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Texas Family Law Practice and Procedure

Publication 705 Release 69 April 2014

HIGHLIGHTS

Pub Update

- This release updates the set in light recent case law developments.

Mediated settlement agreements and child’s best interest. In *In re Lee* [2013 Tex. LEXIS 809 (Sept. 27, 2013)], a majority of the Texas Supreme Court held that, under Family Code Section 153.0071, a trial court may not deny a motion to enter judgment on a properly executed mediated settlement agreement concerning conservatorship issues based on the court’s inquiry into the child’s best interest. The four dissenting Justices and the concurring Justice would hold that a trial court does not abuse its discretion by refusing to enter judgment on an MSA that could endanger the safety and welfare of a child. See Task E3, Using Alternate Dispute Resolution Methods, § E3.02[5].

Attorney’s fees in SAPCR. In *Tucker v. Thomas* [2013 Tex. LEXIS 1035 (Dec. 13, 2013)], the Texas Supreme Court held that,

in the absence of express statutory authority, a trial court may not award attorney’s fees recoverable by a party in a non-enforcement modification suit as necessities or as additional child support. See Task E7, Obtaining Court-Ordered Attorney’s Fees and Costs, § E7.01[2][e], [f]; Task H6, Obtaining Order Modifying SAPCR Order, § H6.02[3].

Judicial admissions in modification petition. If both parents seek modification of conservatorship based on changed circumstances, one party’s allegation of changed circumstances constitutes a judicial admission of the common element of changed circumstances in the other party’s similar pleading, even if the parties are seeking different relief. See Task H2, Initiating SAPCR Modification Proceedings, § H2.02[3][b].

Amicus attorneys. An amicus attorney should not engage in ex parte communications with the trial court. The Texarkana Court of Appeals has criticized the Legislature’s creation of the position, disagreeing with the idea that an amicus attorney is

the trial judge's attorney. See Task H3, Conducting SAPCR Modification Proceedings, § H3.03[1].

Child support enforcement. A trial court errs by finding no arrearages where the parties agree that arrearages are owed but disagree as to the amount. A clerical error in the Attorney General's payment record cannot serve as a basis for an arrearage determination. See Task J1, Choosing Which Remedies to Seek, § J1.03[1][a].

Termination of unregistered father's parental rights. To be entitled to notice of a termination suit, the alleged father must timely register with the paternity registry even if the mother prevented him from finding out about her pregnancy and the child's birth, and even if the mother concealed or lied about the father's identity. The registration-for-notice requirement applies regardless of whether the alleged father was aware of the pregnancy, the birth of the child, or even the existence of a paternity registry. See Task R1, Understanding Legal Relationship Between Father and Child, § R1.02[2][a].

Affidavit of relinquishment. Failure to comply perfectly with all the technical requirements for an affidavit of relinquishment does not amount to the "fraud, duress,

or coercion" that must be shown in order to attack a termination order based on an affidavit of relinquishment. See Task S1, Initiating Termination Suit, § S1.06[2].

Premarital agreements. Recitals in a premarital agreement concerning voluntariness do not bar a subsequent claim of involuntariness. See Task V1, Creating Premarital Agreement, § V1.10[1].

Name change. Stating that evidence of tradition and custom should not be categorically excluded, the Houston Fourteenth Court of Appeals has developed its own criteria for determining whether a name change is in a child's best interest. See Task Z2, Changing Name of Child, § Z2.03[1].

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Publication 705, Release 69, April 2014

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