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Texas Family Law Practice and Procedure

Publication 705

Release 86

November 2022

HIGHLIGHTS

TEXAS FAMILY LAW RELEASE 86

- This release updates the set to incorporate recent case law developments.

MSA enforcement. A mediated settlement agreement is unenforceable if it is entered into as the result of fraudulent inducement or fraud by nondisclosure [Matter of Marriage of Moncur, 640 S.W.3d 309 (Tex. App.—Houston [14th Dist.] 2022, no pet. h.); Matter of Marriage of Penafiel, 633 S.W.3d 36 (Tex. App.—Houston [14th Dist.] 2021, pet. denied)]. See Task E2, Settling the Case; Agreements Incident to Divorce, § E2.17[2][c].

Appeal of default divorce decree. A failure to file a motion for new trial under *Craddock* in the trial court

does not foreclose a party’s ability to raise on appeal an evidentiary challenge to a default property division [Matter of Marriage of Williams, 646 S.W.3d 542 (Tex. 2022)]. See Task G3, Bringing Appeal in Court of Appeals, § G3.01[3][a].

SAPCR enforcement. Courts have come to different conclusions about whether a custodial parent’s passive conduct in the face of a child’s refusal to go with the noncustodial parent at the start of a period of possession constitutes a denial of visitation. See Task N1, Defending Against SAPCR Enforcement, § N1.06[2][d].

Post-dissolution property division. The Texas Supreme Court has held that when community property is left undivided by a divorce decree, the former spouses may seek either a partition of the property under the

Property Code or a just-and-right division under Family Code Section 9.201 et seq. If either former spouse invokes the just-and-right standard, that will be the rule of decision. The divorce court does not have exclusive jurisdiction over the action [S.C. v. M.B., 2022 Tex. LEXIS 538 (Tex. June 17, 2022)]. See Task O1, Determining Right to Post-Dissolution Property Division, §§ O1.01, O1.02.

Family violence protective orders. As long as the respondent has been served with the application for a protective order and notice of the hearing, the trial court may render a binding protective order even if the respondent is not present at the hearing [Sermon v. Hernandez, 631 S.W.3d 927 (Tex. App.—El Paso 2021, no pet. h.)]. See Task P2, Following Procedures to Obtain Protective Order, § P2.04[2].

Termination of minor’s parental rights. The issue of how courts obtain personal jurisdiction over minor parents in termination cases is unsettled [Tex. Dep’t of Family & Protective Servs. v. N.J., 644 S.W.3d 189 (Tex. 2022) (concurring opinion)]. See Task S1, Initiating Termination Suit, § S1.12[1].

Mandatory dismissal deadline in DFPS termination cases. Pursuant to a series of Emergency Orders issued by the Texas Supreme Court in response to the COVID-19 pandemic, Texas trial courts may extend dismissal deadlines in proceedings under Family Code Section 263.401 [see In Interest of E.C.R., 638 S.W.3d 755 (Tex. App.—Amarillo

2021, pet. denied)]. See Task S2, Conducting Termination Suit, § S2.09[8].

Termination under Subsection (D). The Texas Supreme Court has held that a father’s knowledge of the mother’ drug use during pregnancy, and his corresponding failure to attempt to protect the unborn child from the effects of that drug use, may support an endangerment finding [In Interest of J.W., 645 S.W.3d 726, 749–750 (Tex. 2022)]. See Task S3, Establishing Grounds for Termination, § S3.02[2][b][iii].

Termination under Subsection (O). When termination of parental rights is sought on the ground of failure to comply with the requirements set out in a family service plan, the Texas Supreme Court has held that actions that are worded as requests, rather than as positive mandates, are not sufficiently specific because a request does not connote a mandatory requirement [In Interest of A.L.R., 646 S.W.3d 833 (Tex. 2022)]. See Task S3, Establishing Grounds for Termination, § S3.02[12][a].

Appellate review of endangerment findings. The Texas Supreme Court has held that when a court of appeals determines that there was factually insufficient evidence to support termination under Subsection (D) or (E) of Texas Family Code Section 161.001(b)(1), but legally and factually sufficient evidence to support termination on another ground, the proper remedy is to affirm the trial court’s termination un-

der that other ground and strike the (D) and (E) findings [In Interest of M.P., 639 S.W.3d 700 (Tex. 2022)]. See Task S5, Obtaining Final Order in Termination Suit, § S5.05[1C].

Adoption. The Corpus Christi Court of Appeals has set out the factors that a court considers when

deciding whether there is good cause to unseal adoption records [In Interest of H.L.S., 643 S.W.3d 453 (Tex. App.—Corpus Christi 2022, no pet. h.)]. See Task T5, Obtaining Final Order in Child Adoption Proceedings, § T5.01[5][b].

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Publication 705, Release 86, November 2022

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