What's New in Texas Family Law 2022

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Taylor v. Tolbert, ___ S.W.3d ___, No. 20-0727, 2022 WL 1434659 (Tex. 2022) (05-06-22)

SCOTX

Attorney entitled to summary judgment on wife's state wiretapping claim based upon the application of the attorney-immunity defense. However, attorney may not invoke Texas's attorney-immunity defense as a bar to liability under the federal wiretapping statute.

In re J.W., ___ S.W.3d ___, No. 19-1069, 2022 WL 1739028 (Tex. 2022) (05-27-22)

SCOTX

Trial court erred in submitting a broad-form jury question addressing multiple grounds for termination.

S.C. v. M.B., ___ S.W.3d ___, No. 20-0552, 2022 WL 2192167 (Tex. 2022) (06-17-22)

SCOTX

Subchapter c of chapter 9 of the tfc is not the exclusive remedy to partition property following a divorce. Further, subchapter c does not impose a jurisdictional limitation that confers exclusive jurisdiction on the original divorce court to perform such division.

MMO: Interestingly, we now know from SCOTX that an undivided asset does not have to be divided under Ch 9 in a post-divorce division suit. One could file a regular old partition suit in civil court also. Neither jurisdiction nor remedies of Ch. 9 are exclusive. Hmmm ok. The dissent says the statute is clear when it says "THE" court, not "A" court which means "THE" family court that heard the case originally. I tend to agree with the dissent here, but no one really asked me. So, we are stuck with this decision. Welcome to civil court, everyone.

In re D.A.A.-B., ___ S.W.3d ___, No. 08-21-00058-CV, 2022 WL 3758574 (Tex. App.— El Paso 2022, no pet. h.) (08-30-22)

El Paso

Mother, a non-biological spouse, possesses standing and is afforded the constitutional right to file a SAPCR petition based upon allegations that she is the child's mother.

MMO: This is a very important case. Highlights: 1) The marriage parental presumption for fathers applies to non-gestational mothers as well. 2) Where a child is conceived during a marriage through formal or informal assisted reproduction, the spouse is the parent of the child (not just presumed parent). 3) Suit may be brought as part of the divorce/SAPCR or as an independent suit for adjudication. 4) Divorce decree is either void or lacks finality where it fails to adopt a parentage finding.

In re A.C.P.C., No. 12-22-00080-CV, 2022 WL 3452267 (Tex. App.—Tyler 2022, no pet. h.) (mem. op.) (08-17-22)

Tyler

A psychiatric clinic cannot be named as a tiebreaker for custody disputes when the clinic is not a party to the lawsuit and does not consent to being a tiebreaker.

MMO: Guys, this is a BIG one! How many orders have we all entered appointing a “tie-breaker” to make decisions when the parents can’t agree? Well, guess what, those are ALL unenforceable. Yep. The “tie-breaker” isn’t a party or doesn’t consent, you can’t make them do it. Anyway, back to coparenting…

Smith v. Smith, No. 02-20-00370-CV, 2022 WL 1682427 (Tex. App.—Fort Worth 2022, no pet. h.) (mem. op.) (05-26-22).

Fort Worth

Wife entitled to spousal maintenance because she could not provide for her minimum reasonable needs and was not required to liquidate her retirement account to do so because of tax consequences. Also, husband had an extensive history of committing family violence.

MMO: The interesting thing about this case is that the Fort Worth COA held that Wife didn't have to sell her car or cash in retirement to support her minimum reasonable needs. This is getting closer to the "cash flow" argument that many of us have put forward for years – that the real standard for meeting minimum reasonable needs is whether the assets provide a cash flow, not just the value.

In re Rigg, No. 05-21-00342-CV, 2022 WL 908951 (Tex. App.—Dallas 2022, orig. proceeding) (mem. op.) (03-29-22).

Dallas

Finding father in contempt improper because the order purportedly violated was vague and not enforceable by contempt.

MMO: The Dallas COA finds that the word "timely" in an order is too ambiguous to support a contempt finding. Also provision that decisions are to be made "subject to agreement of the other conservator" is too ambiguous to be enforced by contempt.

IMOMO Day, No. 05-21-00290-CV, 2022 WL 2255722 (tex. App.—Dallas 2022, no pet. H.) (Mem. Op.) (06-23-22)

Dallas

Trial court erred in terminating trial before wife had completed her case in chief or rested; thus, harm is presumed.

*MMO: This is an interesting case and result. Husband dies after the decree is entered but still during plenary power. Wife appeals on grounds that she didn't get to put on a case before she put on evidence. Of course, she wins on that. But the COA reverses only the property division – and *not* the divorce date – and remands. So at the new trial, the divorce date will stand and the parties will be divorced before husband's death, but the trial court can divide the community estate as of the date of divorce and presumably give it all or vast majority to wife. Husband's estate will represent husband in the trial. This means that she can't inherit or be a beneficiary since they were divorced already when he died. I'm sure she hoped for a different remedy upon reversal. But a reminder from the family appellate attorneys that there's almost never error in the date of divorce on appeal so that will almost never get changed once rendered.*

Villa v. Gebetsberger, No. 01-21-00529-CV, 2022 WL 3649368 (Tex. App.—Houston [1st Dist.] 2022, no pet. h.) (mem. op.) (08-25-22)

Houston 1st

Boyfriend 1 failed to present evidence that raised a fact issue as to whether he and boyfriend 2 were informally married. Accordingly, the trial court did not err in granting boyfriend 2's no-evidence msj.

MMO: First, it's not a good idea to combine your traditional and no-evidence MSJs for the reason this case illustrates. One ruling and order on all leaves confusion as to what was or was not granted. But, here, the real key is that no response with evidence was filed to the noevidence MSJ so it is granted as a matter of law. There's no discretion in that scenario. It's a loss – and call your carrier. If you aren't experienced and comfortable answering MSJs, this is an area that your loveable family appellate lawyer can help with. Call one of us.

Guidry v. Guidry, No. 04-20-00311-CV, 2022 WL 2821086 (Tex. App.—San Antonio 2022, no pet. h.) (mem. op.) (07-20-22)

San Antonio

Because wife agreed to the terms contained within the final decree, which were based upon two MSAs, she cannot complain that the final decree is not enforceable.

MMO: Be careful agreeing to orders that contain provisions you don't agree to! Invited error doctrine precludes a challenge to that to which you agree.

Depreist v. Depriest, No. 14-20-00032-CV, 2022 WL 2205281 (Tex. App.—Houston [14th Dist.] 2022, no pet. h.) (mem. op.) (06-21-22)

Houston 14th

Wife not entitled to a jury trial because she failed to show there was an issue of material fact to be determined by a jury. Further, trial court properly characterized husband's unvested stock options as his separate property despite his judicial admission that they were community property.

MMO: A judicial admission is not evidence. It's an estoppel argument.

IMOMO Brisco, No. 07-21-00196-CV, 2022 WL 2982512 (Tex. App.—Amarillo 2022, no pet. h.) (mem. op.) (07-28-22)

Amarillo

Trial court did not err in awarding husband a disproportionate share of the community estate in order to compensate him for having to pay wife's bills, which the trial court expressly ordered her to pay.

MMO: This case seems to tell us we have a new disproportionate division factor– noncompliance with court orders and specifically failing to pay bills you were ordered to pay. Let the games begin!

Sherman v. Sherman, ___ S.W.3d ___, No. 02-21-00172-CV, 2022 WL 2753627 (Tex. App.—Fort Worth 2022, no pet. h.) (07-14-22)

Fort Worth

Wife not entitled to spousal maintenance because trial court awarded her sufficient property to provide for her minimum reasonable needs.

MMO: This is an important case. Here, the argument was over whether wife had sufficient property to meet her minimum reasonable needs. The COA looked at the assets she had access to, which importantly they said should not include her retirement account because she couldn't use it to live off of in the next 5 years. Then they looked at the remaining asset value net of debts and concluded that her $6k/mo needs that she testified to could be satisfied by her net asset value for the duration of what would be a spousal maintenance award… so no maintenance needed. So, the COA expects the spouse to live off all of it for that period and expend it. Then what? I think they could have decided this on the definition of "minimum" (is $6k/mo a reasonable "minimum") instead of going through these gymnastics about what property is to be looked at for the support.

In re M.L.R.S., No. 14-20-00584-CV, 2022 WL 2165539 (Tex. App.—Houston [14th Dist.] 2022, no pet. h.) (mem. op.) (06-16-22)

Houston 14th

Great-grandmother successfully established standing under tfc 102.004(a)(1) because there was satisfactory proof that the child's present circumstances would significantly impair her physical and emotional development.

MMO: This is a grandparent/nonparent case. GM had standing and rebutted the fit parent presumption to be awarded SMC.

In re B.W.S., No. 05-20-00343-CV, 2022 WL 2663155 (Tex. App.—Dallas 2022, no pet. h.) (mem. op.) (07-13-22)

Dallas

Trial court did not err in imposing time limitations on the parties at a final modification hearing.

MMO: Preservation of error in complaining about time limits needs to resemble an offer of proof. Make the objection as early as possible when you realize you have an issue. Then, make the objection often. Getting the objection on the record is obvious. Then when you run out of time, you need to put in the record what evidence/witnesses you would have called that you couldn't because of the time limits, why all of that is necessary evidence to your case, and why you, the lawyer, didn't do a better job getting that in sooner if it was so dang important.

In re Hallas, No. 03-22-00413-CV, 2022 WL 3650090 (Tex. App.—Austin 2022, orig.proceeding) (mem. op.) (08-25-22)

Austin

A trial court cannot grant multiple extensions of a TRO, nor can it extend a void TRO.

MMO: This is an important case. First, this case says that a family court TRO still has to comply with TRCP 680 – so no unlimited extensions and for sure no indefinite extensions.

In re A.C., No. 02-21-00121-CV, 2022 WL 1793419 (Tex. App.—Fort Worth 2022, no pet. h.) (mem. op.) (06-02-22)

Fort Worth

Grandmother failed to establish that invoking TFC 153.004(b) [history of domestic violence or sexual abuse] automatically voids an agreement under TFC 153.007 that the parents be appointed joint managing conservators.

MMO: The parties can agree to JMC even if there's a history of domestic violence because the policy is to encourage settlement.

In re N.H., ___ S.W.3d ___, No. 14-21-00409-CV, 2022 WL 2719919 (Tex. App.— Houston [14th Dist.] 2022, no pet. h.) (07-14-22)

Houston 14th

A nonparent, which does not possess a biological or legal relationship to the child, must establish at a minimum that the denial of visitation would significantly impair the child's physical health or emotional well-being to overcome the fit-parent presumption.

MMO: This case is one of the first to begin to interpret the standards for rebutting the fit parent presumption. Remember in CJC where Justice Lehrmann's concurrence said we don't know the standard? Well the Houston 14th has given some direction, although expect this one to go to SCOTX.

Joseph v. Joseph, No. 14-20-00855-CV, 2022 WL 3205099 (Tex. App.—Houston [14th Dist.] 2022, no pet. h.) (mem. op.) (08-09-22)

Houston 14th

Trial court erred in finding that father committed family violence because father denied committing such acts, and trial court did not conduct an evidentiary hearing on the matter.

MMO: This issue is becoming more prevalent and I just don't understand it. Judges, you have to have hearings. That is literally your job. You can't just make decisions without hearing both sides' evidence.