 2023 by which time H had paid all 30 months of the maintenance award. As a result, the court's judgment effectively terminated the maintenance obligation retroactively, ordering W to pay back $13,800. In reviewing the statute the COA noted that termination was only allowed "after a hearing." Further TFC 8.056(c) provides that termination under subsection (b) does not terminate maintenance accruing before the date of termination. Reading these two subsections together in accordance with their plain meaning the COA determines that since all of H's obligations accrued before the date of termination in March 2023, payments could not be terminated retroactively. First judgment regarding maintenance reversed and rendered. Second judgment regarding c/s rendered as to proper guideline amount and reversed and remanded for entry of orders with terms allowing W sufficiently specific visitation with the children.

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7 *Jimenez v. Jimenez*, 2025 Tex. App. LEXIS 2696 (Tex. App. – Houston [1st Dist.] April 22, 2025) (mem. op.) (Cause No. 01-23-00087-CV)

In 2010, H and W executed a premarital agreement (PMA) before their marriage that H had purchased on the internet from a company based in Mississippi. The parties married 7 months later and there were three children born to the marriage. In 2021 W filed for divorce and sought to enforce the PMA. H filed a counter claim and sought the same relief. The parties resolved their SAPCR issues in an MSA and the property matters were tried to the court. Terms of the PMA provided that property listed in attached financial schedules would be separate property of the respective spouses. Further, all property acquired by the parties in their sole name during marriage would likewise be their separate property. H testified at trial that his 401k and a Fidelity IRA were held in his sole name, acquired during marriage and were therefore his s/p. He offered a current statement for each account into evidence. W disagreed as to the interpretation of the PMA. W also sought reimbursement on behalf of the community estate for funds expended to enhance H's separate estate. H argued that under the terms of the PMA, the parties' waived any rights to reimbursement. The court ultimately enforced the PMA, disagreeing with H's interpretations. The court awarded W a portion of H's 401k and Fidelity IRA, awarded her a reimbursement claim in favor of the community and ordered H to make a lump-sum payment of $20K to W. H appealed. Although H timely sought findings, his notice of past due findings was late and thus no findings of fact were issued. The COA initially recognized that neither party challenged the validity of the PMA and no one claimed it was ambiguous. As a result, the COA was called upon to interpret the PMA as it would any other contract, noting however that PMA's are unique in the sense that interpretation must favor the community estate. As to his 401k and the IRA, H argued that TFC 4.001 defines property to include income and earnings and because those accounts were in his sole name, they were his separate property. The COA disagreed, noting that the PMA expressly provided that property acquired during marriage in a spouse's sole name would be s/p. Here H offered no evidence that he acquired the 401k and IRA during marriage. He only argued that the property was "held" in his name which is not the term used in the PMA. H offered no evidence of the beginning balances in either account if they had existed before marriage and he did not offer evidence accounting for interest and dividends which the terms of the PMA did not cover. Because the presumption is that property "held" on the date of divorce is community property the COA found the court did not err in treating H's 401k and IRA as community and awarding a portion to W. H likewise challenged the reimbursement claim asserting it has been waived in the PMA. The COA disagreed, finding no reference to reimbursement in the waiver provisions. Finally, as to the $20k lump sum award H argued it could only be paid from his s/p because the parties joint checking account had a balance of less than $2k, divesting him of s/p to pay the balance due. The COA again disagreed based on its characterization of other assets as community from which payment of the lump sum amount was available. Judgment affirmed.

8 *Peterson v. Peterson*, 2025 Tex. App. LEXIS 2739 (Tex. App. – Dallas April 23, 2025) (mem. op.) (Cause No. 05-23-01023-CV)

H and W were divorced in 2013 after a trial at which H failed to appear. The default divorce decree awarded W a Lake House and an interest in a Colorado Timeshare. In 2016 the parties entered into a Settlement Agreement providing that (1) the parties would equally own the Lakehouse and W would be responsible for all operating costs and taxes; and (2) the parties would jointly own the parking space associated with the Timeshare and W would be responsible for the expenses associated with it and making sure all requirements of ownership were maintained. H filed the 2016 Settlement Agreement with the court in 2022. In 2023 W filed a suit to enforce the Decree under TFC Chapter 9 claiming H refused to execute the closing documents for the Lake House and Timeshare. H answered and asserted affirmative defenses of statute of limitations (SOL) and ambiguity. W filed a revocation of the 2016 agreement. H amended his answer and asserted defenses of estoppel, laches, waiver and fraud. H then filed a breach of contract suit, claiming W's suit to enforce was a breach of the 2016 agreement. W asserted defenses of fraud, failure of consideration, illegality, estoppel and waiver. The case went to trial and after the evidence closed the court questioned how the 2016 agreement impacted enforcement of the decree and who carried the burden to establish whether the Timeshare was real or personal property. Both parties submitted briefing after which the trial court ruled that the 2016 agreement was binding, the parties were fully informed when executing it and that they had been operating under its terms for 6 years. The court found the Timeshare was personal property subject to the TFC Chapter 9 two-year SOL barring the claim and denied W's enforcement. The court ordered each to pay their own fees. H then non-suited his breach of contract claim. W appealed. The COA addressed only W's second issue (as dispositive) which challenged the trial court's finding that the Timeshare was personal property barring enforcement based on a two year SOL. First, the COA notes that TFC 9.003(a) bars a suit to enforce the division of "tangible personal property"

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8 *Peterson v. Peterson,* 2025 Tex. App. LEXIS 2739 (Tex. App. – Dallas April 23, 2025) (mem. op.) (Cause No. 05-23-01023-CV), cont'd...

as filed more than two years after the decree or final appeal. Second, the COA recognizes the court's limitation in a Chapter 9 suit which does not permit the court to modify or alter the property division. Noting that "tangible" property is something that can be seen, weighed, measured, felt or touched, the COA considered whether H had satisfied his burden to establish that the Timeshare property was "tangible." Citing the Texas Timeshare Act (who knew?!), H offered that the timeshare was an interest in property, but was considered ownership of a "timeshare use" and not a "timeshare estate." H offered nothing to address the question of whether it was "tangible." W offered that the decree only references "use" of the timeshare during a specific week each year with parking and amenities available year- round. Because H carried the burden of proof on his SOL affirmative defense, it was up to H to establish that the Timeshare interest was "tangible" personal property and not just property, which he did not do. As a result, the COA reversed and remanded for additional proceedings, noting that the parties could amend to seek additional relief beyond Chapter 9, they were entitled to reasonable notice of trial and any issues beyond Chapter 9 could be tried to a jury.

9 *In the Interest of A.M.G.J.,* 2025 Tex. App. LEXIS 2769 (Tex. App. – Corpus Christi April 24, 2025) (mem. op.) (Cause No. 13-24-00084-CV)

M and F briefly dated in Texas and M became pregnant. Upon separation M moved to Hawaii to live with her mother and the child was born there in October 2016. In November M filed a suit in Hawaii to establish F's paternity, address conservatorship and child support. The court granted M's request and named her primary custodian and ordered F to pay child support. F appealed in Hawaii and the COA there found the trial court had no personal jurisdiction over father and reversed the finding of paternity and the child support award. Thereafter F filed suit in TX to establish paternity. M filed a counter petition seeking above guideline child support. Before trial M's counsel sought a continuance due to lack of discovery. This was denied. M's attorney requested that M be allowed to testify by remote means because she lived in Hawaii. The trial court denied the request finding that TRCP 21D only allowed remote testimony if the party had given prior notice which M had not provided. The court then adjudicated F as the father and ordered guideline support. M appealed. The TX COA only addressed M's challenge to the court's ruling that she not be allowed to give remote testimony, asserting that it was mandatory under TFC Chapter 159 (UIFSA). F argued that error had been waived because M did not reference UIFSA in making her objection and her stated reasons for not appearing in person had to do with some health issues. The COA examined the record and found that M was not required to refer to a specific statute in making her objection and that her claims that she could not be present because she lived in Hawaii were sufficient to preserve error. Thereafter the COA noted that under UIFSA, TFC 159.316(f) provides that the court must allow a party to testify remotely and that the statute takes precedence over TRCP 21D. There was no dispute in the record that UIFSA applied to the extent that Mother and the child lived in Hawaii and the suit was addressing the issue of child support. Finding an abuse of discretion in refusing to allow M to testify remotely at trial, the judgment for child support was reversed and remanded; finding of paternity affirmed.

10 *In re Benavides,* 2025 Tex. LEXIS 327 (Tex. Sup. Ct. April 25, 2025) (Case 23-0463)

H was a descendant of the founding family of Laredo, TX and was the patriarch of a large family with significant holdings and trusts. H married his 4th W in 2004 after executing premarital agreements and thereafter postmarital agreements which provided that no community estate would arise. Shortly after the marriage H filed for divorce and several months later was diagnosed with dementia. The divorce suit was DWOP'd. By the end of 2007 W claimed that H had given her full authority over his bank accounts, had transferred property to her and repeatedly stated all of his property was hers. H's adult daughter, Linda, challenged these claims in various lawsuits with W which went through numerous appeals. In 2011 Linda and her brothers sought guardianship over H. Two weeks later W claimed that H had signed a new Will leaving everything to her, naming her executor and disqualifying his children as eligible to be his guardian. A temporary guardian was appointed who filed a suit for divorce on H's behalf. Eventually, based on the declaration that H was fully incompetent, Linda, his daughter became the permanent guardian of his estate and person. Linda filed another suit for divorce on H's behalf, asserting grounds that the parties had lived apart for more than 3 years. W challenged Linda's standing which challenge was denied. The court granted summary judgment enforcing the marital property agreements, found no communityh estate and signed a divorce decree. W appealed.

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10 *In re Benavides*, 2025 Tex. LEXIS 327 (Tex. Sup. Ct. April 25, 2025) (Case 23-0463), cont'd...

Two weeks later, H died. Both Linda and W filed competing claims to probate H's will, with Linda advancing a 1996 will and W advancing the 2011 will. The Will contest was resolved in Linda's favor and W appealed. Linda moved to dismiss W's appeal from the divorce as moot. The COA agreed. W sought PFR in the Supreme Court. Appellate matters relating to the Will were abated. Regarding the question of "mootness" the Supreme Court recognized that an appeal is rendered moot when a party dies after the court has rendered them divorced, but only if the divorce was valid. In this case, W challenged Linda's authority as guardian to pursue a divorce on her father's behalf. Determining whether the marriage ended in divorce or death had a substantial impact on the property rights involved, which were further complicated by the outcome of the appeal related to the Will contest. As a result, the Supreme Court determined that H's death did not render the appeal moot. Next the Supreme Court examined whether a guardian has authority to seek a divorce on behalf of their ward. Examining the Estates Code the Supreme Court found that the statutes did not expressly confer upon a guardian the power to file a divorce suit, but suits generally. Examining trends from other states, the Supreme Court concluded that at a minimum, a guardianship order must expressly authority a guardian to file suit for divorce on behalf of their ward and further, such authority cannot be given unless the court makes findings by clear and convincing evidence that filing such a suit is in the proposed ward's best interest and will promote and protect his or her well-being. The Supreme Court recognized that the Family Code expressly authorizes a guardian to file a suit for annulment for a ward and suggests that the Legislature consider passing legislation to reconcile the Estates and/or Family Code statutes to make a guardian's authority clear. In the meantime, the Supreme Court notes that in this case, the probate court did not expressly authorize Linda to file for a divorce and did not make any findings that it was in H's best interest to do so. The family court made no such findings in the divorce decree. Further, because H has now died, Linda will not be able to offer evidence supporting the required findings. As a result, the Supreme Court finds that the decree of divorce invalid because the divorce filing was not authorized. As such, the Supreme Court now declares the appeal moot, vacates the decree and dismisses the underlying suit for divorce. This decision effectively finds that the parties' marriage ended by death and all other litigation will now revolve around those matters relating to the competing Wills and their validity.

11 *Puligundia v. Madipuri*, 2025 Tex. App. LEXIS 2858 (Tex. App. – Houston [14th Dist.] April 29, 2025) (mem. op.) (Cause No. 14-23-00743-CV)

H and W married in 2004 and had two children thereafter. The youngest child was born with cerebral palsy. H filed for divorce in 2016 after discovering W's adultery. W filed a counter petition. Both parties sought JMC with exclusive right to domicile. H alleged adultery and W alleged cruel treatment. Both parties alleged fraud on the community by the other. The parties stipulated to JMC and a domicile restriction to Washington County before trial. The case was thereafter tried before a jury who found H should be the primary conservator with the exclusive right of domicile. The jury found adultery but not cruelty and found both parties had committed fraud. The trial court ordered a week on/week off possession schedule, ordered both parties to pay child support but following offsets required H to pay W $1660/month and divided the property 47% to H and 53% to W. H appealed, challenging the 50/50 possession schedule arguing that it contravened the jury's verdict that he have the exclusive right of domicile. H further challenged the division of property which is not discussed here. As to the 50/50, H argued that this ruling in effect created two primary residences for the children, citing IIO ZKS (2020 Tex. App. LEXIS 221) out of Corpus Christi. In ZKS the court of appeals found that an order for week on/week off possession of children where the parents lived 240 miles apart did effectively create two primary residences and contravened the jury's verdict awarding mother that exclusive right. However, in this case, the COA considered that the parties agreed to a geographic restriction in one county and they lived only a short driving distance from one another. Construing TFC 105.002, the COA found that (c)(1)(D) [the right to determine residence as being a jury issue] and (c)(2)(B) (placing decisions for possession and access in the exclusive control of the court) are not in conflict and the Legislature unambiguously enumerates what a jury and judge may decide. Finding that the evidence likewise supported the trial court's ruling that 50/50 possession was in the children's best interest the judgment was affirmed.

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12 *Stary v. Ethridge*, 2025 Tex. LEXIS 357 (Tex. Sup. Ct. May 2, 2025) (Case 23-0067)

F and M divorced in 2018 and shared custody of two children. In 2020 M was charged with felony-injury to a child, accused of repeatedly striking one of the children's head against hardwood floors. (The state dismissed these charged in February 2025. A week after her arrest, F filed for a protective order alleging felony family violence and serious bodily injury (both of which can support a PO for longer than two years). The court issued an ex parte order preventing M from contact with the children while the PO application was pending. The case was heard in September 2020. Medical records confirmed the child's injury. Waiving her 5th amendment privilege, M testified the injury occurred while she was attempting to separate the children who were fighting one another and a friend of M's testified that she was a "gentle disciplinarian" who had taught her daughters in school. Making the required findings to issue a PO for more than two years, the court issued a PO enjoining all contact by M with the children for W's life. M filed a MNT arguing that the ruling was tantamount to a termination of her parental rights and that the decision was made based on a preponderance of the evidence instead of clear and convincing evidence as required for termination. The motion was denied. On appeal, the COA affirmed, finding that despite the lack of contact, M maintained some parental rights to confer with H re: the children and to receive information concerning them. The Supreme Court granted review. First, the Supreme Court examined whether M has been deprived of a fundamental right to make decisions regarding the care, custody and control of her children without any heightened protection against government interference. Finding that a no contact order prevented M from being in the presence of her children in order to make decisions about their care and preventing her from participating in the emotional aspects of parenting, the Court determined that entry of a PO which prohibits all contract between a parent and child for a period of more than two years impacts a parent's fundamental right to make decisions concerning the care, custody and control of the child. Next the Court considered whether the heightened clear and convincing evidence should be applied in such circumstances. Although a parent can twice seek review of any such protective order to determine if it remains necessary, the Court found that this still does not erase the deprivation of a fundamental private interest for a substantial period of time, including PO's that are more than two years, but less than a parent's lifetime. The Court further found that by imposing a clear and convincing standard of evidence, this would reduce the risk of error by the trial court, requiring consideration of the quality of evidence over its quantity, and avoiding rulings for extended PO's in the marginal case. Lastly Court found that the government's stated goal in protecting children remains when it considered that it is a child's best interest not to be separated from a parent. Likewise the government's interest in retaining the "preponderance of the evidence" standard for 2year+ PO's is slight compared to the protections that the clear and convincing standard affords against overreaching PO's. Based on these findings the Supreme Court concludes that the burden of proof to be met in securing a protective order which bans a parent from all contact with their child for more than two years is clear and convincing evidence and further that the decision to enjoin all contact must be based on an evaluation of best interest. Reversed and remanded for further proceedings.

13 **Note:** The Opinion in *In the Interest of S.G.B.*, 2025 Tex. App. LEXIS 1712 (Tex. App. – Dallas March 13, 2025) (mem. op.) (Cause No. 05-23-00684-CV) dated March 13, 2025 and reported in the May 7, 2025 edition of Interesting Cases has been withdrawn and replaced by Opinion dated May 2. 2025 found at 2025 Tex. App. LEXIS 3070. The outcome of the Opinion is the same.

14 *In re Hita*, 2025 Tex. App. LEXIS 3278 (Tex. App. – San Antonio May 14, 2025) (orig. proceeding) (Cause No. 04-24-00544-CV)

M and F divorced in 2019. The parties were named JMC of their three children and M was awarded the exclusive right to designate their residence within Bexar and contiguous counties. M was also given the right to make decisions concerning the children's education after conferring with F regarding their health, education and welfare. The decree did not specify the level or defer of "conference" required between the parties. At the time of the decree, M and the children lived in the North East ISD. In December 2023 M moved with the children to the Medina Valley ISD but kept the children in their former schools to finish out the 2023-2024 school year. M complied with all aspects of the decree. In April 2024, F filed a petition to modify seeking the exclusive right of domicile and education. In June 2024 M began the process of enrolling the children in the MVISD, after the school year had ended and they were no longer enrolled in classes.When F filed his suit, the Bexar County standing order became effective. That order specified that it was not intended to effect or circumvent existing orders regarding conservatorship and the right of domicile and such orders

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15 *In re Hita*, 2025 Tex. App. LEXIS 3278 (Tex. App. – San Antonio May 14, 2025) (orig. proceeding) (Cause No. 04-24-00544-CV), cont'd...

would remain in place until further order of the court. The order further enjoined the parties from disrupting or withdrawing the children from the school in which they are presently enrolled without the written agreement of both parties or order of the court. The parties attended mediation in June which is when F learned that the children had been withdrawn from school. F filed a motion to enforce, alleging that in "approximately June 2024" M had withdrawn the children from school. The motion did not allege where the children were presently enrolled or offer any argument that the children were eligible to attend their former schools in NEISD. A hearing on the motion to enforce took place in August and the court heard no evidence, only argument. F could not confirm the children's eligibility to be enrolled in their old schools. The court granted the motion and ordered the children to re-enrolled in their former schools and for the child who was transitioning from elementary to middle school, the court ordered her enrolled in the school that her older sibling attended. M sought mandamus relief. The COA focused on the trial court's order as effectively violating TFC 156.006(b) which prevents the court from issuing orders which have the effect of changing the designation of the parent with the exclusive right to determine residence without evidence supporting the necessary standard. In this case, requiring M to enroll the children in a school zoned outside her chosen residence changed her right to determine residence. Further, focusing on the standing order, the COA found "disrupting" or "withdrawing" are not defined under the Education Code, however under their common usage, they both presume that the children are "presently enrolled." F offered on evidence that the children were presently enrolled in any school in June 2024 when M began the process or enrolling them in new schools during their summer break, thus there could be no violation of the standing order. Mandamus granted and trial court ordered to vacate its order within 15 days.

16 *In the Interest of Bryant*, 2025 Tex. App. LEXIS 3297 (Tex. App. – Corpus Christi May15, 2025) (Cause No. 13--24-00285-CV)

H and W married in 2018. W had a child from a prior marriage and the parties had two children together. During marriage, W alleged four instances of family violence between 2019 and 2023. H denied all allegations, claiming W would only make these allegations when the parties discussed the possibility of divorce. In March 2023 there was an alleged incident where H slapped one of the children while changing a diaper and thereafter put feces in the child's mouth, at which time W locked herself in the bathroom with the child, who had vomited and had blood on his lip. H allegedly tried to break down the bathroom door, the police were called and H was arrested. A month later H filed for divorce and he was thereafter arrested for violating his bond conditions, allegedly stalking W and driving by the house, possessing 2 handguns when he was arrested. W filed a counter petition and sought a protective order. At the hearing on the PO, it was revealed that W had sought and been denied a PO against H previously in 2019 and that she had later recanted her allegations against H regarding that incident. The court questioned W extensively regarding the "recanting" and suggested the circumstances could amount to perjury. W explained that she recanted because H convinced her he had not choked her and that she was likely suffering from pregnancy hormones when she made false allegations. She testified that she still believed her claims from 2019. A police officer testified about observing fecal matter in the bathtub during the March 2023 call and a CPS worker testified that after her investigation the allegations of abuse from that incident were substantiated and they had developed a safety plan for H. The court, expressing disbelief about the allegations asked the CPS worker if she suspected W might suffer from Munchausen syndrome. The court denied the PO. W then reported two of the prior FV incidents to the police stating she felt the trial court had been dismissive of her claims. The court issued temporary orders naming the parties JMC and ordered exchanges of the children to take place at the Sheriff's office. W amended her pleadings and sought SMC. At a bench trial in January 2024, H claimed FV had been fabricated and that W was trying to exclude H from the children's lives. W denied those claims and testified to other concerns regarding H's care of the children. Police officers testified as to the March incident and a police investigator confirmed in response to a question by W's counsel that H had been arrested with handguns in his possession, however testified that the DA declined to press stalking charges and H had been no-billed by the jury. The court asked W's counsel what was the relevance of mentioning the hand-guns in connection with the stalking incident and rhetorically asked "Do you know how many handguns I have in my vehicle?" Counsel replied that the judge was not facing a stalking charge to which the judge replied "Not yet." After all the evidence the court named H as SMC of the children and named W PC. The court issued findings of fact which found that W could not foster a positive relationship between H and the children and that she was not credible.

Interesting Cases

by Sallee S. Smyth

16 *In the Interest of Bryant*, 2025 Tex. App. LEXIS 3297 (Tex. App. – Corpus Christi May15, 2025) (Cause No. 13--24-00285-CV), cont'd...

The findings relied significantly on W's "recantation" of a prior FV allegation against H, the DA's refusal to press charges, and the grand jury no-bill on the stalking charge. W appealed, challenging (1) the sua sponte appointment of H as SMC without any pleadings by H requesting such and (2) sufficiency of the evidence to overcome the presumption of JMC and evidence of judicial bias. As to the pleading issue, the COA distinguished between the sufficiency of pleadings in an original suit establishing conservatorship for the first time and modification suits. The COA agrees that in original suits, when the court's jurisdiction is involved to make conservatorship decisions, the court has substantial discretion and can be guided by the children's best interest and no specific pleadings for SMC are required. The COA notes that in original suits, the court is required by statute to name the parties either JMC or SMC and the parties have fair notice when any conservatorship claims are included in the pleadings. As to judicial bias, the COA notes that generally it is disfavored for judges to question witnesses but they are allowed to do so in bench trials where their impartiality is not affected. Further the COA found that the rule which allows a party to complain about judicial bias for the first time on appeal in criminal cases should apply equally in civil cases. Here the COA found that the judge questioned every witness about W and her credibility, focusing on her recantation and the grand jury no bill. The COA felt recantations were not uncommon in family matters, noting that they are inadmissible in criminal cases to prove lack of credibility. The COA also found that a "no-bill" does not establish that the accused conduct did not occur. Focusing on the record, the COA found that the judge's conduct and comments rose to a level beyond mere dissatisfaction or annoyance and that he had affirmatively asserted himself into the case with his adversarial questioning of all witnesses, at one point accusing the CPS conclusion that abuse occurred "wrong." The COA determined that aside from the recantation and no-bill issues, there was no evidence of W's refusal to foster a positive relationship between H and the children and that judicial bias clearly influenced the court's rulings. The COA reversed and remanded terms of the decree regarding the children and ordered a new trial. Finding that the trial judge was now retired, there was no need for the COA to order a new judge appointed.

17 *Stroik v. Stroik*, 2025 Tex. App. LEXIS 3357 (Tex. App. – Fort Worth May 15, 2025) (mem. op.) (Cause No. 02-24-00322-CV and 02-24-00472-CV)

After three years, several lawsuits, two interlocutory appeals and one reversed judgment, this case finally resolves a dispute regarding the meaning and effect of terms in a final decree relating to the award of the marital residence to W. The parties divorced in 2020 and the final decree awarded W the marital residence "subject to" separate provisions regarding re-finance and payment of an equity portion to H. In prior proceedings the trial court had agreed with H's argument that the award was conditional only and entered injunctions preventing a sale, then later appointed a receiver in another proceeding which did result in a sale whereupon H had sought turnover of the sales proceeds. H thereafter claimed the residence was "undivided" and filed suit under Chapter 9. Ultimately the trail court clarified the decree, found the award conditional, redivided the residence (which was now just proceeds) and awarded H a disproportionate share. W appealed and the COA recognized that the entire dispute revolved around an interpretation of the agreed decree language. The COA noted that the award language to W indicated a present award and terms obligated H to execute a SWD in her favor. Further, the parties used express language for "conditions precedent" regarding other matters in the decree but did not use such terms as related to the marital residence award. The COA found the language obligating W to re-finance was only triggered after appraisals had been completed and H's obligations to execute the deed to W occurred much sooner. The COA found the terms regarding re-finance governed W's obligations to pay H a portion of the equity from the house and did not make refinancing a condition of the award itself. The COA found the trial court's order effectively modified the final decree which was not authorized and rendered judgment that H take nothing on his "re-division" claim.

Interesting Cases

by Sallee S. Smyth

18 *In the Interest of A.M.S.*, 2025 Tex. App. LEXIS 3454 (Tex. App. – Dallas May 21, 2025) (mem. op.) (Cause No. 05-24-00862-CV)

M and Charles began an online relationship in 2011 and after a few months M moved to TX to begin a polyamorous relationship with Charles and his then wife, Victoria. M soon became pregnant and LK was born in November 2012. Charles and his wife discovered that M was a registered sex offender and she also began exhibiting signs of severe mental health issues. At some point she was taken away by police and diagnosed as bi-polar and suffering from PTSD, anxiety and borderline personality. The relationship between M, Charles and his wife ended in 2014 but not before M became pregnant again. Unbeknownst to Charles, M was involved in a second polyamorous relationship with Dave and his wife and M advised Charles she was not sure who the father was. Charles retained custody of LK when the relationship with M ended. While pregnant with the second child, AMS, M was arrested for parole violations and she gave birth to AMS while in prison. Dave and his wife immediately took custody of AMS and then they adopted M in order to facilitate her visitation with the baby while incarcerated. Thereafter, Dave and his wife filed a petition to be named JMC of AMS and an agreed order was signed naming Dave and his wife "non-parent" JMC with the right of domicile and naming M as a parent JMC. Later in 2019 Charles found out he was the father of AMS through DNA testing and he filed a suit to adjudicate parentage, requested genetic testing and asked to be named SMC of AMS. In a response, Dave acknowledged he was not the father of AMS but asked to be declared a presumed father and claimed Charles' suit was barred by SOL. Genetic testing was ordered and established Charles was the father. The court ordered a custody evaluation and after a one-year investigation the evaluator filed a 138 page report recommending that Charles be named SMC, that M be named as a PC and that Dave and his wife be removed as JMC. Trial was to the court. The evaluator testified as to her concerns that AMS was confused by Dave's "incestuous" relationship with M because she thought he was her father but he was also her grandfather by virtue of the adoption and she was aware that both M and Dave's wife had a relationship with him. She likewise expressed concern that Dave and M would slap each other on the butt and walk in on each other in the bathroom even though they claimed they were no longer sexually involved. The evaluator also expressed concern that there was no privacy in Dave's residence as there were cameras in every room except one specific bathroom and everyone knew that is where they should undress or change if they did not want to be seen. Finally the evaluator expressed concern that Dave and his wife rented bedrooms in their house on a weekly basis and that their on-line rental posting advertised that "perfect backgrounds" were not required for renters. The evaluator's only concern about Charles' residence was its cleanliness due to the number of pets he had. She testified he was raising LK as a single parent having divorced Victoria and that he set good boundaries for LK and AMS. After the evidence the court adjudicated Charles as the father, named him JMC and ordered a domicile restriction for Dallas and contiguous counties. M was named PC and Dave and his wife were removed as JMC. Although Dave, his wife and M all had separate pleadings on file, Dave is the only party that appealed. First, Dave challenged Charles' standing, however the COA found that any man whose parentage is to be established has standing to bring suit. As to the SOL argument, the COA found that TFC 160.607's four year statue of limitations only applies to children who have a presumed father, otherwise there is no limitation upon when a suit to adjudicate can be brought. Here Dave tried to claim he was a presumed father because he had held-out as AMS father in every way. However, he was not on the child's birth certificate and he had previously admitted that he was not the father and secured an order naming his as a non-parent JMC. Under these circumstances, there was no presumed father and Charles' suit was timely. Dave argued that the parental presumption did not apply because Chales had voluntarily relinquished the child to him since birth, however the COA found no evidence of such and the trial court made no finding on the matter. Even so, the COA found there was more than sufficient evidence to support removal of Dave and his wife as JMC and appoint Charles as SMC. Judgment affirmed.

19 *In the Interest of L.I.A.H.*, 2025 Tex. App. LEXIS 3442 (Tex. App. – San Antonio May 21, 2025) (mem. op.) (Cause No. 04-24-00338-CV)

In June 2023 F filed a petition to modify terms of the effecting order regarding possession and access. In January 2024 the parties read into the record what the COA refers to as "high-level terms" of an agreed parenting plan, which detailed possession under 50 miles, under 100 miles and over 100 miles, providing for varying locations for surrender and other terms. After M's counsel read the agreement into the record the court asked F's counsel if this was the agreement. F's counsel responded that it was however stated that the parties' considered it a "rough draft" and they agreed to work together to finalize drafting of an order but if there were problems they would return to court.

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19 *In the Interest of L.I.A.H.,* 2025 Tex. App. LEXIS 3442 (Tex. App. – San Antonio May 21, 2025) (mem. op.) (Cause No. 04-24-00338-CV), cont'd...

Not surprisingly, both parties prepared order drafts and interpreted the terms of the parenting plan differently. The court held two hearings and heard arguments at both. Each party raised objections to the other's proposed orders. The court adopted M's order (which omitted terms from the agreement in the record and added ones not part of that agreement). The order recited that it was agreed to by the parties but neither party nor their counsel signed the order. F appealed. F claimed the court abused its discretion by deviating from the agreed parenting plan without taking any evidence as to the child's best interest. M argued that the court reasonably interpreted the parties' oral agreement considering the child's best interest. The COA recognizes that parties are encouraged to enter into agreed parenting plans and when they do so the court only has two choices. One, if the court finds the agreement to be in the child's best interests, it must render an order accordingly. Two, if the parties are not in agreement, the court can set the matter for a hearing to hear evidence regarding best interest. Here the record established that the parties had no clear meeting of the minds on their agreement, with counsel indicating that it was only a "rough draft" and ultimately both parties took very different positions as to what was meant or intended. In these circumstances, the court's only choice was to refuse to enter an order based on an alleged agreement and set the matter for a hearing. The court had no authority to render an agreed order when there was no agreement, distinguishing this case from a situation where an agreement is unambiguous and one party simply changes their mind. In those cases, the court has discretion to enter an order on a clear agreement if it is found to be in the child's best interest. Judgment reversed and remanded.

20 *Aguilar v. Aguilar,* 2025 Tex. App. LEXIS 3599 (Tex. App. – San Antonio May 28, 2025) (mem. op.) (Cause No. 04-24-00161-CV)

H and W divorced in 2014 by an agreed decree in which H agreed to pay W the sum of $600/month for 24 months. In 2019 W filed a motion to enforce alleging that H had failed to pay any amount and her motion sought contempt, a money judgment for $28,800 and wage withholding. H filed a general denial. The parties appeared for a hearing in August 2023. Neither H nor W testified. Attorneys for both parties recited their positions at which point the court asked them to work out the details of a settlement and the court made some notes suggesting terms of an agreement. The court further stated that if they could not agree then they could discuss the matter further. The parties thereafter signed a Rule 11 agreement providing that if H paid W $20K by September 30 she would non-suit her enforcement. Before the deadline H filed an amended answer asserting that his obligation was for contractual alimony, contempt and WWH were not proper remedies and he asserted a SOL defense. Thereafter, in December the court signed an order holding H in contempt, granting a judgment for the full amount of $28,800 and ordered WWH. H filed a mandamus regarding the contempt finding and an appeal regarding the balance of the order. In In re Aguilar, 2025 Tex. App. LEXIS 267 (Tex. App. – San Antonio January 22, 2025, orig. proceeding)(mem. op.) a panel of the COA found that the $600 monthly obligation was a contractual agreement to pay under a TFC Chapter 7 division of property and not a Chapter 8 spousal maintenance obligation. The COA instructed the trial court to void the contempt order, which it did. As to this appeal, a different COA panel determined they were bound to apply this finding. However, in addition, H asserted due process claims on appeal, challenging the trial court's action in signing a final judgment when he had never been afforded a trial and there was no agreement. The COA first determined that the court's notes and pronouncements on the hearing date did not amount to a rendition because it was clear the judge wanted the parties to reach a settlement but contemplated they might not agree which would require further involvement of the court. Further, after the parties actually signed a Rule 11 Agreement, H filed an amended answer asserting affirmative defenses to W's claims which effectively operated to revoke his consent to the Rule 11 before rendition and judgment could take place. Thus, when the court signed the order in December, it could not qualify as a consent judgment. The COA then determined that W's claims were effectively as a breach of contract suit upon which evidence was required. Although the attorneys made certain comments on the record, neither party testified. As to the record, there was never a trial. Determining that there was some acknowledgment that H was aware of his obligation and had made some payments, the COA decided to remand (rather than render) for a hearing on W's enforcement and H's defenses. The COA vacated that portion of the judgment for WWH and dismissed W's claim for such relief finding that WWH is not a remedy on a breach of contract claim unless the parties expressly agree to that remedy and no such agreement appears in this record. Partially vacated and partially reversed and remanded.

Interesting Cases

by Sallee S. Smyth

21 *Stankewich v. Stankewich, 2025 Tex. App. LEXIS 3678 (Tex. App. – Beaumont May 29, 2025) (mem. op.) (Cause No. 09-23-00156-CV)*

H and W married in 2011. The parties lived in Alaska and relocated to TX. They had a tumultuous relationship which resulted in several protective orders over several years. In 2018 W hired counsel to draft a post-nuptial agreement which was signed by both parties. In 2022 W filed for divorce and sought enforcement of the PMA. H opposed enforcement and claimed his execution of the agreement was not voluntary and that the agreement itself was unconscionable. At trial the parties' testimony was conflicting. H claimed he signed the agreement under duress because W threatened to kick him out of the house if he did not sign and he stated that he had no family and nowhere to go. He claimed W tricked him to go to the attorney's office as he thought they were going to get a new kitten. H claimed he was on methadone and other medications for his psychological issues when he signed. He claimed he advised W's attorney that he was signing it under duress and he thought the attorney wrote that by his signature. H claimed the agreement was also unconscionable because it required him to pay W upon divorce more than his monthly income and gave her 50% of his retirement and disability pay. He claimed he had no knowledge of the parties' finances because W controlled all the accounts. W said H knew they were going to sign a PMA because they had discussed it. She admitted that H did have psychological issues but indicated he voluntarily signed the PMA, even negotiating for various changes which were made. In the end the trial court stated that it found the agreement to be unenforceable. W appealed on that sole basis. The COA considered the defenses of involuntariness and unconscionability and found that the court had the ability to believe H's testimony, which provided sufficient evidence to support both of H's defenses, effectively invalidating the agreement. The COA notes that since W was appealing a finding upon which she did not carry the burden of proof, she had to establish that there was no evidence supporting the court's decision, which she did not do in this case. Judgment affirmed.