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Texas Family Law Practice and Procedure

Publication 705 Release 71 April 2015

HIGHLIGHTS

Pub Update

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

Transgender marriage. The Corpus Christi Court of Appeals has held that, as the result of a 2009 amendment to the marriage license statute, an individual who has had a sex change is eligible to marry a person of the opposite sex [In re Estate of Araguz, 443 S.W.3d 233, 242–249 (Tex. App.—Corpus Christi 2014, no pet. h.)]. See Task B1, Establishing the Marriage Relationship, § B1.01[3].

Rebutting the parental presumption. The Texas Supreme Court has indicated that, when a parent and a nonparent are vying for appointment as managing conservator, evidence that the child will be harmed by uprooting him from a stable, long-term foster home may be a factor in determining whether the nonparent has rebutted the parental presumption [Danet v.

Bhan, 436 S.W.3d 793, 797 (Tex. 2014)]. See Task B2, Determining Custody of Children, § B2.03[2][c].

Support for disabled child. To obtain support for an adult disabled child, the disability must have existed before the child turned 18, but a court need not have made such a finding before the child’s 18th birthday [In re Thompson, 434 S.W.3d 624, 627 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding)]. See Task B3, Calculating Child Support, § B3.02[13].

Liability of marital property for one spouse’s debt. A husband’s premarital debt may give rise to a lien on a home owned as joint management community property, even though the wife was not named in the suit resulting in the lien and had no role in incurring the debt [Drake Interiors, L.L.C. v. Thomas, 433 S.W.3d 841, 849–852 (Tex. App.—Houston [14th Dist.] 2014, no pet. h.)]. See Task B5, Characterizing Property of Parties, § B5.01[5][b].

Compensation for wrongful imprisonment. A former inmate’s monetary com-

compensation for wrongful imprisonment was his separate property and his wife had no community property interest in the award even though the parties were married during the incarceration [Phillips v. Tucker, 442 S.W.3d 543, 545–547 (Tex. App.—Dallas 2014, no pet. h.)]. See Task B5, Characterizing Property of Parties, § B5.05[9][b].

Attorney’s fees. A father was entitled to an award of attorney’s fees in a proceeding to enforce a provision in the parents’ agreed divorce requiring the mother to deliver the children’s passports to him [Kendrick v. Seibert, 439 S.W.3d 408, 411–412 (Tex. App.—Houston [1st Dist.] 2014, no pet. h.)]. See Task E2, Settling the Case; Agreements Incident to Divorce, § E2.04[3][c].

Jury trial. The Texas Supreme Court has held that a trial court may substitute a regular juror with an alternate if the regular juror is unable to fulfill or is disqualified from fulfilling his duties, but a trial court may dismiss a juror and proceed with fewer than 12 jurors only if the dismissed juror is constitutionally disabled [In re M.G.N., 441 S.W.3d 246, 248 (Tex. 2014)]. See Task E6, Trying Case Before a Jury, § E6.01[1].

Contempt. A party asserting inability to pay as a defense in a contempt proceeding has the burden of pleading and proving the defense even if he or she was found indigent for purposes of the appointment of counsel [In re Mancha, 440 S.W.3d 158, 166–167 (Tex. App.—Houston [14th Dist.] 2013, orig. proceeding)]. See Task J2, Bringing Motion for Contempt and Other Remedies, § J2.09[1].

Termination based on mistaken paternity. Termination on the basis of mistaken paternity does not include a best-interest determination. If a petitioner makes a prima facie showing entitling him to genetic testing and the testing excludes him as the father, he is entitled to termination without regard to the child’s best interest [In re J.K.B., 439 S.W.3d 442, 450 (Tex. App.—Houston [1st Dist.] 2014, no pet. h.)]. See Task S1, Initiating Termination Suit, § S1.01[7][c].

Affidavit of relinquishment. The Texas Supreme Court has held that an affidavit of relinquishment is adequately verified if it states that it is made under oath [In re K.M.L., 443 S.W.3d 101, 108–111 (Tex. 2014)]. See Task S1, Initiating Termination Suit, § S1.06[6].

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