

PUBLICATION UPDATE

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Texas Family Law Practice and Procedure

Publication 705 Release 58

November 2008

HIGHLIGHTS

Pub Update

- This release updates *Texas Family Law Practice and Procedure* in light of all relevant case law developments since Release 57.

Selected Recent Developments

- See summaries of analysis below.

Characterization. When a corporation is dissolved, distributions received in exchange for the cancellation of stock retain the character of the stock. *See* Task B5, Characterizing Property of Parties.

Retirement benefits. A court of appeals explains how to calculate military retirement benefits of an active-duty service member. *See* Task B6, Valuing Assets.

Fraud on the community. A third party may not be held liable in tort when one spouse takes community property. Rather, the sole method for adjudicating claims of fraud on the community is a just-and-right division of the community estate. *See* Task

B7, Dividing Community Property.

Agreed decrees. If a party signs a decree that he or she has approved and consented to as to both form and substance, that party may not appeal from the judgment absent fraud, collusion, or misrepresentation. *See* Task E2, Settling the Case; Agreements Incident to Divorce.

Amicus attorney. An amicus attorney does not represent either party and thus has no basis for filing a brief in an appeal. *See* Task H3, Conducting SAPCR Modification Proceedings.

Hague Convention. Determining whether a child is “well-settled,” and establishing “acquiescence” and “grave risk” of harm, are discussed in Task K5, Obtaining Remedies Under Hague Convention.

Transfer. A child who is living with a foster parent resides in the foster parent’s home for purposes of the Family Code’s transfer provisions. *See* Task R4, Conducting Paternity Suit.

Genetic testing. A party must be entitled to maintain a proceeding to adjudicate par-

entage before a trial court may order genetic testing to determine parentage. *See* Task R4, Conducting Paternity Suit.

Appointed counsel in termination suit. There is no statutory right to appointed counsel in a private termination suit. *See* Task S2, Conducting Termination Suit.

Appeals in DFPS-initiated termination suits. The procedures set out in Texas Family Code Section 263.405, applicable to appeals from orders terminating parental rights in cases initiated by the Texas Department of Family and Protective Services, have been the subject of considerable litigation in recent months. An expanded discussion of this evolving topic is set out in new Section S5.04. *See* Task S5, Obtaining Final Order in Termination Suit.

Adoption. Texas courts of appeals have refused to hold that an adoption order is void because the adoptive parents are of the same gender. *See* Task T5, Obtaining Final Order in Child Adoption Proceedings.

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