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Texas Family Law Practice and Procedure

Publication 705 Release 54

November 2006

HIGHLIGHTS

Pub Update

- This release incorporates a new chapter, Task C8, Establishing Parenting Plans, as well as recent case law developments..

Parenting plans.

- A new chapter covers parenting plans, which are court orders covering the rights and duties of parents in SAPCRs. Parenting plans include provisions relating to conservatorship, possession of and access to children, child support, and dispute resolution processes to minimize future disputes. The use of a parenting coordinator to assist in developing a parenting plan is discussed. The chapter contains forms to assist with drafting an agreed or proposed parenting plan and a SAPCR order containing a final parenting plan, as well as forms for a motion requesting appointment of a parenting coordinator. *See Task C8, Establishing Parenting Plans*

Family violence and appointment of SMC.

- The presumption against appointment of a parent with a pattern or history of family violence as the child's sole managing conservator is rebuttable. The statute does not automatically preclude such a parent from being appointed as the child's sole managing conservator. *See Task B2, Determining Custody of Children.*

No constitutional right to equal possession time.

- Even a good and fit parent does not have a constitutional right to an equal amount of time with the child. The standard possession order is a presumptively reasonable possession schedule. *See Task B2, Determining Custody of Children.*

Spousal maintenance for disabled spouse.

- To be entitled to continuing maintenance, a disabled obligee must prove that his or her disability is continuing, but need not establish a material and substantial change

in circumstances as is required in a proceeding to modify spousal maintenance. *See Task B4, Determining Spousal Support and Maintenance.*

Binding arbitration and child's best interest.

- Although a trial court will not enforce a binding arbitration award that is not in the child's best interest, a person challenging the award on this basis must request a best interest hearing in order to invoke the right to a hearing. The best interest hearing must occur before the trial court renders its order. *See Task E3, Using Alternate Dispute Resolution Methods.*

Recouping overpaid child support.

- When an appellate court overturns support order, the obligor who has complied with the order during the pendency of the appeal is entitled to recoup the amount he or she overpaid, even if the appeal was pending. *See Task G3, Bringing Appeal in Court of Appeals.*

Counterclaim or offset for support during periods voluntary relinquishment. An obligor asserting a voluntary

relinquishment defense to a child support enforcement proceeding must show both voluntary relinquishment and actual support in order to prevail. Whether an obligor parent is entitled to an offset or to reimbursement will depend on whether such parent continued to pay the court-ordered support obligation during all or part of the period of excess possession. If support was paid during this period, the obligor must seek reimbursement; if it was not, the obligor must ask for an offset. In either event, Family Code Section 157.008's reimbursement remedies of offset or counterclaim are alternative, not cumulative. During any particular month, the obligor may be entitled to one or the other, but not both. *See Task J2, Bringing Motion for Contempt and Other Remedies.*

Affidavit of relinquishment. An affidavit or relinquishment may be voluntary given as part of a plea bargain agreement. *See Task S1, Initiating Termination Suit.*

Bill of review in termination case. A party to a termination suit may seek a bill of review of the order. *See, Task S4, Responding to Termination Suit.*

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