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Texas Family Law Practice and Procedure

Publication 705

Release 78

December 2018

HIGHLIGHTS

- This release updates the set to incorporate recent case law developments and new Texas Rule of Civil Procedure 308b.

Joint Managing Conservatorship. A parent’s immigration status should not be used as a basis for denying joint managing conservatorship absent evidence that the immigration status affects that party’s ability to parent. See Task B2, Determining Custody of Children, § B2.03[4].

Nonparent Standing. Resolving a split of authority among the courts of appeals, the Texas Supreme Court has held that a nonparent has the actual control of the child necessary to establish standing under Family Code Section 102.003(a)(9) if, for the requisite six month time period, the nonparent served in a parent like role by (1) sharing a principal residence with the child, (2) providing for the child’s daily physical and psychological needs, and (3) exercising guidance, governance, and direction similar to that typically exercised on a day to day

basis by parents with their children. The statute does not require the nonparent to have ultimate legal authority to control the child, nor does it require the parents to have wholly ceded or relinquished their own parental rights and responsibilities. The nonparent’s care and control of the child need not be exclusive; parents and nonparents can both play parental or parent-like roles in a child’s life at the same time [In Interest of H.S., 2018 Tex. LEXIS 558 (June 15, 2018)]. See Task B2, Determining Custody of Children, § B2.07[2][b][iv].

Child Support. The Texas Supreme Court has held that neither physical custody nor legal guardianship is required for a parent to have standing to file a suit seeking child support for an adult disabled child under Family Code Section 154.303(a)(1). The mother of an adult disabled daughter had standing to seek child support from the child’s father even though she did not have physical custody of the daughter and was not her legal guardian [In Interest of C.J.N.-S., 540 S.W.3d 589, 590–593 (Tex. 2018)]. See Task B3.02[13][b].

Enforceability of Foreign Judgment. New Texas Rule of Civil Procedure 308b, which sets out the procedure for determining the enforceability of a judgment based on foreign law in family law cases, is discussed in Task E5, Pretrial Motions and

Preliminary Matters, § E5.04[2A]. Related amendments to Texas Rule of Evidence 203 are discussed in Task E5, Pretrial Motions and Preliminary Matters, § E5.04[3][a][v].

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