# FAMILY CASE LAW UPDATE

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**WOMEN AND THE LAW SYMPOSIUM**
**AND ATTORNEY RETREAT 2026**
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**EDUCATION**

B.A. – Baylor University (1991)
J.D. – Baylor University (1995)

**EMPLOYMENT**

Goranson Bain Ausley, PLLC—2023-present
Law Office of Cindy V. Tisdale, PLLC—2003-2023
Lynch, Chappell & Alsup, P.C., Midland, Texas, Of Counsel—2019-present
Reed & Tisdale, Waco, Texas—1999-2003
Dunnam & Dunnam, Waco, Texas—1997-1999
McLennan County District Attorney's Office—Assistant District Attorney 1995-1997

**SERVICE TO THE BAR**

President of the State Bar of Texas, 2023-2024
Texas Board of Legal Specialization, Board Member, 2025-
Council for the Women and the Law Section of the State Bar of Texas, 2025-
Board of Disciplinary Appeals, member, appointed by the Texas Supreme Court 2020-2022
Chair of the Board of Directors for the State Bar of Texas, 2013-2014
State Bar of Texas Board of Directors, District 14 Representative, 2011-2014
State Bar of Texas Executive Committee, 2012-2015
Chair of the Texas Bar Foundation, 2017-2018
Texas Bar Foundation Board of Trustees, 2015-2019
Chair to the Council for the Family Law Section of the State Bar of Texas 2017-18
Council for the Family Law Section of the State Bar of Texas, 2008-2018
Pattern Jury Charge, Family Law Committee Member, 2019-
Pattern Jury Charge, Family Law Committee Vice Chair, 2020-
Co-Chair State Bar Workgroup on Texas Lawyer Needs Arising From the 2020 Pandemic and 2021 Winter Storm
Co-Course Director, Advanced Family Law Course – August 2011
Course Director, Trying Your First (Or Next) Divorce – January 18, 2013
Co-Course Director, the Texas Academy of Family Law Specialists Trial Institute, January 2015
Co-Course Director, New Frontiers in Marital Property Law, October 2015
Co-Course Director, Annual Meeting for the State Bar of Texas, June 2016
Legal Services to the Poor in Civil Matters – Committee Member 2012-2013
Supreme Court Task Force for the Delivery of Legal Services to the Poor – Committee Member 2012-2013
State Bar of Texas Affordable Legal Services – Committee Chair 2012-2013

**PROFESSIONAL ACTIVITIES AND HONORS**

Member, American Board of Trial Advocates, 2017-present
Board Certified in Family Law by the Texas Board of Legal Specialization, 2003-present

Fellow, International Academy of Matrimonial Lawyers, 2014-present
Fellow, American Academy of Matrimonial Lawyers, 2010-present
Texas Super Lawyer, 2019-2022
James C. Watson Inn of Former Officers and Directors, Member
Texas Academy of Family Law Specialists, Board of Directors, 2012-present
Executive Committee for the Texas Academy of Family Law Specialists 2017-present
Texas Bar Foundation, Sustaining Life Fellow
Presidential Citation from Allan DuBois, President of the State Bar of Texas
Presidential Citation from Trey Apffel, President of the State Bar of Texas
Recipient of the Standing Ovation Award for Outstanding Volunteer for 2013, from the Texas Bar CLE
College of the State Bar of Texas, Member
State Bar of Texas Family Law Section, Member
Texas Academy of Family Law Specialists, Member
Hood County Attorney of the Year Award 2004 and 2007
Hood County Bar Association, Member
Children's Advocacy Center of Hood and Somervell County – President 2011-2012, Board of Directors

**LECTURES/PUBLICATIONS**

"Third Party Discovery," Marriage Dissolution Institute, Fort Worth, TX April 2009
Moderator, Family Law Essentials, Stephenville, TX July 2009 (Lecture Only)
"Maximizing Results at Mediation," Family Law Essentials, Victoria, TX October 2009 (Lecture Only)
"Electronic Evidence: How to Avoid Getting Shocked," Ultimate Trial Notebook, San Antonio, TX December 2009 (Voted one of the Best for 2009 CLE)
"Advocating and Defending Unusual Child Support Requests," Family Law On The Front Lines, San Antonio, TX July 2010
"Collecting Child Support," Advanced Family Law 2010, San Antonio, TX August 2010
"Discovery and Drafting in the Computer Age", Advanced Family Law Drafting Course, Houston, TX, December, 2010
Texas Academy of Family Law Specialists Trial Institute, Panelist, Las Vegas, NV, Feb. 2011 (Lecture Only)
"Admissibility of Electronic Communication in Family Law," Texas College for Judicial Studies, Austin, TX April 15, 2011
"Closing the File," Family Law Drafting, Dallas, TX, December 2011
"The Top 10 SAPCR Cases You Need To Know," Advanced Family Law, Houston, TX August 2012.
"The Trial Notebook," Trying Your First Jury Trial, Austin, TX, December 2012.
Texas Academy of Family Law Specialists Trial Institute, Panelist, Colorado Springs, CO, February 2013 (Lecture Only)
"Enforcement and Clarification Proceedings Under Chapter 9," Marriage Dissolution Institute, Galveston, TX, April 2013
"Unusual Motions," Advanced Family Law, San Antonio, TX, August 2013
"Unusual Possession Schedules," Advanced Family Law Drafting, Dallas, TX, December 2013
"Using Form Discovery," Marriage Dissolution, Austin, TX, April 2014
"Family Law Update," Solo and Small Practitioner's CLE, Galveston, TX, September 2014
"Family Law Update," Tarrant County Family Law Bar Association CLE, Fort Worth, TX, November 2014
"Family Law Update," Essentials for General Practitioners, San Antonio, TX, December 2014
"Family Law Update," Essentials for General Practitioners, Lubbock, TX January 2015

"Family Law Update," Essentials for General Practitioners, Sugarland, TX March 2015
"Property Update," Marriage Dissolution, Dallas, TX, April 2015
"Property Update," State Bar of Texas Annual Meeting, San Antonio, TX June 2015
"Direct and Cross Examination of Collateral Witnesses," Advanced Family Law, San Antonio, TX, August 2015
"Drafting Documents to Close the File," Advanced Family Law Drafting, Dallas, December 2015.
"Drug Testing," Marriage Dissolution, Galveston, April 2016
"Getting It In and Keeping It Out," Advanced Family Law, San Antonio, TX, August 2016
"Dr. Strangelaw: Or How I Stopped Fighting and Learned to Love Collaborative Law," Abner V. McCall Inn of Court, October 2016 (Lecture Only)
"Family Law Update," Solo and Small Practitioner CLE, Fredericksburg, TX, April 2017
"Courtroom Evidence and Demonstration," Marriage Dissolution, Austin, TX April 2017
"Legislative Update," Texas Bar College Summer School, Galveston, TX July 2017
"Valuation Demonstration," Advanced Family Law, San Antonio, TX August 2017
"Managing Your Law Practice," Mastering Your Practice: Family Law & Estate Planning and Probate, Horseshoe Bay, TX September 2017 (Lecture Only)
"The Art of Case Analysis," Mastering Your Practice: Family Law & Estate Planning and Probate, Horseshoe Bay, TX September 2017 (Lecture Only)
"Closing the File: Are We There Yet?" Advanced Family Law Drafting, Fort Worth, TX December 2017
"Getting Information to Value a Business," Marriage Dissolution Institute, Dallas, TX April 2018.
"Family Law Basics: From the Beginning to the End," Texas Bar College 20th Annual Summer School, Galveston, TX July 2018.
"Exposing Confirmatory Bias: The Example of Sexual Abuse Allegations," Advanced Family Law, San Antonio, TX August 2018.
"Unusual Possession Schedules" and "Closing the File," Texas Association of Paralegal Specialists, Addison, TX September 2018.
"Preparing Your Client for Trial: Managing Emotions and Expectations," Advanced Trial Skills for Family Lawyers, New Orleans, LA, December 2018.
"Exposing Confirmatory Bias: The Example of Sexual Abuse Allegations," Family Justice Conference, Austin, TX January 2019.
"The Art of Case Analysis," Moderator of Panel, Mastering Your Practice: Family Law, The Woodlands, TX February 2019 (Lecture Only).
"Managing Your Law Practice," Panelist, Mastering Your Practice: Family Law, The Woodlands, TX February 2019 (Lecture Only).
"Is ICWA Ancient History?" Advanced Child Protection Law Course, Dallas, TX, April 2019.
"Initial Client Interviews and Managing Client Expectations," Marriage Dissolution, Galveston, TX, April 2019.
"Family Law Legislative Update," Texas Bar College Summer School, Galveston, TX, July 2019.
"Representing the Compromised Parent," Advanced Family Law, San Antonio, TX, August 2019.
"Family Law Legislative Update," Hood County Bar Association, Granbury, TX, September 2019.
"Property," Trying Your First (Or Next) Divorce, Austin, TX October 2019.
"Initial Client Interviews and Contract Basics," Texas Bar College 22nd Annual Summer School, Galveston, TX June 2020
"With a Little Help From My Friends: Working with Financial Experts," Advanced Family Law, August 2020
"The 30-Minute Cross, 3-Minute Direct, 5-Minute Witness: Including Presenting and Managing Exhibits," Advanced Trial Skills, Webcast, December 2020.
"Property Issues," Handling Your First (Or Next) Divorce, Webcast, February 23, 2021
"Evidentiary Issues: Text Messages, Facebook and Social Media," Advanced Child Protection Law Course, Webcast, March 2021
"The New Discovery Rules: The Who, What, When, How and What," Wild West CLE, State Bar of Texas Paralegal Division, Granbury, TX, April 2021
"The Brady Bunch: SAPCR Case Law Update," Marriage Dissolution, Webcast, April 2021

"Disfunction and Disorders in Complex Custody Cases," Panel Discussion, Innovations: Breaking Boundaries in Custody Litigation, Webcast, May 2021
"Temporary Orders," Texas Bar College 23rd Annual Summer School, Galveston, TX July 2021
"What Lawyers Need to Know to Be the Better Advocate in a Disputed Custody Case—Judges Panel," Advanced Family Law, San Antonio, TX August 2021
"Closing the File," Corpus Christi Bar Association, March 2022, Via Zoom
"Cutting Edge Apps and Technology to Win at Trial," Texarkana Bar Association, Texarkana, TX, March 2022
"Professionalism: What Would Ted Lasso Do?," Advanced Family Law, San Antonio, TX, August 2022
"Professionalism in the Courtroom," Advanced Trial Skills for Family Lawyers, New Orleans, LA, December 2022
"What Would Ted Lasso Do," Webinar, January 2023
"What Would Ted Lasso Do," Hidalgo County Bar Association, January 2023
"What Would Ted Lasso Do," Rockwall County Bara Association, February 2023
"What Would Ted Lasso Do," Panhandle Family Law Association, March 2023
"What Would Ted Lasso Do," Southwest Louisiana Bench Bar Meeting, March 2023
"What Would Ted Lasso Do," Hopkins County Bar Association, April 2023
"What Would Ted Lasso Do," Tarrant County Bench Bar, April 2023
"Discovery Made Easy(er)," Wild West CLE Paralegal Seminar, April 2023
"Sex, Drugs, and Rock & Roll: Authenticity and Admissibility of Salacious Evidence," Spring Regional Judiciary Conference, April 2023
"State Bar Update," Tarrant County Bar Association meeting, July 2023
"Child Support by Any Other Name—Still Child Support," Advanced Family Law, San Antonio, TX, August 2024
"Child Support by Any Other Name—Still Child Support," Texas Association of Domestic Relations Offices, Fort Worth, TX, October 2024
"Challenging Topics in Challenging Times," Advanced Family Law, San Antonio, TX, August 2025
"Professionalism in the Law: What Would Ted Lasso Do?," Collin County Bar Association, March 2026
"How to Secure Your Own Oxygen Mask First-Tips for Developing Business," Women and the Law Webcast, April 2026

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# FAMILY LAW CASE UPDATE: 2024-2025

## I. INTRODUCTION

This paper is intended to update the most interesting family law cases over the last year or so relating to issues involved in suits affecting the parent-child relationship as well as those affecting marriage, divorce, property division and enforcement.

The appellate decisions summarized herein are those which have been issued since August 2024. The case law updates include not only decisions regarding significant legal issues but also those that are factually interesting and unique, whether or not they include anything of legal note. Cases involving the termination of parental rights and protective orders are not covered.

Within each topic, the cases have been organized chronologically. All references to "TFC" are to the Family Code; "TRCP" to the Texas Rules of Civil Procedure; "TRE" to the Texas Rules of Evidence; and "CPRC" to the Texas Civil Practice and Remedies Code.

## II. TEXAS SUPREME COURT DECISIONS

### A. *State v. Loe,* 692 S.W.3d 215 (Tex. 2024)

***The law enjoining certain treatments for children diagnosed with gender dysphoria does not violate the Texas Constitution.***

The Texas Legislature passed SB 14 to become effective September 1, 2023. SB 14 prohibited certain medical treatments to children if administered for the purpose of "transitioning a child's biological sex" or "affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." With few exceptions, the statute prohibits certain surgeries and the administration of certain prescriptions to children. Before the statute went into effect several plaintiffs (including the parents of five children, three physicians and two organizations) filed suit in Travis County to enjoin enforcement of the statute. Defendants were the State of Texas, the Texas Attorney General, the Texas Medical Board and the Health and Human Services Commission. After a two day hearing the trial court found that the statute likely violated Art. 1, Section 19 of the Texas Constitution for infringing upon parents' fundamental right to the care, custody and control of their children and upon Texas physicians' right to occupational freedom, as well as Art. 1, Sections 3 and 3a of the Texas Constitution by discriminating against transgender adolescents. The trial court enjoined enforcement of the statute. Defendants sought appeal directly to the Texas Supreme Court. **Majority Opinion:** (R. Huddle) The Court recognized that while parents have a fundamental right to make decisions regarding the care, custody and control of their children, such rights are not absolute. Determining that the State had the right to regulate medical treatment for both adults and children, the Court found that parents have a fundamental right to secure treatment for their children but only to the extent that such treatment is legally available. Identifying gender dysphoria as a relatively new condition, the Court found that the Legislature has the power to regulate novel treatments for novel conditions without being subject to heightened scrutiny. The Court notes that the decision does not sever a parent's control or autonomy over their children's medical care, but instead restricts the treatments available to children with a newly diagnosed medical condition, gender dysphoria. The Court further found that the physician's occupational freedoms were not infringed and that physicians may continue to treat children with gender dysphoria by methods not otherwise prohibited by the statute, noting that the statute does not restrict these procedures for adults. **Concurring Opinion:** (J. Blacklock, J. Devine) Comparing the "Traditional Vision," in which gender is simply male and female as assigned at birth, versus "Transgender Vision," in which a person may not identify as the gender assigned at birth, necessarily causes a conflict in morality and philosophy depending on which you believe to be true. "The divergence is unbridgeable." **Concurring Opinion:** (J. Busby) Gender dysphoria is a relatively new diagnosis, and there is substantial debate in the medical community regarding the benefits and harms of the therapies limited by this law. The majority did not change the law but simply applied established precedent to determine whether the Legislature had the power to enact the law without facing heightened scrutiny. **Concurring Opinion:** (J. Young) Parents start with a presumption favoring their autonomy. To determine whether an action does not fall within the historic concept of caring for and raising children—thus enabling State regulation—the court must analyze each claim at a specific level. Conduct that constitutes abuse and neglect is not the kind of conduct that our history, tradition, or law has ever characterized within the zone of options for a parent. **Dissenting Opinion:** (J. Lehrmann) At its core, this case presents a foundational issue: whether the State can usurp parental authority to follow a physician's advice regarding their own children's medical needs. The parents here are not mistreating their children. They are facing this challenge with extraordinary courage, fortitude, and perseverance. The challenged laws are not only cruel but unconstitutional.

**B. *In the Interest of J.O.L.,* 702 S.W.3d 358 (Tex. 2024)**

***Justice Lehrmann offers additional guidance on the type of evidence necessary to overcome the fit parent presumption.***

Justice Lehrmann writes a Concurring Opinion on the denial of a Petition for Review from *In the Interest of J.O.L.,* 668 S.W.3d 160 (Tex. App. – San Antonio 2023, pet. denied). The Court of Appeals decision was summarized in the April 5, 2023 edition of Sallee's Interesting Cases. Briefly, M and F were named JMC of their two children in a 2016 agreed order, with F having the right to establish residence. F designated the residence of his aunt and uncle as the primary residence of the children and they became the children's primary conservators and were for many years. M filed a suit to modify. The trial court determined M was not entitled to the fit parent presumption under *In re CJC.* A jury awarded conservatorship to the aunt and uncle and M appealed. The COA reversed and remanded for a new trial, determining that M was entitled to the presumption. Finding that the Supreme Court had not identified any specific evidentiary standard to overcome the presumption, the COA found that sufficient evidence of some specific, identifiable behavior must be admitted in order to overcome the presumption. The aunt and uncle petitioned for review which the Supreme Court denied. Justice Lehrmann concurred in that decision but writes separately to address her disagreement and concerns with the COA's conclusion that the fit parent presumption must be overcome with sufficient "evidence to establish physical abuse, severe neglect, abandonment, drug or alcohol abuse or immoral behavior." Justice Lehrmann opines that *requiring* such evidence improperly equates the evidence need to overcome the fit parent presumption with the level of evidence necessary for termination of parental rights and the two issues are not properly on par with one another. In addition, Justice Lehrman notes a lack of clarity in the COA's opinion which discussed the impact that could be created by removing the aunt and uncle from the children's lives. The COA found that significant impairment could be inferred upon consideration of this impact and its manifestation in any given case. Justice Lehrmann agrees but suggests that while such evidence is relevant to an evaluation of the children's best interest on remand, it should be part of a more broad-based analysis of evidence supporting the standard that appointment of the parents as conservators would not be in the children's best interest because it could significantly impair their physical health or emotional well-being. Justice Lehrmann notes this standard is correct as opposed to the COA's suggestion that evidence of "physical abuse, severe neglect, abandonment, drug or alcohol abuse or immoral behavior" is *required* to overcome the fit parent presumption, which, in her opinion, is not accurate.

**C. *In re J.Y.O.,* 709 S.W.3d 485 (Tex. 2024)**

***Bonus earned in whole or in part for work performed during marriage, even though paid after divorce, is community property.***

H and W married in 2010. H worked for Bank of America and his compensation included an annual bonus of cash and stock paid on February 15 of each year, contingent upon performance by H and the bank the previous year. In divorce proceedings, the court pronounced the parties divorced on 12/9/19 but litigation continued regarding a division of their property. Prior to February 15, 2020, W filed a motion asking that H's annual bonus be deposited into the registry of the court. At the hearing a compensation expert from the Bank testified. He confirmed that the bonus was for work performed the prior year, it was purely discretionary, it was recommended by H's manager in November 2019 and approved by the board in January 2020 and that H must be employed on the date it was to be distributed. In the final decree the trial court found the bonus to be 100% H's separate property. The COA agreed, relying upon the Supreme Court's 2017 decision in Loya v. Loya (526 SW3 448). Upon review, the Supreme Court notes that its decision in Loya relied upon the express terms of the parties MSA which provided that all "future income" of either party was partitioned as s/p on the effective date of the MSA, making a $4.5 million bonus H received after the divorce entirely H's separate property, notwithstanding that H earned the bonus while married. As the Court notes here, characterization of the bonus in Loya did not rely in any manner on when the bonus was earned or vested, but instead was based strictly on the terms of the parties' MSA. In JYO, the Supreme Court notes the well-settled law under *Cearly v. Cearly* (544 SW2 661) that characterization of compensation relies on the key factor of when it is earned, not when all contingencies for payment have been met. When compensation is earned (in whole or in part) during marriage but deferred, it is more than a mere expectance and will be community property when earned even if there is no immediate right of possession. In a second issue the Court considered the COA's determination that the trial court erred by characterizing a residence as 100% H's s/p. H owned

the house before marriage but re-financed during marriage and in that process, H and W (as grantors) deeded the house to H and W (as grantees). The COA found that this created a presumption of gift by H to W of ½ the residence as s/p and that H had failed to offer evidence rebutting the presumption. Agreeing with these principles and analysis, the Supreme Court affirmed. Finally, the Supreme Court affirmed the COA's determination that H had failed to clearly trace his s/p claims to a 401k, warranting reversal. Supreme Court affirms the COA's decision on the residence and 401 K but reverses the COA as to the bonus. All property issues were remanded to the trial court for further rulings.

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

***Guardianship orders must expressly authorize guardian to file suit for divorce but only after express findings that such filing is in the ward's best interest.***

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 community estate and signed a divorce decree. W appealed. 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 authorize 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.

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

***A "no-contact" protective order lasting more than two years must be supported by clear and convincing evidence and "no-contact" must be based on best interest.***

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 M'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, the 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.

**F. *Mehta v. Mehta,* 2025 Tex. LEXIS 538 (Tex. Sup. Court June 20, 2025) (Case No. 23-0507)**

***Considering child support as income for spousal maintenance purposes means you must consider the children's expenses too!***

H and W married in 2000 they had triplets in 2007. W quit her job to become a full-time caregiver for the children while H continued his employment. One of the triplets had physiological and neurological issues that required continued and extensive medical care. W took care of all matters related to the child's medical appointments and medical care at home. W founded a non-profit organization and drew a guaranteed salary of $30K for one year. W filed for divorce in 2019 and sought the award of spousal maintenance. The court issued temporary orders obligating H to pay temporary child support and spousal maintenance. The court awarded exclusive use of the home to W and ordered her to pay the mortgage, utilities and taxes. During trial H expressed concerns about W's ability to maintain the mortgage and other bills, claiming he had been required to pay these several times while the divorce was pending. After all testimony the court ordered H to pay $2,760/mo in child support, ordered spousal maintenance of $2,000/month for 36 months or until W remarried or died). H appealed. The COA reversed the spousal maintenance award finding that W had failed to present sufficient evidence that she would lack property sufficient to meet her minimum needs, making her ineligible for support. The COA considered exacting evidence of W's income, the liquid assets available to her and 100% of her child support as affording her over $5,600/month where the only evidence of needs she offered were those for her mortgage and property taxes, determining that she had funds in excess of $2,800 over her proven needs. The COA reversed the award of spousal maintenance and

W filed her petition for review with the Supreme Court which was granted. The Supreme Court finds that reasonable needs is not defined in the TFC and further that the code does not specify any exacting evidence that is required to establish such proof. Further, the Supreme Court recognizes that a determination of spousal maintenance may involve consideration of not just the "quantitative" evidence offered to conduct a mathematical equation reflecting available resources and needs, but also to consider "qualitative evidence" that exists or can be implied. For example, in this case the H testified regarding his concerns that W could not meet the mortgage expenses or other bills. This should have been considered. More significantly, the Supreme Court recognizes that while receipt of child support by the spouse also seeking maintenance can and should be considered, it cannot be factored in without likewise considering the overlapping expenses of the children and/or the obligee's duty to support the children, leaving less money available to support the obligee's minimum reasonable needs. The Court holds that when the spouse receiving child support also seeks spousal maintenance, the spouse's child-related expenses, whether commingled (like housing) or child specific (like clothing and medical care) diminish the amount of income that can be devoted to meeting the spouse's minimum reasonable needs. As a result, both child support and the children's expenses must be factored in to the spousal maintenance calculation. In other words, the receipt of child support can be considered on the income side of the ledger only if the child related expenses are considered on the expense side of the ledger. In this case the COA only considered the former and not the latter, making the decision to reverse the spousal maintenance award error. Further the Supreme Court found that although the trial had not specified the basis for spousal maintenance under TFC 8.051, the evidence was sufficient that W qualified under TFC 8.051(2)(C) (primary custodian of a child requiring substantial care). Reversed the COA decision regarding spousal maintenance and reinstated the trial court's order obligating H to pay $2,000/mo for 36 months. Justice Lehrman concurring by separate opinion as recognizing the different purposes served by spousal maintenance and child support and supporting the majority's opinion that child support may be considered as income in the maintenance determination but only when child related expense are likewise a relevant consideration for all practical purposes.

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

***Wife's non-receipt of citation is sufficient to support first element of Craddock text, entitling her to a new trial, notwithstanding completed alternative service before rendition of default decree.***

Facts: The parties had been married for 13 years and had one Child together. Wife left due to mistreatment by Husband, and that same month, Husband filed for divorce and informed Wife of his filing. Wife later testified that she did not know what to do, had no access to money for an attorney, and was afraid. Wife assumed she would be served in person. However, after months of unsuccessful service attempts, the trial court signed an order for alternative service by attaching the petition to the door of Wife's parents' home. After Wife failed to answer, Husband obtained a default judgment. Wife learned of the default judgment when Husband absconded with the Child and their dog, and she immediately contacted an attorney, who filed an answer and a Craddock motion for new trial. Although Wife's motion was filed before the written order was signed, the court nevertheless signed the default decree. Subsequently, the court denied Wife's Craddock motion, finding she was consciously indifferent to answering and failed to show a new trial would not harm Husband. Wife appealed. The appellate court held that Wife was aware of the ongoing suit and that her excuse of not being aware of the alternative service was insufficient to negate the finding of conscious indifference in failing to answer. Thus, the appellate court affirmed the default decree. Wife petitioned the Texas Supreme Court for review.

Holding: Appellate Judgment Reversed; Remanded to Trial Court.

Opinion: Default judgments are greatly disfavored under Texas law. The law merely tolerates such judgments because defendants cannot defeat the authority of the courts simply by refusing to appear. "Accordingly, any doubts about a default judgment—not just doubts about service—'must be resolved against the party who secured the default.'" When the three elements of Craddock are satisfied, a new trial must be granted. Even if a defendant does not satisfy the Craddock test, a court has broad discretion to order a new trial if "good cause" supports doing so. A failure to answer is not intentional merely because it is deliberate, and conscious indifference is more than mere negligence. Here, Wife thought the papers would be served on her in person. Her mistake of law in not knowing of alternative service methods could satisfy the first Craddock element. Additionally, Wife was unaware of any attempts to serve her. She had not heard anyone knocking on her parents' door and

was unaware of anyone otherwise attempting to contact her. Once she learned of the default decree, she expeditiously filed an answer before the decree was signed. She never learned of any documents being affixed to her parents' door. Husband argued Wife's claims of nonservice were conclusory. However, "[p]eople often do not know where or how they lost something—that is precisely why it remains 'lost.'" Additionally, Wife's claims were supported by her father's testimony explaining that construction work was being done at his house at the time. He testified that the neighborhood security officer should have notified him of visitors, but no notification was received. The construction crew also did not give him any documents from the door. While Wife had general knowledge of an ongoing suit, she never received a citation warning her that a failure to answer could result in a default judgment. While not understanding a citation is not an excuse for not answering, not receiving citation is generally sufficient to support granting a new trial. Husband additionally argued that he controverted Wife's claim by establishing alternative service was properly executed. Alternative service provides proof of how and when service was executed but is "no evidence in the record of when defendant received actual notice." The process server testified that he did not see Wife, and there was no evidence she received the citation. Husband next argued Wife failed to show that she would succeed on a meritorious claim. However, Husband set Wife's burden too high. She was merely required to "set up" a meritorious defense, not show that she would succeed at trial on the claim. Finally, Wife represented at the hearing on her Craddock motion that she was ready for trial, agreed to pay Husband's costs incurred in obtaining the default decree, and acknowledged the court's authority to award fees relating to the new trial motion. This satisfied her initial burden and shifted the burden to Husband to show injury. While he generally complained about strains relating to litigation, he did not show how those complaints would disadvantage him in presenting the merits of his case at a new trial.

**H. *Morrison v. Morrison*, __ S.W.3d __, No. 24-0053, 2026 WL 247877 (Tex. 2026) (01-302026).**

**Enforcement Order Failed to Follow Provisions in Divorce Decree Contemplating Breach and Providing Method for Enforcement; However, the Error Did Not Deprive Trial Court of Jurisdiction to Consider Enforcement Petition.**

Facts: The parties' divorce decree ordered that their marital residence be sold, and the net proceeds of that sale were to be divided equally. The decree also included provisions contemplating breaches relating to damaged or non-delivered property and provided enforcement remedies. Because Husband failed to comply with the decree, Wife moved for enforcement. The trial court rendered an enforcement order that awarded Wife 100% of the net proceeds from the sale of the marital residence. Husband appealed. The appellate court determined the enforcement order went beyond the enforcement power of the trial court by modifying the property division. The court of appeals vacated the enforcement order and dismissed the case for want of jurisdiction. Wife petitioned the Texas Supreme Court for review.

Holding: Appellate Judgment Reversed; Remanded to Trial Court.

Opinion: Family Code Chapter 9 allows trial courts to enforce a divorce decree, but the trial court lacks subject-matter jurisdiction to modify a property division. This Chapter thus permits enforcement while protecting a decree's finality against successive collateral attacks. When a trial court exceeds enforcement mechanisms available to it, the resulting enforcement order is void and unenforceable; however, the decree remains subject to enforcement suits. "A court that exceeds its power to enforce does not lose the continuing enforcement jurisdiction it otherwise possesses." To determine whether the trial court here had jurisdiction to render its enforcement order required an examination of the property division in the parties' divorce decree. The decree allocated half the proceeds from the sale of the marital residence to each spouse. It also accounted for the possibility of damage to the community estate before assets were divided via an enforcement provision. That enforcement provision included a method for valuation of damages and a method for collection of damages. Specifically, damages "shall be awarded to the other party, and account for out of the proceeds from the sale of the marital residence." [emphasis added by Supreme Court]. Husband argued that using proceeds from the marital residence as a source for collecting damages resulted in a redivision of the divorce decree's property division. However, the enforcement provision in the parties' decree did not seek redivision. Rather, it provided a mechanism for collection of damages resulting from a breach of the decree, which was permissible under Chapter 9. In the trial court's enforcement order, it awarded Wife 100% of the net proceeds of the sale of the marital residence based on Husband's noncompliance. However, the order failed to assign a value to Husband's breach as required by the parties' decree. Therefore, the enforcement order did not

comply with the decree and was remanded to the trial court for further proceedings. The court of appeals erred in finding the trial court's error deprived the trial court of any jurisdiction to consider the motion to enforce and render a proper enforcement order.

**I. *In re Estate of Lopez*, __ S.W.3d __, No. 24-0315, 2025 WL 3114451 (Tex. 2025) (11-072025).**

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

Facts: After Decedent's death, Son moved for independent administration and an heirship determination. The probate court granted Son's requested relief, and Decedent's estate was distributed to Son and his two siblings. Subsequently, Wife filed a petition for bill of review, seeking a judgment that she was an heir of Decedent. Before ruling on heirship, the question of whether Decedent and Wife were informally married was presented to a jury. At that jury trial, a former family-court judge testified via a videotaped deposition as an expert over Son's objections. The Former Judge opined that the parties satisfied the statutory elements of informal marriage. The jury found a marriage existed. Son appealed, and the appellate court affirmed, finding the inclusion of the expert testimony was harmless error. The appellate court reasoned (1) the evidence was cumulative; (2) the Former Judge did not present any improper legal concepts; (3) Wife did not emphasize the Former Judge's testimony; and (4) other evidence supporting Wife's claims withstood Son's factual sufficiency challenge. Son petitioned the Texas Supreme Court for review.

Holding: Court of Appeals Reversed;

Remanded to Trial Court Opinion: A qualified expert may testify if their specialized knowledge will help the trier of fact. Because the expert's testimony does not help unless the expert's knowledge and experience are beyond that of an average jury, the court should exclude expert testimony if the expert is forming an opinion within the common knowledge of the jury. Erroneous admission of expert testimony is harmless unless the inclusion of the testimony probably caused the rendition of an improper judgment. To determine whether error was harmful, the court must evaluate the entire case from voir dire to closing, considering the evidence, strengths and weaknesses of the case, and the verdict. For example, the error would be harmless if the testimony was cumulative of other evidence but harmful if the testimony was crucial to a key issue. Because the question of whether evidence established an informal marriage was within the average juror's knowledge, inclusion of the Former Judge's testimony was error. Wife offered no argument for why "specialized knowledge" was necessary. The Former Judge testified at length about Family Code presumptions, but conveying that information to the jury is the role of the sitting judge not an expert. Instead of aiding the jury, the Former Judge's testimony provided "an official endorsement" favoring Wife's position. She emphasized that she formed her opinions "wearing [her] judge's hat" and explained that on the evidence presented, based on her experience presiding over 5,000 family-law trials, Wife should win. Further, the Former Judge's testimony was critical to the only contested issue in the case. While there was evidence favoring Wife's claim, there was also controverting evidence. The evidence was not one-sided. It was unclear from the record whether the jury would have found an agreement to be married in the absence of the Former Judge's testimony. Additionally, contrary to the appellate court's findings, not all the Former Judge's testimony was cumulative. She provided her own spin on how the jury should weigh the competing evidence. Wife's use of the Former Judge's testimony was calculated and not inadvertent. Finally, the Former Judge's role was emphasized throughout her testimony. The trial court abused its discretion in including the testimony, and the appellate court erred in finding the error was not harmful. The Supreme Court noted that it was not stating that former judges should never testify as experts. However, practitioners should be mindful of touting and emphasizing the former judge's role. "The entrance of a judge into the litigation arena in aid of a combatant impacts not only the outcome of that conflict but the very idea of judicial impartiality."

**J. *D.V. v. TDFPS*, __ S.W.3d __, No. 24-0840, 2025 WL 3038976 (Tex. 2025) (10-31-2025).**

**In Parental-Termination Cases, A Court May Not Terminate Parental Rights In The Face Of An Unequivocal And Unrepudiated Statement Made By Someone Speaking On TDFPS's Behalf That Withdraws Termination As A Requested Form Of Relief.**

Facts: The TDFPS representative twice stated at trial that TDFPS sought to restrict but not terminate Mother's parental rights. The trial court nevertheless terminated Mother's parental rights. She appealed, and TDFPS argued on appeal that it had not abandoned its pleaded request for termination. The

appellate court affirmed. Mother petitioned the Texas Supreme Court for review.

Holding: Reversed and Rendered.

Opinion: When affirming the trial court's decision, the appellate court opined, "[i]n interpreting stipulations, courts consider the language used 'and the surrounding circumstances, including the state of the pleadings, the allegations made therein, and the attitudes of the parties toward the issue.'" The appellate court identified the case's larger "context" as including the termination recommendations from the CASA volunteer and attorney ad litem; the presentation of evidence that would support termination; the request by Mother's counsel not to terminate; and the statements abandoning termination coming not from TDFPS's counsel but its designated representative. Accordingly, the court "agree[d] with" TDFPS's contention that, given this "context," the statements expressly withdrawing termination as TDFPS's requested relief did not have the effect of doing so. Without opining as to whether this approach would be appropriate in an ordinary civil suit, the Supreme Court held it was inadequate in a parental-termination case. Claims can be formally abandoned. But a claim may also be abandoned by stipulation, so that "[w]hen parties stipulate that only certain questions will be tried, all others are thereby waived." The question here, then, was simply whether the statements by TDFPS's designated representative amount to the TDFPS's unequivocal abandonment of termination as a requested remedy. The representative clearly stated it wished to "limit and restrict" Mother's rights and to "limit [Mother's] rights to parent non-conservator." The TDFPS representative unequivocally presented those statements as being for TDFPS and were not her personal views. CASA's statement could not be imputed as TDFPS's. Father did not seek termination of Mother's rights. While evidence at trial could have supported termination, it also could have supported restricting Mother's parental rights. It would be bizarre to restore termination as an option because Mother's counsel asked the court not to terminate. With respect to the reliance on TDFPS's representative, rather than its counsel, stating TDFPS was not seeking termination: the point of having a designated representative of TDFPS was for that representative to apprise the court of TDFPS's position. When TDFPS's counsel asked for the representative of TDFPS's position and received an answer, counsel did not make any effort to countermand that answer. Finally, TDFPS's reliance on its live pleading was not persuasive because its live pleading also requested termination of Father's parental rights, yet at trial, it openly advocated for Father to be given full authority over the Child. "In other words, it is hard to give much weight to what the live pleading says about termination when in this very case the live pleading demanded a termination that the department had undisputedly abandoned." (emphasis in original). The Supreme Court rendered Mother's rights were not terminated and remanded for the trial court to render judgment consistent with this opinion and resolve any remaining issues.

**K. *Mehta v. Mehta*, 716 S.W.3d 126 (Tex. 2025) (06-20-2025).**

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

Facts: Husband and Wife had triplets, and one of the Children was "medically fragile." Wife quit her job to be the primary caregiver and shouldered the responsibility of providing childcare. When the Children were about 12-years old, Husband filed for divorce. Temporary orders required Husband to pay child support and spousal support. At the three-day bench trial, Husband expressed concerns about Wife having the ability to pay the mortgage and other expenses. Wife responded that Husband failed to pay spousal support and was behind on child support payments. The final order set Husband's monthly child-support obligation at $2760 and ordered Husband to pay $2000 in monthly spousal maintenance for 3 years. Husband appealed, challenging the spousal-maintenance award. The appellate court held that Wife failed to present legally sufficient evidence that she would lack sufficient property to provide for her minimum reasonable needs. Wife testified that her monthly mortgage was $2032, and that she would have to pay about $756 per month in property taxes. However, the appellate court noted that Wife failed to present evidence of other monthly expenses, such as food, utilities, clothing, medical expenses, childcare costs, or car-related costs. The appellate court reviewed the evidence and determined that between three cash accounts awarded Wife that she could withdraw from, her income, and her child support, Wife had $5,635 a month accessible to her in the next three-year period, which was about twice the amount needed for mortgage and property taxes. Thus, the appellate court held that the evidence was legally insufficient to support the award of spousal

maintenance. Wife petitioned the Texas Supreme Court for review.

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

Majority Opinion: (J. Huddle) Although an itemized list of monthly income and expenses is the most "helpful" evidence to establish eligibility for spousal maintenance, neither the Family Code nor caselaw require that exactitude. The court of appeals in this case recognized that almost everyone has basic essential needs such as food, utilities, and medical expenses. Additionally, the law does not require the spouse to spend down long-term assets, liquidate all available assets, or incur new debt simply to obtain job skills and meet short-term needs. The purpose of spousal maintenance differs from that of child support. Spousal maintenance exists to ameliorate the very real hardships that would otherwise exist as the result of a divorce. Child support acts to fulfill parents' natural and legal duty to support children during minority. Child support is not a debt to a former spouse. The parent receiving child support is obligated to spend or hold child support for the child's welfare, upkeep, and benefit. Child-support payments are designed to benefit children, not parents. The appellate court erred in only considering the incomplete quantitative evidence of Wife's expenses and erred in treating the child-support payments as entirely available for Wife's minimum reasonable needs without also considering the children's expenses. Blanket treatment of child-support payments as property available in full to meet the spouse's minimum reasonable needs absent consideration of the children's expenses is inconsistent with the Family Code. When the spouse receiving child support also seeks spousal maintenance, that spouse's child-related expenses—whether commingled, like housing; or child-specific, like clothing or medical expenses— diminish the amount of income that can be devoted to the spouse's own reasonable needs. Where the spouse seeking maintenance also receives child support, both the child support and the children's expenses necessarily factor into the spousal-maintenance calculus. Additionally, the trial court must avoid double counting on either side of the ledger. During trial, Husband testified about his concern that Wife could not afford the mortgage and that the home needed repairs that were not being addressed. Wife testified that Husband once paid the mortgage during the pendency of the divorce after being late on child support because Wife lacked funds to make the payment. While an itemized list would be the best practice, the court could also credit qualitative testimony about a spouse's inability to pay essential, basic living expenses. Finally, because one of the children was "medically fragile," and evidence supported that assessment, spousal maintenance was authorized by the Family Code.

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

## III. PROCEDURE AND EVIDENCE – SAPCR

### A. *In The Interest Of F.H.* 2024 Tex. App. Lexis 6810 (Tex. App. - Dallas September 16, 2024, No Pet.) (Cause No. 05-23-1038-Cv) (Mem. Op.)

***Strict compliance with substituted service is required and where court orders three methods, all of them must be attempted.***

M and f divorced in 2020. The decree identified their personal information and addresses as required by tfc 105.006. In march 2022 f filed a suit to modify and requested service on m at an address different from the one in the decree. Thereafter, when service could not be obtained, f filed a motion for substituted service under trcp 106. The motion included statements regarding m's usual place of residence and work, however the affidavits attached included sworn statements indicating the opposite. The motion asked that m be served by posting citation on her door at the address f provided and by email and docusign. The court granted the motion and issued an order directing service by all three methods. F's attorney filed an affidavit describing efforts to serve m through docusign on two occasions. F appeared with counsel to secure a default which the court granted. M thereafter filed a restricted appeal, complaining that she had never been served and/or that service did not

comply with the order. The coa found that strict compliance as to service of process is required. First, the motion seeking substituted service did not comply because, although the unsworn motion represented addresses to be m's usual place of abode and business, the attached affidavits did not likewise provide this information. Second, the order directed substituted service in three different ways and f complied with only one. As a result, the default order was void. Reversed and remanded.

**B. *In re H.J.*, 2024 Tex. App. LEXIS 7082 (Tex. App. – San Antonio October 2, 2024, no pet.) (Cause No. 04-24-00344-CV) (mem. op.)**

***5th Am. Privilege protects information which implicates criminal conduct as well as information that could be "linked" to criminal conduct.***

F filed a suit to modify custody of three children ages 9, 12 and 15. During the proceedings, M issued a discovery subpoena to F's new wife, seeking to recover electronic information stored on her IPhone, specifically looking for messages between the new wife and the 15 yo which she believed to be of a sexual nature. New W did not produce the information but asserted her 5th Amendment privilege against self-incrimination. W filed a motion to compel which the court granted, ordering new W to surrender her phone and specifying what the forensic examiner was authorized to retrieve. The order further provided that all information retrieved was subject to an order of confidentiality. New W sought mandamus relief. The COA notes that the 5th Amendment privilege protects not only information that would directly implicate an individual of a crime, but also information that would provide a "link" to criminal conduct that would allow enforcement officials to create a chain of custody tying the information to the individual and subjecting them to potential criminal prosecution. In this case, the COA found that the information on new W's phone could provide just such a link and was thus entitled to complete protection from discovery when the privilege was asserted. Further the COA found that "confidentiality order" (a civil protective order) which the trial court had put in place was insufficient to protect new W from the reach of a criminal grand jury. Finding the trail court abused its discretion compelling the discovery, mandamus was granted.

**C. *In the Interest of B.A.R.U.*, 2025 Tex. App. LEXIS 775 (Tex. App. – Houston [14th Dist.] February 11, 2025) (mem. op.) (Cause No. 14-23-00328-CV)**

***Exclusion of TO's allowing M to relocate to Dallas was reversible error when F's theme before the jury suggested the move was unilateral and unauthorized.***

M and F dated and M learned she was pregnant after the couple separated. The child was born in June 2020 while both parties were living in Houston. F filed a suit to adjudicate his parentage within a few week, seeking to be named JMC with M as primary and a geographic restriction within Harris County. The parties submitted agreed temporary orders to that effect with F paying c/s. In November 2021 M filed a motion to modify the geographic restriction, asking that she be allowed to move to Dallas. M, an attorney, had been unemployed for a year, had not been able to find a job in Houston and had an offer in Dallas. In response, F filed an amended petition seeking to be named primary parent. The court issued an amended TO permitting M to move to Dallas and modifying F's possession. M and the child were living in Dallas when the case went to trial in January 2023 before a jury. The issue for the jury was which parent should have the primary right of domicile. F's focus was on the difficulty the move created for his relationship with the child, suggesting M's move was unilateral and made in effort to alienate him from the child. M explained her difficulties in securing employment, justifying her move. M sought to have the amended TO admitted into evidence. F objected and the court excluded the amended order but allowed M's counsel to ask M one question, that being whether her move to Dallas had been in violation of a court order, to which M answered "No." Even so the court admitted the original TO's which required M to live within Harris County. The jury issued a verdict in favor of F as to primary residence and imposed a geographic restriction to Harris County. M appealed, challenging exclusion of the amended TO. F initially argued that M had failed to preserve error, having never offered the evidence, however the COA found that the record supported numerous discussions and efforts by M to admit the amended TO's, determining error was preserved. As to exclusion, M argued that the amended TO was relevant to the key issue in the case and by failing to admit it, F was allowed to create a false impression that M had unilaterally moved to Dallas without permission. F argued that the evidence was an improper comment on the weight of the evidence by the trial court based on alleged findings within the amended TO. The COA acknowledged a Supreme Court decision which held that such orders, previously rendered by the same judge, could constitute an improper comment on the weight of the evidence, particularly when they contain the trial court's findings on the very facts the jury is being asked to consider, and at a minimum those findings should be redacted. However, here the COA notes that the

amended TO was issued by an associate judge and not the presiding judge handling the jury trial and further the amended TO contained no findings explaining the court's reasoning for allowing the move. Further, the original TO had been admitted which restricted the residence to Harris County and because F and his counsel consistently referred to M's move as unilateral and unauthorized, the amended TO should have been admitted to rebut these false impressions. Otherwise, the jury could have believed that M's testimony stating her move was not against a court order was untrue. Noting that reversal is not warranted unless the exclusion of evidence was harmful, the COA conducted a harm analysis and determined that M's move was the key focus of the case and there was substantial evidence offered in support of both parent's bid to be primary conservator. Further, F's suggestion that M's move was unauthorized left a misimpression that clearly could have been cured by admission of the amended TO. The COA found that failure to admit the evidence could have substantially led to the jury's verdict adverse to M and thus reversed and remanded for further proceedings.

**D. *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)**

***A complete lack of notice that issue of parentage would be decided at a hearing violates due process.***

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 CB'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 CB agreed to temporary orders obligating CB 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, 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.

**E. *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)**

***UIFSA mandates remote testimony and trumps TRCP 21d.***

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 was not 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.

**F. *In the Interest of S.G.B.*, 2025 Tex. App. LEXIS 3070 (Tex. App. – Dallas May 2, 2025) (mem. op.) (Cause No. 05-23-00684-CV)**

***Judgment affirmed despite detailed analysis of numerous jury charge issues.***

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 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 specify 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. **NOTE:** This Opinion replaces 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.

**G. *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)**

***No meeting of the minds negates entry of agreed***

***order.***

In June 2023 F filed a petition to modify terms of the effective 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. 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.

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

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

Facts: Husband filed for divorce. About nine months later, the parties signed a handwritten Rule 11 agreement with respect to use of property during the divorce, payment of debts, and Wife's name change. Subsequently, counsel for both parties withdrew. Before a decree was signed, Husband passed away. Wife filed a suggestion of death and motion to dismiss, claiming the parties had reconciled before Husband's death. The case was dismissed for want of prosecution. Nearly a year and a half later, Husband's Daughter filed a motion for new trial or to reinstate, arguing the divorce had been granted before Husband's death. Daughter relied upon a docket sheet entry stating that evidence was presented, the divorce was granted, and property was divided pursuant to a Rule 11 agreement. Wife moved to strike Daughter's petition in intervention, challenging her standing and the claim that the divorce was ever rendered. After an evidentiary hearing, the trial court reinstated the case and signed an "agreed" final decree of divorce. The trial court denied Wife's motion for new trial, and she appealed.

Holding: Reversed and Rendered.

Opinion: Wife argued the divorce was not final when pronounced and rendered from the bench. The appellate court reviewed Baker v. Bizzle, 687 S.W.3d 285 (Tex. 2024) and the more recent Sargent v. Sargent, No. 02-24-00470-CV, 2025 WL 2627033 (Tex. App.—Fort Worth Sept. 11, 2025, no pet.). In Baker, the trial court rendered the divorce but took the property division under advisement. Although there were email discussions regarding the division, no final order was signed before one of the parties' died, and the emails were not part of the trial court's record. Thus, the oral rendition was interlocutory, and the trial court lacked jurisdiction to finalize the divorce. In Sargent, the court rendered judgment on the record, and the subsequent written order was merely a ministerial act. Here, there was no reporter's record; however, the docket sheet indicated a present rendition of divorce. The docket sheet notations further indicated the parties' waived the making of a record, granted Wife's name change, and adopted the parties' Rule 11 agreement. Thus, unlike in Baker, the court finally disposed of all issues between the party on the day of rendition. Additionally, the parties and the trial court signed the document entitled both "Final OR[D]ERS/Decree" and "RULE 11 AGREEMENT (with entry to follow)" and filed it

with the court clerk. Thus, unlike in Baker, the court made its ruling public before the death of a party. Wife argued the "Final OR[D]ERS/Decree" document was not final because it did not divide her retirement account, credit cards, bank accounts, art, or mementos. However, the parties waived the making of a record, so the appellate court was required to assume the evidence presented at trial supported the judgment. Accordingly, the rendition finalized the divorce, and the documents signed that day controlled. Husband's subsequent passing divested the trial court of authority to sign any subsequent orders. Further, the orders dismissing and reinstating the case were void and without effect.

**I. *Torres-Martinez v. Torres*, No. 08-24-00389-CV, 2026 WL 118078 (Tex. App.—El Paso 2026, no pet. h.) (mem. op.) (01-15-2026).**

**Decree Vacated for Lack of Jurisdiction Because Return of Service Did Not Indicate Husband Was Served with Citation.**

Facts: Wife filed for divorce and requested that Husband be served at one of two addresses in Wisconsin. At the final trial, Wife and her attorney appeared, but Husband did not. Wife briefly testified. That same day, the court signed a final decree of divorce, appointed Wife as the sole managing conservator of the parties' Children; ordered Husband to pay child support, medical support, and spousal support; and awarded Wife her attorney's fees. Husband filed a restricted appeal.

Holding: Reversed and Remanded.

Opinion: Husband asserted (1) the return of service was defective; and (2) Wife failed to establish the trial court had personal jurisdiction over him as a non-Texas resident. The appellate court only addressed the issue of service. Here, return of service only indicated that the petition for divorce was delivered to Husband. It did not reference the citation. Without proper service of citation, the trial court lacked jurisdiction over Husband. Because error was apparent on the face of the record, Husband was entitled to a restricted appeal, and the decree was vacated for lack of jurisdiction.

**J. *Pujols v. Rivas*, No. 11-24-00210-CV, 2026 WL 191731 (Tex. App.—Eastland 2026, no pet. h.) (mem. op.) (01-22-2026).**

**Husband Not Entitled to Notice of Final Default Hearing Because Husband Failed to File an Answer.**

Facts: On the same day Wife filed her petition for divorce, Husband received notice that he was required to serve in a Louisiana penal institution. A person identifying as Husband's mother contacted the divorce court via letter asserting that she had a power of attorney over Husband, Husband only spoke Spanish, the divorce papers needed to be in Spanish, and Husband could not afford an attorney. This letter was allegedly also sent to Wife. No answer was filed. Husband was served with the divorce citation and petition while he was incarcerated. The mother sent another similar letter to the divorce court alleging Husband was indigent and again requesting the documents be provided in Spanish. About a month later, the trial court granted Wife's motion for an interpreter. Because there was no answer on file and Husband failed to appear at final trial, the court signed a default decree. Husband received the decree ten days later and filed no postjudgment motions or a request for findings. Almost two months after the decree was signed, Husband filed a pro se notice of a restricted appeal.

Holding: Affirmed.

Opinion: To succeed on a restricted appeal, error must be apparent on the face of the record. If the respondent fails to appear at trial in a divorce, the petitioner still must present evidence to support her claims. However, here, because there was no reporter's record, the appellate court was required to presume the evidence supported the judgment. Husband additionally made due process complaints regarding notice of the final hearing and the court's failure to provide Husband with an interpreter. While there is no presumption of valid service, the record established strict compliance with service rules, and Husband was properly served. Because Husband failed to file an answer, he was not entitled to notice of the default setting. Similarly, the trial court was not required to sua sponte appoint an interpreter or inquire about Husband's personal appearance in the absence of any filing by Husband. Moreover, the complaint regarding an interpreter was of no consequence because the court appointed an interpreter on Wife's motion.

**K. *Tiney v. Tiney*, No. 14-25-00116-CV, 2026 WL 507652 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (02-24-2026).**

**Default Property Division Reversed for Insufficient Evidence.**

Facts: Wife filed a petition for divorce and secured a default judgment after Husband did not answer or appear. Husband appealed.

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

Opinion: Husband complained that he was not properly served and the evidence did not support the judgment. Wife did not file a responsive brief. At trial, Wife was the only witness and provided only two pages of testimony. She stated the parties owned a home they intended to sell "eventually." She expressed a desire for Husband to leave the home. Wife did not offer an inventory or any other exhibits. The final decree awarded each party his or her own monetary assets, and each party was awarded a car with its associated loan. Wife was awarded the residence and instructed to give Husband 50% of the residence's fair market value, but the decree contained no provisions about a potential sale of the residence. The record contained no evidence of the value of any assets or debts. Wife presented no evidence to support her request to stay in the home without Husband, which would leave Husband having to find other accommodations until some unspecified time when Wife decided to sell the residence. Overall, the evidence was insufficient to support the judgment, and the property division was reversed and remanded for further proceedings. With respect to Husband's service complaints, the return complied with the Rules of Civil Procedure. Accordingly, the granting of divorce was affirmed.

**L. *In re A.K.M.*, No. 05-24-00153-CV, 2025 WL 2723280 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (on reh'g) (09-24-2025).**

**Because No Record Was Made Of The Trial Court's Interview With The Child, The Court Of Appeals Was Required To Presume That The Evidence Received During That Interview Supported The Judgment.**

Facts: When the Child was about 7-years-old, the trial court rendered an order establishing Father's paternity and giving Father the exclusive right to designate the Child's primary residence. Three years later, after the Child made an outcry against Father about extreme corporal punishment, Mother filed an application for a temporary restraining order and a petition to modify the parent-child relationship. Father filed a counterpetition. The parties reached a Rule 11 agreement that gave Mother the exclusive right to designate the Child's primary residence and gave Father a limited possession schedule. However, a few months later, with the aid of new counsel, Father revoked his agreement. The trial court nevertheless signed temporary orders based on the agreement. By the time of trial, the Child was 14-years old. The trial court signed a final order appointing the parties joint managing conservators, with Mother having the exclusive right to designate the Child's primary residence. Father appealed pro se.

Holding: Affirmed.

Opinion: Father first challenged the finding of a material and substantial change in circumstances. However, the court did not need to find a material and substantial change in circumstances to give Mother the exclusive right to designate the Child's primary residence because the Child was over the age of 12 and expressed in chambers his desire to live primarily with Mother. Moreover, Father judicially admitted to a material and substantial change through his counterpetition. Father next argued the evidence was insufficient to support a finding that the modification was in the best interest of the Child. No record was made of the interview with the Child. In the absence of such a record, the court was required to presume that the evidence received during that interview supported the judgment. Moreover, evidence from the family counselor indicated the Child desired to live with Mother, and the counselor testified positively about the Child's relationship with Mother. Although Father denied the accusation, there was evidence that Father had bruised the Child when using a belt for discipline. Additionally, Father complained of the requirement that he pay child support. Because the court modified possession, it had authority to modify child support. Further, the order was within the Family Code's guidelines. Father next raised arguments regarding the exclusion of testimony from various witnesses. However, some of the excluded evidence could not have harmed Father because it would have been cumulative of other testimony, and for other complained-of exclusions, Father failed to make an offer of proof. Father next challenged the entry of the temporary orders after he revoked his agreement. Because the final order mooted the temporary orders, Father's appellate complaint was moot. Finally, Father complained of the lack of specificity in the trial court's findings of fact and conclusions of law. However, the findings requested by Father were contrary and inconsistent with the original findings. Further, even if Father had been entitled to additional findings, Father was not prevented from presenting his appellate complaints and was not harmed.

## IV. INFORMAL MARRIAGE

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

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

Facts: After Decedent's death, his adult Sons discovered a will that had been executed while Decedent was still married to their Mother, and the Sons sought to admit that will to probate. Wife objected to the application and asserted she had entered into an informal marriage with Decedent and that he had revoked his previous will but died before executing a new one. In a bench trial, Wife presented evidence she and decedent lived together and held themselves out as a married couple. While Wife also testified that she and Decedent agreed to be married, the Sons argued the "Dead Man's Rule" barred her testimony about what Decedent may have said. The trial court determined Wife established a marriage by the preponderance of the evidence and that Wife was Decedent's surviving spouse. The Sons appealed.

Holding: Affirmed.

Opinion: The Sons challenged the sufficiency of the evidence to support the finding that the Wife and Decedent entered into an informal marriage and argued the trial court erred in denying their oral motion for a "directed verdict" because Wife presented no admissible evidence to support her assertion Wife and Decedent agreed to be married. The trial court was presented with conflicting evidence regarding cohabitation in Texas and representations to others that Wife and Decedent were married. However, the trial court as the sole judge of the credibility of witnesses was free to believe Wife and her witnesses while disbelieving the Sons' version of events. With respect to the agreement, Wife testified about a conversation she had with Decedent regarding an agreement. Per Wife's testimony, Decedent said, "you f*** around on me, I'll kill you. And [Wife] said to him, if you f*** around on me, I'll kill you too." After that conversation, they laughed and began holding themselves out as a married couple. The Sons argued that the Dead Man's Rule prevented the trial court from considering this conversation as evidence to support an agreement to be married. Texas Rule of Evidence 601(b) details the Dead Man's Rule as it exists today. Generally, testimony of a decedent cannot be admitted without corroboration. Corroborating evidence "must tend to support some of the material allegations or issues that are raised by the pleadings and testified to by the witness whose evidence is sought to be corroborated." "It is sufficient, for instance, if the corroborating evidence shows conduct on the part of the deceased which is generally consistent with the testimony concerning the deceased's statements." Contrary to the Son's argument, there was evidence from other sources that Decedent behaved as if he were married to Wife. Again, the evidence was conflicting, but the trial court was in the best position to resolve those conflicts.

**B. *West v. Ward*, No. 09-24-00060-CV, 2026 WL 234041 (Tex. App.—Beaumont 2026, no pet. h.) (mem. op.) (01-29-2026).**

**Jury Instruction Regarding Isolated References Being Insufficient to Support the "Holding Out" Element of Informal Marriage Proper to Assist the Jury in Understanding the Law.**

Facts: Girlfriend filed a petition for divorce, alleging she and Boyfriend were informally married. She alleged that the couple planned to marry formally, but when they learned Texas recognized informal marriage, they simply agreed they were married and began holding themselves out as such. Boyfriend denied there was ever an agreement to be married but did not deny plans to possibly marry in the future. The trial court granted Boyfriend's unopposed motion to bifurcate the question of the existence of an informal marriage from the other issues in the case. Thus, the question of whether the parties were informally married was tried to a jury. After hearing conflicting evidence, the jury returned a verdict finding the parties were not married. The trial court signed a final judgment accepting the verdict and ordering Girlfriend take nothing on her claims. Girlfriend timely filed a motion for new trial challenging the jury charge's instructions and the sufficiency of the evidence to support the verdict. After the denial of her motion for new trial, Girlfriend appealed.

Holding: Affirmed.

Opinion: In reviewing the evidence presented, the jury's finding that there was no agreement to be married was "not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." Because that element was not proven, the appellate court did not need to address the other two requirements for proving an informal marriage. Girlfriend also asserted the trial court abused its discretion in denying her motion for new trial based on newly discovered evidence Boyfriend tampered with a material witness. Girlfriend claimed that the parties' wedding planner was going to testify in favor of a marriage but ultimately declined to testify after being threatened by Boyfriend. Girlfriend further argued the testimony was not cumulative because it

would have confirmed the parties were presently married and that their representations were not isolated references. A party seeking a new trial on grounds of newly discovered evidence must demonstrate to the trial court that (1) the evidence has come to her knowledge since the trial, (2) her failure to discover the evidence sooner was not due to a lack of diligence, (3) the evidence is not cumulative, and (4) the evidence is so material it would probably produce a different result if a new trial were granted. A party's allegations alone will not be enough to obtain a new trial based on newly discovered evidence. Instead, the party must introduce admissible evidence at a hearing on the motion for new trial that establishes such essential facts as the party's lack of prior knowledge of the newly discovered evidence, the party's prior diligence toward discovering the evidence, and the nature of the newly discovered evidence. Here, there was no record of a hearing on Girlfriend's claim of newly discovered evidence. During trial, Girlfriend twice asked the court to allow the wedding planner to testify remotely because of a sick child. Boyfriend objected because the wedding planner was not on Girlfriend's witness list. The record showed Girlfriend was not diligent because she did not list the wedding planner as a witness, did not file a motion to allow remote testimony, and did not take the planner's deposition before trial. Moreover, the trial court could have reasonably determined the testimony was cumulative of other testimony and, thus, did not abuse its discretion in denying the motion for new trial. Finally, Wife challenged the jury instruction that included additional information than what is included in the pattern jury charge. The instruction stated: Isolated references to each other as husband and wife, without more, are insufficient to establish that [Boyfriend] and [Girlfriend] each represented to others that they were married. Whether [Boyfriend] and [Girlfriend] had a reputation in the community for being married to one another is a significant factor in your determination of whether [Boyfriend] and [Girlfriend] each represented to others that they were married. A jury charge should track the applicable statutory language as closely as possible, and the trial court should not burden the jury with surplus instructions. A proper jury instruction assists the jury, accurately states the applicable law, and is supported by both the pleadings and evidence. That said, not every correct statement of law belongs in the jury charge. A jury instruction impermissibly comments on the weight of the evidence when it encourages the jury to give undue weight to certain evidence. Here, the jury heard evidence that Girlfriend told certain people she was married, while she told others she was engaged. The parties sometimes referred to each other as "husband and wife," but not always. Boyfriend asserted Girlfriend edited old Facebook posts to create references to herself as his wife. Given the evidence presented, the instruction was proper to assist the jury in understanding the law.

## V. DISCOVERY

### A. *Caldwell v. Quaid*, No. 14-24-00071-CV, 2026 WL 308913 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (02-05-2026).

**Husband Failed to Establish Good Cause to Admit Late-Produced Expert Report; Offer-of-Proof Not Necessary Because Report Already in Record and Appellate Review Did Not Hinge on Evidentiary Concerns but on Timeliness of Disclosure.**

Facts: Shortly before the first trial setting in the parties' divorce, Husband supplemented his tracing expert's report, noting that the impressions and opinions would be provided upon completion of the report. Husband sought a continuance to allow his expert to complete the evaluation. The parties agreed to reset trial but did not make any agreement regarding the expert report. One week before the reset trial, Husband produced his report. The trial court sustained Wife's objections regarding untimely production and excluded the report from evidence. At the trial's conclusion, the court rendered a divorce on the grounds of Husband's adultery and divided the community estate. Husband appealed.

Holding: Affirmed.

Opinion: Husband first challenged the exclusion of his tracing expert's testimony, which Husband framed as a "death penalty" sanction. Contrary to Husband's assertion, the exclusion was not a death penalty sanction. Under the rules concerning expert disclosures, noncompliance results in the automatic exclusion of evidence. Husband bore the burden to show good cause or lack of surprise for his untimely disclosure. While Husband produced the name of his expert early on in the litigation, he did not produce the expert's "mental impressions and opinions and a brief summary of the basis for them" until a week before trial. Husband moved for a continuance to obtain more time for the expert's tracing, but instead of obtaining a ruling on that motion, the parties offered a partial mediated settlement agreement that did not address the admissibility of Husband's expert's report. The trial court was duty-bound to exclude the evidence unless Husband met his burden to show good cause. Although Husband stated that Wife was not prejudiced, his argument was conclusory and did not satisfy his burden. Husband next argued the trial court

erred in failing to allow him to make an offer of proof for the expert's testimony. The purpose of an offer of proof is to show the reviewing court the nature of the evidence specifically enough so that the reviewing court can determine its admissibility. Here, the ruling pertained to the belated timing of disclosure, not the admissibility of the testimony under the rules of evidence. Further, Husband had filed the report, so it was already part of the appellate record. Even presuming the trial court erred in disallowing the offer of proof, the decision did not prevent Husband from presenting his appellate issues.

**B. *In re D.J.*, No. 05-24-00962-CV, 2026 WL 265250 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (01-30-2026).**

**Discovery Sanctions Improper Because Father Did Not Receive Notice of Potential Sanctions and Mother Did Not File a Motion to Compel Before Final Trial.**

Facts: A divorce decree included provisions for the parties' child, including an obligation for Father—who had two master's degrees and a PhD—to pay monthly child support. The following year, Father filed a motion to terminate income withholding because he had just lost his job. After a hearing, the trial court temporarily reduced Father's child support obligation based on Father's monthly unemployment income. Just after that hearing, Wife retained counsel and served Father with discovery requests to which Father only partially responded. At the final hearing, Father acknowledged failing to fully respond to discovery and stated he did not have the responsive documents at the hearing. Father testified that he had been applying for jobs but had not found one and that he had to borrow money to pay bills. On cross-examination, Father agreed that he owned real property, a retirement account, and an investment account. After Father rested, the court granted Mother's motion for judgment and denied Father's request to terminate child support, noting Father had not provided any documentation of his current financial situation that would enable the court to determine Father's assets and income. The court denied Father's request to terminate his child-support obligation, made the temporary reduction in Father's child-support obligation final, and ordered Father to pay a monetary sanction for discovery abuse. Father appealed pro se.

Holding: Affirmed as Modified.

Opinion: Father challenged the denial of his request to terminate his child-support obligation. Father bore the burden to present evidence of his historical and current financial circumstances, but he presented only limited evidence. Based on the record, the trial court did not abuse its discretion in denying Father's request. Mother incurred $4800 in attorney's fees, which was the amount set for the sanction award against Father. The trial court explicitly stated that the award was a discovery sanction and not simply an attorney's fee award. Sanctions for discovery abuse under Rule 215 may be imposed only after notice and a hearing. Notice is essential for the proper imposition of sanctions. Father did not receive proper notice for the imposition of sanctions. Moreover, sanctions for alleged violations known to movants before trial are waived if a hearing and ruling are not secured pretrial. Mother's counsel explained that he did not file a motion to compel due to the expense and limited timeframe before trial. Thus, the imposition of sanctions was an abuse of discovery, and the appellate court modified the order to vacate the sanctions. Father additionally alleged the court was biased against him. However, the record did not establish a deep-seated favoritism or antagonism that would make a fair judgment impossible.

## VI. STANDING

**A. *In re N.A.*, 2024 Tex. App. LEXIS 7673 (Tex. App. – San Antonio October 30, 2024, orig. proceeding) (Cause No. 04-24-00145-CV) (mem. op)**

***Harsh results denying standing exposes deficiencies in the parentage statutes.***

Nancy and Judy (aliases) were involved in a romantic relationship from 2020 to 2023 and lived together with Judy's two children. In 2021, Nancy gave birth to a child using the same sperm donor responsible for the pregnancies of Judy's two children, making all three children true half-siblings. Nancy's child was given a hyphenated last surname using Nancy and Judy's last names and they all lived together as a family. The relationship ended in August 2023 and Nancy moved out with her one child. In October, Judy filed a SAPCR and claimed standing under TFC 102.003(a)(9), care, custody and control for a period of 6 months. Within that pleading Judy did not claim she was a parent and she did not seek an adjudication of parentage, but asked that both parties be named JMC of the child. (Judy's two older children are not part of this dispute). Nancy filed a plea to the jurisdiction, asserting Judy lacked standing and had not asserted that Nancy was unfit. Judy amended her pleadings, did not change her standing allegations, but did attach an affidavit in which she described herself as the "other mother" and a "parent-like" figure,

referring to her own parents as the child's grandparents. Nancy filed special exceptions, seeking to determine whether Judy was proceeding as a parent or a non-parent. At the hearing on temporary orders, Judy's attorney conceded that Judy was not a biological parent and that her only basis for standing was care and control for 6 months. The court denied the special exceptions and heard evidence on temporary orders. The court rendered orders naming both parties as parents, named them temporary JMC of Nancy's child and ordered Judy to pay Nancy child support. The court appointed an amicus, ordered a psychological evaluation and enjoined Nancy from changing the child's name during the suit. Nancy sought mandamus relief, challenging the trial court's finding that Judy was a parent without pleadings seeking that relief and without evidence establishing her entitlement to it. The COA initially acknowledges that TX is a fair notice state when it comes to pleadings and that in SAPCR situations this rule is often relaxed. However, those cases addressing a relaxed standard are not ones that have dealt with the question of whether a party is proceedings as a parent or non-parent. The COA notes that this is significant because it changes the relevant standard to be applied, the relevant evidence to be considered and a determination of whether the parties will be treated equally or whether the fundamental rights of only one (as a parent) will be at issue. From the record, the COA notes that the issue of parentage was not tried by consent as the trial judge was the only one who appeared to have that intent. The COA further notes that Judy had no basis upon which to assert a parentage claim as she did not give birth to the child, she never took steps to adopt the child, she did not sign the birth certificate or execute an acknowledgment of maternity and the parties were not married. Judy argued that she could be considered a parent by estoppel, but the COA notes that this concept arises from Chapter 160 where there is a presumed parent and Judy did not qualify as a presumed parent under any statute. The majority points out that their holding is not dependent on Judy's gender or the nature of the parties' same sex relationship but would have been the same if Judy had been Nancy's ex-boyfriend under the same facts. Finding the trial court abused its discretion the COA grants mandamus relief and orders the trial court to vacate the temporary orders resulting from its decision in their entirety. **Concurring Opinion:** Justice Rios concurs in the result but writes separately to note her belief that the majority opinion goes too far. Justice Rios believes mandamus could have been granted on the lack of pleadings alone and that the majority's opinion on all other issues that could be involved is premature, relies upon matters not fully developed in the record and which could become the subject of future disputes should Judy amend her pleadings. Justice Rios encourages the parties not to rely upon dicta in the majority as reflecting their opinions on matters not currently before them. Justice Rios also encourages the TX Legislature to incorporate equitable principles into the parentage statutes, noting that TFC 160.204(a)(5) (living with a child and holding the child out as your own for 2 years) is the only equitable path to parentage that does not involve marriage. Justice Rios acknowledges that children such as Nancy's child in this case may suffer trauma in situations where a person they have only known as their parent is not given that legal status when the adult relationship ends. Justice Rios offers a variety of examples where equity has already been incorporated into the statutes as promoting a child's best interest. Justice Rios expressed her concerns over the harsh results of this case under a strict interpretation of the statute, noting that the undisputed facts showed that the child fully considered Judy to be a "mom" and her children to be siblings, highlighting Nancy testimony that her plan was to sever all ties between them. This case gives us a lot to think about.

**B. *In re Battenfield,* 2025 Tex. App. LEXIS 909 (Tex. App. – Texarkana February 14, 2025, orig. proceeding) (mem. op.) (Cause No. 06-24-00090-CV)**

***Statutory definition of "parent" does not include an alleged father and that makes all the difference.***

The Clawsons obtained guardianship and thereafter conservatorship of three children. Their biological mother, Jessica, consented to these orders. When Jessica died, her sister Samantha intervened in the conservatorship case and sought custody of her niece and nephew as the third child had died in the Clawson's care. Samantha claimed standing pursuant to TFC 102.003(a)(13) allowing a relative within the 3rd degree of consanguinity to bring an original SAPCR if the *parents* are deceased at the time suit is filed. The Clawsons challenged standing, arguing that the word "parents" would include the children's alleged biological fathers, asserting they believed these individuals could be identified and they were still living. Samantha argued that "parents" is included in the definition of "parent" in TFC 101.024(a) which includes a presumed father, a man claiming to be the father, an acknowledged father, an adjudicated father and an adoptive father, but not an "alleged" father. Samantha testified that no man met the required criteria. The trial court agreed with the Clawsons. Samantha sought mandamus relief. The COA determined that when a word is defined by statute, the statute controls and in this case the definition of

"parent" would include "parents" as referred to in TFC 102.003(a)(13). The trial court erred by applying the definition. Further since Samantha was a relative within the third degree of consanguinity, she had standing. Mandamus granted.

**C. *In re S.N.*, __ S.W.3d __, No. 02-25-00525-CV, 2025 WL 3713587 (Tex. App.—Fort Worth 2025, orig. proceeding) (12-22-2025).**

**Girlfriend Lost Standing in Pending SAPCR Because Her Amended Petition with Supporting Affidavit Was Insufficient to Satisfy the New Family Code Section 102.0031.**

Facts: During their relationship, Mother and Girlfriend each adopted children and gave the other conservatorship rights to certain children each had adopted. Later, the Child was placed in Mother and Girlfriend's home because, in part, he was a sibling of one of Mother's adopted children. When Mother and Girlfriend broke up, they agreed to a possession schedule for the previously adopted children, and the Child followed the same schedule. About 6 months after the breakup, Mother adopted the Child. Girlfriend filed suit to be appointed the Child's sole managing conservator. Despite the lawsuit, Mother and Girlfriend continued following the agreed possession schedule for a few years until Mother terminated Girlfriend's visitations with the Child. On September 1, 2025, the new statute requiring affidavits from nonparents (Section 102.0031) became effective and applied to pending litigation. Thus, Girlfriend amended her petition and attached a supporting affidavit. Mother filed a motion to dismiss, alleging Girlfriend's affidavit was insufficient to support the requested relief. After the trial court denied the motion to dismiss, Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: When standing has been conferred by statute, the statute itself provides the proper framework for a standing analysis. The new Section 102.0031 requires a nonparent to attach to her petition a supporting affidavit that contains facts to support an allegation that denying the relief sought would significantly impair the child's physical health or emotional development. If the affidavit is insufficient, the court "shall" deny the relief sought and dismiss the suit. Girlfriend's affidavit described her relationship with the Child, concerns that the Child blamed himself for the parties' breakup, and concerns that Mother's choice to withhold the Child from Girlfriend was detrimental the Child's wellbeing. The appellate court reviewed the affidavit in light of the numerous opinions addressing significant impairment in the context of grandparent-access suits because the statutory language is nearly identical. Because the statements in Girlfriend's affidavit were conclusory and would fail in the grandparent-access context, the affidavit also failed here. Although Girlfriend noted that the appellate court previously found in favor of her in standing arguments, those prior opinions were issued before the legislative change. A party may lose standing while a case is pending. Further, contrary to Girlfriend's assertions, the new legislative change did not intend to codify Justice Lehrmann's concurrence in In re C.J.C., 603 S.W.3d 804 (Tex. 2020) (orig. proceeding) but to codify the majority opinion in that case. Additionally, C.J.C. did not concern standing.

**D. *In re Marriage of Chatman*, No. 12-25-00091-CV, 2026 WL 395247 (Tex. App.—Tyler 2026, no pet. h.) (mem. op.) (02-11-2026).**

**Although Evidence Showed Aunt And Uncle Could Serve As Better Custodians For The Children, There Was No Evidence To Overcome The Parental Presumption, And Court Erred In Appointing Aunt And Uncle As Joint Managing Conservators With The Parents.**

Facts: Mother filed for divorce after 12 years of marriage. The parties had two Children before filing, and Mother gave birth to Twins during the pendency of the suit. Father sought to terminate Mother's parental rights to all four Children on the ground of abandonment. Mother informed the court she had initiated a kinship adoption for the Twins so that her sister and brother-in-law (Aunt and Uncle) could adopt them. Mother had initially incorrectly believed Father was not the father of the Twins. Aunt and Uncle intervened, seeking appointment as the Twins' sole managing conservators, as Aunt and Uncle had been the Twins' sole providers since their birth. By the time of final trial, Mother had another child, but a DNA test established Father was not that child's father. Father testified that while Mother was pregnant with the Twins, he asked her if he was the father, and Mother said no and claimed to be serving as a surrogate for Aunt and Uncle. Agreed temporary orders had granted Father supervised possession of the Twins, but when he returned the Twins to Aunt and Uncle, the Twins had bruises on them. After that incident, Aunt and Uncle refused to agree to any further visitation for Father with the Twins. Father said the alleged photos of bruising (not admitted into evidence) looked more like a rash. Aunt accused Father of being illiterate, having only a ninth-grade education, and placing little weight on education. She did not believe Father could adequately care for the Twins. Father did not think he

should have to pay child support for the Twins if they were not in his home. The final decree of divorce dissolved Mother and Father's marriage, appointed Father and Mother as joint managing conservators of the older two Children, and gave Father the exclusive right to designate those Children's primary residence. The court appointed Father, Mother, Aunt, and Uncle joint managing conservators of the Twins and gave Aunt and Uncle the exclusive right to determine the Twins' primary residence. Father appealed pro se.

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

Opinion: Father first challenged Aunt and Uncle's standing, but the uncontroverted facts established Aunt and Uncle had care, control, and possession of the Twins sufficient to satisfy the prior version of Section 102.003(a)(9). Father further challenged the appointment of the non-parents Aunt and Uncle as the Child's managing conservators. Although Father had failed one drug test, a subsequent test was negative. There was no additional evidence of drug use by Father, and no evidence any alleged use impacted the Children. Although there were allegations of bruises on the Twins, there was no evidence linking the claimed injuries to Father. Mother testified she was not concerned Father would abuse the Twins. Although Aunt complained generally about Father's lack of focus on education, she did not point out any specific behavior that gave rise to those concerns. While there was some evidence Aunt and Uncle might have been better custodians for the Twins than the parents, that evidence was insufficient to overcome the parental presumption. Evidentiary close calls should be decided in favor of a child's natural parents. Thus, the trial court erred in appointing Aunt and Uncle as conservators.

## VII. JURISDICTION AND VENUE

### A. *In re Christon,* 698 S.W.3d 597 (Tex. App. – Waco August 29, 2024, orig. proceeding)

***Venue may be transferred only to a proper county which does not include a county in which the child resides in violation of a court order.***

The court in Brazos County entered a default divorce. The default decree provided for no geographic restriction and thereafter M and the child moved to Martin County. F successfully had the default set aside on a MNT. Thereafter, the court again granted a divorce in September 2022. At that time M and the child still lived in Martin County, Texas. Within the rendition, M was given the exclusive right to establish the residence of the child in either Brazos or Montgomery County. She was allowed to stay in Martin County for a brief period awaiting sale of the parties' residence but she was ordered to return to Brazos County within 4 to 5 days after the sale. The parties thereafter agreed that the geographic restriction would not begin until the week before school started in 2023 and a final decree was not signed until August 2023. M never relocated and stayed with the child in Martin County. F filed a motion to modify terms of the August 2023 decree. M filed an answer along with a motion to transfer the case to Martin County because the child had resided there for more than 6 months. F filed a controverting affidavit. F non-suited his modification but refiled shortly thereafter and M again responded with a motion to transfer. The trial court denied her motion and she sought mandamus relief. The majority panel noted that although a transfer would normally be mandatory where a child has resided in another county for 6 months, this is only required where there is a proper court to transfer venue to. The majority panel of the COA found that Martin County was not a proper court to transfer venue to because M was living there in violation of a court order. As a result, the COA found that M had waived her right to seek a mandatory transfer and denied mandamus. The dissenting justice found that the Family Code makes transfer mandatory under the facts of this case. Further, the dissent recognized that M and the child began living in Martin County at a time when there was no order preventing that and the child's residency in that county began at that time. F later signed an agreed order allowing the child's residence to be extended in Martin County for almost a year. Under the circumstances, the dissent found no authority which would have allowed the trial court to deny M's requested transfer and that it was an abuse of the discretion for the trial court to do so.

### B. *In the Interest of S.G.F.,* 2024 Tex. App. LEXIS 6836 (Tex. App. – Dallas September 17, 2024, no pet.) (Cause No. 05-23-00853-CV) (mem. op.)

***Failure to pursue all available remedies from default precludes granting BOR and default divorce decree signed in county where no one lived had to be affirmed.***

H and W were married in 2014. In 2017, M gave birth to a child. In 2019, SC filed a suit to adjudicate paternity of the child in Kaufman County. H and W and SC entered into a MSA which established that SC was the biological father of the child and that H would be dismissed from the suit and a final agreed order would be entered. Despite the MSA the suit was

DWOP'd in December 2021. In January 2022 H filed for a divorce in Dallas County and served both W and SC but neither answered the suit. Instead, SC filed a motion to reinstate the parentage suit in Kaufman County. Although that court initially reinstated the case, it signed another order denying reinstatement because it has lost plenary power. In March the Dallas court signed a default divorce decree adjudicating H, not SC, as the father of the child. SC learned about the default just after plenary power expired when F showed up at the child's school to pick her up. SC hired counsel and filed a bill of review and a motion to dismiss the Dallas divorce case because no one had lived in Dallas County at the time the divorce was filed. The trial court held a hearing on the BOR and motion to dismiss, granting both. H appealed, arguing it was error to grant a BOR because SC could not demonstrate that H had prevented him from timely securing relief from the default judgment or that the judgment existed through no fault of his own. The COA agreed, determining that when a party fails to use due diligence to pursue all legal remedies available to them, they cannot secure relief through an equitable BOR. Here the COA noted that when SC learned of the default, he qualified for and had plenty of time to obtain an extension under TRCP 306a to file a motion for new trial. Because he did not do so, he failed to exercise due diligence and was not entitled to a BOR. In addition, the COA found that although no party lived in Dallas County when the divorce suit was filed, residency requirements were not jurisdictional. As a result, the Dallas County decree was merely voidable and not void. SC's motion to dismiss for lack of jurisdiction was a collateral attack which could not be sustained unless the order was void, making it error for the trial court to grant the motion to dismiss. Trial court's orders reversed and the Dallas County Final Decree reinstated.

**C. *In the Interest of B.G.J., 702* S.W.3d 886 (Tex. App. – Eastland 2024, no pet.)**

***Although M and child "lived" in county for 2 days when F filed suit elsewhere, M could not establish "permanency" in the new county as justifying transfer of venue.***

B.G.J. was born in 2021 to M and F, who were not married. On July 20, 2022 F filed an original SAPCR in Erath County seeking to be named SMC and requesting temporary orders. F also filed a writ of HC and attachment for the child. The court set a hearing for August 4 and ordered M to produce the child on that date. In response, M filed a special appearance, plea to the jurisdiction and alternatively a motion to transfer venue to McCulloch County where she claimed to reside with the child. (The special appearance was a non-starter as M lived in TX) The court held a hearing at which M and F and other witnesses testified. According to the evidence, the parties lived together in Erath County with M's parents for a year before suit was filed. On 7/15 F moved out and took the child. M threatened kidnapping charges so he returned the child on 7/17. At 3:00 am on 7/18 the police and CPS visited M at the house. Later that day M left with the child and went to live in McCulloch County. F filed suit on 7/20/22. The trial court determined that M had not established any "permanency" as to her residence in McCulloch County and denied the motion to transfer. The court issued temporary orders naming F as primary JMC. The case was eventually tried to the court and F was named primary with certain geographic restrictions on domicile. M appealed, challenging the initial ruling denying her motion to transfer and the conservatorship rulings (which were ultimately affirmed and are not addressed in this summary). As to the venue ruling the COA recognized that TFC 103.001 requires suit to be filed in the county of the child's residence which is further defined as the county where both parents reside or if they don't reside together, the county where the parent with actual possession and control of the child resides. There was no dispute that M was the parent with actual possession and control on 7/20/22 when the SAPCR was filed. As such the focus was on determining M's residence on that date. M argued that TFC 103.001 imposes no time constraints upon the length of a party's residence in determining venue and the trial court erred by imposing one. The COA agreed, however considered cases where an element of "permanency" is still required. This involves evidence showing a fixed place of abode, occupied or intended to be occupied for a substantial period of time, that is permanent rather than temporary. The COA noted other cases where this was shown by obtaining a job, enrolling children in school, paying rent, etc.. In this case, M had been in McCulloch County for two days before suit was filed in Erath County. There was no evidence that in that time M had taken any steps to make it permanent or that she intended it to be permanent. Even though M lived in McCulloch County with the child on the date suit was filed, venue remained proper in Erath County because noting established permanency in McCulloch County. The COA ultimately found sufficient evidence to support the judgment as to conservatorship and other SAPCR issues.

**D. *In the Interest of N.M.B.H.,* 2024 Tex. App. LEXIS 8334 (Tex. App. – Dallas December 3, 2024, no pet.) (mem. op.) (Cause No. 05-23-01187-CV)**

***Order denying transfer of SAPCR on basis of divorce filing in another county affirmed where M contested existence of marriage and F offered no evidence to support his claim.***

M & F, unmarried, had a child together in 2018. In 2019 M filed a SAPCR in Collin County, seeking the parties' appointment as JMC with M as primary and requesting c/s from F. F filed a counter petition seeking primary. Several months later, M & F enter into a Rule 11 agreement on all issues and the court issued TO's based on that agreement. By the time the case went to trial in 2023, the court had taken away F's possession of the child. M had asserted F's ongoing harassment of her, including ongoing texts and emails, appearing at her workplace, the child's day care and doctor's appointments as well as contacting her family, despite mutual injunctions. M claimed F had spiraled out of control when he learned she was dating someone and she was fearful his conduct would endanger the child. The court's modified TO's gave F supervised visitation until he completed a psychological evaluation. M asked to modify the TO's again after visitation supervisors witnessed F inappropriately touching the child. In 2022, before the case went to trial, F filed a motion to transfer the suit, claiming he had filed for divorce from M in Denton County sometime in 2021. F argued that consolidation of the SAPCR with the divorce was mandatory. M denied the existence of a marriage and the court denied the transfer. The case was tried to a jury which found that M should be named SMC and that F should not be named as a conservator of any kind. The trial court signed an order denying F conservatorship or possession, ordering him to pay c/s and M's fees, as well as enjoined F's contact with M. F appealed. Regarding the transfer, the COA found that when a controverting affidavit is filed, the court must conduct an evidentiary hearing to determine if transfer is required. In this case, F offered no evidence establishing a marriage between the parties, which is a prerequisite for transfer under TFC 155.201(a). F failed to preserve error regarding the jury charge and his issue challenging the time limitations imposed by the court was overruled. Judgment affirmed.

**E. *In re P.R.*, No. 02-25-00543-CV, 2025 WL 3559018 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (12-11-2025).**

**Stepmother Lacked Standing to Amend Her Counterpetition for Divorce to Include a SAPCR Because She Did Not Share a Residence with the Child in the 90 Days Immediately Preceding Her Amended Petition.**

Facts: Mother and Father were married, but Mother died shortly after the Child was born. Not long after that, Father married Stepmother, but she moved out of the marital residence about 4 years later. Father petitioned for divorce and asserted there were no children of the marriage. Stepmother filed a similar counterpetition; however, she later amended it to seek conservatorship of the Child. Father challenged Stepmother's standing to make that request. At a hearing on Stepmother's standing, the undisputed evidence showed Stepmother provided actual care, control, and possession of the Child and acted as the Child's mother for years. Father initially obtained a protective order after filing for divorce to prevent Stepmother from seeing the Child, but he later allowed Stepmother to see the Child. During that time, Stepmother cared for the Child, took her to school and doctor's appointments, and kept the Child overnight with Father's permission. However, after a few months, Father stopped allowing overnight visits. The trial court determined Stepmother satisfied the requirements of Texas Family Code Section 102.003(a)(9) and denied Father's plea to the jurisdiction. The court appointed the parties joint managing conservators. Father sought mandamus relief.

Holding: Writ of Mandamus Conditional Granted.

Opinion: At the time of filing, the prior version of the statute applied, requiring "actual" care, control, and possession for at least six months ending not more than 90 days preceding the petition. Although Stepmother had actual care, control, and possession of the Child and acted as a mother to the Child, she did not share a principal residence with the Child within the 90 days of her petition. Father argued that lack of a shared residence defeated Stepmother's claim of standing. "Stepmother acknowledge[d] that at the time she first filed the SAPCR, she had not shared a principal residence with [the Child] within no more than 90 days before the SAPCR's filing." Stepmother argued the relation-back doctrine should have applied, making the date of filing the date of her original counterpetition for divorce, despite not having any SAPCR-related pleadings in that counterpetition for divorce. Family Code Section 101.031 defines "suit" as an action under "this" title (Title 5 SAPCRs). The time requirements of Section 102.003 are measured by when a "suit" is filed. Even if Father may have anticipated a future suit involving the Child, Stepmother's initial counterpetition did not constitute a Title 5 suit— only her amended counterpetition did. Thus, the timeframe for determining standing in the SAPCR had to be calculated based on her amended counterpetition and could not relate back to the

original counterpetition. Stepmother argued that she did not initially include the Child in her original counterpetition due to alleged erroneous advice of prior counsel. Regardless, the courts are bound by the statutory framework with respect to standing in SAPCRs, and evidence of a close relationship between Stepmother and the Child cannot provide a basis for ignoring the Legislature's intent. Contrary to Stepmother's claim of an unjust result, at the time of the hearing, Father had not restricted all Stepmother's access.

**F. *In re G.K.*, No. 02-25-00420-CV, 2025 WL 3558969 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (12-11-2025).**

**Mother Entitled to Restricted Appeal and New Trial Because No Evidence of Proper Service Appeared in the Record.**

Facts: Mother and Father were not represented by attorneys at trial or on appeal. Father sought to modify the prior SAPCR order because Mother had accepted a job in the Democratic Republic of Congo and expressed a desire to move there with the Child. Father sought "full custody." Father's petition did not include a certificate of service or request citation be served on Mother. The record did not include a return of service on or answer from Mother. Mother did file multiple motions, including a demand to dismiss Father's motion to find her in contempt. About three weeks after he filed his petition, Father moved to require Mother to designate an agent for service or to waive service. The court did not rule on that motion, but it did sign an order denying international travel on certain days. Subsequently, Father moved for final hearing and a default order, asserting Mother had moved and had constructively abandoned the Child. This motion also contained no certificate of service. Father also filed a motion asking the OAG be served with notice and requested the OAG's intervention with respect to child support. That motion had no certificate of service indicating Mother had been served. At trial, Father alleged Mother knew of the proceedings but offered no evidence to substantiate that claim. The trial court signed Father's proposed default order that day. Four months later, Mother filed a notice of restricted appeal.

Holding: Reversed and Remanded.

Opinion: To prevail on a restricted appeal, an appellant must establish that: (1) it filed notice of the restricted appeal within six months after the judgment was signed; (2) it was a party to the underlying lawsuit; (3) it did not participate in the hearing that resulted in the judgment complained of and did not timely file any postjudgment motions or requests for findings of fact and conclusions of law; and (4) error is apparent on the face of the record. Although Mother filed a post-judgment motion to set aside the default order, that motion was not timely filed. Father attached emails to his appellee's brief to support his appellate argument that Mother had actual knowledge of the trial court proceedings. However, documents attached to an appellate brief cannot be considered by the appellate court if those documents were not in the appellate record. Mother was entitled to proper service, and the trial court was required to obtain personal jurisdiction over Mother before signing a binding judgment. The record here contained no return of citation, and there are no presumptions in favor of valid issuance, service, and return of citation. Even if Mother's motions could be construed as a general appearance, there was no evidence Mother was served with notice of the final hearing. No evidence showed the motion requesting the OAG's involvement was served on Mother. Failure to provide Mother with adequate service deprived her of her due process right to appear and present her case.

**G. *Nitz v. Bouffard*, No. 03-25-00205-CV, 2025 WL 3558565 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (12-12-2025).**

**Father's Self-Diagnosed Purported Injury on Date of Trial Insufficient to Show His Choice Not to Appear Was Not an Act of Conscious Indifference, Particularly When He Did Not Request a Continuance or Ask to Appear Remotely.**

Facts: The Child's parents had been involved in litigation for a large portion of her life, resulting in 3 prior final orders before the most recent modification suit filed by Mother. Father had been previously ordered to submit to Soberlink testing five times a day per the parties' agreement, and Mother alleged he was no longer complying with that requirement. On the day of the final hearing, Father (pro se) sent an email to the court administrator advising that he was injured and unable to attend the hearing. The email was discussed at the beginning of the hearing. The trial court nevertheless signed a final default order, modifying possession and child support. Father hired a new attorney, who filed a Craddock motion for new trial to which no supporting affidavit or other evidence was attached. At a hearing on the motion, Father asserted that he had fallen from a ladder and rebroken his tailbone. Father rested and took some codeine that he had on hand but did not go to a doctor. He acknowledged that he had not requested the hearing be reset. In denying the motion, the court found Father's

failure to appear was a result of conscious indifference. Father appealed.

Holding: Affirmed.

Opinion: Father first asserted he did not receive proper notice of the final trial. The final setting at which Father failed to appear was not the first setting. Father had received more than 45 days' notice of the initial setting. That hearing was reset, and Father received 12 days' notice of the reset hearing. Rule of Civil Procedure 245 only requires 45 days' notice of the first setting. Notice of a reset final hearing must be "reasonable." Nothing in the record indicated the 12 days' notice was inadequate. Additionally, when setting the new date via email with Mother's counsel and the trial court, Father never asserted he was entitled to 45 days' notice or said he needed more time to hire counsel. When asked about the date at the new trial hearing, Father said he planned to attend and represent himself at the reset final hearing. Father failed to show he lacked adequate notice. Father next argued he was entitled to a new trial under Craddock and that his failure to appear was not the result of conscious indifference. Father offered no medical evidence to support his self-diagnosis of a broken tailbone. Father said he could walk after the fall. He explained that he began feeling better but could not sit on anything flat. He did not move for a continuance or ask to appear remotely. Based on Father's testimony, the trial court could have reasonably concluded Father's purported injury was not so severe that it rendered him unable to attend the hearing or that even if it did, Father had the ability to ask for a continuance or appear remotely but chose not to do so.

**H. *In re D.Z.C.*, No. 04-24-00565-CV, 2025 WL 3650390 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (12-17-2025).**

**Child Support Review Case Remanded for a New Trial Because No Record Made, and There Was No Indication Father Waived the Making of a Record.**

Facts: After an evidentiary hearing, the court signed an order in a child-support review initiated by the OAG. Father appealed. After a clerk's record was filed, but before a reporter's record was filed, Father filed an appellant's brief. The appellate court reached out to Father to determine whether he wished for the appeal to be considered without a reporter's record. Father then detailed his efforts to obtain a reporter's record. The court coordinator had informed him that the audio recording of that day had been reviewed, and no record of Father's case was found. The OAG then responded that if this were true, Father would be entitled to a new trial. However, the OAG could not confirm whether a recording of the trial existed. The appellate court then ordered the court coordinator to file a response. That response indicated that proceedings that day were made by Zoom, and recordings were generally kept through that application. However, that day, a visiting judge was presiding, and no record was made.

Holding: Reversed and Remanded.

Opinion: The Family Code requires a record be made of contested hearings unless the making of a record is waived by the parties. Here, the court's findings indicated a record was made, but the coordinator confirmed that was not the case. Nothing in the clerk's record suggested Father waived the making of a record, and the OAG did not assert otherwise. Because this error probably prevented Father from properly presenting his case on appeal, the case had to be remanded for a new hearing.

**I. *In re M.O.S.*, No. 04-24-00767-CV, 2026 WL 293342 (Tex. App.—San Antonio 2026, no pet. h.) (mem. op.) (02-04-2026).**

**Potential Due Process Violation in Refusal to Hear Post-Trial Evidence when Judgment Delayed by Almost a Year; However, Not Reversible Error Because the "New" Evidence Was Substantially Similar to What Was Presented at Trial.**

Facts: A prior order appointed the parties joint managing conservators and gave Mother the exclusive right to designate the Child's primary residence without a geographic restriction. Father filed a petition to enforce his standard possession order. A year later, Mother filed a counterpetition to modify and seeking a judgment for child support arrearages and to hold Father in contempt for nonpayment. Among the temporary orders rendered during the litigation, the trial court found credible evidence Mother was alienating the Child from Father, determined Mother's access to the Child should be supervised, and appointed Father as a temporary sole managing conservator. Despite these orders, Mother withheld the Child from Father. After a final hearing, the court stated an intent to make the temporary orders final and to hold a status conference in three months. Nearly a year later, the court held a hearing on Father's motion to enter. Mother objected and argued she should have been permitted to present evidence of events occurring in the last year. The trial court refused to hear additional evidence, and the final order matched the temporary orders and included a required status hearing. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court erred in refusing to hear her additional evidence. She further argued that in doing so, the court denied her due process because any changes in that year between the final hearing and final order would be excluded from future modification proceedings as res judicata. Thus, she would never be able to present that evidence to the court. Mother's argument first turned on when the trial court rendered its final order. In reviewing the record, the oral rendition after final trial did not constitute a rendition because the court demonstrated an intent that the litigation would be ongoing and was not yet completed. The question next became whether Mother's due process rights were violated by the exclusion of post-trial/pre-judgment evidence. The test to determine whether due-process rights have been violated balances three factors: (1) the party's private interest affected; (2) the risk that interest is deprived in error through the procedures used and the probable value, if any, of additional or alternative procedural safeguards; and (3) the government's interests, including the function involved and the fiscal and administrative costs that the additional or substitute procedural requirements would entail. The paramount concern in a child-custody modification suit is the best interest of the child. While it is understandable that the trial court would desire to keep things moving, particularly in a contentious case, the court's decision potentially deprived Mother of her due process rights. However, reversal is only appropriate when a trial court's error probably caused the rendition of an improper judgment. Mother detailed to the trial court the kind of evidence she wished to present, which was similar to the evidence she presented at the final hearing. "Although a refusal to allow evidence of the ten-month period of time can be significant, on this record and mindful that the trial court had the opportunity to determine the credibility of the parents and the weight to be given the same kind of evidence and similar allegations in the prior trial, we cannot conclude the trial court's best interest findings would have necessarily turned on the purported evidence to be offered by Mother at the [entry] hearing."

## VIII. PARENTAGE

**A. *In the Interest of R.G.S.,* 2024 Tex. App. LEXIS 8402 (Tex. App. – Beaumont December 5, 2024, no pet.) (mem. op.) (Cause No. 09-22-00425-CV)**

***Decree which did not adjudicate "second mom" was res judicata to later suit she filed to adjudicate parentage.***

Amber (A) and Jennifer (J) married in 2015. In 2016 they signed an agreement with a reproductive clinic and A underwent a procedure using sperm from the clinic. A gave birth to RGS in 2017. In 2020, A filed for divorce and identified RGS as a child of the marriage. In 2021 the parties appeared before the court to finalize the divorce and SAPCR pursuant to an MSA, which included a term for J to be adjudicated as a parent of RGS. Ten days before the prove-up hearing the court asked for briefing on its ability to adjudicate a second mom. Prior to the hearing J amended her pleadings to request adjudication. At the hearing the court heard testimony regarding J's actual care and control of RGS and requested the court to name her a non-parent conservator IF the court decided not to adjudicate her. The court recessed and asked the attorneys to talk and let the court know what they decided. Upon return the court then signed a Final Decree which had been approved and signed by counsel and by both parties as to form and substance. The Decree did not adjudicate J as a parent but approved the remainder of the MSA terms included therein. When the court announced it was not adjudicating J a parent there was no objection. The Decree contained a Mother Hubbard clause denying all relief requested if not granted within the Decree. J did not file a MNT and did not pursue an appeal. Six months later, J filed a petition to adopt RGS, or alternatively to adjudicate parentage. A responded with an answer asserting res judicata as an affirmative defense and asked that the case be dismissed. The court denied the petition to adjudicate and severed the petition for adoption. J appealed claiming that res judicata does not apply because there was no adjudication of her parentage since the trial court refused to order it. The COA notes that res judicata applies to matters already litigated as well as those that could have been litigated. The COA found that in this case, the issue of J's parentage was front and center, with pleadings requesting it and a final order that specified all relief requested and not granted was denied. J could have objected at the time the court announced its ruling but did not do so and did not appeal. All elements of res judicata (prior judgment on the merits, identify of parties and second suit with the same claims) were met. Judgment affirmed. (Also see related case, *In re R.G.S.,* under and related case *Detillier v. Smith* under the section for SAPCR-Miscellaneous).

**B. *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)**

***Tangled trysts and trios threatens true parentage.***

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 statute 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 him 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.

**C. *In re E.R.F.*, No. 04-25-00570-CV, 2026 WL 221259 (Tex. App.—San Antonio 2026, orig. proceeding) (mem. op.) (01-28-2026).**

**Adjudication of Paternity Unnecessary Because Father Was Both Presumed and Acknowledged Father.**

Facts: Mother, the Child, and Mother's two other children lived with Father for about six years. After an argument ,and without notice to Father, Mother took the Children to live with Mother's family in Wisconsin. Father discovered what Mother was doing while she was at a motel in Oklahoma. Father physically took the Child from Mother over Mother's protests, and she continued to Wisconsin with her other children. Father filed a suit to adjudicate the parentage of the Child. Mother denied that Father was the Child's biological father and claimed to have told Father that many years earlier. However, she acknowledged Father was the only father the Child had ever known, and Father was a good father. Father

claimed to have believed he was the Child's father until receiving the results of a court-ordered DNA test. That test was ordered after Father had nonsuited his petition. Father was listed as the Child's father on the Child's birth certificate, and an acknowledgement of paternity that was endorsed by both Mother and Father indicated Father was the Child's father. Father was the person who took care of the Child's health and wellbeing. He expressed concerns about Mother's ability to care for the Child and alleged Mother had threatened to harm herself. Father's sister corroborated Father's testimony. Following the close of evidence in the temporary orders hearing, the court noted the nonsuit. Mother's counsel advised that the case was still live because of her request for genetic testing that had been filed before the nonsuit. Father's counsel asserted Mother had not filed a counterpetition before the nonsuit, and Mother did not contradict that assertion. The trial court set the case for final trial and ordered Father to return the Child to Mother in Wisconsin within two days of the hearing. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: An adjudication of paternity is not necessary if the man's paternity is established by other enumerated means. Father was the Child presumptive father because he resided with the Child and held out to others that he was the Child's father during the first two years of the Child's life. Additionally, Father had signed a valid acknowledgement of paternity. No evidence indicated a rescission proceeding had been initiated. Thus, despite Father's non-suiting of the petition to adjudicate parentage, which was wholly unnecessary given his status as described above, Father remained vested with the same parental rights as Mother with regard to the child The record clearly established that the trial court's order to send the Child to Wisconsin was based on its belief that paternity had not yet been established by adjudication. However, adjudication was unnecessary. The trial court's order required Father to relinquish custody of his Child and deprived the Child of the only home he had ever known and of access to his existing educational and medical providers, including his speech therapy and autism treatment. The appellate court also noted that it appeared the trial court erred by continuing to act after Father's nonsuit. However, that question was not presented in the mandamus petition, and the answer was not clear from the mandamus record.

## IX. ALTERNATIVE DISPUTE RESOLUTION

**A. *In the Interest of G.L.W.,* 2024 Tex. App. LEXIS 5740 (Tex. App. – Dallas August 12, 2024, no pet.) (mem. op.) (Cause No. 05-23-00327-CV)**

***Terms of MSA extending amicus duties post-judgment were void and not severable from remainder of the MSA, requiring trial court to set the entire agreement aside.***

In 2018 M filed for divorce and F filed a counter petition. The parties were in litigation for 4 years. In 2022 the parties attended mediation but did not settle. Even so, for days after the mediation the mediator, the amicus for the children and the attorneys for both parties continued to discuss settlement. The mediator dropped out of the discussions however the others continued to negotiate. The case was set for trial a week later and on the eve of trial an agreement was reached as to matters regarding the SAPCR, but the agreement reserved issues concerning the property division and further provided that all unsettled issues would proceed to arbitration with the mediator. All parties signed the agreement which was filed with the court on the morning of trial. The agreement was titled "Partial Mediated Settlement Agreement for SAPCR Issues Only." Shortly thereafter M's attorney noticed the MSA did not include terms for possession of the children over spring break and asked the mediator to include it, which the mediator never did. The parties went to arbitration and an award was made. F's counsel drafted a proposed decree. One of the MSA terms was that the amicus for the children would be retained, post-divorce. F filed a motion to enter the decree. M filed a notice of revocation of the MSA, arguing that it did not meet the requirements of an MSA. M filed objections to the decree. The court overruled M's objections and signed F's decree. M filed an MNT and motion to set aside the arbitration award, both of which were denied. M appealed. The COA first addressed M's issue challenging the post-divorce appointment of the amicus attorney. M argued that this should not be permitted and that the amicus was given duties and authority beyond what was allowed under the TFC. The COA acknowledged that the parties MSA did provide their agreement that the amicus would continue and that the terms of the MSA clearly indicate that it was the parties' intent for the amicus to have expanded duties not otherwise provided in the TFC. However, the COA did note that F provided no authority allowing for such an appointment with expanded powers, post-divorce. The COA examined other cases wherein expanded authority for an amicus attorney had been rejected. Agreeing with a prior decision from the 14th COA (242 SW3 847), the COA held that the powers of an amicus are limited to those specified in the TFC and a trial court abuses its discretion if it enters an order which extends their authority beyond the statute. The COA

recognizes that the MSA included terms for the amicus continued appointment and expanded duties, however because these terms were beyond the court's authority, they were void as were the terms of the decree which attempted to make them effective. Because the MSA terms were void, it could not be considered a statutorily compliant MSA binding on the parties or the court. Thereafter the COA determined whether it could sever the void terms from the balance of the decree. Severance depends upon whether the illegal terms were a main or essential part of the overall agreement. In this case, the parties' intent was necessary to make that determination and their intent could not be determined because it was part of a confidential mediation process and there were no exceptions to application of the mediation privilege which would have allowed this evidence to be compelled. As such, severance was not permitted and the decree was reversed and remanded with instructions for the trial court to set aside the MSA upon which it was based and to return the case to the active docket.

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

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

Facts: On the final day of trial, the parties announced they had reached an agreement. The parties then testified on the record regarding their agreement, and a joint exhibit was referred to but was not offered into evidence. Among other provisions, the parties agreed that a third party would manage the day-to-day activities of their company and that no further distributions would be made after that day. An email was sent from Wife's counsel to Husband's attorney's paralegal with the attached joint exhibit and stated the parties would agree to terms for transfer of ownership of the company or else they would re-appear before the trial court. Subsequently, Husband filed a motion to sign and a motion to reopen evidence. Husband argued the evidence should be reopened to address whether Wife needed to refinance the company. The trial court denied the motion to reopen evidence. In his proposed decree, Husband included language restricting distributions from the company. Wife argued the additional language conflicted with the "Rule 11 agreement"—the post-trial email regarding transferring ownership. The trial court agreed with Wife and signed a decree without Husband's proposed language. Husband appealed.

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

Opinion: Husband argued the final decree did not match the parties' agreement. The parties' agreement at trial was dictated on the record in open court before a certified shorthand reporter, both parties were present, and the terms of the agreement and the parties' acknowledgement of the agreement was put on the record. Thus, that oral agreement satisfied the requirements of Rule 11 and was enforceable. Because the Rule 11 agreement was valid and enforceable, the decree was required to be in strict or literal compliance with the terms of the parties' agreement. However, the subsequent email was not signed by 47 the parties or their attorneys and was not admitted into evidence. Thus, neither that email nor the joint exhibit was part of the Rule 11 agreement. Wife responded that the circumstances surrounding the settlement agreement indicated that restrictions on distributions were only necessary until a decree was signed. Wife pointed to the joint exhibit to support this assertion. However, the joint exhibit was never offered and was not part of the agreement. Therefore, because the parties testified to their agreement regarding distributions in their oral agreement, the trial court erred in failing to include that language in the final decree. Husband next argued the trial court erred in failing to reopen evidence. Although Husband urged that the information he sought to present was new, he offered no evidence as to why the evidence was previously unavailable, and he did not argue that he did not have an opportunity to present the evidence before judgment. Rather, he conclusorily claimed he was diligent in obtaining evidence without offering any further elaboration.

**C. *Gan v. Mathijssen*, No. 03-24-00115-CV, 2026 WL 232789 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (01-29-2026).**

**Court Required to Enforce Partial MSA's Agreement of Guideline Support and Could Not Offset That Amount to Account for Father's Travel Expenses.**

Facts: The parties married in the Netherlands and then moved to Texas. Father worked remotely in Texas for the University of Pennsylvania for a few years before moving to Pennsylvania. Mother remained in Texas. After Father moved, the parties cross-petitioned for divorce on the grounds of insupportability and entered into a partial MSA addressing most of the issues concerning their only Child. At trial, Father testified

that after separation, Mother depleted their accounts, and he asked that the depletion be considered in the just and right division. Father also detailed the travel costs associated with visiting the Child in Texas. Mother acknowledged taking some money at separation but contested the amount and invoked the Fifth Amendment regarding some of the transfers. Mother additionally sought reimbursement for alleged waste by Father and retroactive child support. At the trial's conclusion, the court adopted the MSA's provisions regarding conservatorship, possession, and access but found the child-support provisions were "clear as mud." The court found Mother breached her fiduciary duty to Father by the way she spent money. In a subsequent letter ruling, the court set child support at less than guideline due to travel costs and awarded Father a money judgment to reach a just and right division of the community estate. On Mother's request, the court issued detailed findings. Mother appealed.

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

Opinion: Mother first argued the trial court erred in setting Father's child support obligation at an amount less than the statutory guideline amount and less than what had been agreed to in the partial MSA. Further, Mother argued neither party requested that child support be set differently from what was in the MSA. Here, the MSA complied with the Family Code and listed certain issues that would be reserved for trial. Child support was not among those issues. Rather, the agreement provided that "current child support" would be "guideline child support per the current temporary order." The MSA was binding, and no exception allowed the trial court to deviate from that agreement. Thus, the appellate court reversed and rendered the amount of Father's child support obligation Mother additionally challenged the just and right division. Specifically, she challenged the money judgment because her expenditures during the divorce were necessary and not wasteful. The trial court was in the best position to weigh the credibility of each witness's testimony and other evidence, which was legally and factually sufficient to support the trial court's findings.

## X. GENERAL CONSERVATORSHIP ISSUES

### A. *Gopalan v. Marsh,* 706 S.W.3d 650 (Tex. App. – Austin, 2025, pet. filed)

***JMC F given the exclusive right to determine residence does not equate to primary parent designation and does not entitle him to elevated possession or other exclusive rights, affirming order giving him expanded possession and ordering him to pay c/s to M.***

H and W married in 2000 and purchased a home in 2010, with both contributing funds to the purchase. The parties had two children. W filed for divorce in 2018 and H filed a counter petition. The case was tried to a jury in May 2022 and thereafter additional evidence was admitted before the bench in July 2022. The jury named H as the parent to be awarded the exclusive right to establish the primary residence of the children with Travis County. The jury characterized the residence as 88% community and 5%+ separate of each spouse. Thereafter the trial court allocated rights and duties, giving W exclusive medical/psychological/education and awarded H something akin to an SPO with conditions regarding therapy. The court ordered H to pay W c/s of $2300 per month and obligated H to post a $250K bond if he traveled internationally with the children. The court granted a JNOV on the jury's finding that H had a s/p interest in the residence and awarded the entire residence to W. H appealed. H claimed that the court's allocation of rights and duties and award of possession contravened the jury's verdict and was unconstitutional because the jury named him the primary parent. The COA discounts this claim, pointing out that H was given the exclusive right to establish the primary residence of the child but he was not "named" a primary conservator, primary parent or primary caregiver. The COA notes the TFC statute which directs the court to allocate rights and duties between parents either independently, exclusively or jointly and holds that if the Legislature had intended that the exclusive right to establish residence equates to superior rights over the other parent and/or a primary parent designation it would have said so. This same reasoning underscored the COA's analysis of the periods of possession, finding that nothing in the TFC requires the parent given exclusive domicile rights to be given greater periods of possession. The COA found that the final order expressly gave H the exclusive right to designate the children's residence and did not otherwise contravene the jury's verdict in any manner. Further, the COA stated that a decree which gives certain rights exclusively to one parent is not unconstitutional. H further challenged the bond requirements on his international travel with the children, claiming that although he was a naturalized UA citizen, these restrictions were culturally and ethnically biased. The COA disagreed and found that the evidence sufficiently supported concerns for international abduction. Regarding c/s, the COA found that nothing restricts the court from ordering the parent with domicile rights to pay c/s to the other parent and in this case H's income ($500K/year) was far in excess

of W's and it was in the best interest of the children that he pay support. As to the JNOV regarding H's s/p interest in the residence the COA found that although H established his withdrawal of s/p funds immediately prior to the house purchase, there were significant gaps in his tracing of those funds towards the purchase price versus other expenditures, justifying the JNOV ruling. Judgment affirmed.

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

***COA reverses decree where judicial bias, not evidence, supported the trial court's rulings.***

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. 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.

**C. *Wadhwa v. Wadhwa,* 2025 Tex. App. LEXIS 5180 (Tex. App. – Houston [14th Dist.] July 22, 2025) (Cause No. 14-23-00521-CV)**

***Order striking alternative pleading for JMC improperly denied mother the right to a jury issue.***

H and W married in 2007 and had 2 children. W filed for divorce in 2021 and sought to be named JMC with exclusive right of domicile with no geo restriction. H filed a counter petition seeking the same relief for himself but with a geo restriction in Harris County. W subsequently amended her pleadings a number of times, including seeking SMC, alternatively JMC. When the case was called to trial W's counsel did not appear and the court granted a continuance but closed discovery. A month later, W filed her 6th amended petition which sought SMC, alternatively JMC and giving her exclusive right to residence in Harris County. H filed a motion to strike, claiming surprise and the inability to do discovery. The court struck only W's alternative pleading for JMC. The case went to a jury and the Charge asked two questions: (1) should W be named SMC … answer "No" and (2) should the parties be named JMC with H having the exclusive right of residence … answer "Yes.". The balance of the issues were tried to the court. W had alleged fraud on the community against H for his transfer of a business interest to his father, unexplained transfers of funds, extravagant spending on the children, time and expense of obtaining a pilots license and giving his parents a promissory note and lien on the marital residence in exchange for their payment of the mortgage, all without W's knowledge or consent. The court ordered a 50/50 division and appointed a receiver to sell the residence. W filed a MNT which was denied. W appealed. Initially, W challenged the court denial of her motion for new trial. W argued that her 6th amended petition was not a surprise and did not reshape the litigation. Further W argued that striking her alternative JMC claim prevented the jury from considering her as a candidate to be awarded the exclusive right of residence. The COA agreed finding that W's pleadings had always contained some form of request for JMC with the right to establish residence and that this could not have operated as a surprise to H and it did not totally reshape the litigation. Further, striking the JMC claim supported the Court's decision to deny W's submission of her as JMC with primary to the jury. The COA found it was error to strike W's alternative JMC claim, finding further that when error denies a party their right to present their issues to a jury when disputed facts exist, the error is harmful. Sustaining this issue the court reversed all orders concerning conservatorship, including the allocation of rights and duties, and remands for a new trial. **Comment:** Discussions regarding the property related holdings are found in Section XVII.

**D. *Urbina v. Rangel,* 2025 Tex. App. LEXIS 5414 (Tex. App. – Austin July 25, 2025) (Cause No. 03-23-00449-CV) (mem. op.)**

***Enjoining parents from having their children around guns does not violate due process.***

M and F, unmarried, had one child and their relationship ended in 2020. The OAG filed suit asking the court to issue orders concerning conservatorship and support. The court issued TO's naming the parties JMC and giving M primary rights and ordering F to pay support and issuing custom possession orders if the parties could not otherwise agree. At final trial F had filed for enforcement against M for TO violations. Evidence at trial revealed harsh discipline by M towards the child, physical violence by M towards F and general erratic behavior. Evidence also indicated that M carried a firearm to possession exchanges with the child because she felt she needed it to protect herself. Evidence also indicated that M's companion also carried a firearm to these exchanges and F testified he never knew if he would make it out of these exchanges alive. After final trial the court named the parties JMC, gave F exclusive rights and ordered M to pay child support. The court also permanently enjoined both parents from allowing the child to be in a residence where firearms were not properly secured and from bringing firearms to possession exchanges. M appealed. The COA found sufficient evidence as to all of the SAPCR orders. M also challenged the permanent injunctions regarding firearms, arguing they violated the 2nd Amendment of the US Constitution. The COA considered that the 2nd and 14th Amendments protect a person's right to possession of a handgun in their home for self-defense and further a right to carry a hand-gun for self-defense, but noted

that these rights are not unlimited. The COA notes that these rights are subject to longstanding policies which prevent possession by certain persons (i.e. felons or those who are mentally ill) and which prevent carrying firearms into sensitive places like schools or government buildings. If the government can demonstrate that the regulation is consistent with the historical traditions of firearm regulation, then it can regulate conduct outside of 2nd Amendment protections. Here, the COA found that the injunction prohibiting the child from being in a residence where firearms were not properly stored was consistent with historical traditions regarding the safety of firearm storage. The COA also found that enjoining the parents from taking a gun to possession exchanges was consistent with historical traditions where persons who had threatened others were prohibited from "going-armed" in certain circumstances. As such the COA found that neither injunction violated a party's rights under the 2nd Amendment. All other orders were affirmed.

**E. *In re S.I.S.F.*, No. 04-24-00799-CV, 2026 WL 233852 (Tex. App.—San Antonio 2026, no pet. h.) (mem. op.) (01-28-2026).**

**Evidence Supported Imposing a Geographic Restriction on Mother's [The Child's Sole Managing Conservator] Exclusive Right to Designate the Child's Primary Residence.**

Facts: Mother lived in the Dominican Republic, and Father lived in Texas. They met in Miami and pursued a long-distance relationship. When Mother became pregnant, she lived with Father in Texas. After they ended the romantic relationship, they continued living together for a while until Mother moved out. Shortly after Mother's move, Father initiated an original suit affecting the parent-child relationship. Mother asked for no geographic restriction on the Child's residence so that she could move with the Child to the Dominican Republic, or alternatively, a restriction to the U.S. so she and the Child could live in Florida. After a three-day bench trial, the court appointed Mother as the Child's sole managing conservator with the exclusive right to designate the Child's residence within Bexar and contiguous counties so long as Father lived in one of those counties. Mother appealed.

Holding: Affirmed.

Opinion: Although Mother argued her domicile was in the Dominican Republic, she had resided in Bexar County for about 20 months. During that time, she visited a few other states in the US and only visited the Dominican Republic once. Thus, contrary to Mother's apparent argument, the restriction did not require her to abandon her home. Further, the restriction did not hinge on what Mother considered to be her domicile but on what was in the Child's best interest. Mother claimed that she would have better opportunities to find work in the Dominican Republic. Father testified he would not be able to move from Bexar County to be closer to the Child if Mother moved. The Child had extended family in Bexar County. Mother had a history of making it difficult for Father to access the Child. Applying the evidence to the Lenz factors, the trial court did not abuse its discretion in imposing the geographic restriction.

**F. *In re B.R.*, No. 05-24-01146-CV, 2025 WL 3208209 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (11-17-2025).**

**Husband's Net Resources Could Not Be Based On Temporary Orders Because Neither The Temporary-Orders Transcript Nor Evidence Supporting That Ruling Was Offered At Final Trial.**

Facts: Husband owned a lawn care business and received some assistance from family during the divorce proceedings. Wife did not present evidence of Husband's income but provided her belief as to the value of Husband's company. Husband presented some evidence of his income but no evidence for his business valuation. The parties had four Children, including one who was an adult disabled Child. Caring for that Child prevented Wife from maintaining full-time employment. Both parties provided estimates for their belief of the value of the marital residence. At the trial's conclusion, the court ruled Father would continue to pay child support based on the temporary orders and divided the marital estate, including awarding Husband his business and Wife the marital residence. Husband appealed. Holding: Affirmed in Part; Reversed in Part. Opinion: Husband argued the evidence was insufficient to support the determination of his net resources. Although evidence was presented regarding Husband's net resources, the evidence did not support the ultimate determination of his net resources. Rather, when orally rendering, the trial court stated its intent to set child support at the amount set in the temporary orders. However, the temporary orders transcript was not offered into evidence and, thus, could not be relied upon by the trial court for the final ruling. The appellate court sustained Husband's issue and remanded the issue of determining Husband's net resources. Husband next

complained of the division of the marital estate because the evidence for the values of his business and the marital estate was insufficient. Generally, a party who does not provide the trial court with valuation for property cannot complain about the lack of information on appeal. Moreover, Husband did not argue on appeal that the division was so unequal as to materially affect the just and right division of the community estate. Finally, Husband complained of the order's requirement that he pay all ad valorem taxes on real property awarded to Wife. In the allocation of debts section, Husband was ordered to pay all taxes, etc. on property awarded to Wife. However, the exact same provision later provided that Wife was ordered to pay all taxes awarded to Wife. The conflicting language created an ambiguity regarding who was required to pay past-due ad valorem taxes and was remanded for clarification.

## XI. POSSESSION AND ACCESS

### A. *In re Marriage of Bentrott,* 2024 Tex. App. LEXIS 7320 (Tex. App. – Amarillo October 11, 2024, no pet.) (Cause No. 07-23-00363-CV) (mem. op.)

***Trial court thoughtfully balanced F's issues with M's concerns, supporting decision to affirm possession orders with sufficient restrictions and conditions protecting children's best interest.***

H and W married in 2015 and had two children. Shortly after the birth of the second child, W discovered pornography sites on H's computer which he had left open. Thereafter the parties separated. H admitted to W he was an alcoholic and sex addict and that he had gratified himself while caring for the children who were sleeping in his arms as infants. H successfully completed an in-patient treatment program and secured the services of 4 different counselors to assist him with his various issues. H filed for divorce. When the case went to trial the children were 3 and 5. The court ordered a psychosexual evaluation of H which determined that his addiction was not motivated or connected to children in any manner. All four of H's therapists testified and agreed, further opining that H was doing well in therapy and his conditions were improving. The court ordered custody evaluator determined that H was guilty of sexual abuse and should have only supervised access. The supervised visitation witness testified that H's visits with the children were splendid and that he interacted appropriately, and the children were glad to see him. W argued at trial that H was guilty of family violence and she should be named SMC. The trial court made no such finding, appointed the parties JMC, with W as primary, gave H stair-step possession moving from supervised to unsupervised under strict conditions, including continued therapy, accountability software and numerous injunctions which were designed to specifically address any and all concerns surrounding H's issues. W appealed. The COA assessed the definitions of family violence as well as those under the Penal Code for sexual indecency with a child and found that the evidence was insufficient to establish that H had committed any criminal act or FV, determining there was no abuse of discretion in naming the parties JMC. The COA likewise reviewed the record and found no evidence that H had ever harmed the children or that there were any concerns about his relationship with the children. The COA noted that the court order placed numerous conditions and safety precautions in place for H's possession and that the stair-step orders were appropriate. W's concerns that the stair-step orders were improper were covered by the orders themselves which logically provided H would never obtain unsupervised access if he failed to comply with any of the conditions required for transition. Finding no error the COA affirmed. **Comment:** This case demonstrates an insightful approach by the trial court to breaking down facts which were extreme as supporting serious concerns but working through them, trusting the experts, and covering all the bases to protect the children while allowing the parent to maintain his parent-child relationship.

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

***50/50 possession schedule does not contravene a jury verdict regarding the right of domicile where geographic restriction keeps parents close.***

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.

**C. *Gillette v. Gillette,* 2025 Tex. App. LEXIS 4982 (Tex. App. – Austin July 16, 2025) (Cause No. 03-24-00485-CV)**

***The child's wishes as to possession and access do not control the day.***

M and F married in 2007 and lived in California before moving to TX in 2022. They had two children, ages 14 and 16 at the time of trial. F returned to California to renovate the parties' house there. F returned to TX in 2023 but did not live with M and the children upon his return because W had filed for divorce earlier that year. M asked that the parties be named JMC with M having the right to establish the children's primary residence. F filed a counter petition asking the court to issue orders for conservatorship, possession and support if the parties were unable to agree. Trial to the bench occurred in August 2024. At that time F had not been employed in 5 years and M's income supported the family. F requested an expanded SPO and M sought something less than an SPO. M's counsel advised the court that the children, ages 14 and 16, wished to speak with the judge to make their feelings on possession known. The court agreed to interview them and asked if the parties desired a record. Both parties waived the making of a record and none was made. F testified that when he returned to TX in 2023 he saw the children only at times M approved and although he would ask to see them, he was typically given some reason why they could not visit. M testified that F's relationship with the children had improved and that they loved him and wanted to spend time with him but they felt they would like to go only two weekends a month. M claimed F was controlling and offered the children no ability to express their opinions. After interviewing the children the court named the parties JMC, gave M exclusive domicile and awarded F possession every other weekend and Thursday evenings but placed conditions on his possession including (1) to occur only when both children agreed to visit; (2) both children mut be present during any period until the oldest child emancipates; (3) both children had full authority to modify the length of time for any period and the right to refuse any period in the order; and (4) all periods would be consistently supervised by M or someone she designated until F produced a certificate verifying his attendance at an anger management course. F appealed challenging the possession order claiming that the orders were not supported by M's pleadings and further that the evidence did not support such an extreme departure from an SPO. As to the claimed pleading error, the COA found that both parties placed the issues of conservatorship and possession before the court which in a broad sense gave the court discretion to impose conditions or limitations on possession as found to be in the children's best interest. The COA found it was not necessary to specifically plead claims of violence before conditions could be ordered. As to the sufficiency of the evidence the COA first noted there was no record of the children's interview and thus the COA was required to presume that there was something within that interview that must have caused the court to rule in the manner it did. The COA also acknowledged that the court can take such information fully into account or ignore it completely. However, the COA found that there is no authority which allows a best interest decision to be based solely on the children's wishes, stating "no authority supports taking the child's desire to the extreme of granting the child – no matter how mature – complete discretion over possession of a parent." Noting that M agreed for F to be a JMC, said the children loved him and wanted to spend time with him, and presented no evidence of past abuse or neglect, the COA found that it was an abuse of discretion to place restrictions on F's possession and access. The portions of the order addressing possession were reversed and remanded for further proceedings.

## X. MODIFICATION

**A. *Johnson v. Johnson,* 2024 Tex. App. LEXIS 8373 (Tex. App. – Houston [1st Dist.] December 5, 2024, no pet.) (mem. op.) (Cause No. 01-22-00457-**

**CV)**

***Child custody evaluator was not required to be excluded in the absence of a written report as required by statute where he gave an oral report to all parties, counsel and the amicus and F failed to take steps to secure a written report.***

M and F divorced in 2019 and had two children. M was named primary JMC and the parties were given the right, subject to the agreement of the other party, to make decisions regarding invasive medical, psychiatric and psychological treatment and education. A year later, F filed a motion to modify, seeking to be named primary JMC with exclusive rights. M filed a counter petition asking to be named SMC, with amended pleadings later seeking increased c/s. At some point F filed a motion seeking appointment of a custody evaluator and Dr. Kit Harrison was appointed. An amicus was also appointed. The custody evaluation order required the preparation and filing of a written report. In July 2021 F emailed Harrison requesting a report, but not specifying whether it be written. (F would attempt to offer this email at trial but it was excluded after objection from M's counsel). In early August 2021 Harrison provided an oral report of his findings and recommendations to counsel for both parties and the amicus. During that conference, Harrison advised that if the parties wanted a written report, they would each need to deposit an additional $4,000. Neither party requested a written report. Over the course of the litigation F filed several motions to compel discovery. F supplemented 7,000 pages of discovery a few days before trial without identifying what he intended to use as exhibits. The parties appeared for the first date of trial in August 2021 and M's counsel asked that the court begin trial but recess so that the parties could organize and exchange their intended trial exhibits. The court did so and thereafter the first witness was called on December 1. During the interim period, F filed additional discovery motions. On the second day of trial, M called Harrison to testify and F objected, asking that he be excluded because he had failed to file a written report as required by the statute and by the court's appointment order. After hearing testimony from Harrison regarding the report only and arguments from all counsel, including the amicus, the court allowed Harrison to testify. After the conclusion of the evidence the court retained the parties as JMC, gave M exclusive rights regarding medical, psychological and education, awarded F an expanded SPO which removed 2 additional days/month he had under the prior decree, increased F's c/s, and awarded M fees in the amount of $185K. In addition, the court assessed sanctions against F for $15K relating to the motions to compel discovery he pursued against M after the case was put to trial in August. H sought findings and thereafter appealed. The COA ultimately reversed and rendered on the $15K sanction award, finding F's conduct did not rise to the level necessary as supporting sanctions under TRCP 13. As to the $185K in fees, the court found that F's suit was frivolous and brought for harassment under TFC 156.005 and further found that fees were justified under TFC 106.002. On appeal, F attacked the trial court's award under TFC 156.005. Since F stipulated to the reasonableness and necessity of M's fees otherwise, they were affirmed under TFC 106.002. Regarding the custody evaluator's testimony, the COA found that F waived his right to a written report by failing to take all steps necessary to enforce the court's order and/or secure a report. The COA found the oral report under the circumstances was sufficient. The COA noted the many opportunities to secure the report and criticized F's failure to secure a pre-trial ruling, deciding to object on the 2nd day of testimony. F also complained about the sufficiency of the evidence regarding the modification orders generally, but in particular the court's decision to take away 2 days of his possession each month. F claimed that M had no pleadings on file seeking such relief. As to the sufficiency of the evidence, the COA examined the record and found evidence supporting the parties' inability to make any shared decisions and noted difficulties the children had faced as a result, finding there was no abuse of discretion. As to possession, the COA examined the record for evidence that the parties had tried the issue by consent. This was clear based on motions and discovery responses filed by the parties indicating possession times, exchanges and interference were all a concern that needed to be reviewed. The amicus indicated the same in her opening statement to which no one objected. There was extensive testimony regarding possession issues between the parties, demonstrating the everyone knew it was an issue and determining that modification of possession had been tried by consent. Modification order affirmed. $15K Sanction order reversed and rendered.

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

***Mother's move with children during summer did not violate standing order enjoying "withdrawal from school" because the children were not "enrolled."***

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 of "conferencing" 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 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.

**C. *In re Haddad*, No. 04-25-00484-CV, 2026 WL 517517 (Tex. App.—San Antonio 2026, orig. proceeding) (mem. op.) (02-25-2026).**

**Mother's Complaints About Poor Coparenting Could Not Establish "Significant Impairment" to Warrant Modifying the Geographic Restriction on the Child's Residence Two Months After an 8-Day Jury Trial.**

Facts: After an eight-day jury trial, Father was granted the exclusive right to designate the Child's primary residence anywhere in the continental U.S., allowing Father to move to Virginia with the Child. Two months later, Mother filed a motion to modify the exclusive right to designate the Child's primary residence but did not attach a supporting affidavit. She subsequently amended her motion to include an affidavit that complained of coparenting challenges and expressed "great" concerns about the Child's emotional wellbeing and safety but did not identify any specific facts about the Child's present environment that might have endangered his physical health or significantly impaired his emotional development. Father filed a motion to deny relief because the affidavit was insufficient. The trial court found the affidavit was facially sufficient and conducted a hearing. Witnesses testified in support of Mother's requested relief; however, the witnesses did not offer evidence of the Child's present circumstances but of earlier circumstances. The trial court rendered temporary orders restricting the Child's residence to Bexar County and appointed an amicus attorney and parenting facilitator. Father sought mandamus relief. Mother and the trial court judge filed responses.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: When a party seeks to modify the person with the exclusive right to designate a child's primary residence less than a year after the prior order's rendition, that party must attach an affidavit alleging, with supporting facts, that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development. The purpose of this requirement is to promote stability in the conservatorship of children by preventing the re-litigation of custodial issues within a short period of time after the custody order is entered. The trial court is required to deny the relief sought and decline to hold a hearing on the proposed modification

unless the court determines that, on the basis of the affidavit, adequate facts have been alleged to support the allegations regarding the child's physical health or emotional development. Here, none of Mother's allegations in her affidavit were sufficient to meet the statutory requirement, so it was an abuse of discretion for the trial court to conduct a hearing. "Our analysis does not end there." Appellate courts have consistently held that it is harmless error for a trial court to hold a hearing on a proposed modification when the required affidavit is deficient or absent, provided that adequate evidentiary support is admitted at the hearing. "We are left with a Catch22 paradox—whether the trial court's decision to hold a hearing on the modification was harmless error may only be determined after consideration of the evidence adduced at that hearing." Here, the evidence offered at the hearing did not include any direct knowledge of the Child's present circumstances or living environment. Mother's complaints about difficulties obtaining medical and educational records appeared to have been resolved and would not have been sufficient to meet the statutory requirement. Mother offered pictures showing bruising on the Child's legs but no evidence linking the bruises to any inappropriate action by Father or by anyone in Father's household. Thus, the evidence presented at the hearing did not cure the trial court's error in conducting the hearing.

## XIII. MISCELLANEOUS – SAPCR

### A. *Quinn v. Melton,* 696 S.W.3d 769 (Tex. App. – Waco 2024, pet. denied)

***Child Custody Evaluator* is not considered as providing health care to a patient, making the procedural requirements under CPRC Chapter 74 inapplicable.**

Within a suit for divorce and custody, Quinn was appointed to conduct a child custody evaluation. She conducted her evaluation and filed a report in 2019. In 2022, acting *pro se,* F filed a suit against Quinn, asserting claims for negligence, gross negligence, abuse of official capacity, official oppression, dereliction of duty, conspiracy and IIED, as well as violations of the Penal Code. F contended that Quinn had made false allegations within the evaluation report and had failed to properly investigate facts which led to a report favoring his W who he alleged was friends with Quinn. F claimed the report required him to settle his custody case and harmed his reputation. In response to the suit, Quinn filed a motion to dismiss contending that F's claims were health care liability claims under the Texas Medical Liability Act (TMLA) (CPRC Chp. 74) and that F had failed to file the required report in connection with his claims. The trial court denied Quinn's motion to dismiss and she appealed. The COA considered the definitions for a "health care liability claim" and "health care" as provided under the Act and determined that Quinn, in conducting the child custody evaluation, was not providing health care to a patient but instead was preparing an investigative report to assist the court in determining the issues of conservatorship. Further the COA found that the parties' participation in the evaluation did not invoke Quinn's service to a patient for medical care of treatment. The COA was specific to note that TFC 107.112(h) expressly provides that a person who participates in a custody evaluation is not considered a "patient" as defined by the Health and Safety Code. Based on these conclusions the COA affirmed the trial court's order denying Quinn's motion to dismiss.

### B. *Powell v. Fletcher,* 2024 Tex. App. LEXIS 8195 (Tex. App. – Houston [1st Dist.] November 26, 2024, no pet.) (mem. op.) (Cause No. 01-22-00640-CV)

***A worthy read to identify all the behaviors that an attorney should avoid, otherwise face sanctions and disbarment.***

M (an attorney) and F and paternal grandfather executed an MSA in a custody dispute in March 2019. Terms of the MSA enjoined, Powell, an attorney who was also M's boss, from continued harassing behavior against F and PGF. In June, Powell formally appeared as M's attorney and sought to set aside the MSA based on claims that F had committed family violence and made threats to M. A final order was signed in August and Powell pursued appeals on behalf of M. In September, M contacted F and his father to let them know that she no longer wanted to pursue post-judgment matters but Powell refused to dismiss them. F and PGF filed a TRCP Rule 12 motion for Powell to show authority in representing M. In a 5-day hearing (Wow!) the evidence demonstrated that Powell was not only representing M as an attorney, but he was also M's employer, her landlord and that they had an intimate sexual relationship. Powell also represented M's brother pro se in another matter. M claimed that documents, including affidavits, filed on her behalf by Powell contained lies, that Powell had threatened to terminate her job and evict her, had indicated she could face criminal repercussions if she terminated him as her lawyer and that he threatened to cease representation of her brother. Powell had also filed a request for guardianship over M, improperly disclosed her medical records and refused to send her file to a new attorney. Powell ultimately terminated M's

employment and evicted her. The trial court issued more than 170 findings of fact and sanctioned Powell in the amount of $490,000. After Powell made additional filings, the court sanctioned Powell again, obligated him to post an additional $76,000 in the court registry for conditional appellate fees and awarded another $7500 in fees. Powell appealed both sanction orders. Powell claimed that the trial court lacked jurisdiction to sanction him because those proceedings occurred after a final order had been signed. The COA clearly dismissed this issue concluding that the trial court had jurisdiction to issue sanctions based on its earlier findings, to enforce its order (including one based on an MSA which enjoined Powell's behavior) and under its inherent authority. Further, Powell challenged the court's authority to sanction him based on his behaviors directed towards the PGF because he claimed the PGF did not have standing in the underlying custody suit. The COA found that PGF's standing was not relevant to the sanction issue and overruled this issue. Powell challenged the sufficiency of the evidence supporting sanctions which the COA overruled based on the overall evidence and resulting findings, many of which Powell did not challenge on appeal. While the proceedings were ongoing, Powell filed a series of recusal motions, all of which were denied. On appeal he challenged the trial court rulings based on judicial bias against him however, the COA found his appellate issues to be multifarious and inadequately briefed. Powell's issues regarding the conditional appellate fee deposit and award of attorney fees were also overruled. Judgment of the trial court affirmed. **Comment:** This Opinion serves as a primer touching upon almost every ethical boundary an attorney can cross in representing a client. Surely if you read the entire Opinion you could claim some self-study ethics credit! Additionally, Powell was disbarred in 2022 and guess what, he appealed! His disbarment was affirmed in December 2024 at 2024 Tex. App. LEXIS 9070.

### C. *In the Interest of R.G.S.*, 2024 Tex. App. LEXIS 8408 (Tex. App. – Beaumont December 5, 2024, no pet.) (mem. op.) (Cause No. 09-23-00308-CV)

***Various arguments challenging denial of same-sex adoption overruled, including confirmation that when a MC consents, they may revoke that consent at any time prior to the hearing.***

Amber (A) and Jennifer (J) married in 2015. In 2016 they signed an agreement with a reproductive clinic and A underwent a procedure using sperm from the clinic. A gave birth to RGS in 2017. In 2020, A filed for divorce and identified RGS as a child of the marriage. In 2021 the parties appeared before the court to finalize the divorce and SAPCR pursuant to an MSA, which included a term for J to be adjudicated as a parent of RGS. Ten days before the prove-up hearing the court asked for briefing on its ability to adjudicate a second mom. Prior to the hearing J amended her pleadings to request adjudication. At the hearing the court heard testimony regarding J's actual care and control of RGS and requested the court to name her a non-parent conservator IF the court decided not to adjudicate her. The court recessed and asked the attorneys to talk and let the court know what they decided. Upon return the court then signed a Final Decree which had been approved and signed by counsel and by both parties as to form and substance. The Decree did not adjudicate J as a parent but approved the remainder of the MSA terms included therein. When the court announced it was not adjudicating J a parent there was no objection. The Decree contained a Mother Hubbard clause denying all relief requested if not granted within the Decree. J did not file a MNT and did not pursue an appeal. Six months later, J filed a petition to adopt RGS, or alternatively to adjudicate parentage. A responded with an answer asserting res judicata as an affirmative defense and asked that the case be dismissed. The court denied the petition to adjudicate and severed the petition for adoption. After the trial court severed J's petition for adoption of the child, a hearing was held in 2023. The court appointed evaluator, Harrison, testified as to his interviews with all parties, their significant others, the child and collateral sources such as the child's therapist and did psychological testing. Harrison indicated that J wanted validation as the child's primary parent and indicated the child viewed J as a primary parent. He testified that the child is bonded with both A and J and that the child is doing well with both parties. He indicated J and A have difficulty making decisions together and that J continuing her role would be in the child's best interest. He indicated that if A began to limit or restrict that role it would be harmful to the child. Harrison believed guaranteed possession orders for J would be best. Both parties testified with J claiming that A was preventing her from speaking with the child and attending her activities or generally following relevant terms of the decree. A testified that she does not consent to the adoption and described the parties' difficulties in getting along. The trial court denied the petition to adopt and J appealed. J first argued that the court erred as a matter of law by failing to waive the requirement that a managing conservator consent to an adoption when they are not the petitioner per TFC 162.010(a). J claimed that consent can be waived when the MC refuses or revokes consent without good cause. The COA noted that J carried the burden to prove a lack of good cause by A in refusing/revoking

her consent. Examining the evidence the COA found that J was not biologically related to the child, she agreed to the parties' decree (which failed to adjudicate her) as to both form and substance, she did not appeal this decree, that A had an established relationship with the child that had not been terminated and evidence supported that the adoption was not in the child's best interest. These findings did not establish a lack of good cause as a matter of law and thus there was no abuse of discretion in denying the adoption on this basis. J also argued that A was estopped from refusing/revoking consent based on the contract she signed with the reproductive clinic containing terms that both J and A would be parents. J argued that there was no good cause for A changing her position. The COA found however that the evidence did not show a change in position because A had consistently represented that she did consent to an adoption. The COA further noted that TFC 162.011 allows a managing conservator to revoke their consent to an adoption at any time before the hearing, indicating that an MC can change their original position as given under TFC 162.010. J also argued that she was entitled to an adoption by estoppel under the Estates Code 201.054. The COA disagreed finding these principles do not establish a legal or statutory adoption. J argued that she was entitled to adoption by estoppel based on her presumption of maternity with RGS having been born during marriage. However, the COA found that the presumption does not create an adoption but only entitles J to notice of an adoption which was not an issue in the case. Lastly the court found evidence supported denial of the adoption was in RGS's best interest.

**D. *Detillier v. Smtih,* 2024 Tex. App. LEXIS 8410 (Tex. App. – Beaumont December 5, 2024, pet. filed) (mem. op.) (Cause No. 09-22-00384-CV)**

***Non-parent's suit to declare decree void as failing to adjudicate her parentage was an improper collateral attack on the prior decree and many of the arguments could have been made before the decree was signed and then challenged by direct appeal but were not.***

This case involves the same facts, same parties and same procedures as detailed in the case discussed immediately above. In the summer of 2022 (more than a year after the parties agreed decree of divorce was signed), J filed a petition to declare the Decree unconstitutional and void based on her arguments that she had a fundamental right to be a parent to RGS. J argued that the court's order violated her rights of due process and equal protection. J argued that the court's refusal to adjudicate her as a parent failed to follow the statute and thus the court exceeded its subject matter jurisdiction and the order was therefore void. J argued that the MSA was binding on the parties and the court and therefore the court was required to adjudicate her. She also complains that the decree orders her to pay child support although she has not been adjudicated as a parent. A responded by filing an answer that argued J's pleadings were an impermissible collateral attack on the Decree. The trial court denied J's petition and she appealed, arguing that the court denied her equal protection by failing to apply the Uniform Parentage Act equally to her and that the court had no subject matter jurisdiction to disregard the MSA which agreed she would be adjudicated a parent of the child. A responded by arguing that J invited error, if any, by agreeing to the Decree as to both form and substance. The COA first determined that the Decree was a final order because (1) it included terms which specifically addressed the non-adjudication of J's maternity and (2) it included terms specifying that all requested relief not granted was denied. Further, J could have directly appealed from the trial court's Decree but did not do so. The COA notes that only void orders can be collaterally attacked. The Decree was not void for lack of subject matter jurisdiction because the court clearly had such jurisdiction over the SAPCR proceeding generally. Further, the COA found that J's claim that she was denied equal protection under the Uniform Parentage Act were arguments which existed at the time of the original Decree and could have been raised by J in that case or on appeal from that case and were not. Further, the decree was not void as failing to comply with the MSA. This did not create a lack of jurisdiction and again, could have been challenged on direct appeal but was not. Finally, the Decree included a merger clause and to the extent that the Decree differed from the earlier MSA regarding J's adjudication as a parent, the Decree amended the MSA and this was approved by both parties as to form and substance. As such the Decree was not void. Judgment denying suit to declare decree void affirmed.

**E. *In re Interest of C.T.H.,* 2024 Tex. App. LEXIS 9004 (Tex. App. – Dallas December 27, 2024, no pet.) (mem. op.) (Cause No. 05-22-01202-CV)**

***Permanent injunctions preventing grandparents from contacting mother, step-father and the children were not unconstitutional as a prior restraint on free speech because they prevented contact, not speech and were linked to protecting the children's best interest.***

M and F are the parents of two sons. After the first son (CTH) was born in 2009, M moved in with her parents (MGP = maternal grandparents) for approximately two years. Thereafter a second son was

born in 2013 and M again moved in with her parents until 2017. Admittedly, MGM (maternal grandmother) significantly participated in raising the boys. In 2016 M and F divorced and were named JMC with M as primary. MGM had intervened in the divorce proceeding and by agreement the decree ordered that she would provide secondary health insurance for the children. In 2017 M filed a suit to modify based on allegations relating to F. MGP intervened in the modification and asked to be named SMC of the children, alternatively JMC. Soon thereafter M and the children moved in with M's boyfriend. A year later M and the boyfriend married. In 2019 M requested a temporary injunction against the MGP and asked that it become a permanent injunction. The court granted relief enjoining MGP's from contacting M or the children and coming within 1000 feet of her home or the children's day-care facilities. During trial, much of the evidence focused on the oldest child who had mental health struggles that resulted in both inpatient and outpatient care. Likewise, evidence was admitted regarding MGM's intrusive interference and her ongoing efforts to remain in contact with her grandchildren despite M's requests to the contrary. These efforts included trespassing to leave gifts for the children and contacting third-persons, including step-father's family, to intervene and assist her in reaching the boys. At the conclusion of trial the court retained M and F as JMC with M as primary. The court removed any obligation that MGM provide insurance and permanently enjoined MGPs from communicating with M, step-father or the children in any manner, coming within 1000 feet of M's residence or any school facility or activity of the children, contacting the children's day care facilities or schools, coming within 1000 feet of M, disturbing the peace of the children or stalking the children. MGP's filed post judgment motions, including a motion to re-open the evidence. All motions were denied and MGP's appealed, challenging the constitutionality of various injunctions and questioning the evidence to support them. MGP's argued that the injunctions restraining communication was a prior restraint on their free speech and the trial court had not made the proper findings supporting such relief. The COA initially found that this complaint was not sufficiently raised before the trial court and therefore not preserved. However, even so, the COA found that specific findings are only necessary to support "gag orders" which restrain the "content" of speech as an exception to the general rule that the prior restraint of speech is unconstitutional. Here the COA found that the trial court's injunctions did not restrain the content of speech by the MGP's but restrained their "contact" with M and the children Further the COA found that the evidence sufficiently supported a relationship between the conduct enjoined and the court's authority to protect the best interest of the children. The COA made clear that injunctions in family law cases are reviewed under an abuse of discretion standard and do not require application of the general civil standards (a showing of imminent harm and no adequate remedy at law). As an additional issue, MGP's sought to enforce an MSA that had been executed by M, F and MGP's in an original suit MGP's had filed in 2012, a year before the second child had even been born. This MSA gave them certain possessory rights to the first child. The COA noted that this MSA was never adopted by any order of the trial court and eventually its terms were never included in the parties' 2016 divorce decree. Further, MGP's did not raise the MSA issue during trial, first mentioning it almost 8 months after trial. The COA concluded that the MSA was not timely brought to the trial court's attention and that the MGP's should have brought it up during their intervention in the 2016 divorce. As to MGP's motion to reopen the evidence which the trial court denied, the COA found that there was no error. The motion was 30 pages long and attached much of the additional evidence the MGP's sought to be considered. The trial court's order denying the motion expressly referenced that its contents had been considered, making it clear that there was no error. Judgment affirmed.

**F. *Torres v. Giacona*, 2025 Tex. App. LEXIS 3901 (Tex. App. – Houston [1st Dist.] June 10, 2025, no pet.) (Cause No. 01-23-00546-CV)**

***Claims for reimbursement of medical care belongs to the parents and cannot be paid from the child's PI recovery.***

M was visiting a neighbors house (N) with her three children. N's dog attacked one of the children who sustained serious injuries and required several surgeries. M and the other two siblings tried to secure the dog but were unable and those two children required counseling. M sued N for her own damages as a bystander and she also sought reimbursement for medical expenses provided for the children. She likewise sued as next friend for the injured child and sought appointment of a GAL for the child which was granted. The parties settled for insurance policy limits of $300,000, all of which was allocated to the children ($200K to injured child and $50K each to the other two siblings). M asked the court to approve the settlement after certain deductions were made from the settlement proceeds as covering reimbursement for medical expenses. The trial court refused the request, finding that all money belonged to the children to be set up in trust however the court segregated $25,000 (the

amount of medical expenses claimed by M and F) and ordered that it be placed in interest bearing accounts for the children. M appealed. The COA found that parents have a duty to provide medical care for their children pursuant to TFC 151.001(a)(3) and further that they are entitled to reimbursement in these situations. However, in this case the parties agreed that 100% of the policy limits would be allocated to the children. The COA recognized that a claim for reimbursement of medical care belongs to the parents and not the children and as a result, a parent cannot be compensated from the amounts awarded to the children. The structure of the settlement foreclosed M's recovery. Trial court's judgment affirmed.

**G. *Schvartz-Poludniewska v. Schvartz,* 2025 Tex. App. LEXIS 5344 (Tex. App. – Austin July 23, 2025, no pet.) (Cause No. 03-25-00214-CV) (mem. op.)**

***COA suspends property division terms under SAPCR statutes!***

In an amended final decree of divorce, the court confirmed the marital residence as H's separate property and granted him the exclusive use and possession of the property beginning not less than 30 days from the entry of the amended Decree. The amended decee named the parties JMC, giving W the exclusive right to designate the children's primary residence. Apparently under the trial court's original decree W was given exclusive use and possession of the residence while her appeal from the decree was pending and it contained specific orders obligating her to maintain the property. The amended decree did not allow for her use the marital home in the same manner. H notified W that he did not intend to allow her to continue use of the residence and that her occupancy after a specified date would constitute trespassing. Within her appeal from the decree W filed a motion in the COA asking that they issue a stay and suspend enforcement of the decree terms forcing her to evacuate the residence. The COA issued a temporary administrative stay in April 2025 and now, in this Opinion decides the motion on its merits. The COA notes that under TFC 109.002 the court of appeals can issue temporary orders pending appeal as necessary to protect the best interests of the children, even in circumstances where the trial court took no such action or even refused a request for such orders. W's motion asserted that displacing the children from the home would be emotionally disruptive, they were enrolled in school nearby and her work was close by and she had found no other appropriate rental options. W further claimed that H lived outside the US and thus would not be prejudiced. H made 3 arguments in response. First, he claimed any such order would deprive him of his s/p but the COA found that TFC 109.002 allowed for orders which would prevent disruption of the children's living arrangements. Second, H argued that W should have sought suspension under TRAP 24, however the COA found that TFC 109.002 offers another option and the COA has authority to issue such orders to protect the children. Third H argued that allowing W to remain in the residence is a form of spousal or child support but offered no authority and the COA simply disagreed. Because the COA found suspension of W's forced move from the residence was necessary, it remanded the matter to the trial court for consideration of specific orders obligating W to maintain the residence during the appeal. W's motion also sought suspension of H's ability to dispose of certain personal property awarded in the amended decree which W claimed should have been awarded to her under a French pre-marital agreement. The COA found that this request properly fell under TFC 6.709 as relevant to temporary orders pending appeal affecting a property division upon divorce and that W had not timely sought such relief. Even though orders regarding the marital residence related to the court's property division, these orders fell under the purview of TFC 109.002 because they impacted the children's living arrangements whereas disposition of personal property could not receive similar treatment. Motion for suspension granted with remand to trial court for specific orders. **Dissent.** The dissenting justice points out that the majority has basically allowed the W to suspend a portion of the court's property division under the guise of TFC 109.002 governing temporary orders as to SAPCR terms. The dissenting justice notes that W has been rewarded for laying behind the log by not filing a TFC 6.709 request for temporary orders pending appeal and then after all time for such motions have passed, pursuing relief in the COA under TFC 109.002. The dissenting justice felt a denial of relief was warranted.

**H. *In re K.C.,* No. 05-24-00806-CV, 2026 WL 188026 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (01-23-2026).**

**Despite Husband's Claim of Unemployment, Evidence of CashApp Deposits Over a 14-Month Period Sufficient to Support Awarding Maximum Guideline Child Support.**

Facts: Husband's attorney withdrew prior to trial in the parties' divorce, so Husband appeared pro se. After a three-day bench trial, the court issued a final judgment. Husband obtained an attorney and appealed the decree.

Holding: Affirmed.

Opinion: Husband first challenged the calculation of his net resources for the purpose of assessing his child-support obligation. The trial court found Husband's income exceeded the maximum guideline amount and set the support accordingly. Husband argued he had been unemployed for years. Wife testified that although Husband had been unemployed, he had a furniture business that she learned about during discovery. Although Husband did not fully comply with discovery, Wife was able to determine that Husband had three CashApp accounts, and the primary account received nearly $160k in deposits in a 14-month period. Husband argued that account was used for day trading and that he did not actually make any money over that period. Husband noted a withdrawal from his retirement for roughly the same amount; however, Wife testified those funds were separate from the CashApp income. The trial court was free to find Wife's testimony to be more credible. Husband also challenged the property division. The findings of fact stated that Husband was guilty of wasting the community estate, was guilty of mismanaging the estate, and had engaged in cruel treatment including family violence. Neither the findings nor the order included a specific award for a waste claim. The findings did not include any values for any assets, and Husband did not request additional or amended findings. Although the trial court referenced one of Wife's exhibits in the final letter ruling, the letter ruling was not a substitute for findings. The evidence supported the findings regarding Husband's behavior. Moreover, rather than argue the division was not just and right, Husband argued the trial court erred in making a division without sufficient evidence. Wife provided evidence of the nature and value of the estate. Husband appeared at trial, cross-examined Wife, and had the opportunity to present his own evidence. Husband could not fail to provide evidence at trial and then complain on appeal that the evidence was insufficient. Finally, Husband complained of the orders for possession of the parties Child. However, the Child turned 18 before the opinion was issued, rendering the issue moot.

**I. *Owens v. Johnson*, No. 01-24-00137-CV, 2026 WL 233134 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (01-29-2026).**

**Father Failed to Establish Claimed Transfers Were Direct Child-Support Payments to Mother.**

Facts: Father filed a suit to reduce his child-support obligation. Mother responded with a countersuit and motion to enforce unpaid child support. Father was in the US Army, and his status had changed to reserve, which lowered his income. Additionally, he was no longer eligible for housing and food allowances due to a remarriage. Father's medical expenses for the Children had also increased. Father asked that his obligation be reduced to less than a third of the previously ordered amount. On cross-examination, Father conceded that the statements he provided were incomplete and that he had not provided evidence of his income. Mother generally disputed Father's testimony. While she acknowledged a reduction of Father's obligation was appropriate, her estimated obligation was more than twice what Father proposed. Mother stated she based her estimate on an online military pay calculator, but the trial court sustained Father's hearsay objection when Mother tried to introduce the calculator into evidence. Mother based her arrearages claim on OAG records. Father claimed to have made significant direct payments to Mother, resulting in no arrearages. The trial court reduced Father's child-support obligation to an amount between the two parties' requests, but closer to Mother's, and confirmed an arrearage based on Mother's evidence. Father appealed.

Holding: Affirmed

Opinion: Father first argued the court erred in relying on the online military pay calculator. However, the court excluded the calculator as hearsay. When a trial court sitting as factfinder rules that proffered evidence is inadmissible, the appellate court presumes that, consistent with the trial court's ruling, that court disregarding the evidence in making its decision. Nothing in the record defeated that presumption. Father further argued the court should have accepted his calculation of his income. However, the trial court was in the best position to review the evidence and determine its credibility. Moreover, Father failed to provide complete documentary evidence regarding his income. Next, Father argued the court erred in assessing arrearages. Father argued that his redacted bank statements conclusively established he had already paid the amounts due directly to Mother. The bank statements included notations that they were transfers to Mother, but the record did not divulge who made those notations. Further, there was no evidence of the funds being received by Mother or that they were sent for the purpose of child support. Again, the trial court was in the best position to review the evidence and determine its credibility.

**J. Harris v. True, No. 03-25-00127-CV, 2025 WL 2941954 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (10-17-2025).**

**Attorney's Fee Award Amount Remanded Because Mother Failed To Segregate Fees Incurred For Seeking Protective Order From Fees Incurred In The SAPCR.**

Facts: Mother and Father had an on-and-off relationship. Father admitted to being an occasional user of hard or illegal drugs; drinking and driving; and mixing alcohol, cocaine, and energy drinks with his prescription Adderall. When Mother became pregnant, she was hesitant to tell Father because she knew he did not want Children. After learning of the pregnancy, Father accused Mother of taking fertility medications to get pregnant. Initially, the couple tried to make their relationship work but failed. Mother stated that Father did not help much when the Child was an infant. Father complained that Mother did not give him as much access to the Child as he would like. Mother lived in Austin, and Father wanted to move to Dallas where his business was located. Father offered evidence of Soberlink tests to support his assertion that he had gone many months without drugs or alcohol. After a jury trial, Mother was given the exclusive right to designate the Child's primary residence. The court adopted the guardian ad litem's recommended step-up possession order for Father and made Mother the "tiebreaker" for certain rights. Additionally, based in part on evidence Father had impersonated Mother to gain access to medical information, the court imposed permanent injunctions against Father. Finally, the court ordered Father to pay maximum guideline support, awarded retroactive child support, and awarded Mother attorney's fees. Father appealed.

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

Opinion: Father argued the trial court erred in ordering him to pay over $20k in retroactive child support and almost $2000 in retroactive medical and dental support. Father asserted he paid more than that voluntarily during the relevant time, and the trial court failed to credit those payments. The Family Code provides that a court "shall consider" certain factors when determining whether to order retroactive child support, and the trial court's findings included the requisite findings. However, contrary to Father's assertion, there is no requirement for the court to consider actual support or other necessaries for the child. Moreover, Father did not present any evidence showing that the award would place a financial burden on him or his family. Father additionally challenged the award of attorney's fees to Mother of over $90k for trial fees and $15k for appellate fees. Father asserted insufficient evidence supported the awards and that Mother failed to segregate fees relating to the SAPCR from fees relating to her seeking a protective order. Although Father argued Mother failed to put on live testimony regarding fees, Father had agreed to that manner of presentation. Further, Mother's evidence regarding both the incurred trial fees and expected appellate fees satisfied the requirements laid out by the Texas Supreme Court in Rohrmoos. However, Mother failed to segregate the protective order fees from the SAPCR fees. Because the trial court did not find Father had committed family violence and did not issue a protective order, Mother could not recover fees for those services. Therefore, that issue was reversed for the trial court to correct the amount of attorney's fees awarded. Next, contrary to Father's assertion, ample evidence supported deviating from the standard possession order, including Father harassing conduct towards Mother, lack of specific plans for housing or schooling for the Child, and past use of "hard or illegal drugs." To the extent Father offered evidence supporting his position on appeal, the trial court did not abuse its discretion in determining the modified possession order was in Child's best interest. Father further challenged the award to Mother of certain exclusive rights and the designation of Mother as "tiebreaker" for decisions regarding educational, psychological, and psychiatric decisions. Mother had made most of the decisions for the Child since birth and provided the Child's health insurance. Mother had specific plans for the Child, while Father remained uncertain. Further, the parents had difficulty communicating but generally agreed on decisions regarding medical care and education. The trial court did not abuse its discretion in determining how to allocate rights and duties. Finally, Father asserted the court abused its discretion by enjoining him from certain conduct, including allowing the Child to be cared for by certain people and recording, stalking, or impersonating Mother. However, the appellate court noted that it had previously held that permanent injunctions in family law are permissible when the injunctions are in the child's best interest. Sufficient evidence supported the trial court's determination that the injunctive relief was in the Child's best interest.

## XIV. PROCEDURE AND EVIDENCE – MARRIAGE AND DIVORCE

**A. *In re Guggenheim,* 2024 Tex. App. LEXIS 7343 (Tex. App. – Texarkana October 15, 2024, no pet.) (Cause No. 06-24-00033-CV) (mem. op.)**

***Once party files a general denial and revokes MSA, the case is considered "contested" and the party is entitled to 45 days' notice of first trial setting.***

H and W married in 2021 and separated in January 2023. They had no children. Within a week of separating, they executed a MSA which provided for a division of their property and stated that it was voluntary and binding. Thereafter W filed for divorce and attached the MSA, requesting the court to issue a final decree in compliance with its terms. H filed a general denial and a counter petition. When W set a hearing to enter a decree, H filed a motion to revoke the MSA. After a hearing the trial court upheld the MSA. W's attorney submitted a final decree to the court with a letter requesting the court sign the decree if no objection was received from H within 10 days. When no objection was filed the court signed the decree. H appealed arguing that the case was a "contested" case and that he was denied due process because he did not receive at least 45 days' notice of a final setting at which he had the right to be heard. W argued that H failed to preserve error by failing to object to the decree within 10 days. The COA agreed with H finding that once H filed a general denial and sought to revoke the MSA the case became "contested" and he was entitled to proper notice. H's failure to object to the decree did not waive his rights and H made it clear that he objected to entry of a decree upholding the MSA which he had revoked. Relying upon *Highsmith v. Highsmith,* 587 SW3 771 (Tex. 2019) the COA found that H was entitled to proper notice which he did not receive, violating his due process rights. Judgment reversed and new trial ordered.

**B. *Hong Fei Lu v. Min Li,* 2024 Tex. App. LEXIS 7468 (Tex. App. – Houston [14th Dist.] August 27, 2024, no pet.)** (Cause No. 14-23-00810-CV)**

***Trial court's order enjoining H from dissipating assets while appeal was pending operated to suspend enforcement of all aspects of the decree and court has discretion to set terms of suspension even when those are not expressly provided within TRAP 24.***

**This Opinion was released the week of October 22, 2024 however the date on the Opinion indicates it was filed on August 27, 2024.

H appealed from a divorce decree dividing the parties' estate and awarding money damages to W on her reimbursement claims and for attorney fees. H filed a motion for new trial, notice of appeal and motion for temporary orders pending appeal (TOPA). In a first amended motion for TOPA, H asked the court to suspend enforcement of the judgment without the requirement of a supersedeas bond. The motion was denied. W responded with a motion for enforcement by contempt, claiming H had failed to pay certain obligations in the decree and failed to deliver personal property awarded to her. Thereafter, H made a cash deposit in lieu of bond just shy of $17,500, representing this to be 50% of his net worth. W opposed H's net worth claim. The court held several hearings and issued an order which accepted H's claimed net worth and his cash deposit in lieu of bond as a proper amount and enjoined H from dissipating or transferring assets to avoid enforcement. The court further determined it had sufficient evidence to calculate the amount needed to suspend enforcement of the real property portions of the division and therefore declined to suspend those terms but provided they were not enforceable for a period of 20 days after the order. W filed a motion for clarification asking the court to delete all references to "real property" because the decree divided no such interests. The court issued a clarified order which maintained findings accepting the cash deposit in lieu of bond and as suspension for all other aspects of the judgment, enjoined H from dissipating assets to avoid satisfaction of the judgment. The court further deleted the word "real" as characterizing the remaining property, specifying that enforcement of such property awards was suspended only for 20 days, effectively allowing W to enforce terms regarding the division of personal property such as bank and retirement accounts after that time period expired. H filed a motion asking the COA to review the supersedeas order. H argued that his cash deposit should have superseded enforcement of the entire judgment, including the money judgments and personal property awards. H further argued that even if the cash deposit only superseded the money judgment, the court's order providing "as suspension of all other aspects of the judgment … [H is enjoined from dissipating assets to avoid enforcement]" operated to suspend the remaining terms of the decree. The COA addressed H's second argument as dipositive. W argued that an injunction is not an acceptable form of supersedeas under TRAP 24. The COA disagrees, finding that the rules do not limit the trial court's discretion for the type or amount of security needed for suspension other than establishing a floor for the amount. The trial court's order enjoining dissipation of assets secures the status quo of the disputed personal property awarded to W. The COA further found certain terms of the Supersedeas Order inconsistent and construed the order as intending to supersede the money judgments by accepting the cash deposit and all other aspects of the order by the injunction, effectively suspending the entire judgment. As such it was improper for the court to permit enforcement of the personal property awards. The COA grants H's motion and orders the judgment suspended.

**C. *In re M.R.,* 2025 Tex. App. LEXIS 271 (Tex. App. – Fort Worth January 22, 2025, orig. proceeding) (mem. op.) (Cause No. 02-24-00491-CV)**

***A court may have partial jurisdiction over some issues but not others and in that situation the issues become severable.***

H and W, both Canadian citizens, married in 1997, resided in Canada and had two children. W and children moved to TX in 2019 and the plan was for H to follow. However, W filed for divorce in 2022. The parties executed an ISA and a final decree was signed in 2023. The decree awarded W one item of real property in Canada and divided another parcel between the parties 50/50. W filed a modification suit 6+ months later alleging domestic violence by H during his summer possession. H filed a bill of review (BOR) claiming W was abusive and that he executed the ISA under extreme duress. He claimed that although he and W had reached an agreement, W submitted a decree containing different terms. During the prima facie BOR hearing the judge stopped the testimony and expressed concern that the court did not have jurisdiction to divide property in Canada. The court made an oral ruling finding the decree void and discontinued the hearing. H submitted proposed orders granting a BOR but the trial court ultimately signed an order finding that the final decree was void for lack of jurisdiction. Thinking he was now still married, H filed a counter petition for divorce and obtained a setting for TO. W sought mandamus relief. The COA noted that the court had jurisdiction over the division of property even if that division may have been incorrect. Even so, the COA considered that a court can have jurisdiction over some issues and not others, and when an issue is severable, the court can grant partial relief. Here the parties' did not dispute that the court had subject matter jurisdiction over the divorce and custody aspects of the suit. These issues were severable from the division of property, if in fact it was correct that the court should not have divided the properties in Canada. There was no basis for the court to declare the entire decree void. Further, W had no adequate remedy by appeal as the court's ruling substantially delayed W's suit for modification and court's pronouncement that the parties remained married created intolerable issues for the parties and the children. Mandamus granted.

**D. *In re Leeson,* 2025 App. LEXIS 999 (Tex. App. – Corpus Christi February 20, 2025, no pet.) (mem. op.) (Cause No. 13-23-00158-CV)**

***Denial of trial by jury when disputed facts exist is reversible error.***

H and W married in 1986 and W filed for divorce in 2020. H filed a counterpetition. Both parties accused the other of cruel treatment and fraud upon the community, each seeking a disproportionate division. They both also sought reimbursement to the community for funds expended for the benefit of the other's separate property. In 2021 the court issued TO's that appointed a receiver to take possession of the parties' business and specified property. Trial was set for November 2022. At a status conference in April 2022 the court ordered the parties to file sworn inventories by June 27 and ordered that all discovery be completed by that date. H filed a jury demand and paid the jury fee on June 28. At a pre-trial hearing in September the court ordered H to submit his proposed charge to W by October. A venire panel was assembled for the November trial. W filed a motion in limine seeking to exclude certain evidence on the basis that H had failed to timely supplement his discovery and his legal theories and factual basis. This included evidence regarding W's adultery, W's alleged cruelty and evidence supporting H's reimbursement claim. The court granted W's motion in limine on these points. The receiver's report identified property values as supplied by both H and W as well as an appraiser that the parties had agreed to. The court asked the parties to identify what jury issues even existed if the court was excluding evidence of W's adultery and H's reimbursement. H claimed that he disputed the valuations of the appraiser and that he had not agreed the appraisers findings would be binding upon him. W argued that H had not identified himself as an expert on valuation, even as a property owner, which she claimed was required. The court asked H's counsel if there were any jury issues to which he replied that valuation was disputed but he understood that the division of property was an advisory only issue. Ultimately the court determined there were no jury issues, dismissed the venire panel and tried the case to the bench the following day. The court rendered a divorce and division of property. H appealed, challenging the denial of his right to a jury as well as the division of the estate and an award of unconditional appellate fees to W. W argued that H waived his right to a jury by failing to object the following day when the court began the bench trial. Relying on a 2022 Supreme Court decision (659 SW3 421), the COA held that once a party receives an adverse ruling on a request for jury trial, they are not required to take any further steps to preserve error. The COA then addressed the issue regarding denial of a jury trial. The COA found it was undisputed that H timely made his jury demand. Further, the COA noted

that in such circumstance, a party is entitled to a jury when there are disputed issues of fact necessary to decide the issues. H argued that disputed facts existed regarding (1) fault in the break-up of the marriage; (2) fraud on the community; (3) the character of property; (4) matters regarding the parties' reimbursement claims; and (5) the value of property. The COA agreed indicating that the parties had not agreed to be bound by any appraiser's valuation and the parties' own valuations differed by more than $1MM. As to W's argument that H could not offer valuation testimony as a property owner because he had failed to identify himself as an expert, the COA held that a property owner is automatically qualified to give valuation testimony and they need not be disclosed as an expert. Further, although H was precluded from offering evidence of W's cruelty, he was not prevented from offering evidence in defense of the allegations she had made against him, making fault a disputed fact issue. In addition, H had claimed 7 properties as his s/p but the receiver only agreed with 6 of them and the trial court had found the last property to be c/p and awarded it to W. Overall, the COA identified numerous factual disputes that should have gone to a jury. The trial court erred in denying H his right to a jury trial. The COA affirmed the divorce but reversed and remanded the other matters for trial by jury. H's additional issues were not reached.

**E. *In re E.S.*, No. 13-25-00190-CV, 2026 WL 113723 (Tex. App.—Corpus Christi 2026, no pet. h.) (mem. op.) (01-15-2026).**

**Order Requiring Father to Provide Mother with Copies of Photographs of Their Children Specific Enough to be Enforceable by Contempt.**

Facts: Pursuant to a Colorado divorce decree, Father was required to provide Mother with copies of certain photographs of the parties' Children. More than eight years later, Mother sought to enforce this provision in Texas. The trial court found that the divorce decree lacked command language necessary to support a contempt finding and was not specific enough to be enforced by contempt because it did not identify the Children or provide a delivery address for the photographs. The court rendered a new order clarifying Father's obligation. Mother appealed pro se.

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

Opinion: Mother first challenged the refusal to hold Father in contempt. However, contempt orders cannot be challenged through direct appeal, so those complaints were dismissed by the appellate court for lack of jurisdiction. Mother additionally challenged the trial court's clarification order, arguing it exceeded the court's authority. The parties had four Children. Two lived with Father, and two lived with Mother. The order required Father to provide photos of "the children." The trial court found that the order failed to identify which Children were subject to the order, provide a delivery address, or include command language. The appellate court disagreed and did not find the order sought to be enforced was ambiguous or unenforceable. The prior order described the Children as "of this relationship" and specified a date range. The plain language of the order required electronic copies of the photographs to be delivered. Additionally, the prior order stated that Mother would provide Father with a prepaid envelope in which he could insert a storage device to return to Mother. Father was given two weeks to complete the task. No conjecture was required. Finally, the appellate court did not understand what command language the trial court believed to be lacking. The order stated that Father "shall" comply with the provisions. Nothing indicated Father's compliance was optional. Accordingly, the trial court abused its discretion in rendering the clarification order.

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

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

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

agreement and moved for a new trial. After a hearing, the court struck several provisions of Husband's proposed decree, denied Wife's motion to revoke consent, and signed a final decree. Wife appealed.

Holding: Affirmed.

Opinion: Wife argued the trial court did not exhibit an intent to render after the parties read the agreement into the record. In its findings, the trial court found that at trial, the parties announced that agreement on all issues had been reached, and they asked the court to accept the agreement and find the division to be just and right. The court found that it rendered judgment on the agreement and granted a divorce. On appeal, Wife focused on the trial court's use of the word "will" when referring to its judgment and argued that the term "will" evidenced a future, rather an a present, intent to render judgment. Here, however, the word "will" did not stand alone, and additional evidence supported a present rendition. Focusing only on the use of the word "will" ignored (1) the later statement by the trial court that it had "rendered" judgment that day and (2) the "Judge's Order" setting out the agreement of the parties that was signed by the parties and the trial court the same day and filed-marked three days later. Moreover, on the date of the agreement, Wife asked the court to adopt the agreement as the order of the court. Wife further argued the court could not render judgment on the day the parties read their agreement into the record because a full, final, and complete judgment was not rendered until months later. When presenting the agreement to the court, Husband testified that the settlement was "just, right, and equitable" and asked the court to approve it. Wife testified that she agreed to the division and also asked the court to adopt it as an order of the court. The trial court was not required to independently determine the division was just and right when the parties' agreed it was. Wife additionally argued that the final decree included provisions not agreed to by the parties. The appellate court disagreed because the specific provisions were in line with the general terms of the agreement. For example, the decree divided interests in the parties' respective travel and hotel rewards benefits, which was not specifically addressed by the agreement. However, the parties agreed that each party would be granted all property in his or her possession. The inquiry was not whether the divorce decree varied from the terms of the agreement but rather whether any variances in the decree significantly altered the parties' agreement in a way that deviates from their intent as manifested in the agreement—whether any changes were material. The decree contained only those terms that were necessary to effectuate or implement the parties' earlier agreement. Wife finally argued the final decree was void because Wife had revoked her consent to the agreement. Because the court rendered judgment when the parties read their agreement into the record, and because Wife did not try to revoke her consent until months later, Wife's attempt to revoke her consent was untimely and ineffective.

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

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

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

Holding: Affirmed.

Opinion: Husband first complained of the trial court's denial of his motion to transfer venue. Husband asserted Wife resided in the county where they lived and worked during the week. He offered Wife's driver's license, voter registration, and tax returns to support this assertion. Husband said they only went to the other property on the weekends to take care of the animals. Wife testified that she grew up in the area where the parties went on the weekends and that she only lived in the weekday residence for work. A person may have two residences. The trial court did not err in finding that one of Wife's residences was at the farm. Husband additionally raised issues regarding characterization and the division of the community estate; however, the evidence supported the trial court's judgment. To the extent Husband cited in his appeal evidence that was contrary to the judgment, the trial court as factfinder was free to determine Wife's evidence to be more credible than Husband's. Husband finally challenged the trial court's finding he committed adultery. Wife placed a tracker on Husband's car, which showed that Husband went to a motel to meet various women. Wife provided photos of Husband's car in the parking lot and testified as to her observations. Husband argued that the mere fact his car was in the parking lot did not establish he engaged in an adulterous act. Husband claimed he was meeting the women to discuss church business

regarding a new building and FEMA funding. The trial court did not abuse its discretion in believing Wife's testimony.

## XV. ALTERNATIVE DISPUTE RESOLUTION-MARRIAGE AND DIVORCE

### A. *Pyle v. Wedekind,* 2025 Tex. App. LEXIS 5652 (Tex. App. – Beaumont July 31, 2025) (Cause No. 09-23-00200-CV) (mem. op.)

***Application of TRCP in arbitration expands arbitrator's scope of authority.***

H and W divorced in 2021. To conclude the matter they entered into an MSA which provided that the parties would use the mediator to arbitrate any disputes regarding the interpretation or performance of their agreements, including necessary documents. The MSA also contained terms wherein the parties acknowledged the mediator's personal relationships with involved counsel and waived any claims of bias resulting from those relationships. Following execution of the MSA the parties executed an agreed Decree and an Agreement Incident to Divorce (AID), both of which contained provisions for arbitration, including specific schedules which the parties identified as "disputed" and would be determined in arbitration if the parties could not otherwise reach an agreement. The Decree specifically provided if terms of the Decree or AID conflicted with the MSA, the Decree and AID would control. The Decree and AID both provided that arbitration of disputes would take place by July15, 2021. In May 2022 H sought to compel arbitration. W objected, claiming that the court had no jurisdiction to do so as the July 2021 deadline had now passed. After considering arguments the trial court ordered the parties to arbitrate. Both parties filed various pleadings accusing the other of violating terms of the Decree and AID and seeking sanctions. The Order compelling arbitration contained the scope of the arbitration as agreed to by the parties which included terms for confidentiality agreements as well as W's pleadings for post-divorce division and counterclaims for breach of contract and fraudulent misrepresentations. The Order also provided that the parties would be bound by the rules established by the arbitrator unless otherwise agreed. The arbitrator's Docket Control Order provided that unless modified by the Arbitrator, the Texas Rules of Civil Procedure and Evidence would control. The Arbitrator ultimately issued three separate awards. One provided attorney fees as sanctions against W for frivolous pleadings in violation of TRCP 13, totaling approximately $57,000. A second award ordered $1800 in fees in favor of a third-party trustee relating to discovery issues and the third award addressed terms of a confidentiality agreement. H and others associated with him filed a motion to confirm the arbitration awards. W filed a motion to vacate them. W again argued that the court had no authority to compel arbitration after the July 2021 deadline for arbitration provided in the Decree and AID. Among other issues, W claimed that the arbitrator exceeded the scope of his authority by issuing sanctions. The trial court confirmed all three awards and W appealed. Initially, the COA considered whether the trial court abused its discretion by compelling arbitration after the deadline provided in the Decree and AID had passed. The COA finds that resolution of this challenge was dependent upon whether the "deadline issue" is one of "substantive arbitrability" (which involves the existence, enforceability and scope of arbitration) or "procedural arbitrability (which involves such things as time limits, estoppel, laches and other conditions precedent to an obligation to arbitrate). The COA finds that "substantive arbitrability" issues are decided by the court whereas "procedural arbitrability" issues are determined by the arbitrator. Here, finding that the July 2021 deadline matter was procedural, the COA found the trial court had jurisdiction to refer the matters to arbitration. W also challenged the arbitrator's right to issue sanctions, claiming this exceeded the scope of his authority. However, the COA held that because the order compelling arbitration bound the parties to the rules the arbitrator established unless they agreed to something different, the arbitrator's DCO which provided that the TRCP would control unless modified governed and since the TRCP authorizes sanctions, the arbitrator was within his authority to issue sanctions under TRCP Rule 13. Order confirming arbitration affirmed.

## XVI. MARITAL PROPERTY AGREEMENTS

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

***Specific words matter when interpreting the meaning of terms in a post-marital agreement.***

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.

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

***Involuntariness and unconscionability sink post marital property agreement.***

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.

**C. *Loyd v. Loyd,* 2025 Tex. App. LEXIS 5384 (Tex. App. – Fort Worth July 24, 2025) (Cause No. 02-24-00284-CV) (mem. op.)**

***Lack of a community estate based on premarital agreement does not preclude a breach of fiduciary duty claim.***

H and W married in 2008. Prior to marriage they executed a PMA which provided that there would be no community estate. W filed for divorce in 2021. Both parties asserted that the other had breached the PMA and sought declaratory relief. Under the PMA, terms provided that H (an oil and gas engineer) would create a new entity (Imagery) which would be his s/p and that the working capital of this new entity would come from a loan or loans from an existing company (ML Resources) which was likewise H's s/p. Further the PMA provided that in exchange for W's agreement to relinquish any and all interest in Imagery, all oil and gas leases acquired after marriage, all royalties, working interests and other deeds arising out of these interests would all be run through Imagery. The PMA provided that upon any divorce, W would be awarded 50% of all cash or cash equivalents in Imagery's account net of all liabilities, including intercompany loans as well as 50% of all undeveloped oil and gas leases. The PMA also provided that all salaries payable to H and generated by Imagery would be placed into a joint account and awarded 50/50 to H and W. In the divorce W sought declaratory relief regarding these rights. W also alleged breach of fiduciary duty and breach of the PMA contract against H asserting that H had improperly redirected funds from Imagery in a manner that was not fair to her. On the BOFD and breach of contract claims, the court awarded W damages of $321K. The court awarded W fees and issued orders regarding the parties' children which are not discussed here. H appealed arguing that the court erred in disregarding "intercompany loans" when calculating W's interest under the PMA and erred by finding he breached his fiduciary duty and breached the PMA. As to the calculation of W's interest under the PMA, the evidence established that at the time of trial Imagery had $206K in its bank account and the undeveloped leases had a cash value of $250K. Experts for both H and W acknowledged that loans from ML Resources to Imagery has matured in 2016 and that Imagery had never paid any amounts on these loans. W argued that such loans would have been unenforceable based on statute of limitations and therefore they should be ignored in calculating what she was owed under the PMA. H argued that because these loans exceeded the amounts in Imagery's accounts, W should receive nothing under the PMA. The court agreed with W and awarded her $103K (½ of the cash in the bank) and $125K (1/2 value of the undeveloped leases). The COA found that it was appropriate for the trial court to ignore the loans that ML Resources could never have enforced against Imagery due to the SOL. H argued W had no standing to make this claim on Imagery's behalf, however the COA found that a justiciable controversy existed regarding W's interests under the PMA and therefore she was entitled to seek declaratory relief. As to the breach of fiduciary duty claim, H argued that because the PMA provided no community estate would exist, he owed W no fiduciary duty. The COA disagreed, finding that beyond the obligation to appropriately manage, preserve and dispose of the community estate, spouses have fiduciary duties of frankness and good faith in their dealings with one another. The COA found that even when there is no community estate, these duties remain and in this case H breached these duties by redirecting funds from Imagery to other endeavors not equitable to W, by failing to act in good faith with honesty toward her and by failing to fully and fairly disclose information to her regarding his business transactions. As to the breach of contract claim, the PMA provided that all salaries payable to H and generated by Imagery would be deposited into a managed account and owned 50/50 by each party. Evidence established that H had redirected approximately $190K in funds in Imagery accounts entitling her to damages of $95K. The trail court agreed with W's argument that because Imagery was a pass-through entity, all net income was reported on H's tax return and therefore all of it should have been deposited into the managed account in accordance with the PMA terms. The COA agreed finding that all net income, regardless of whether it was paid out to H, would be considered monies available as salary to H and therefore H breached the PMA by redirecting those funds and not placing them in the managed account. Other issues decided by the trial court, including those affecting the award of attorney's fees and matters relating to the children were affirmed.

## XVII. CHARACTERIZATION AND REIMBURSEMENT

### A. *In re Marriage of Woolf,* 2024 Tex. App. LEXIS 7178 (Tex. App. – Amarillo October 7, 2024, no pet.) (Cause No. 07-24-00123-CV) (mem. op.)

***H failed to overcome the presumption that he made a gift to W by using 100% s/p funds to purchase a residence but placed title in both H & W's names.***

H and W married in 2016. Prior to marriage H owned a residence in Austin. During marriage H sold the Austin house and used the proceeds from the sale to purchase a house in Del Rio. It was undisputed that H used 100% of his separate funds to buy the Del Rio property which he paid for in full, however title to that

property was taken in the name of both H and W. H filed for divorce in 2022 and the case went to trial in 2023. The sole issue at trial was the character of the Del Rio house. H testified that he placed title in both names because the title company required him to, however he did concede that he could have put the property in his sole name if he had insisted. W testified that H put title in both names because they were married and this is where they intended to live for the rest of their lives. The trial court found the Del Rio house to be 50% separate property of each spouse, relying on the presumption of gift when H used separate funds to purchase but took title in the parties' joint name, and determining that H's evidence failed to overcome the presumption. H appealed. The COA acknowledged the presumption which created a fact until rebutted. The evidence at trial included testimony that H always referred to the house as "ours" and noted the conflict between his claim that the title company made him put W's name on the title with his admission that he could have insisted it be in his name only. The COA found the evidence insufficient to overcome the presumption of gift and affirmed the decree.

**B. *In re Pinkert,* 2025 Tex. App. LEXIS 159 (Tex. App. – Amarillo January 15, 2025) (mem. op.) (Cause No. 07-23-00309-CV)**

***Shares of stock can only be issued when consideration has been paid and where there is no evidence of consideration, there were no community property shares transferred to H during marriage.***

Rightway Cattle Co. was created on May 7, 2008. At that time stock certificates were issued to Steve and Jody Pinkert (a father and son), awarding them 50 shares each. Six days later Steve, the father, deeded 125 acres of rural land to the company. Jody married in June 2009. In May 2010 the company's right to do business was forfeited for failure to pay franchise taxes but they were reinstated in 2012. They forfeited again in 2014 and they remained inactive until 2021. Even so, in 2014 the company issued stock certificates awarding 500 shares each to Steve and H. W filed for divorce in 2020 and the case went to trial. The court found 50% of the shares were community property of H and W having been issued in 2014 and that 62.5 acres of the land was community property because the parties were married when the company dissolved. The court declared 50% of the shares belonged to H's father and allocated 25% of the remaining shares to both H and W. The court further awarded W a $42,500 owelty judgment for improvements to the land and placed an owelty lien on the property. H appealed. Initially the COA found that there was no evidence of corporate dissolution, noting that the failure to pay franchise taxes cannot involuntarily terminate a corporation under TBOC. Even so, W argued that H was issued 500 shares of stock in 2014 while married and thus these were presumptively community property. She made this argument despite the fact that neither H nor W could explain why. The COA however reasoned that there was no evidence of compensation for these 500 shares, finding that only when consideration has been delivered can shares be issued and is a person entitled to receive their shares. Here the only evidence established that H legally obtained 50 shares of company stock before his marriage, which were his separate property and they retained this character throughout the marriage. Judgment reversed and rendered that W holds no interest in the company or the land and the owelty lien securing her reimbursement was voided.

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

***Seven-month gap in tracing does not undermine W's separate property tracing!***

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 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 W for primary conservator. W 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 as 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.

**D. *In the Interest of T.E.R.,* 2025 Tex. App. LEXIS 4525 (Tex. App. – Dallas June 26, 2025) (mem. op.) (Cause No. 05-24-00014-CV)**

***Substantial reimbursement claims fail for lack of proper tracing and lack of evidence establishing enhancement in value.***

H and W married in 2006 and had four children. In 2016 they purchased the Springbell property with funds from an account W shared with her grandmother and which contained no community funds. In 2017 H and W bought an unimproved lot in Collinsville, TX. In 2020 the Springbell property sold and the proceeds were deposited into a joint savings account in the name of H and W. A majority of these funds were used to build a house on the Collinsville lot. W filed for divorce in 2022, seeking reimbursement for separate property funds expended on the Collinsville house. W introduced cashiers checks establishing her use of inherited or gifted funds from her grandmother to buy the Springbell property. W offered other evidence attempting to show her s/p contributions to the Collinsville build and The court ultimately awarded her reimbursement of $475K for downpayment on the Springbell property; $47K for closing costs on Springbell; $73K for adding a pool to Springbell and $46K in closing costs on Collinsville. H appealed asserting that W's claims were not reimbursement claims but instead ownership claims to the extent the Springbell proceeds were used in purchasing Collinsville, however, W failed to properly trace. Further, H claimed W failed to offer evidence of enhancement value for the added pool. H also claimed W did not rebut the presumption of gift if she established her s/p purchased Collinsville. The COA found that W adequately established proof of her s/p claims in the Springbell property with testimony and cashiers checks coming solely from the account she held with her grandmother. However, the COA found that once Springbell was sold, and the proceeds were deposited into a joint savings account, these funds became commingled with community funds the parties' paychecks, Zelle and Venmo payments, and interest deposits. Although W offered evidence of various payments associated with the Collinsville purchase and build, she did not systematically trace the funds from the Springbell proceeds through transfers into the parties' checking account which also funded the parties' living expenses, items which are not subject to reimbursement. Further, W failed to offer evidence of the enhancement value of the property after use of separate funds to install a pool at the Springbell property before it sold. The COA found that the reimbursement awards totalling more than $640K materially affected a just and right division of the parties' estate. Division of property reversed and remanded for a new division.

**E. *Ponzio v. Ponzio,* 2025 Tex. App. LEXIS 4534 (Tex. App. – Austin June 27, 2025) (mem. op.) (Cause No. 03-23-00336-CV)**

***A variety of reimbursement claims fail for a variety of reasons.***

H and W married in 2017, had two children and separated in 2021. H owned a house on Running Bush Lane before marriage. During marriage the community estate paid down principal on the mortgage in the amount of $14,600. In 2019 the parties sold the Running Bush house and purchased a house on Adelanto St. During the divorce, W claimed that she and her parents did substantial work on the Running Bush house to get it ready for sale. W sought reimbursement for time, toil and effort. She further claimed that she used $18K of a $25K gift from her parents on improvements to the Adelanto property and that she was entitled to reimbursement. In dividing the estate the court classified the $14,600 c/p reduction on H's s/p mortgage as a community contribution to the downpayment of the Adelanto house, allowing the c/e to own an interest in the residence and to appreciate in value over time because the Adelanto house eventually

sold and the proceeds were to be divided between the parties. On appeal, H argued this was error because any such reimbursement claim should be charged against his s/p estate, allowing 100% of the proceeds from sale of the property to be traced into the Adelanto downpayment. Further, H argued that any reimbursement claim did not arise until the parties divorced, compounding the error by allowing the $14,600 claim to appreciate in value. W conceded this error on appeal, arguing she still maintained a reimbursement claim fixed at $14,600. The COA agreed there was error by awarding more than $14,600 but sustained the reimbursement award at the fixed amount. The trial court also awarded W $21,500 in reimbursement for the time and effort expended by W and her parents in working on the Running Bush house based on evidence regarding the value of their labor. H argued on appeal that the proper measurement was "enhancement value" for which there was no evidence and further that W was not entitled to reimbursement based on any work done by W's parents. The COA found that under the former reimbursement statute, the proper measure for the expenditure of time and effort was "cost to the community" and not enhancement, finding the trial court applied the proper standard. However, the COA agreed that W was not entitled to reimbursement for any work contributed by her parents. Since W had not segregated her time from her parents time the COA simply reversed the $21,500 reimbursement award. Finally, the trial court awarded W reimbursement of $18,500 for s/p funds expended on improvements to the Adelanto house. H argued on appeal that there was no evidence establishing the value of enhancement by use of these funds and the court erred in simply awarding the amount expended. The COA agreed finding the proper measure of the claim was enhancement value for which W failed to offer any evidence. The COA reversed the $18,500 reimbursement award. Finding that the improper reimbursement claims affected a just and right division, the property division as reversed and remanded for further proceedings. H also challenged an above-guideline child support award not discussed herein which was affirmed as fully supported by the evidence.

**F. *Brenner v. Brenner,*2025 Tex. App. LEXIS 5418 (Tex. App. – Austin July 16, 2025) (Cause No. 03-23-00400-CV) (mem. op.)**

***Divided community property stock entitles both parties to shareholder distributions regardless of one spouse's required efforts after divorce.***

During marriage, H worked as an oncologist and W cared for the parties two children. Along with his oncology practice and hospital work, H and others developed a drug to be used in the treatment of breast cancer patients. They formed a corporation called NanoTX who owned the patent rights to the drug and H owned 30.33% of the corporate shares, acquired with community funds. NanoTX entered into a Patent and Know How License Agreement with Plus Therapeutics, Inc. (Agreement). Under this Agreement, NanoTX licensed certain rights for Plus to develop, manufacture and commercialize the drug to the public. The Agreement contemplated the payment of monies to NanoTX upon completion of certain milestones and the bylaws of NanoTX contemplated the payment of monies to its shareholders in the form of distributions and dividends. W filed for divorce in 2021 based on allegations of adultery. After trial the court awarded W 60% and H 40% of their beneficial interest in the NanoTX stock. The court imposed a constructive trust upon the stock held in H's name and obligated H to receive all NanoTX distributions and dividends and deposit them into an account designated by W within a specified time. The court also issued orders regarding the children, including above guideline child support, which H specifically appealed, but which is not discussed herein. As to the property division, H argued that the court erred by mischaracterizing the future milestone payments under the licensing agreement, some of which would not be paid for 10-15 years. H argued because these payments required his continued work for NanoTX as related to the drug and its development, such milestone payments would be his separate property. The COA considered that the only reason H would ever receive money from these milestone payments was because of the licensing agreement between NanoTX and Plus wherein NanoTX would pass on benefits to its shareholders. The COA found that H was not entitled to receive these milestone benefits because of his continued efforts, but solely because he was a NanoTX shareholder and as a result of the property division awarding 60% of that stock ownership to W, she too was entitled to receive these distributions as a shareholder. The COA found that imposition of the constructive trust was proper because it was a mechanism to ensure that W received her portion of shareholder dividends and distributions. Judgment affirmed.

**G. *O'Connor v. O'Connor,*2025 Tex. App. LEXIS 5529 (Tex. App. – Austin July 30, 2025) (Cause No. 03-23-00407-CV) (mem. op.)**

***Lack of relevant detail in offer of proof prevents a harm analysis allowing community property characterization to be affirmed.***

H and W married in 1995. In 2009 H's mother died, leaving H's father as trustee of a trust holding mineral interests which had belonged to his wife. On 11/1/2009 H's father executed Mineral Deeds which granted and conveyed the mineral interests in equal shares to H and his five siblings. The mineral deeds recited that they were given for "adequate consideration received." Several weeks later, H's father issued a check to him and each of his siblings for $12,000 and told them to use these funds to purchase the mineral interests from the trust. H deposited his check into a joint account with W and thereafter wrote a check for $11,130.50 to the trust. When H and W were divorcing, H claimed the mineral interests to be his separate property. His expert testified that he could not use the community out first tracing method because he did not have the necessary documentation on all deposits and withdrawals at the time of the transaction. Instead, he used the clearing house method and identical sum inference method to opine that the mineral interests were H's separate property. The Court found neither of these tracing methods applied because there were three different numbers in evidence ($12,000 check where payor not identified; a $12,171 deposit and an $11,130.50 check to the trust), none of which could be clearly explained. Ultimately the court found the interests to be community property, relying on the language of the deed itself which (1) was not a "Gift Deed;" (2) specified it was based on "adequate consideration given" during marriage and (3) became effective before any money changed hands. The court divided the parties' $10MM reconstituted estate which included these mineral interests. H appealed. Initially, H challenged the court's exclusion of Exhibit P-7, notes written by his father several months before his death in 2012. H offered the notes as evidence of his father's intent to make a gift of the mineral interests. Upon exclusion H made an offer of proof by authenticating the notes in his father's handwriting and then explaining that these were notes his father kept recording the various transactions that he was making with respect to his own estate planning. W argued that H had failed to preserve error. In a detailed examination of preservation through offers of proof, the COA notes that a party must provide the details about the specific content of the proof and not simply the reasons for it. Here, the note itself was fully redacted in the appellate record and H's testimony, while authenticating the note and discussing their purpose, never disclosed any details about his father's intent as proving that he meant for the Deed to be a gift. The COA found that since they could not review the content of the note they could not make a harm determination and error was therefore not preserved. H further argued that the court failed to consider the presumption that gifts from parents to children are presumed to be separate property. The COA found nothing in the record to indicate the court did not consider this but further stated that although such a presumption exists, H was required to show "donative intent" which he could not do. Further, the Deed itself was clear and convincing proof that rebutted the presumption when it recited that the transfer was made in exchange for consideration. The COA found that under any tracing theory (including community out first, clearing house or identical sum inference), H had a fundamental problem in that the record could not support any of these in light of the lack of complete records showing the gift of funds from his father as traced through a joint account and then withdrawn to pay the trust for the mineral interests. Under these circumstances, the COA found no error in the court's characterization of the mineral interests as community property. Judgment affirmed.

## XVIII. SPOUSAL MAINTENANCE/ALIMONY

### A. *Czarkowski-Golejewski v. Wilson,* 2025 Tex. App. LEXIS 16 (Tex. App. LEXIS – Amarillo January 2, 2025) (mem. op.) (Cause No. 07-24-00127-CV)

***Sufficient evidence supported W's necessary expenses in support of her request and receipt of spousal maintenance.***

H and W married in Australia in 2009 and thereafter moved to Austin TX. H obtained a lucrative job while W struggled to maintain employment at no more than $10.50/hour. By 2017, W's health had deteriorated significantly which various bone and joint issues requiring multiple surgeries and preventing her from maintaining employment and requiring others to assist in her care. H filed for divorce and eventually W was awarded spousal maintenance of $5000/month for approximately three years, with a review scheduled in 2026. The court later issued temporary orders pending appeal (TOPA) awarding W appellate attorneys fees. H appealed. H challenged the spousal maintenance award solely on the basis that W failed to support the amount of her minimum reasonable needs. The COA however found more than sufficient evidence in the form of an exhibit detailing W's expenses, the majority of which H testified were reasonable. The spousal maintenance award and overall decree was affirmed. The TOPA however was reversed. Under TFC 6.709(h) any party may file a motion for temporary orders pending appeal at or before the time they are required to file their own notice of appeal. In this case, based on post-judgment activity, H's notice

of appeal was due and timely filed within 90 days of the final judgment. Under TRAP 26.1, any other party, including W, desiring to appeal may file their own notice within 14 days after the initial notice of appeal has been filed. As such, under TFC 6.709(h), W's motion for temporary orders was due to be filed within 14 days after H's, however her motion was filed more than 20 days after H's notice of appeal. As such the trial court had no jurisdiction over W's motion for TOPA and those orders were void.

**B. *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)**

***Retroactive termination of spousal maintenance obligations not authorized by statute.***

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 judgment 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.

**C. *Begala v. Begala,* 2025 Tex. App. LEXIS 4449 (Tex. App. – Houston [1st Dist.] June 26, 2025) (Cause No. 01-24-00734-CV)**

***Construing "cohabitation on a continuing basis" as sufficient to terminate spousal maintenance.***

H and W married in 1995 and W filed for divorce in 2017. While the divorce was pending W moved to Ohio and leased a condo. The court signed a decree in 2022 awarding W various assets and ordering H to pay spousal maintenance of $5,000/month for 7 years, through February 2029 unless W died, remarried or cohabitated. Before her lease in Ohio expired W bought a duplex which she planned to remodel. While the remodel was underway, W lived with her boyfriend for extended periods of time, including a 60+ day period, a 30+ day period and a 116 day period. In January 2024 H filed a petition to terminate maintenance pursuant to TFC 8.056(b), alleging that W was cohabitating with her boyfriend, In responding to admissions, W admitted to these periods but indicated that they were only temporary while her duplex was being remodeled. In closing arguments, counsel for the parties disagreed as to the meaning of TFC 8.056(b). H argued that the circumstances met all the requirements of the statute, cohabitation, with someone in a dating relationship, at a permanent place of abode on a continuing basis. W argued that although she was a frequent overnight guest, it was only temporary, not permanent and she had her own place even if she kept a few things at the boyfriends. The trial court denied H's request to terminate and H appealed. The COA, in a case of first impression, sought to construe TFC 8.056(b). They reviewed definitions of "cohabitate" as considered in other states as well as other circumstances under TX authority. Ultimately the COA reviewed the "temporal" terms within Chapter 8 in an effort to

determinate what was meant by "on a continuing basis." The COA decided 10 years was too long because spousal maintenance could not be ordered for more than that period. Further, the statutes speak to "periodic" payments and reference those as "monthly" payments. Reasoning that if a spouse receiving maintenance cohabitates with a romantic partner for two months, that requires spousal maintenance payments to continue from one month to the next, satisfying the "continuing basis" period under the statute. Under this construction the trail court erred in denying termination., Judge reversed and rendered that H's spousal maintenance obligation terminated. H had filed a TRAP 24 motion to suspend his obligations while the appeal was pending by allowing him to deposit the monthly payments into the registry of the court. The COA carried his motion with the appeal, fast-tracing briefing and oral argument. Upon deciding the issue while allowing W to petition for review in the Supreme Court, the COA ordered that all future payments be deposited into the court registry until mandate issues.

**D. *Mancha v. Mancha*, No. 11-25-00167-CV, 2026 WL 59369 (Tex. App.—Eastland 2026, no pet. h.) (mem. op.) (01-08-2026).**

**Evidence Sufficient to Support Finding that Wife, Despite Diligent Efforts, Was Unable to Meet Her Minimum Reasonable Needs; Because Parties Were Married for Over 10 Years, Wife Did Not Need to Establish She Suffered from an Incapacitating Disability.**

Facts: The parties married at 17- and 18-years old. Wife did not finish high school because Husband did not want her talking to boys at school. Husband physically abused Wife from the beginning of the marriage until their youngest daughter was three; however, his verbal and emotional abuse continued throughout the marriage. The physical abuse restarted after their children became adults, resulting in Wife calling the police multiple times. Shortly before the parties separated, Husband opened a separate bank account from which he made purchases for his new girlfriend and her children. In Wife's divorce petition, she asked for temporary spousal support and spousal maintenance. Wife had difficulty earning income due to ongoing health issues. At the time of trial, Wife lived rent-free in Husband's brother's home. Husband's brother testified that he wanted to start charging Wife rent. Neither party had retirement benefits, and both had significant debt. Wife asked for $2500 a month in spousal maintenance for 7 years. The court granted her $1000 a month for 2 years. Husband appealed pro se.

Holding: Affirmed.

Opinion: Husband challenged Wife's eligibility for spousal maintenance and argued Wife failed to rebut the presumption against spousal maintenance. The parties were married for more than 10 years, and Wife presented sufficient evidence to show she lacked sufficient property and earning ability to provide for her minimum reasonable needs. Wife's income and expense information was not exhaustive, but "a reasonable trial court can[not] ignore the indisputable fact that people must physically nourish themselves to survive. They must eat." Wife's income was substantially less than her minimum expenses. Wife stopped attending school after 8th grade, and her only source of income was a business she operated at the mall and a crafts and jewelry business she operated with her daughter. Wife characterized the craft business as a hobby, and all the proceeds from that venture went to her granddaughter. Wife worked 30 hours a week at the mall business and paid someone else to keep the store open during the remaining mall hours. Husband contended Wife's choice to work only 30 hours was a sign of laziness that should have precluded her entitlement to spousal maintenance. Wife testified that she always felt ill and had trouble working full time. She also took care of her "grandbabies" as much as she could. Even if the trial court did not find an incapacitating disability, it could have found that Wife's health issues were a limitation on Wife's ability to meet her minimum reasonable needs. Husband also argued that the trial court failed to consider the debts assigned to him under the decree when determining his net resources and ability to pay spousal maintenance. Husband presented conflicting information regarding his finances and testified that he had "a little bit leftover" each month. Based on the evidence presented, the trial court did not abuse its discretion in determining Husband's gross income for the purpose of assessing spousal maintenance.

**E. *Douglas v. Douglas*, No. 07-25-00138-CV, 2026 WL 191578 (Tex. App.—Amarillo 2026, no pet. h.) (mem. op.) (01-21-2026).**

**Spousal Maintenance Award Struck Because Wife Presented Insufficient Evidence that She Exercised Due Diligence to Earn Sufficient Income to Meet Her Minimum Reasonable Needs.**

Facts: Husband was an attorney, licensed in California and New York and in the process of getting licensed in Tennessee. At the time of divorce, the parties lived in Texas, and Husband's mother lived with them. Wife was a stay-at-home mother. Wife was arrested for

allegedly assaulting Husband and his mother; however, the charges were no billed. Husband applied for a protective order. Shortly after the assault, Husband filed for divorce and rented an expensive home near the marital residence. Wife asked for spousal maintenance in a counterpetition. Wife had previously worked as a teacher but was having difficulty finding work due to her arrest. Husband was also struggling due to a three-month unpaid leave of absence from work and a lavish lifestyle. After the conclusion of testimony, the trial court announced it intended to order spousal maintenance but noted Wife did not provide a specific request. The court instructed Wife to "put together some numbers" and submit them. Wife did so. Wife explained her difficulties finding work, stated there were no assets to divide, and the parties' debts were largely attributable to Husband, whose income exceeded Wife's income from a laundromat by 55 times. Due to the disparity of incomes, Wife asked for the maximum of $5000 per month for five years. Husband argued Wife did not present evidence of her minimum reasonable needs nor any evidence to support the amount requested. He asked that the court limit the award to one year. The court ordered Husband to pay maximum guideline child support, did not award Wife any real property, and awarded Wife $3500 a month in spousal maintenance for three years. Husband appealed.

Holding: Reversed and Rendered.

Opinion: On appeal, Husband argued the evidence was insufficient to support findings (1) that Wife lacked the ability to earn sufficient income to meet her minimum reasonable needs or (2) that she overcame the presumption maintenance was not warranted because she failed to exercise due diligence. The appellate court noted that the appeal had been transferred from Fort Worth, so that court's precedent was applied to Husband's appeal. During her testimony, Wife asked to be allowed to relocate to California with the Children because there were better employment opportunities there. When Wife worked as a teacher, she earned $30,000 a year. Wife did not present any evidence that she had proper credentials to find work as a teacher in California. Wife was highly educated, but she did not provide a copy of her resume at trial. Other than her assertions, Wife did not offer any evidence of job applications or rejections, except for a homeschool teaching job in California. Although she stated that she worked as a substitute teacher after the parties separated, she did not present any evidence she sought employment as a substitute teacher or was denied an opportunity to do so. Although Wife testified that she could not get a job due to her inability to pass a background check, Wife's criminal history did not automatically disqualify her from teaching. There was no evidence she lost her certificate to teach. Additionally, Wife did not have a criminal conviction on her record because the charges were no-billed. Because Wife did not present sufficient evidence to show she exercised due diligence to meet her minimum reasonable needs, the trial court abused its discretion in awarding spousal maintenance, and the appellate court rendered Wife take nothing on that claim.

## XIX. DIVISION OF PROPERTY – GENERALLY

### A. *Landry v. Landry,* 2024 Tex. App. LEXIS 6833 (Tex. App. – Dallas September 17, 2024, pet. filed) (Cause No. 05-20-00575-CV) (mem. op. on remand)

***Statements thought to be missing in the record for tracing purposes had actually been admitted but expert testified to the contrary without correction and COA was unwilling to look for these statements in a 65 volume record for consideration on appeal.***

This case was first reported in the May 2022 edition of Interesting Cases as *In the Interest of B.N.L.,* 2022 Tex. App. LEXIS 2590 (Tex. App. – Dallas April 20, 2022) (mem. op.) (Cause No. 05-20-00575-CV). Although addressing several matters, the COA reversed and remanded the division of property after determining that the trial court's characterization of two Schwab accounts as husband's separate property was error. Husband's expert testified that there were 4 months of Schwab account statements missing but he assumed that the parties swept the accounts of interest in the same manner that they had done for years, making the missing statements of no concern to him in his tracing. Petition for review was granted by the Supreme Court where they determined that the missing statements had actually been admitted into evidence at trial. The SCt reversed and remanded the matter back to the COA for consideration of the issue in light of the fact that the statements actually did appear in the record. On remand, the COA noted that although the statements were in the record it did not change their opinion. Despite introducing the "missing" statements into evidence, H's expert testified on both direct and cross that the statements were "missing," H's counsel did not correct this misconception, nor did he provide the expert with the statements to review so he could testify regarding them. In supplemental briefing, H invited the COA to review the statements in the record to determine that the expert's assumptions (that the parties swept the accounts) was in fact correct and supported the expert's tracing and the s/p characterization. The COA

points out that the record was 65 volumes and the Schwab accounts were referenced in 20 of those volumes, noting that the trial court, not the COA, is the sole judge of a witnesses credibility and the COA was not in a position to determine such matters on appeal. Divorce affirmed, property division reversed and remanded for trial court to characterize and divide the parties' estate.

**B. *Sloan v. Sloan,* 2024 Tex. App. LEXIS 7441 (Tex. App. – Fort Worth October 17, 2024, no pet.) (Cause No. 02-23-00361-CV) (mem. op.)**

***Trial court's $103K cost of sale reduction on the value of the residence was error where no sale was contemplated, affecting the division and requiring reversal.***

H and W married in 2008. Prior to marriage, H owned a house in Florida where the parties lived for a period of time. H and W moved to TX in 2016 and began construction of a home there. H's name was the only one on the mortgage for this property. The Florida property sold in 2017 and H deposited $172K in sales proceeds into the parties' joint savings account. Further, H deposited $60K from his pre-marriage retirement into the parties' joint checking account. Over the course of the TX build, H wrote numerous checks from the parties' account towards the building costs and transferred some of these funds between accounts. In 2022 H filed for divorce and asked the court to confirm his s/p, asserting that the TX house was "mixed" in character and requested reimbursement on other items as well. W filed a counter petition seeking a disproportion division but did not claim any reimbursement. The case was tried over 6 days. H offered evidence of his s/p funds from both the FLA house sale and his retirement into joint accounts, numerous checks written and transfers made in connection with the build. H testified that the parties did not have any substantial, excess cash assets and that with their income they just "broke even." The court found the TX property to be partially H's s/p and awarded the house to H. The court awarded "luxury items" valued at $50K to W and ordered each to pay their own attorney fees. W sought original and amended FFCL which the court provided. W appealed, claiming the division of property was manifestly unjust, that the court erred in finding the TX house "mixed" in character, and challenged various findings as affecting the valuation and division. The COA went through a detailed analysis of the evidence showing H's efforts at tracing his s/p funds (FLA house proceeds and retirement) into accounts and thereafter out to pay for various matters in connection with the construction of the TX property. Collectively the COA found this evidence demonstrated that H deposited $202,947.86 of his s/p into various accounts and that around the same time, culminating in the purchase of the TX property, he made $184,486.75 in payments to the various home builders. The COA found that this evidence, combined with H's testimony that the parties' income and expenses were a "break even" situation, was clear and convincing to establish his s/p interest in the TX residence. Examining W's various issues concerning the court's FFCL, the COA overruled all of these issues within the exception of W's complaint that there was no evidence supporting an 8% cost of sale reduction on the value of the TX property because no sale was contemplated. The COA agreed. The COA found that this $103K reduction was not *de minimus* as to the overall value of the parties' estate, making it error which resulted in a division of property that was manifestly unjust. W further complained about the amounts found owing for fees, complaining the evidence showed her fees to be $85K and not $31K. Because of the error relating to the cost of sale reduction, the COA vacated the findings regarding fees, affirmed the divorce but reversed and remanded the property division, including a determination on fees, for further proceedings. **Comment:** Although the Opinion is very detailed in reviewing the evidence of s/p funds as connected to the purchase of the TX property, it seems that the COA determined the existence of clear and convincing evidence based on H's collective expenditures during the requisite time period as opposed to a specific tracing of each deposit, withdrawal and transfer by connecting them to the actual purchase.

**C. *Key v. Key,* 2025 Tex. App. LEXIS 687 (Tex. App. – Houston [14th Dist.] February 6, 2025) (Cause No. 14-23-00726-CV)**

***The trial court erred in valuing W's fully vested retirement by failing to consider the expected addition of her employer contributions***

H and W married in 1992. In 2021 W moved out without any notice to H, taking much of the household furniture/furnishings with her, and filed for divorce. When H discovered the move, he withdrew $10K in cash from a joint account and wrote two checks to his mother, one for $65K+ and one for $95K+. claiming his concern about what would happen in the divorce. At some point while the suit was pending, H instructed his mother to return $50K to his wife, which the mother did. The case went to trial. At the time of trial, W was eligible for full retirement and had a pension from her employer that she valued on her inventory at approximately $400K. Both parties had experts, neither of whom testified, but both prepared reports on

valuation of the pension that were admitted as evidence. It was undisputed that upon W's retirement, her employer made a matching contribution but the evidence was not clear on exactly how much that would be. Even so, the expert reports put the potential value of W's pension at between $1.7MM and $2.4MM, significantly greater than the value W included in her inventory. The trial court found the entire estate to be worth $1.8MM and divided it almost equally between H and W, awarding W 100% of her pension. In response to W's waste claims, the court treated the funds withdrawn by H as an illusory asset and awarded W the $50K returned to her and awarded H the remaining $121K. H appealed. H asserted several challenges to the overall division of the parties' estate, including valuation of W's pension. The COA sustained this issue finding that it was clear the trial court failed to include any matching contributions from W's employer, which were significant and otherwise skewed the division to the point it was an abuse of discretion. The COA found sufficient evidence to support a much higher value that the trial court could not ignore. Regarding H's challenge to the fraud finding, the COA indicated that the court was not required to believe H's testimony that he spent these funds on legal fees and expenses relating to maintaining the house after W left. The COA noted that H offered no evidence to corroborate these claims. H claimed he was entitled to "offsets" to the amount of alleged waste because W left the house totally in his care, making him responsible for all the property taxes, insurance and maintenance. However, H failed to offer evidence of these expenses and failed to establish that the money withdrawn from the joint account and paid over to his mother was actually used for these purposes. This, the COA notes, was his burden. The fraud findings and award were sustained. In light of the COA's determination that the trial court erroneously undervalued the W's pension, the entire property division was set aside and remanded to the trial court for further proceedings.

**D. *In re Marriage of Hettinger,* 2025 Tex. App. LEXIS 4208 (Tex. App. – Corpus Christi June 18, 2025) (mem. op.) (Cause No. 13-23-00403-CV)**

***IIED damages reversed because other remedies available and independent suit against H's girlfriend improperly characterized as c/p.***

H and W married in 1997 and there were three children. Together, the parties owned a company, Tex-Mex Recycling, which recycled plastic. Testimony at trial indicated that H's father died in 2015 and H became very depressed. As a result, W hired Abby a CPA, to assist with the company's financials. Subsequently W discovered that H and Abby began an affair. W became worried about Abby's handling of finances at the company. H convinced W to sign off on a $6.5MM loan for the company. H and W traveled to Europe in an attempt to save the marriage but W discovered while there that H was still involved with Abby. W filed for divorce on the grounds of adultery. H fired W from the company and locked her out of the offices. W later amended and asserted an IIED claim against H, alleging various conduct which she considered to be extreme and outrageous throughout the marriage and with respect to the company. In a separate suit, W sued Abby individually for breach of fiduciary duty, loss of consortium and other claims. The case went to trial before a jury on various issues, including the IIED claim. The jury found in W's favor and awarded W $1MM in damages as well as $500K for future pain and anguish. The court further awarded W's suit against Abby to H as part of the division of property. Finally the court assessed child support against H at $6,000 per month. H filed a motion for JNOV on the IIED claim which was denied. H's MNT was also overruled. H appealed. W filed a cross-appeal challenging the court's decision to exclude her expert's testimony at trial and further the court's award of her pending suit against Abby to H as community property. As to the IIED claim the COA notes that this is a "gap-filler" tort which is only available when other remedies for the alleged conduct are not available. In this case, the COA found that W's evidence supporting allegations that H had kicked her out of the company, had expended large sums on attorney fees and had induced her to sign off on a large loan were all claims that could be remedied in other ways, i.e. through a just and right division of the estate and claims of constructive fraud, determining they could not support the IIED finding. W further argued that H's treatment of her over the years, his outrageous conduct regarding his affair with Abby likewise supported her claim. The COA reviewed other cases where IIED had been found based on conduct involving cruelty and humiliation and determined that W's evidence did not rise to these levels. Based on these findings the COA reversed and rendered that W take nothing on her IIED claims. As to W's challenge to the characterization of her suit against Abby as community property and the award of that suit to H, the COA found that where a suit seeks damages that would be characterized as separate property (i.e. personal injury claims), there is no presumption that such claims are community property and W had no burden to establish those claims were her s/p. To the extent that these claims belonged to W and sought personal injury damages that would be her separate property if recovered, the COA found reversible error affecting the just and right division of the community

estate. The entire division was reversed and remanded for a new division. Finally, as to the child support award, H challenged the trial court's consideration of factors in TFC 154.123 in determining above guideline c/s. The COA affirms that the TFC 153.123 factors may only be considered in addressing child support for obligors whose net monthly resources are *below* the current $9,200 cap. When determining whether additional support will be awarded for obligors whose resources are *above* the $9,200 cap, the trial court may only consider the proven needs of the child and the income of the parties as provided by TFC 154.126. Testimony regarding the W's lifestyle and her desire to be able to provide for the children in a manner equal to H was not relevant. As such, the COA reversed the c/s award and remanded for a recalculation.

**E. *Bravo v. Bravo,* 2025 Tex. App. LEXIS 5219 (Tex. App. – Dallas July 22, 2025) (Cause No. 05-24-00419-CV) (mem. op.)**

***Absent alter ego, the court may not divide assets owned or held in the name of a community property business enterprise.***

H moved to the US from Puerto Rico in 2006/2007. He formed several businesses. He used money he brought from PR to purchase several real properties in Florida and TX which he turned into parking lots for 18 wheelers to use as service and parking areas. H married W in 2013 and W began working for H's businesses. H formed a new business, Segundo Rentals, after marriage and this business purchased and operated rental properties. H filed for divorce in 2021. A month before trial H's ex wife intervened in the divorce claiming the existence of property valued at $500K which should have been divided in her prior divorce from H. The day before trial, H amended his pleadings to seek an annulment based on his claim that W had been married twice before and never divorced from those two marriages. W filed a motion to strike the amendment which the court granted. Intervenor failed to appear for trial which proceeded to the judge. The court found that Segundo Rentals was community property and it divided the assets of the company 50/50 between the parties, ordering the highest value property to be sold. The court divided the remaining assets. H attempted to make a formal bill of exception as to a witness who planned to testify about W's failure to secure divorces from two husbands in Mexico. H filed a MNT and attempted to offer the testimony of a Mexican lawyer at the new trial hearing but W objected because he had not been identified as an expert. The court denied the MNT and H appealed, arguing error in the denial of his trial amendment and error in the division of the estate. The COA considered the trial amendment under TRCP 66 and determined that the claim for annulment was a new claim that W could not have anticipated. Further, this claim would have reshaped the nature of the case and likely would have made a significant impact on the property division at trial. Because this would have materially affected the W's ability to try her case, the COA determined that refusal of the trial amendment was not error. As to the property division, the COA found that it was absolute error to specifically divide assets which belonged to the community business. The business was not named as a party and W had not pled alter ego as a potential means of reaching the assets held therein. The COA found that the entire community estate was valued at $5.4MM, of which the assets of this company totaled approximately $3.3MM. The COA found that there was no evidence as to valuation of the company to be added back into the community estate after these individual properties were taken off the table. In light of the impact this had on the overall division, the COA reversed the entire property division. The court stated that although a court may sometimes find it easier to simply divide the assets of a business and avoid the time and expense a business valuation may create, this simply is not proper unless alter ego and veil piercing are pled and proven. In this case they were not. Divorce affirmed, property division reversed and remanded.

**F. *Wadhwa v. Wadhwa,* 2025 Tex. App. LEXIS 5180 (Tex. App. – Houston [14th Dist.] July 22, 2025) (Cause No. 14-23-00521-CV)**

***Husband's promissory note to his parents for paying off mortgage saved money, thus was not fraud, but his other spending choices were not fair.***

H and W married in 2007 and had 2 children. W filed for divorce in 2021 and sought to be named JMC with exclusive right of domicile with no geo restriction. H filed a counter petition seeking the same relief for himself but with a geo restriction in Harris County. W subsequently amended her pleadings a number of times, including seeking SMC, alternatively JMC. When the case was called to trial W's counsel did not appear and the court granted a continuance but closed discovery. A month later, W filed her 6th amended petition which sought SMC, alternatively JMC and giving her exclusive right to residence in Harris County. H filed a motion to strike, claiming surprise and the inability to do discovery. The court struck only W's alternative pleading for JMC. The case went to a jury and the Charge asked two questions: (1) should W be named SMC … answer "No" and (2) should the parties be named JMC with H having the exclusive

right of residence … answer "Yes.". The balance of the issues were tried to the court. W had alleged fraud on the community against H for his transfer of a business interest to his father, unexplained transfers of funds, extravagant spending on the children, time and expense of obtaining a pilots license and giving his parents a promissory note and lien on the marital residence in exchange for their payment of the mortgage, all without W's knowledge or consent. The court ordered a 50/50 division and appointed a receiver to sell the residence. W filed a MNT which was denied. W appealed. As to the property issues, W challenged the court's finding that she presented no evidence of fraud on the community estate by H. The COA considered each of W's claims. First, W offered evidence that H conveyed 40% of his interest in a company to his father; H acquired 40% before marriage and an additional 40% during marriage as compensation. When the business sold, H's father received $675K in sales proceeds, Since W knew nothing about this transfer the COA found it created a presumption of fraud and deprived the community estate of those funds unless H could establish the fairness of the transaction. W also claimed H sold an asset and the $225K in proceeds was deposited and then withdrawn from a joint account. H claimed the asset was his s/p however he failed to offer clear and convincing evidence. This too raised a presumption of fraud. W offered evidence of extravagant trips H took their children on without her. W claimed vacations for the family before separation were never a big expenditure. The COA considered evidence that at the time of these expenditures the community estate had a negative value. Further even though they were for her children the COA found that she had only nominal income and she was omitted from these trips, indicating that H had failed to demonstrate how the expense was "fair." As to the promissory note to his parents in exchange for paying off the mortgage, H argued that the P Note was without interest and this saved money and gave the parties more flexibility in handling their finances. The COA found this evidence sufficient to overcome the presumption of fraud as to that specific item only. Otherwise, the COA found that there was sufficient evidence of fraud on the community which H did not overcome and the amounts involved had more than a deminimis effect on the division of the community estate. The COA reversed the entire division of property and orders appointing a receiver with directives for the court to issue a new division. **Comment:** Discussions regarding the child related holdings are found in Section VIII.

**G. *Kist v. Kist*, No. 14-24-00826-CV, 2026 WL 307397 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (02-05-2026).**

**Father Established He Purchased New House During Divorce Proceeding with Inherited Funds, Making It Separate Property.**

Facts: Father and Mother had four children together. During the divorce proceedings, Father obtained a partial summary judgment regarding the characterization of a house he purchased during the divorce 48 litigation. Father attached to his motion affidavits from himself and his brother, copies of disbursement checks from his mother's estate, and banking statements to trace the funds to purchase the house. The trial court granted partial summary judgment and found the house was Father's separate property. After a bench trial, the court imposed a geographic restriction to that county and the contiguous counties. Mother appealed.

Holding: Affirmed.

Opinion: Mother first challenged the geographic restriction. The family initially lived in Indiana but moved to Texas after Mother had a falling out with her family. In Indiana, Mother worked as an attorney, but in Texas, she stayed home and cared for the Children. Father had five different jobs over the 10 years the family lived in Texas. Mother claimed Father spent all their joint funds after she filed for divorce and threatened that he wanted to make her penniless and on the street. Mother additionally asserted Father was ineffective at coparenting. She asked the court to order that the marital residence be sold because Mother could not afford the mortgage. Additionally, she did not believe she could obtain a job that would allow her to afford housing and daycare in that area, and she did not have anyone to assist her in caring for the Children. She found a well-paying job in Indiana and would receive significant support from her family, including education at a private school owned by her mother. Her family offered to buy Mother a home in Indiana but would not assist with housing in Texas. Father claimed that he could not find work in Indiana. He acknowledged the credit limit on Mother's credit card had been reduced once the divorce was initiated but denied requesting the limit reduction. Father disputed Mother's claims that he did not assist with the Children and keep up with their schooling. He purchased a new home near the marital residence and wanted the Children to remain in the area. Other witnesses disputed Mother's characterizations of Father as an "absentee parent." While some evidence supported allowing Mother to move to Indiana with the Children, there was also evidence to support the trial court's judgment. The court did not abuse its

discretion in finding it would be in the Children's best interest to remain in Texas. Mother next challenged the partial summary judgment and argued the evidence was not competent summary-judgment evidence because the affidavits did not state the attached documents were "true and correct copies." The affidavits did, however, state that the facts within were based on "personal knowledge" and were "true and correct" and explicitly referenced each exhibit in tracking the movement of the funds. Summary-judgment evidence must be property authenticated, which means that there must be evidence sufficient to support a finding that the item is what the proponent claims it is. Objections to authentication must be preserved through a timely objection and ruling on the objection. In the trial court, Mother raised hearsay objections but not authenticity objections. Moreover, the evidence supported the trial court's finding that Father purchased the house with inherited funds, making it his separate property.

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

**Evidence Supported Awarding Wife 75% Of Community Estate.**

Facts: Husband and Wife were married for about seven years and had three Children. During the divorce proceedings, by agreement, the parties shared the marital residence; although, Wife had exclusive use of the master bedroom. Both accused the other of adultery. There was evidence Wife had become close to another man shortly before the divorce but no evidence she engaged in intercourse with that man. 33 Husband admitted to having sex in Wife's bed with another woman while Wife was out of town during the divorce. Husband did not believe that incident constituted adultery because the marriage was not "intact" at the time. Wife reported that Husband abused alcohol, but Husband denied having a problem. The child custody evaluator expressed concerns that Husband did not accept responsibility for his actions. Husband denied many allegations against him, but admitted he beat up, in front of the Children, the man with whom he believed Wife had an affair. He also admitted to shooting guns at a large photo of Wife with the Children but asserted it was one of the Children's ideas. He burned the photo later so no one could see what had been done to it. After hearing evidence, the court named the parties joint managing conservators, granted Wife the exclusive right to designate the Children's primary residence, and gave Husband a modified standard possession order. Additionally, the court granted the community estate two reimbursement awards: one related to Husband's waste and one related to the purchase of property with Wife's separate funds. Husband appealed.

Holding: Affirmed.

Opinion: Husband first challenged the division of the community estate, arguing it unfairly and unjustly awarded Wife 78% of the estate. Wife acknowledged the division resulted in a 75/25 split but asserted the evidence supported the result. Husband did not challenge the findings that he committed adultery and was guilty of cruel treatment against Wife. Rather, Husband challenged findings that he committed waste and that the community estate was entitled to reimbursement. However, Husband stipulated to the reimbursement claim relating to the purchase with Wife's separate funds, and the evidence supported a finding that Husband's use of community funds to benefit his parents' rental property was waste. Further, in addition to the adultery and cruelty findings, the court listed in its findings about 10 other Murff factors that supported a disproportionate award. While Husband complained of one of the listed factors on appeal, he failed to address all of them. Accordingly, Husband's appellate complaint was overruled. Next, Husband complained that the court awarded him a standard possession order instead of a 50/50 possession order, which the parties had been following pursuant to their agreed temporary order. Rather than address the Holley factors, Husband complained that Wife did not explicitly request a standard possession order in her pleading. Wife's pleading asserted that she believed the parties would reach an agreement regarding possession, and if they could not, she asked the court to make orders in the best interest of the Children. Wife did not explicitly request either a standard possession order or a 50/50 possession order; however, she did request Husband's periods of possession be supervised due to his history of alcohol use. From that request, Husband was on notice that Wife sought to significantly reduce his possession. Further, Husband failed to object when Wife testified at trial that she did not believe 50/50 was in the Children's best interest. Nor did Husband object to the child custody evaluator's report, which did not recommend a 50/50 possession schedule. Finally, Husband argued the judge was impartial and deprived him of a fair trial. Although Husband identified instances that he perceived to show bias, he did "not come close to making that showing [of bias] in this case."

**I. *Cruz v. Bazan*, No. 03-24-00478-CV, 2025 WL 3180239 (Tex. App.—Austin 2025, no pet. h.)**

**(mem. op.) (11-14-2025).**

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

Facts: Husband and Wife were married for just over one year. Husband owned real property before marriage. During the marriage, Husband conveyed that property to himself for $10, identifying himself as a single grantee and a married grantor. During the divorce, Wife moved for summary judgment to find this transaction converted the property to community property. Wife obtained the deeds through the real property records because Husband failed to produce them in response to Wife's discovery requests. Husband did not file a response to the motion for summary judgment. The trial court granted Wife's 34 motion and signed a final decree including the property as part of the community estate. Husband appealed.

Holding: Reversed and Remanded.

Opinion: On appeal, Wife argued that her motion was a no-evidence motion, to which Husband failed to respond. Wife did not assert in her motion that there was an element of Husband's claims or defenses for which no evidence existed. Thus, the motion was a traditional motion for summary judgment—not a no-evidence motion. Accordingly, Wife bore the burden to establish her claims as a matter of law, and this burden remained the same regardless of whether Husband filed a response. Husband argued the deed did not conclusively show the disputed property was community property. Presumptions do not apply in summary-judgment proceedings. An essential factor in determining whether property acquired during marriage was separate or community is the source of funds to make the purchase. Wife offered no evidence of the source of the $10 for the "purchase." Wife did not establish she was entitled to relief as a matter of law, so the burden never shifted to Husband to present a genuine issue of material fact.

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

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

Facts: Husband and Wife married and then moved to Texas from the UK, primarily to invest in real estate. Wife's father gave her money to use to purchase property. One home was purchased using those funds. On the advice of an immigration attorney, the purchase and title documents were in Husband's name only. Later, the parties purchased another home with Wife's father. Pursuant to an oral agreement, Wife's father would have a fifty-percent interest in the property, but only Husband and Wife were on the title documents. The parties then formed a real estate holding company (the "LLC") and each of Husband and Wife held a 50% interest in the LLC. The first-purchased home was transferred into the LLC and was subsequently transferred back out before being sold. Wife filed for divorce and claimed the first-purchased home as her separate property. Wife's father intervened in the suit to claim his interest in the second home. The trial court made rulings in Wife's favor, and Husband appealed.

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

Opinion: Through seven issues, Husband challenged the trial court's confirmation of Wife's separate property. Wife introduced evidence that the initial purchase money for the contested property was received by Wife as a gift from her parents. Wife produced a gift letter from her parents, and Husband and his expert both acknowledge the funds were a gift. The funds received from Wife's parents were placed into a joint account, and the subsequently purchased real property was placed in Husband's sole name. While these actions created a presumption of a gift from Wife to Husband, that presumption was rebuttable. Wife testified that at the time of purchase, she was going through immigration proceedings and placed the property in Husband's name to avoid any appearance that she was attempting to immigrate illegally. She testified that it was never her intent to gift the property to Husband. That evidence was sufficient to rebut the gift presumption. However, Wife subsequently transferred the property to a corporate entity, which meant that the property was no longer community or separate property because it was no longer owned by either party. Thus, the proceeds of the subsequent sale of the property could not be traced to Wife's separate property, and the trial court erred in confirming the proceeds as such. Husband next complained of the trial court finding Wife's father owned a fifty percent interest in the other real property. Husband asserted that any oral agreement giving Wife's father an interest was unenforceable because it violated the statute of frauds. However, the statute of frauds is an affirmative defense in a suit for breach of contract that renders the contract voidable and unenforceable. The party relying on the statute of

frauds to avoid his agreement must plead it as an affirmative defense and bears the initial burden of establishing its applicability. Here, Wife's father intervened in the suit claiming his half-ownership in the property. Husband filed no responsive pleadings to the intervention. The record did not reflect that a statute-of-frauds defense was tried by consent. Testimonial evidence established that the parties would purchase the property and Wife's father would possess the rights to half the property's rentals and eventual sale. Wife's father wired funds to the parties and the title company for a portion of the purchase. Although Wife's father's name 64 was not on the deed, Husband acknowledged that rental profits were provided to Wife's father. In the appeal, Husband pointed to a "gift letter" indicating that Wife's father's contribution to the property purchase was a gift. However, it was Husband and Wife who suggested the creation of that letter to ensure Wife's father would not be responsible for payments on the mortgage. The gift letter was not determinative. Finally, Husband challenged the just and right division of the community estate. Because the characterization issues likely had a material effect on the division, the issue was reversed for further proceedings.

## XX. POST-DIVORCE ENFORCEMENT AND CHAPTER 9

### A. *F.H. v. F.H.,* 2024 Tex. App. LEXIS 7876 (Tex. App. – Fort Worth November 7, 2024, no pet.) (mem. op.) (Cause No. 02-23-00493-CV)

***Where H was obligated to pay a portion of a HELOC debt before a certain date but W sold the house beforehand and the sales proceeds satisfied the debt completely, H owed nothing when his deadline came due and W's efforts to enforce the $100K obligation under Chapter 9 failed.***

H and W were divorced in 2017. The W was awarded the marital residence in the final decree which was encumbered by a HELOC debt of approximately $130,000. In the decree, H was ordered to pay $100,000 of the HELOC debt by November 1, 2019 and W was to pay the $30,000 balance. The decree further enjoined the parties from incurring any additional debt on the HELOC account. W paid off her $30,000 portion of the HELOC debt some time in 2018. In early 2019 W learned that the HELOC debt had increased to $160K. W decided to sell the residence and the sale closed in February 2019. Upon sale, $160K in proceeds was remitted to Compass Bank to pay off the HELOC account. In 2023 W filed suit under Chapter 9 requesting a money judgment against H for his $100,000 obligation on the HELOC debt. W claimed that she had "accidentally" paid H's obligation upon sale of the property and that she should be reimbursed. H filed a MSJ asserting that W's claim was not a TFC Chapter 9 suit, seeking sanctions and dismissal. H also asserted SOL as a defense. The trial court granted SJ, dismissed the suit and awarded sanctions. W appealed. The COA considered that TFC 9.010 authorizes a money judgment if (1) a party fails to comply with an obligation to deliver property and delivery is no longer adequate or (2) a party did not receive money or payments as required in a decree. The COA found that neither of these circumstances applied. First, there was no evidence H failed to comply with the decree because he was not obligated to pay his $100K until 11/1/19. W sold the house in February 2019 and the loan was paid off so that when H's obligation came due there was no debt owing! Further, H was not obligated to pay money to W, but to the lender and again, nothing was owing on the due date. The COA recognized that W's claim was properly one for "equitable subrogation" where a party who involuntarily pays the debt of another can seek repayment from the one who in equity and good conscious owes it. W could have filed a new suit in any court for such a claim but the divorce court had no jurisdiction over her claim under TFC Chapter 9, making dismissal proper. The COA affirmed the sanction award as authorized under TRCP 13 and TCPRC Chapter 10. Although W claimed on appeal H had violated the decree enjoining further HELOC debt, the underlying record did not support the claim and she offered no arguments as to how the sanction award was an abuse of discretion. SJ dismissing W's suit affirmed. **Comment:** Ouch!

### B. *In re Homburg,* 2024 Tex. App. LEXIS 8392 (Tex. App. – Corpus Christi December 5, 2024, no pet.) (mem. op.) (Cause No. 13-22-00614-CV)

***UFSPA does not limit the amount of disposable retired pay which may be awarded to a spouse, it only limits the amount that may be garnished.***

H and W divorced in 2009. The final decree awarded W 100% of H's military retirement benefits attributable to his service in the US AirForce and included terms providing H's waiver of all rights to his military retirement. The decree named H a constructive trustee to receive those benefits and pay them to W. The decree also required H to reimburse W for any amounts withheld from his retirement pay for H's medical and dental insurance. In 2022 W filed an enforcement action against H, claiming that he had reduced his payments to her, sending only 50% of his retirement and he had failed to reimburse her as

required. At the hearing, H asserted an affirmative defense, claiming that terms of the Uniform Services Former Spouses' Protection Act (USFSPA) providing that the disposable retired pay that can be included in a court order may not exceed 50%, making the decree unlawful and requiring clarification. The trial court agreed and modified the decree, obligating H to only pay 50%. W appealed. The COA examined the USFSPA and determined that the relevant statutes only limit the amount of disposable retired pay that may be "garnished" but they do not prohibit a court order dividing and awarding the non-military spouse 100% of the other's military retirement if just and right or in accordance with the parties' agreement. As such the trial court erred in modifying the decree. On remand the court was instructed to consider W's reimbursement claims.

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

***H fails to establish that a "timeshare" was tangible property, affecting application of two-year statute of limitations.***

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" 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.

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

***Terms of decree interpreted to make award of residence final and not conditional upon re-financing.***

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.

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

***No present rendition and a valid Rule 11 revocation supports reversal of trial court's order entered as a consent judgment without trial.***

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.

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

**Wife did not need to join company as a party in enforcement action seeking to recover her interest from husband's profits from the sale of that company.**

Facts: After learning Husband was about to sell a company without distributing to Wife any proceeds, Wife filed a Chapter 9 enforcement suit to enforce provisions of their divorce decree. Wife sought to enforce both the distribution of sales proceeds and an unpaid award of attorney's fees from the divorce. She requested the appointment of a receiver and a clarification order if necessary. At the hearing on Wife's petition, Husband argued he had not received adequate notice and that the company had not been served with the enforcement petition. Wife countered that she was not seeking affirmative relief from the company but from Husband. Wife explained that Husband had a one-third interest in the company, and she was entitled to half of that third upon sale. Wife acknowledged she had filed a lis pendens on the real property owned by the company. Husband testified that he had no money and that no distributions had been made from the company to him since the divorce. Husband explained he had appealed the decree, and Wife had made no prior efforts to enforce the attorney's fee award. One of the other owners of the company stated that the company had been listed for sale, there were no offers yet, and the lis pendens was making the sale difficult. Husband's attorney argued that the jump from no demand letters to a motion to appoint a receiver was extreme. The trial court disagreed with Husband's characterization and described the parties' divorce as one of the most frustrating it had heard in the past 16 years. The trial court granted Wife's requested relief, and Husband appealed.

Holding: Affirmed.

Opinion: Husband first argued the trial court erred in granting Wife a hearing because he only received 8 days' notice, rather than 10 days. Failure to give 10 days' notice does not render the proceeding void unless the lack of notice amounted to a denial of constitutional due process. Here, Husband was represented by counsel; his counsel cross-examined Wife's witnesses; he presented his own witnesses, and he testified extensively. He asked for a continuance because the company had not been served, but he did not argue that he lacked time to prepare for the hearing. On appeal, he complained of lack of notice but made no specific allegation regarding how he was prejudiced. Husband next argued the court erred in granting a hearing and in granting Wife's requested relief because she failed to serve the company, which Husband claimed was a "necessary party" to the enforcement because of Wife's filing of a lis pendens and her request to have a receiver take property owned by the company. Husband was the "respondent" in Wife's suit to enforce the divorce decree. Nothing in the Family Code required Wife to serve any third party. The decree awarded Wife a half interest in Husband's share of the proceeds. The company did not claim an interest in Wife's share, and the proceeding did not impair the company's ability to sell or protect its property. The receivership order did not give the receiver any right to the company's property, only to the property in which Husband had an interest.

**G. *Coon v. Thomas*, No. 02-25-00252-CV, 2026 WL 71143 (Tex. App.—Fort Worth 2026, no pet. h.) (mem. op.) (01-08-2026).**

**Judgment Nunc Pro Tunc 30 Years After Judgment Appropriate to Remove Decree's Award of "Future" Retirement Benefits Not Awarded in Letter Rendition.**

Facts: About 30 years ago, a divorce decree awarded Husband 40% of Wife's retirement benefits "existing by reason of [her] past, present, or future employment." A letter ruling issued a few months before the decree was signed included a similar award of retirement, but the letter ruling did not include the quoted language. A QDRO was signed a few months after the decree and divided currently vested retirement plans. Neither party appealed. About 5 years ago, Husband filed a petition for enforcement. Both parties moved for summary judgment, and Wife additionally asked for a judgment nunc pro tunc, asserting the inclusion of "future" employment in the decree was a clerical error. The trial court signed a judgment nunc pro tunc editing the decree as follows: "existing by reason of [her] past, present, or future employment as of [the date of the letter ruling]." Husband appealed, arguing the judgment nunc pro tunc completely changed the breadth of the original property division by severely narrowing his award to Wife's retirement benefits.

Holding: Affirmed.

Opinion: In a prior appeal from this same case, the appellate court remanded proceedings for clarification of the record in light of Baker v. Bizzle, 687 S.W.3d 285 (Tex. 2024) to determine whether the letter ruling was a final rendition of the parties' divorce. Spouses can agree to divide future earnings, but this decree was not agreed. If the letter ruling divorced the parties, they were no longer spouses after that date, could not agree to divide future earnings, and the trial court could not divest either party of separate property acquired after that date. Thus, the question on appeal was whether the trial court could repair the decree by using a judgment nunc pro tunc based on the rendition letter that contained no problematic language but also did

not expressly set out the date of rendition as a limit on the division of retirement. A judgment nunc pro tunc can correct a clerical error, but it may not substantively alter an original judgment to correct a judicial error. A clerical error is a discrepancy between the entry of a judgment in the record and the judgment that was actually rendered by the court and that does not arise from judicial reasoning or determination. If a purported judgment nunc pro tunc corrects a judicial error instead of a clerical error, the judgment nunc pro tunc is void. However, even a significant alteration to the original judgment may be accomplished through a judgment nunc pro tunc so long as it merely corrects a clerical error. When deciding whether a correction is of a judicial or a clerical error, the appellate court looks at the judgment actually rendered, not the judgment that should or might have been rendered. The letter ruling awarded Wife "60% of her retirement benefits with [her current employment] or elsewhere and [Husband was] awarded 40% of such retirement benefits by Qualified Domestic Relations Order." (emphasis added by appellate opinion). When the decree failed to match this rendition, a clerical error occurred. The appellate court also noted that the QDRO included the date of the letter ruling, and neither party appealed from the QDRO. Additionally, the cases on which Husband relied were distinguishable from the facts of this case. The trial court did not err in issuing the judgment nunc pro tunc and denying Husband's motion for enforcement.

**H. *A.W.E. v. D.M.F.N.*, No. 05-24-00507-CV, 2026 WL 116799 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (01-15-2026) (on reh'g).**

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

Facts: Husband and Wife owned stock in a company, and the final decree of divorce ordered the sale of the company with Husband and Wife each receiving half of the net proceeds. The appellate court affirmed the decree after Wife appealed. Husband filed a petition to enforce, alleging Wife violated standing orders, failed to comply with the decree, and violated temporary injunctions pending appeal. After a hearing, the court signed an order imposing similar temporary injunctions and appointing a receiver to sell the company. Wife appealed.

Holding: Reversed and Remanded in Part.

Opinion: Wife first challenged the injunctions imposed against her. Specifically, she alleged the evidence was insufficient to support a finding of any irreparable injury. Wife was enjoined from acts such as contacting the company, threatening the company's employees, filing lawsuits against the company, and making public statements about the company. The trial court found that in the absence of an injunction, Wife's actions would prevent the ability to sell the company and leave the company with no adequate remedy at law. At the hearing, the company's senior vice president of operations in human resources testified that Wife's actions made the vice president consider resigning; however, the vice president did not say she probably would resign. There was no evidence that particular vice president was a key employee. The company's outside general counsel expressed concerns about the potential of people leaving the company, but those speculations could not support injunctive relief. Additionally, Husband complained of a RICO suit filed by Wife; however, the federal court ordered redactions that would redress any injury to the company from the potential disclosure of proprietary information. Husband's concerns about further lawsuits and potential disclosures were simply fear and apprehension that could not establish injury, let alone irreparable injury. Husband additionally presented expert testimony regarding how Wife's actions could chill enthusiasm of potential buyers and experts. However, the testimony was vague and speculative and did not support granting injunctive relief. Further, there was no evidence that the company could not be compensated monetarily if Wife's actions did cause lost value in the future; meaning, Husband did not show that any potential injury was irreparable. Accordingly, the temporary injunctions were dissolved. Wife additionally complained of the appointment of a receiver because the appointment impermissibly changed the property division in the divorce decree and because the conditions precedent to appointing a receiver had not yet occurred. The divorce decree permitted Wife to participate in the sale of the company, and the receivership order removed that right. Wife's participation was crucial to obtaining the highest price and deciding other terms of the sale. The receivership stripped Wife of those rights and authorized the receiver to make those decisions in Wife's name. This change substantively altered the division of property and was beyond the trial court's authority in a post-divorce enforcement suit. Further, the final decree only permitted the appointment of a receiver if the parties disputed the sales process outlined in the decree. The record contained no evidence of such a dispute or that certain preliminary steps of the outlined process had occurred. Husband

argued the trial court had authority to appoint a receiver to enforce the decree regardless of this plain language regarding the sales process. Accepting that argument would render the decree's provision regarding the appointment of a receiver meaningless. Accordingly, the receivership was vacated, and the case was remanded for further proceedings.

**I. *McCarver v. McCarver*, No. 12-25-00063-CV, 2026 WL 181334 (Tex. App.—Tyler 2026, no pet. h.) (mem. op.) (01-22-2026).**

**Because He Failed to Appear at Trial, Husband Failed to Meet His Burden to Establish Assets Subject to Turnover Were Exempt.**

Facts: The trial court signed a final decree of divorce incorporating a premarital agreement that required Husband to pay Wife a "financial security" payment in the event of divorce. The appellate court affirmed the judgment after Husband appealed. When Husband failed to make the payment, Wife sought a postjudgment turnover order and receivership. Husband filed an answer with affirmative defenses, but he failed to appear at the final hearing. Although Husband requested findings, none were entered. Husband appealed.

Holding: Affirmed.

Opinion: The receiver—who was not a party to the appeal—filed a motion asserting Husband's notice of appeal was untimely. Orders appointing a receiver are subject to interlocutory appeal with accelerated deadlines. Despite the title of the trial court's order, the order was a turnover order and a final order. Because Husband's appeal was of a final order, his notice of appeal was timely. Husband's affirmative defenses arose from the premarital agreement, which had been adjudicated in the divorce. To the extent he raised any new defenses not raised in the divorce proceeding, he could have. Husband was prevented by res judicata from raising those claims in the turnover proceeding. Husband next challenged the sufficiency of the evidence to support the turnover order. A judgment creditor may seek a turnover order against a judgment debtor for the satisfaction of liabilities if the debtor owns property, including present or future rights to property, not exempt from attachment, execution, or seizure for the satisfaction of liabilities. The trial court may order the judgment debtor to turn over nonexempt property and may appoint a receiver with the authority to take possession of the non-exempt property, to sell it, and to pay the proceeds to the judgment creditor to satisfy the judgment. A court may enter or enforce an order that requires the turnover of non-exempt property without identifying in the order the specific property subject to turnover. The burden of proving that property owned by the debtor is exempt from execution rests with the judgment debtor. Because Husband failed to appear at the final trial, Wife's claim was sufficient to support the trial court's determination that the debt remained unpaid. Additionally, the divorce decree's confirmation of property was sufficient to support the determination that Husband owned property. There was no evidence that Husband had disposed of the property in the period between the entry of the decree and the hearing on Wife's motion for a turnover order. By failing to appear at trial, Husband failed to meet his burden to establish any of his property was exempt. Although Husband complained about the lack of findings, the turnover order included findings. Husband did not argue on appeal that those findings were inadequate. Nothing about the findings or lack thereof prevented Husband from presenting his appeal.

**J. *In re Marriage of Lannen*, No. 10-23-00358-CV, 2026 WL 249018 (Tex. App.—Waco 2026, no pet. h.) (mem. op.) (01-29-2026).**

**Declaratory-Judgment Action Improperly Dismissed for Lack of Jurisdiction Because Family Code Chapter 9 Permitted Wife to Seek Clarification of Divorce Decree.**

Facts: The parties' agreed final decree of divorce gave Husband the first right of refusal to purchase certain real property from Wife and set the price for the sale. Nine years later, Wife filed a petition for declaratory judgment seeking a judgment that the first right of refusal was invalid or had been waived by Husband. Husband filed a general denial and special exceptions. Husband asserted that Wife's petition was an impermissible collateral attack on the divorce decree and asked the court to dismiss her petition. After a hearing, the court granted Husband's requested relief and dismissed Wife's petition. Wife appealed pro se.

Holding: Reversed and Remanded.

Opinion: Wife challenged the trial court's granting of Husband's special exceptions and dismissing her suit. Declaratory judgments are only appropriate if a justiciable controversy exists as the rights and status of the parties and if the controversy will be resolved by the declaration sought. Additionally, collateral attacks on final judgments are generally disallowed because it is the policy of the law to give finality to the judgments of the courts. Texas courts have generally held that the use of a declaratory judgment action to attack or "interpret" a prior judgment is an

impermissible collateral attack. Only a void judgment may be collaterally attacked. On the other hand, the Family Code specifies that the court that rendered a divorce decree retains continuing exclusive jurisdiction to clarify and enforce the divorce decree's property division, so long as the court does not change the decree's property division. Liberally construing Wife's petition, she sought to clarify the parties' contractual rights regarding the right to first refusal. Thus, under the Family Code, the trial court had subject-matter jurisdiction to consider her petition. Therefore, to the extent her petition was dismissed for lack of subject-matter jurisdiction, the trial court erred. The appellate court noted that it expressed "no opinion on the merits of [Wife's] declaratory-judgment action."

**K. *P.J.S. v. K.S.S.*, No. 03-24-00042-CV, 2026 WL 247197 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (01-30-2026).**

**Partition Agreement Incident to Divorce Not Ambiguous; Trial Court Properly Granted Summary Judgment in Favor of Wife Seeking to Enforce Payments Due to Her from Husband.**

Facts: Before the parties divorced, Husband obtained partnership interests that would be terminated if he divorced. However, the partnership agreed to waive its right to terminate based on certain terms in a Partition Agreement Incident to Divorce (PAID) between Husband and Wife. In addition to dividing the parties' community estate, the PAID required Husband to make certain monthly payments to Wife after the divorce was finalized, which were calculated as 50% of specified net profits "but in no event more than" a maximum dollar amount due to Wife. Another section guaranteed that Husband would pay at least $11,500 if no distributions were received that month unless Wife remarried; in which event the payment would be reduced pursuant to a defined calculation. Subsequently, Wife moved for enforcement because Husband failed to consistently pay the guaranteed amount. Both parties filed motions for summary judgment. Husband acknowledged he had not made payments but argued the PAID was ambiguous. The court granted Wife's motion and denied Husband's. Husband appealed. Holding: Affirmed. Opinion: Husband argued that the plain language of the PAID required him to make the guaranteed payment when the net profits were positive. However, in the months in which he did not pay, the net profits were negative. Husband argued he was not required to make payment under that circumstance. Contrary to Husband's assertion, nothing in the PAID required the net profits be positive. Husband's interpretation would require the court to add words to the agreement.

**L. *Nadar v. Nadar*, No. 05-24-00235-CV, 2026 WL 362649 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (02-09-2026).**

**Clarification Order Appropriate when Decree's Terms Could Not be Enforced by Contempt Because Date for Compliance Had Already Passed when Decree Was Signed.**

Facts: When Husband and Wife divorced, the final decree awarded Husband a house in Texas and awarded Wife a flat in Mumbai. The parties were ordered to execute all documents necessary to fulfill the division. Wife was ordered to vacate the Texas residence by a date about 6 weeks after pronouncement and 5 days before signing. Six years later, Husband filed a motion to enforce the decree because Wife had still not vacated the Texas house. Husband asked the trial court to clarify the decree by issuing a new date for vacation in the near future. Wife asserted the original decree was not enforceable because the date by which she was required to vacate the residence was before the date the order was signed. However, she also argued that the decree as it existed was enforceable but was not enforceable by contempt and, therefore, could not be clarified. Additionally, she complained that Husband had not fulfilled his obligation to transfer the Mumbai flat to her and intended to file a bill of review regarding the property division. The trial court agreed with Husband and signed a clarified order with a future vacation date. The trial court denied Wife's motion for new trial, and she appealed.

Holding: Affirmed.

Opinion: Wife argued the trial court erred in signing a clarification order because the final decree was not ambiguous. Chapter 9 of the Family Code permits clarification orders if the final decree is not specific enough to be enforceable by contempt. Here, the decree ordered Wife to vacate the residence by date that had already passed. In setting a new date for compliance, the clarification order did not modify the property division. Wife further complained the trial court erred in failing to consider evidence of Husband's failure to deliver the Mumbai flat. Nothing in the clarification order altered Husband's obligation to deliver to Wife the Mumbai flat. Further, contrary to Wife's assertion, evidence supported the clarification judgment. The trial court reviewed and considered the final decree without objection. The terms of the decree were not disputed by the parties. Moreover, Wife did not raise any claims of unclean

hands or laches at the clarification trial and, thus, waived those complaints in this appeal. Finally, Wife argued the trial court erred in denying her motion for new trial based on the Craddock factors. The clarification order was not a default order. Wife's attorney appeared on her behalf. Thus, the Craddock factors were inapplicable, and the trial court did not abuse its discretion in denying Wife's motion for new trial.

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

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

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

Holding: Motion for Temporary Orders to Set Supersedeas Bond Granted

Opinion: A judgment debtor may supersede a judgment by filing with the trial court clerk a good and sufficient bond. When the judgment orders recovery as an interest in real property, the trial court does not have discretion to refuse supersedeas. Pursuant to a 2024 amendment to the Rules of Appellate Procedure, Husband's filing of the bond was effective upon filing. However, it remained subject to challenge. Because Husband unilaterally filed the bond before requesting an evidentiary hearing to set a sufficient amount, the amount filed was not in an amount required by the Rules. The issue though was a matter of sufficiency of the bond, rather than its validity. When a posted bond is insufficient, the Rules permit modification of the amount. Therefore, the appellate court granted Husband's motion to set the amount for the bond and ordered the trial court to conduct an evidentiary hearing.

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

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

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

Holding: Writ of Mandamus Conditionally Granted.

Opinion: An alleged contemnor must have knowledge or notice of the underlying order, and the order must be enforceable by contempt before the alleged contemnor may be found in contempt. A party cannot be held in contempt for violating a court order of which he had no knowledge, as willful disobedience is a necessary element of contempt. Further, a court may not give retroactive effect to a clarifying order in such a way as to subject a party immediately to contempt. Here, Wife did not expressly ask for a contempt finding, and the court did not indicate during the hearing that contempt was a potential outcome. Rather, the court found the decree was not specific enough to be enforceable by contempt. The court erred in finding Husband in contempt without providing adequate notice or a reasonable time to comply with the clarified order.

**XXI. MARRIAGE AND DIVORCE –**

## ATTORNEY FEES

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

***Stipulation to qualifications of counsel and amount of fees does not equal stipulation to reasonableness or necessity!***

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 purpose of assisting her first H to 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 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.

B. *Taylor v. Taylor*, No. 05-24-00544-CV, 2025 WL 3464949 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (12-02-2025).

Award for Conditional Appellate Attorney's Reversed and Rendered as "Take Nothing" Because No Evidence Supported the Amount Requested.

Facts: The parties cross-petitioned for divorce. Husband also brought a third-party action against Wife's sons regarding civil conspiracy. In temporary orders, the parties agreed to appoint a joint Forensic Accountant. Wife and her attorneys were uncooperative with the Forensic Accountant, so it intervened for unpaid fees and attorney's fees. Ultimately, the divorce was granted on insupportability. The court granted reimbursement claims against both parties, found Wife committed fraud, and reconstituted the community estate. The court signed a "Final Judgment for Intervenor" that was incorporated into the final decree of divorce. Wife appealed.

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

Opinion: The Forensic Accountant asserted Wife's notice of appeal with respect to it was late because her notice was filed more than 30 days after the Final Judgment for Intervenor was rendered. Wife argued that the deadlines did not begin running until after the final decree of divorce was signed. In general, there can be only one final judgment in a case. A final judgment disposes of all parties and all claims to a case. The intervention judgment did not meet that criteria because it did not dispose of all parties and claims. Despite its title, it was not a final appealable judgment and was only an interlocutory judgment. No order severed the intervenor judgment from the rest of the case, so Wife's timely appeal of the final decree of divorce could also challenge on appeal the intervenor judgment. Wife challenged the trial court's characterization of certain property. However, Wife introduced the Forensic Accountant's report, and the report was admitted as evidence. The final decree adopted the characterizations in the report. Moreover, Wife offered no evidence to refute the characterizations. Wife could not assign error on appeal to characterizations she sponsored, requested, and never disputed. Wife additionally challenged the valuation of an unaffixed cabin that sat on Husband's separate property land. However, Wife offered no evidence of valuation at trial. Thus, she could not

complain on appeal that the trial court lacked sufficient information regarding that property's value. The decree awarded 22 separate reimbursement claims, and Wife challenged 4 of them on appeal. However, Wife failed to challenge those claims at trial, and she endorsed the report that set out the claims. Moreover, contrary to Wife's assertions, the revised statute still allows for reimbursement claims recognized by common law, and none of the claims were excluded by statute. Wife further challenged the finding she committed fraud and the trial court's reconstitution of the community estate. Husband showed that Wife disposed of his interest in community estate without Husband's knowledge or consent, creating a presumption of fraud and shifting the burden to Wife to show the dispositions were fair. Again, the sums were set forth in the unchallenged report. Additionally, other evidence supported the trial court's findings regarding Wife's fraud. The trial court awarded the Forensic Accountant a judgment for attorney's fees incurred at trial (split evenly between Husband and Wife) and an additional sum for conditional appellate attorney's fees. While the Forensic Account provided testimonial and documentary evidence to support the amount of already incurred fees, there was no opinion testimony regarding estimated legal expenses on appeal or about any relevant legal experience that could form a basis for an assertion that the estimated amount was reasonable. Thus, the evidence was insufficient to support the award of conditional appellate attorney's fees, and the appellate court rendered the Forensic Accountant take nothing in appellate fees. Wife also challenged the judgment in favor of the Forensic Accountant. Specifically, Wife challenged the form of the intervenor's pleading. However, the pleading clearly stated Husband and Wife signed a contract for services and the amount of the unpaid fees. Wife filed no special exceptions. An attorney of reasonable competence could, on review of the pleading, ascertain the nature and the basic issues of the controversy. Thus, the Forensic Accountant's pleading was sufficient. Additionally, the issues were tried by consent without objection, and the judgment was supported by the evidence.

## XXII. MARRIAGE AND DIVORCE – MISCELLANEOUS

### A. *Johnson v. State,* 2024 Tex. App. LEXIS 7044 (Tex. App. – Tyler September 30, 2024, no pet.) (Cause No. 12-24-00090-CR)

***Texas community property laws were not relevant in H's criminal case for unlawful installation of a tracking device on W's car.***

During marriage, W purchased a new SUV. Title was taken solely in her name with a loan on which she was the only party. W was the only one with keys to the vehicle and its sole driver. Subsequently the parties filed for divorce. While the divorce was pending, a friend went to meet W for dinner and saw H in the parking lot bending down near W's vehicle. The friend reported this to W who found a tracking device on the car when she returned home. H was charged with unlawful installation of a tracking device and pled not guilty. H claimed as his defense that he was an owner of the vehicle under TX community property laws. At trial he sought to introduce the expert testimony of a family law attorney regarding community property. The trial court excluded the expert. In addition, H sought to include in the jury charge a definition of "owner" that reflected TX community property law. This request was denied. W testified that she alone owned the vehicle, H had no keys, and neither she nor H ever drove the others car. H was convicted and given a 90 day probated sentence. H appealed. Initially, the COA determined that an expert can be excluded when their testimony would be prejudicial or confuse the jury. The Penal Code statute under which H was charged did not define "owner" specifically when defining the elements of the offense. As such the COA determined that the general Penal Code definition of owner applied which could be (1) the title owner; (2) a person in possession or (3) a person with greater right to possession than the defendant. Here the COA found that the family law attorney's testimony regarding community property would not refute W's title and possession of the property and could serve to confuse the jury. The COA went on to find that TX community property laws were not applicable in this case and were not relevant to the issue before the jury. The COA found no error in excluding the expert or refusing to include the requested definition of "owner" in the jury charge. Affirmed.

### B. *Kreit v. Khoury,* 2024 Tex. App. LEXIS 8100 (Tex. App. – Houston [1st Dist.] November 21, 2024, no pet.) (Cause No. 01-22-00874-CV)

***Family Code does not limit the appointment of a receiver to community property only and when the appointment is made as part of a TO, there has not yet been a decision on the character of property.***

W came to the US from Lebanon and married H in 2010. H is a physician and W was a stay at home mom, caring for the parents three children. W filed for divorce in 2022 and sought temporary orders, including the appointment of a receiver over various assets. During the TO hearing, H admitted to

transferring houses and funds to various relatives and to accounts and entities in Lebanon and Syria. H testified that prior to marriage he was worth approximately $8.6MM which was invested in foreign properties. H identified several accounts with US banks. H testified that he had $1.8 in a Lebanese account which had been frozen and that he owed a credit card debt of $50K. W claimed that prior to the filing she had access to a single account and a credit card, that she did not work outside the home and the H provided for all needs of herself and the children. W claimed that she had traveled to Lebanon on H's behalf prior to filing to assist him in some of the transfers but she had no information about all the funds or accounts and wanted a receiver to protect the parties' property. The court granted the motion and appointed a receiver. The court signed a general order and later a more specific order delineating that the appointment covered (1) the parties' marital estate; (2) several specified pieces of real property in TX; (3) any other real property owned individually or by the community and (4) H's medical clinic in TX. The court authorized the receiver to manage, control and preserve the property and to sell it if necessary. The court also made orders for spousal support and interim fees. H filed an interlocutory appeal. The COA addressed only the appointment of the receiver by interlocutory appeal. H claimed that the court was not authorized to appoint a receiver over his separate property and that the court's grant of authority was too broad, asserting that the court had not considered less harsh remedies such as an injunction. The COA initially found that the appointment of a receiver under TFC 6.502 does not require any specific showing as is required under CPRC. The COA further notes that the statute does not limit the court's authority to only community property as it references "the parties' property," which could include assets of both community and separate character. Further, the COA indicated that since the order was interlocutory in nature, there had been no final adjudication as to the character of property. Based on the evidence the COA found that the appointment of receiver to protect the property was proper. As to H's argument that less harsh remedies were not considered, the COA disagreed. H indicated W had filed a lis pendens which would have protected her interest and an injunction could have been issued. W's counsel argued that H was not responding to discovery and despite the lis pendens, had continued to transfer assets outside the US. The trial court's order recited that the court had considered the pleadings, evidence and argument of counsel which the COA found to be sufficient in demonstrating that the trial court had considered other options. Order appointing the receiver was confirmed.

**C. *Ramos v. Marroquin,* 2025 Tex. App. LEXIS 1392 (Tex. App. – El Paso February 28, 2025, pet. filed) (mem. op.) (Cause No. 08-23-00289-CV)**

***Spouse may not transfer homestead without the other spouse's consent, regardless of whether property is separate or community.***

In 1998 Anna acquired 5+ acres in Uvalde County. Anna claimed that she, her husband and her father, Louis all paid for the property and the plan was for Louis to live there during his life and Anna and her H would live there when they retired. (Maria, who would subsequently sue for the land, claimed that Louis paid for the property even though it was deeded to Anna.) After purchase, Louis built a house on the land where he lived with his wife, Jeanette. Several years later, Jeanette moved out. Anna assisted Louis in completing divorce papers and he later advised Anna that he was divorced but he was not. Louis continued to reside in the house with a girlfriend and in 2004 Anna deeded the property to Louis so he could use it as collateral for a business venture. In 2016 Louis deeded the property back to Anna but two months later he executed a will that left the property to Maria. Louis died in 2018 and thereafter, Jeanette (still Louis' W) deeded her interest in the property to Maria. Maria sued Anna and her husband for trespass to try title or alternatively partition. Maria claimed that she owns the property 100% based on Louis' will and Jeanette's deed. Anna and Louis claim the deed to them in 2016 is valid because Louis was the sole title holder of the property. After a bench trial the court found that Maria owned an undivided ½ interest and Anna and her husband owned an undivided ½ interest. The court ordered the property sold and the proceeds divided. Maria appealed, arguing that the conveyance to Anna and her husband was invalid since Jeanette never consented to a transfer of homestead property and thus the deed violated TFC 5.001 and the TX Constitution. Anna cross-appeals challenging the finding that Maria owns any interest because TFC 3.104 allows her to rely on Louis' right to transfer since the property was titled in his sole name, making it presumptively his sole management community property. It was alleged at trial that Jeanette "abandoned" the homestead when she moved out. The COA notes that while this claim was disputed, ultimately their conclusion relied upon the procedures set forth in TFC 5.101 and 5.102 which addresses situations where a spouse wants to convey homestead property but for whatever reason cannot obtain the joinder of a spouse. Under those procedures, Louis could have petitioned the court for an order alleging that he could not obtain Jeanette's and if granted, he could have legally transferred the property to Anna and her husband. However, Louis did not

complete this step. Noting Anna's claim that she was allowed to rely on Louis' presumptive right to transfer the property held solely in his name, the COA found that TFCV 3.104 (allowing 3rd party to rely on transfer from sole title holder absent fraud) is a general statute which is trumped by TFC 5.001 (expressly prohibiting a spouse from transferring a homestead, whether separate or community, without the joinder of a spouse). Further the COA explains that a spouse is not allowed to transfer only their ½ interest in a community homestead because it effectuates a partition by creating a tenancy in common between the remaining spouse and a third party which violations the TX Constitution. Homestead protections are not extinguished when a spouse holds title in their sole name or even when the property is wholly the separate property of one spouse. Louis' attempt to deed the property to Anna and her husband was invalid. Reversed and remanded for entry of order specifying that Maria held superior title to the property. **Note:** This Opinion withdraws and replaces *Ramos v. Marroquin,* 2025 Tex. App. LEXIS 217 decided on January 16, 2025. The results are the same.

**D. *McCray v. Spector,* 2025 App. LEXIS 942 (Tex. App. – Dallas February 18, 2025, no pet.) (mem. op.) (Cause No. 05-23-00738-CV)**

***Termination of receivership proper where receiver properly carried out his obligations in selling and allocating property.***

H filed for divorce in 2009. During the proceedings, the court appointed Spector as a receiver with authority and control over H's assets, to manage payments and obligations owed by H, to pay expenses for H, to stop payments on checks from H's accounts, etc. In addition, Spector was named as H's attorney in fact to sign and deliver any documents necessary or helpful to perform his duties as a receiver. In 2014 the receiver was authorized to take possession of additional assets in H's bankruptcy estate and all of his exempt retirement accounts and to continue paying H's expenses and all of his obligations to the W and the minor children. In 2015 the court signed a final decree in which W was awarded a Gilder Gagnon (GG) retirement account and a $1.2 million judgment against H for fraud on the community. The decree did not provide terms for payment of 2015 taxes. The decree retained Spector as receiver with all duties and obligations as provided in the prior orders. In 2021 W filed a motion to dissolve the receivership asserting that its purpose had been served. She sought turnover relief pursuant to CPRC 31.002, claiming Spector possessed non-exempt assets that were sought in satisfaction of her judgment. The matter was heard by an AJ. H apparently did not object to termination of the receivership but claimed that Spector had not paid his income taxes in 2015 and 2016 and he objected to any funds being turned over to W. W testified that Spector had fulfilled all of his obligations and that she had only managed to collect about $400K of her judgment. Spector testified that he had not paid certain of H's taxes because he felt the decree did not authorize him to do so. The AJ terminated the receivership, found that Spector had adequately performed all of his duties and he ordered various assets to be turned over to W in partial satisfaction of her judgment. H filed for de novo review. Transcripts of the AJ hearing were admitted in evidence and the presiding judge heard some additional testimony but basically affirmed the AJ's prior ruling. H appealed asserting there was insufficient evidence to support findings that Spector discharged his duties in accordance with the court orders, that Spector performed his fiduciary obligations to the parties with care and that his accounting should be affirmed. The COA first notes that TFC 6.502(a)(5) governs the appointment of receivers in a divorce suit, providing no real predicate to support the appointment, determining that a receiver is an officer of the court and charged with exercising his duties with the ordinary care and prudence that a man of business would exercise in managing his own affairs. Based on the evidence submitted the COA found that Spector had acted diligently and had performed in accordance with the orders, justifying termination of the receivership. H further complained of the turnover relief suggesting that W did not possess a lien on the property in the receiver's possession and further, H himself was not in possession of the property allocated to W at the time of the turnover order. The COA found that a creditor is not required to pursue other forms of collection before seeking turnover relief and therefore W was not required to first obtain a lien against H's property. Further, the COA found that the receiver properly allocated the property he controlled between the parties and thereafter allocated those assets owned by H to W. The fact that the receiver was in possession of property owned by H was sufficient to satisfy the turnover statute. Order affirmed.

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

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

Facts: The parties' MSA in their divorce provided Wife would receive 50% of the community portion of Husband's net disposable retired pay. Husband moved for entry of a decree, but Wife argued the MSA was unenforceable because it allowed Husband to waive his retirement pay to receive disability pay. Wife 49 asked the trial court to include language to prohibit Husband from waiving his miliary retirement pay because military disability is not divisible in a divorce. The final decree prohibited Husband from taking action to reduce Wife's share of his retirement and required Husband, if he did reduce Wife's share, to pay her for the amount of the reduction. Husband appealed.

Holding: Affirmed as Modified.

Opinion: Husband argued the trial court improperly prohibited him from converting his military retirement into disability payments and erred in ordering him to reimburse Wife for the costs of that election. A divorce court cannot apportion miliary retirement pay that has been waived to receive VA disability benefits. A court may not expressly or impliedly prohibit a retired military member from making that election. Thus, here, the trial court erred in improperly prohibiting Husband from waiving some or all of his retirement pay to collect disability. Additionally, a trial court may not require a retired military member to pay his ex-spouse for the reduced retirement benefits due to the election to receive VA disability benefits. Wife argued that other states had approved this type of provision. However, no Texas court has. Accordingly, the provisions were struck from the decree, but the decree was otherwise affirmed. In a cross-appeal, Wife argued the MSA should be set aside because there was no meeting of the minds. The MSA met the Family Code's requirement to entitle the parties to judgment on the MSA. No evidence was presented to the trial court regarding a meeting of the minds, so the appellate court could not reverse the decree on that ground. Additionally, while Wife argued the MSA was ambiguous, she failed to articulate what language was ambiguous or what the conflicting interpretations would be.