



TEXAS CENTER
—★—
FOR THE JUDICIARY

2019 Family Justice Conference

Family Case Law Update

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Mediated Settlement Agreements

- Divorce, TFC § 6.602(c)
- SAPCR, TFC § 153.0071(d)
- (i) “non-revocable” (ii) signed by parties (iii) signed by attorneys present
- The decree cannot materially deviate from the MSA
- *Mg. of Harrison* (Houston [14th Dist.] 2018) - modify MSA for changed circumstances
- *In re Minix* (Houston [14th Dist.] 2018) - no joint revocation

Grounds to Disregard an MSA

- Family Violence, TFC § 153.0071 (e-1)
- Endangerment of Child, *In re Lee* (Tex. 2013)
- Fraud, duress, coercion, dishonest means; various intermediate courts
- MSA in parental termination proceedings, supporting but not determinative

MSA: Other Issues

- Interpreting MSAs
- “Meeting of the Minds”
- Timing of when the MSA is signed

Arbitration

- Under Title 1 of TFC
- Under Title 5 of TFC
- The Federal Arbitration Act
- The Texas Arbitration Act
- Texas Common Law of Arbitration
- Ability to Choose

Divorce and Characterization

- Jurisdiction; Venue; Immigration Status
- Separate and Community Property
 - Proof of Separate Property
 - *Mg of Stegall* (commingled cattle)
 - *Mg of Tyeskie* (commingled cash)
 - *Mg of Attagule* (corroboration ordinarily required)
 - *Lee v. Lee* (sep. pty. proved as a matter of law)
 - *Weed v. Frost Bank* (shifting presumptions)
 - Inception of Title
 - Personal Injury Recovery

Property Division

- Cannot Divest Separate Property
 - *Eggemeyer v. Eggemeyer* (Tex. 1977)
- Just and Right Division
 - *Bradshaw v. Bradshaw* (Tex. 2018) (S.C. usurps TC's discretion)
- Foreign Property
 - *Chatterjee v. Banerjee* (Dallas 2019) (rupees)
- Future Changes in Tax Law, TFC § 7.08
 - *Oddi v. Ayco Corp.*, 947 F.2d 287 (7th Cir. 1991)

Post-Divorce Enforcement of Property Division; Division of Undivided Property

- Chapter 9 post-divorce enforcement (cannot modify; 2 yr. limitations)
 - *Burnett v. Burnett* (misinterpreted COLA)
 - *Moore v. Moore* (mineral interests, no 2-yr SL)
 - *Chakrabarty v. Ganguly* (bank account, no 2-yr SL)
- Chapter 9 Post-Divorce Division
 - *Etheridge v. Opitz* (community vs. partnership property)

Spousal Maintenance

- *Dalton v. Dalton* (Tex. 2018) (enforcing Oklahoma alimony agreement)
- Income Withholding only for Chap. 8 spousal maintenance
- Full Faith & Credit does not apply to remedies

MANAGING AND POSSESSORY CONSERVATORSHIP



Relaxed Rules of Pleadings in SAPCRs

- *Leithold v. Plass* (Tex. 1967) - “technical rules of pleading and practice are not of controlling importance”
- *Flowers v. Flowers* (Houston [14th Dist.] 2013) - geographic restriction
- *In re A.B.H.* (Fort Worth 2008) - reversed sole MC when only JMC pled
- *King v. Lyons* (Houston [1st Dist.] 2014) - injunctive relief must be pled

Cannot Award Rights to Non-Party

- *Marriage of D.E.L. & J.J.P.* (Houston [14th Dist.] 2019): “In the absence of a non-parent’s intervention, the trial court has no authority to award any non-party visitation.”
- *In re H.R.L.* (El Paso 2014): trial court had no jurisdiction to award grandmother relief without first determining she had standing and granting her leave to intervene.

Standing in SAPCRs

- § 102.003. General Standing to File SAPCR
- § 102.004. Standing for Grandparent or Other Person Seeking Custody
- § 102.004(b). Standing to Intervene
- § 102.005. Standing for Termination and Adoption
- § 153.432. Standing for Grandparent Possession or Access
- § 156.002. Standing to Seek Modification

Standing to Intervene

- TFC § 102.004(b)--leave to intervene is discretionary with trial court
- Grandparent or other person deemed to have had substantial past contact
- Does general standing under § 102.003 act as a substitute?
- Must grandparent have had substantial past contact?
- Foster parents must have standing under both § 102.003 and § 102.004(b)

Effect of Family Violence

- TFC § 153.004. History of Domestic Violence or Sexual Abuse
- *C.C. v. L.C.* (Fort Worth 2019, pet. denied) (is one event a history?)

Interstate Jurisdiction Issues

- UCCJEA
- Initial determination TFC § 152.201(b):
 - 1) Home state
 - 2) No home state anywhere, or home state jurisdiction declined and significant contact to Texas, other than presence, and substantial evidence exist in Texas.
 - 3) All courts with jurisdiction under 1), 2), or 3) have declined jurisdiction
 - 4) No other state has jurisdiction under 1), 2), or 3)
- *Interest of D.S.* (Dallas 2018): Jurisdiction to terminate requires jurisdiction under § 152.201(b)

Parental Presumption

TFC § 153.131:

- Must appoint parent as sole or joint managing conservator unless appointment would significantly impair child's physical health or emotional development
- Must show specific, identifiable behavior, acts or omission
- *In re F.R.N.* (Waco 2019) - Reactive Attachment Disorder
- Parental presumption does not apply in modifications

Visitation

- TFC § 153.192 (b) standard possession order
- Presumptive minimum
- Several recent cases affirm restrictions

Child Support

- Eff. Sept. 1, 2018 - medical support includes dental care & insurance
- Eff. Sept. 1, 2019 - cap under TFC § 154.125 increased from \$8,550 to \$9,200. (20% x \$9,200 = \$1,840)
- *Interest of V.J.A.O.* (Dallas 2017) (affirmed \$5,000/mo. for one child)
- *Attaguile* (El Paso 2018) (net resources do not include 401k or cash accounts)

Modification

- TFC ch. 156
- Must show material and substantial change and best interest
- Temporary Order modifying primary residence or geographical restriction allowed only if present circumstances significantly impair physical health or emotional development
- *In re Lee* (San Antonio 2019) (mandamus set aside T.O. allowing mother to move child to Florida)
- Court loses continuing jurisdiction to modify if child, or child and at least one parent, cease to have significant connection to Texas and substantial evidence is no longer available in Texas

Native American Indian Issues

- ICWA requires the court, in parental termination of Indian child, to favor:
 - 1) placement with extended family
 - 2) other members of the tribe
 - 3) other Indian families.

- *Bracken v. Bernhardt* (5th Cir. 2019) (upheld constitutionality of ICWA)

Procedural Issues

- Ineffective assistance of counsel
- Frivolous appeal of termination decree
- Missing trial deadline in DFPS placement case
- Pro Se Litigants
- Notice not required for turnover order
- What is an agreed judgment?
- When is letter of rendition an appealable judgment?
- Failure to timely supplement discovery
- De Novo review, *Interest of A.L.M.-F.* (Tex. 2019)
- Bill of Review
- Appellate review of termination decree, TFC § 161.001(b)(i)(D) & E

Attorneys' Fees

- *Rohrmoos Venture v. UTSW DVA Healthcare, LP* (Tex. 2019)
 - Reasonable hours worked x reasonable hourly rate
 - Required evidence:
 - 1) particular services performed
 - 2) who performed those services
 - 3) approximately when the services were performed
 - 4) the reasonable amount of time required to perform the services, and
 - 5) the reasonable hourly rate for each person performing such services.
- Awarding interim fees pending appeal requires evidence

Premarital Agreements

- *Lehman* (Houston [14th] 2018) (summary judgment upheld on lack of voluntariness)
- *Kozerz v. Velemir* (Houston [1st] 2018) (PMA set aside for involuntariness; affirmed)
- *Velderkens* (Houston [14th] 2018) (awarding fees for defending attack on character of property contra to PMA)
- *Mg. of I.C. & Q.C.* (Tex. 2018) (upheld forfeiture of \$5 million payment under “no contest” clause pled as alternative relief)

The End

