FAMILY LAW UPDATE

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Collin County Bench Bar

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I. Introduction

In addition to the Family Code revisions by the 82nd Legislative Session, last year was a busy year for Texas courts. This article covers some of the significant legislative and judicial changes in family law for the year running from March 1, 2011 through February 29, 2012. This article is intended to present summaries of some of the key changes in Texas family law, but does not address every statutory revision or relevant case. Family law can be a highly technical area of practice, so it is always wise to consult with a specialist on complex issues or changing areas of the law.

II. Divorce Procedure

A. Featured Case

Mandamus is available to review a ruling on a request to deny jurisdiction based on inconvenient forum.
In re Alanis, __ S.W.3d __, 2011 WL 2713606 (Tex. App.—San Antonio 2011, orig. proceeding).

Father and Mother divorced while living in Texas and Father was granted the right to determine the primary residence of the child. Father and child eventually moved to California and Mother moved to Oklahoma. One month after Father and child moved to California, Mother filed SAPCR in Texas. Father filed a plea to the jurisdiction in favor of California based on inconvenient forum but Texas courts declined. Father filed a petition for mandamus. Mandamus was appropriate because Father did not have remedy on appeal. TFC 152.207(b) provides factors for determining convenience of forum including the relative financial circumstances of the parties, nature and location of the evidence and the familiarity of the court with the facts and issues in this case. Here, because neither party lived in Texas and there wasn't substantial evidence that only the Texas courts would have, allowing the case to proceed in California promoted judicial economy.

B. Additional Cases

✯ *Texas Supreme Court* ✯

A trial court must state reasons for setting aside a jury verdict and granting a motion for new trial
In re Cook, 02-10-00068-CV, ___ S.W.3d ___ (Tex. 2011).

Couple did not establish an informal or common-law marriage because they did not have a reputation in the broader community as a married couple; occasional introductions as husband and wife are not sufficient
Small v. McMaster, ___ S.W.3d ___, 2011 WL 5008412 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.).

Texas trial court dismissed divorce proceeding because Virginia had exclusive continuing jurisdiction over child custody matters and Virginia was a more convenient forum.
Okonkwo v. Okonkwo, ___ S.W.3d ___, 2012 WL 556310 (Tex. App.—San Antonio 2012, no pet. h.).

Default judgment appropriate despite lack of service where Father was represented by counsel at motion to quash, pursuant to TRCP122.
In re A.M., ___ S.W.3d ___, 2011 WL 2471766 (Tex. App.—El Paso 2011, no pet. h.).

Return of service citation by process server must be verified and is invalid if not properly notarized.
Chupp v. Chupp, No 01-01-00197-CV, 2011 WL 2623996 (Tex. App.—Houston 2011, no pet. h.) (mem. op.).

III. Property Division and Maintenance

A. Legislative Changes

Fraud on the community – codification of Schlueter
Tex. Fam. Code § 7.009

This new section codifies the existing *Schlueter* caselaw regarding fraud on the community. It clarifies that the procedure is to add back in the value of the wrongful depletion and divide this reconstituted value between the parties. The court may award a money judgment and an appropriate share of the remaining community estate.

Court-ordered spousal maintenance provisions significantly revised
Tex. Fam. Code § 8.051 – 8.0591

The legislature made sweeping revisions to the spousal maintenance statutes. The new statutes are a considerable change from the previously-existing regime. There has not yet been time for caselaw to develop that would interpret the new changes and provide guidance on how they will be applied. The duration of maintenance is linked to the length of the marriage, and maintenance may now last up to 10 years after the date of the order. Further, the maximum amount has increased from $2,500 to $5,000 per month. The new language also specifies what income is to be included in calculating maintenance.

B. Featured Case

Court cannot order wage withholding to enforce payment of "contractual alimony"
Heller v. Heller, ___ S.W.3d ___, 2012 WL 333776 (Tex. App.—Beaumont 2012, no pet. h.).

Husband and Wife entered into an agreed divorce decree containing a contractual alimony provision stating "These support payments undertaken by [Husband]. . . are intended to qualify as contractual alimony as that term is defined in section 71(a) of the Internal Revenue Code." Husband fell behind, and Wife asked the court to enter a withholding order. The appellate court held that, while the provision resembled spousal maintenance, it was not spousal maintenance under Ch. 8, and a wage withholding order would be an illegal garnishment of current wages under the Texas Constitution. The record contained no evidence or findings to indicate Wife's eligibility for spousal maintenance. The record did not evidence the parties' intent to be governed by chapter 8, nor did the alimony provision in the decree order or command Steven to make alimony payments. Because the parties did not make their agreement use the language of spousal maintenance, the promise to pay contractual alimony created nothing more than a debt.

C. Additional Cases

✯ ***Texas Supreme Court*** ✯

Although previous caselaw held that award of attorney's fees in divorce is only proper from the community estate, Texas Supreme Court denied mandamus where trial court awarded interim attorney's fees and parties had premarital agreement providing for no community property
In re H.D.V.; 05-11-00078-CV, ___ SW3d ___ (Tex.App.—Dallas 2011) (mandamus denied by TX Sup. Ct. on Sept. 30, 2011).

Adultery can be shown by circumstantial evidence and can support a finding of cruel treatment and a disproportionate division of the estate.
Newberry v. Newberry, ___ S.W.3d ___, 2011 WL 4062505 (Tex. App.—El Paso 2011, no pet. h.).

Court may consider each spouse's contribution to the community estate in its division of the marital estate; Murff factors need not be considered; Murff factors are not exclusive
Monroe v. Monroe, ___ S.W.3d ___, 2011 WL 2348453 (Tex. App.—San Antonio 2011, no pet. h.) (09/07/11) replaces opinion issued on 06/15/11.

Trial court properly instructed jury to determine Husband's separate property interest in his retirement as a specific dollar amount, as opposed to a percentage based on Husband's time employed while single and while married
Sprague v. Sprague, ___ S.W.3d ___, 2012 WL456936 (Tex. App.—Houston [14th Dist.] 2012, no pet. h.).

Trial court does not have authority to divide property previously partitioned between the parties by a Rule 11 Agreement.
Collins v. Collins, ___ S.W.3d ___, 2011 WL 1648240 (Tex. App.—Dallas 2011, no pet).

Trial court property awarded ex-wife one half of the corpus of husband's employee savings plan following his death because decree failed to divide corpus, leaving it as undivided community property.
Maddox v. Maddox, ___ S.W.3d. ___, 2011 WL 808930 (Tex.App.—Texarkana 2011, no pet. h.).

Personal injury settlement to both Husband and Wife is separate property because awards were made to each party separately and the parties later put funds in a trust that established separate property remains separate.
Harrell v. Hochderffer, ___ S.W.3d ___, 2011 WL 229770 (Tex. App.—Austin 2011, no pet. h.).

Conveyance of Husband's separate property to both Husband and Wife and "joint tenants with right of survivorship" constitutes gift of one-half interest in property to Wife.
In re Marriage of Skarda, ___ S.W.3d ___, 2011 WL 2502946 (Tex. App.—Amarillo 2011, no pet. h.).

Disproportionate division proper where Husband was at fault, Wife would no longer receive benefits derived from marriage, Husband gifted parts of community estate to his family and Wife incurred attorney's fees.
Pagare v. Pagare, ___ S.W.3d ___, 2011 WL 244911 (Tex. App.—Dallas 2011, no pet. h.).

Modifying alternate payee on QDRO for child support and specifying that Husband was responsible for taxes on the QDRO does not substantially modify or alter the property division in a divorce where parties were ordered to pay own taxes for the previous and current years.
Quijano v. Quijano, ___ S.W.3d ___, 2011 WL 3197709 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.).

IV. Post-Decree Enforcement

A. Cases

Money damages appropriate to enforce Final Decree of Divorce where specific performance is not possible.
Campbell v. Campbell, No. 01-10-00562-CV, 2011 WL 2436513 (Tex. App.—Houston [1st Dist.] 2011, no pet. h.).

Motion for enforcement must clearly and concisely identify the provision of the order allegedly violated and the enforcement order must include the language of the provisions of the order for which enforcement is sought.
In re Aslam, ___ S.W.3d ___, 2011 WL 2622374 (Tex. App.—Fort Worth 2011, orig. proceeding).

V. SAPCR Procedure

A. Featured Case

Texas trial court rather than Louisiana trial court properly exercised jurisdiction in divorce case because neither state had jurisdiction over the children and father filed petition in Texas before mother filed petition in Louisiana.
Marsalis v. Marsalis, ___ S.W.3d ___, 2011 WL 923941 (Tex. App.—Texarkana 2011, no pet. h.).

Father filed for divorce in Texas though children had not lived in Texas for six months prior to filing. Subsequently, Mother filed for divorce in Louisiana where children were living at the time she filed, though the children had not been living in Louisiana long enough to meet the jurisdictional requirements. Louisiana trial court granted a divorce and Mother filed the decree with the Texas court. Thereafter, Texas court rendered a divorce and adjudicated custody of the children and Mother appealed. Under UCCJEA, Texas court can obtain jurisdiction to conduct custody determination by one of four methods: (1) Home State Jurisdiction; (2) Significant Connection Jurisdiction; (3) More Appropriate Forum Jurisdiction (if all courts having jurisdiction under 1 or 2 above fail to exercise jurisdiction); or (4) Default Jurisdiction (if no court in any other state would have jurisdiction under 1-3 above). Here, default jurisdiction applied and because Father filed for divorce before Mother, Texas already had jurisdiction and Louisiana could not exercise jurisdiction over the case.

B. Additional Cases

Mandatory transfer of venue did not invalidate jury verdict despite trial having been held in improper venue because mother failed to request a stay of the proceedings while she sought mandamus relief for the transfer
Cooper v. Johnston, No. 11-11-00110-CV, 2011 WL 4137731 (Tex. App.—Eastland 2011, no pet. h.) (mem. op.).

Even though the final divorce decree stated that the child's residence was temporary, trial court had a mandatory duty to transfer the subsequent SAPCR to the county where child had resided for more than six months prior to filing of the SAPCR
In re Lawson, ___ S.W.3d ___, 2011 WL 5298488 (Tex. App.—San Antonio 2011, orig. proceeding).

Evidence of a material and substantial change in circumstances should have been established by a comparison with circumstances at time last child support order was signed, not with circumstances at time last motion to modify was declined
In re J.D.D., No. 05-10-01488-CV, 2011 WL 5386370 (Tex. App.—Dallas 2011, no pet. h.) (mem. op.).

Family Code does not allow Texas to claim subject matter jurisdiction over an unborn child. California was child's home state and California had not declined jurisdiction, so Texas was required to dismiss, even if no proceedings had been filed in California.
Arnold v. Price, ___ S.W.3d ___, 2011 WL 6415133 (Tex. App.—Fort Worth 2011, no pet. h.).

Default judgment is void where Father timely filed an answer but failed to receive notice of hearing to establish parent-child relationship.
In re I.L.S., ___ S.W.3d ___, 2011 WL 711633 (Tex. App.—Dallas 2011, no pet. h).

A court hearing set orally and never reduced to writing during one hearing on mother's pleadings for father's motion in a cross-action was not deemed sufficient notice to mother of hearing.
In re P.C., ___ S.W.3d ___, 2011 WL 1157635 (Tex. App.—El Paso 2011, no pet. h.).

Legislative continuance is mandatory for a temporary orders hearing, even if filed within thirty days of the hearing because a temporary orders hearing is neither a suit nor a trial.
In re I.E.F., ___ S.W.3d ___, 2011 WL 1402841 (Tex. App.—San Antonio 2011, orig. proceeding).

Despite not filing an answer, because mother appeared at the temporary orders hearing she was entitled to notice of final trial.
In re N.L.D., ___ S.W.3d ___, 2011 WL 2139122 (Tex. App.—Texarkana 2011, no pet. h.).

Comments made by trial court during rendition are not a substitute for findings of fact and conclusions of law and may not be considered unless court transcripts are entered as evidence.
In re J.C., ___ S.W.3d ___, 2011 WL 2802937 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.).

Temporary caregivers have standing to file SAPCR because they showed actual care, control and possession of the children and do not need to show that they have legal control of the children.
Jasek v. Jasek, ___ S.W.3d ___, 2011 WL 259312 (Tex. App.—Austin 2011, no pet. h.).

Due process is denied when a litigant is not given notice that a scheduled hearing is a dispositive hearing and could result in a default judgment.
Rojas v. Scharnberg, No. 01-09-01039-CV, 2011 WL 941616 (Tex. App.—Houston 2011, no pet. h.) (mem. op.).

VI. Conservatorship

A. Legislative Changes

Relevant Factors for Possession Orders Under Age 3
Tex. Fam. Code § 153.254

The Legislature added a non-exclusive list of 13 factors for the court to consider in rendering an appropriate possession order for a child under 3 years of age. The court also must make findings supporting the order if requested by a party.

B. Featured Cases

Trial court in non-enforcement modification suit had jurisdiction and authority to order Father to pay attorney's fees as additional child support
Tucker v. Thomas, ___ S.W.3d ___, 2011 WL 6644710 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.).

Father filed a modification, seeking to be appointed joint managing conservator with the exclusive right to designate the children's primary residence and an order geographically restricting the children's primary residence. Mother countered, seeking appointment as sole managing conservator of the children, modification of the terms and conditions for Father's access to and possession of the children, and an increase in Father's monthly child-support obligation. At the end of the 11 day trial, the court denied Father's modification and ordered him to pay ½ of the ad litem's fees and all of Mother's $82,000 in attorney's fees *as additional child support*. Father appealed, arguing that, in a modification suit with no past-due child-support obligation, the trial court has no authority to order payment of attorney's fees as additional child support. The appellate court held that the trial court had authority to order additional child support in general and, under the family code duty of support and the common law doctrine of necessaries, the court had the authority to order payment of attorney's fees as additional child support. The court stated that a parent's duty to support his children encompasses an obligation to provide them with necessaries, which may include reasonable attorney's fees for legal services benefitting the children. The court also held that, although the child support enforcement statutes specifically authorize payment of attorney's fees by the obligor, nothing in the Family Code prohibits a court from ordering that relief in other contexts. However, the appellate court did reverse, holding that, while Mother put on evidence of the amount of her attorney's fees, she failed to put on evidence that the fees were reasonable. The court remanded for further factual determination of the reasonableness of Mother's fees.

A concurring opinion highlighted the fact that the two Houston appellate courts are now split on this issue, and called for Supreme Court review.

Without evidence that father's use of alcohol endangered the safety of the child, random alcohol tests were deemed too restrictive to protect best interests of the child.
Newell v. Newell, ___ S.W.3d ___, 2011 WL 372042 (Tex. App.—Fort Worth 2011, no pet. h.).

Mother and Father were married and had one child together. During the marriage, Father began abusing drugs and Mother filed for divorce. Temporary orders were entered making Father's possession of the child contingent upon passing drug tests. Parties had a final trial to determine if Father would need to take drug tests beyond five years if he remained unemployed. At trial, evidence was entered regarding Father's alcohol use and Father admitted abuse but not addiction to alcohol. Mother testified that child had reported that Father drank in front of the child during his periods of possession. Trial court ordered random alcohol and drug tests for Father and specifically ordered that if he had consumed alcohol 80 hours before his possession of the child, his possession would be modified. As the test could be given up to 12 hours before his possession, this test would ultimately require that Father refrain from consuming alcohol up to 92 hours prior to possession. Father appealed arguing that court abused its discretion by ordering random alcohol tests when evidence was factually insufficient to support the order.

The COA held that though it is a rebuttable presumption that a standard possession order is in the best interest of a child, if this order is unworkable or inappropriate, it should be modified to an order as similar as possible that is workable. An order that restricts or limits a parent's possessory rights may not exceed the terms necessary to protect a child's best interests. The court found that a restriction that the Father not drink up to 92 hours exceeded the restrictions required to protect the child's best interest. The concurring opinion made the salient point that as the goal for the test was to ensure Father did not drink while in possession of the child, such test did not accomplish the intended result. The dissenting opinion opined that the COA should not have modified the trial court's order but should have remanded the case because there was sufficient evidence to support the trial court's decision due to Mother's testimony that Father had an issue with alcohol abuse and that the child had reported to Mother that Father drank while having possession of the child. The dissent argued that the COA should have deleted the testing requirement only if there was no evidence to support the trial court's order but because there was evidence of Father's use of alcohol, their judgment should not have been substituted for the trial court.

C. Additional Cases

Mother was granted right to determine the children's residency without a geographical restriction because her out-of-state family could help support the children
Yasin v. Yasin, No. 03-10-00774-CV, 2011 WL 5009895 (Tex. App.—Austin 2011, no pet. h.) (mem. op.).

By scheduling and conducting a hearing on Father's motion to modify conservatorship, trial court implicitly found Father's affidavit was sufficient under TFC 156.102 to support his motion; also Mother failed to raise her motion to dismiss
In re A.L.W., ___ S.W.3d ___, 2011 WL6122941 (Tex. App.—Texarkana 2011, no pet. h.).

Father loses exclusive right to consent to medical, dental, psychological and psychiatric treatment after he voluntarily and unilaterally moves out of state.
In re M.A.M, ___ W.3d ___, 2011 WL 1448633 (Tex. App.—Dallas 2011, no pet. h.).

Father awarded right to determine primary residence of child in modification after Mother moved child out of state despite geographic restriction.
In re W.C.B., ___ S.W.3d ___, 2011 WL 147912 (Tex. App.—Dallas 2011, no pet. h.)

Mother's failure to extensively identify material and substantial change in circumstances did not support modification of conservatorship.
Anderson v. Carranza, No. 14-10-00500-CV, 2011 WL 1631792 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.) (mem. op).

Trial court erred in declining to hear evidence of possible sexual abuse by Father against Mother at motion for new trial hearing.
In re M.B.D., ___ S.W.3d ___, 2011 WL 1709895 (Tex. App.—Texarkana 2011, no pet. h.).

VII. Non-Parent Access

A. Legislative Changes

Non-parent authorization agreements
Tex. Fam. Code § 34.001 – 34.008

Ch. 34 was revised to add a "person with whom the child is placed under a parental child safety placement agreement" to the list of covered persons (grandparent, sibling, aunt, or uncle). The new revisions also attempt to address the problem of multiple authorization agreements.

B. Cases

Grandparents had standing to file an original SAPCR because evidence indicated father had abused the children in the past and no evidence showed that the present circumstances had changed since the reported abuse
In re McDaniel, ___ S.W.3d ___, 2011 WL 4926002 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding).

Grandparents could not be named temporary managing conservators because mother never relinquished authority to them and no evidence that the child was in danger in parents' care
In re Calkins, No. 09-11-00531-CV, 2011 WL 4975008 (Tex. App.—Beaumont 2011, orig. proceeding) (mem. op.).

Grandmother's SAPCR dismissed because, rather than intervening, she filed her own action after the trial court had a hearing and the parents had entered an agreed parenting plan. She further failed to show that the child's environment posed a danger.
In re D.W.J.B., ___ S.W.3d ___, 2012 WL 424386 (Tex. App.—Texarkana 2012, no pet. h.).

Grandparents did not have standing to intervene for conservatorship because only one of the child's joint managing conservators gave consent to intervene
In re Lewis, ___ S.W.3d ___, 2011 WL 6141579 (Tex. App.—Fort Worth 2011, orig. proceeding).

Paternal aunt with joint managing conservatorship of the child was denied due process when trial court sua sponte modified temporary orders without notice prior to a hearing
In re Chester, ___ S.W.3d ___, 2011 WL 4863711 (Tex. App.—San Antonio 2011, orig. proceeding).

Law of the case applies throughout case history and lack of change that children do not suffer serious impairment if they do not have visitation with grandmother does not reach high threshold under TFC 153.433.
In re B.G.D., ___ S.W.3d ___, 2011 WL 3795228 (Tex. App.—Fort Worth 011, no pet. h.).

Aunt and Uncle could not be appointed non-parent joint managing conservators in case where they had not sought to intervene and establish standing.
In re C.A.H., No. 11-10-00030-CV, 2011 WL 947082 (Tex. App.—Eastland 2011, no pet. h.) (mem. op).

Grandparent's petition in intervention in divorce case could not be acted upon by the Court where Grandparent's failed to serve Mother with a copy of the petition in intervention prior to trial.
In re C.T.F., ___ S.W.3d ___, 2011 WL 80612 (Tex. App. – Texarkana 2011, no pet. h.).

VIII. Child Support

A. Legislative Changes

Child support obligation terminates upon order excluding obligor as father based on genetic testing
Tex. Fam. Code § 154.006

Nondiscretionary retirement plan contributions deducted from net resources
Tex. Fam. Code § 154.062

Procedures for using payment records
Tex. Fam. Code § 157.162

A movant may attach a copy of the payment record to the motion for enforcement. That record or an updated payment record is admissible at the hearing to prove the dates and amounts of payments, the amount of accrued interest, and the cumulative arrearage.

A court may not reduce or modify a child support arrearage, but may allow a counterclaim or offset.
Tex. Fam. Code § 157.263

Child support liens can be placed against mutual funds, life insurance policies, or annuities.
Tex. Fam. Code § 157.311, 157.317

Procedures for levying a financial account of a deceased obligor
Tex. Fam. Code § 157.3271

Employer size reduced from 250 employees to 50 employees for withholding by electronic transfer
Tex. Fam. Code § 158.203

Acknowledgments of paternity
Tex. Fam. Code §§160.307 – 160.312

There are new ways for presumed or alleged fathers to rescind or challenge an acknowledgment of paternity. A man may rescind an AOP before the earlier of the 60th day after the effective date of the AOP or the date a proceeding relating to the child is initiated before a court. If the time period to rescind has expired, a man may file a suit to challenge the AOP on the basis of fraud, duress, or material mistake of fact. However, the challenge must be brought prior to the issuance of any order affecting the child. The bureau of vital statistics must prescribe a rescission form.

Falsification of genetic testing is a felony, and an order based on it is void
Tex. Fam. Code § 160.512

Wrongful paternity
Tex. Fam. Code § 161.005

A man may file to terminate the parent-child relationship if the man signed an AOP or was adjudicated to be the father in a proceeding without genetic testing. The suit must be filed within one year of when the man becomes aware of the facts indicating he is not the genetic father. Future child support may be terminated, but the order does not affect obligations for support incurred prior to the date of the order. The man may request possession or access to the child following termination, if denial would significantly impair the child's physical health or emotional well-being.

State may refuse to issue a license or renew an existing license if obligor fails to pay child support for 6 months or more
Tex. Fam. Code § 232.0135

B. Featured Case

United States Supreme Court
Turner v. Rogers, 564 U.S. ___ (2011).

Mother was on public benefits and had assigned her right to collect child support from Father to the state. Father could not afford counsel, and South Carolina does not provide counsel for indigent parties in child support cases. The trial court, without making a finding about Father's ability to pay, found that he owed $6,000 back child support, found him in civil contempt, and sentenced him prison for 12 months or until he paid. Because he could not pay, he served the full sentence. The South Carolina Supreme Court distinguished between civil contempt and criminal contempt, and held that counsel was only constitutionally required for criminal contempt.

The U.S. Supreme Court held that the constitution does not require states to provide free counsel to indigent defendants in civil contempt cases. However, courts must provide alternative procedures to ensure due process. Since Father did not have clear notice that ability to pay would be the critical question in this proceeding, nor was he provided with information that would have allowed him to provide such information, the trial court erred in finding him in contempt.

It's possible that this ruling could affect Texas law, which currently requires that an indigent respondent is entitled to a court-appointed attorney in child support contempt proceedings. *See, e.g.*, Ex parte Walker, 748 S.W.2d 21, 22 (Tex.App.—Dallas 1988, orig. proceeding).

★ ***Texas Supreme Court – Opinion Not Yet Issued*** ★

In re Ezukanma, 336 S.W.3d 389 (Tex.App.—Fort Worth 2011).

Mother filed a motion to enforce Father's child support payments, citing specific payments that had already gone unpaid, as well as any months following the filing of the motion that Father would fail to pay. At the time of the hearing, Father had paid only the past payments listed in the motion; he was in arrears on subsequent payments. The Family Code states that a respondent may not be held in contempt if the respondent is "current in the payment of child support as ordered by the court." Mother alleged that "current" means that Father must be caught up on ALL payments to avoid contempt. Father argued that he only had to pay the payments preceding the filing of the motion for enforcement. The trial court found him in contempt, but the appellate court disagreed, holding that Father was only required to be current in the payments pleaded in the motion. The appellate court stated:

> [Mother] contends that this interpretation of section 157.162(d) means that "all of the obligors in Texas could conceivably wait until they had been sued for enforcement of their child support obligation before paying off their arrearage and thus avoid punishment for their violations." She contends that "such a result could not have been intended by the Legislature's enactment of Section 157.162(d)." But that is precisely what the language of section 157.162(d) and the subsequent enactment of subsection (e) indicate. The legislature has determined that it is more important that past due child support be paid—even in the face of a motion to enforce—than for nonmovant parents to be punished by criminal contempt in such situations…. It is not our place to question the legislature's judgment on such policy determinations.

The Texas Supreme Court heard oral argument in this case on February 27, 2012. The decision has not yet been issued, but stay tuned for updates on this case. You can follow the Texas Supreme Court's online docket for this case at:
http://www.supreme.courts.state.tx.us/opinions/Case.asp?FilingID=32415

C. Additional Cases

★ ***Texas Supreme Court*** ★

Obligee does not have to prove that obligor was intentionally unemployed or underemployed in a child support modification lawsuit.
Hiff v. Hiff, ___ S.W.3d ___, 2011 WL 1446725 (Tex. 2011).

Trial court's failure to sign confirmation order before mandatory expedited deadline did not make order void – TFC233.0271 requirement is not jurisdictional and contains no consequences
In re J.A.C., ___ S.W.3d ___, 2011 WL 6425698 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.).

Trial court not required to award attorney's fees for a judicial writ of withholding
Granado v. Meza, ___ S.W.3d ___, 2011 WL 6076029 (Tex. App.—San Antonio 2011, no pet. h.).

Father could not be incarcerated for failure to pay child support because he conclusively established his inability to pay, an affirmative defense under TFC 157.008(c)
In re Smith, ___ S.W.3d ___, 2011 WL 6217121 (Tex. App.—Dallas 2011, no pet. h.).

Father not in contempt for failure to pay child support where Mother filed enforcement action during appeal from modification and where the Court of Appeals ultimately modified child support requirement.
In re Maasoumi, ___ S.W. 3d ___, 2011 WL 1448721 (Tex. App.—Dallas 2011, orig. proceeding).

OAG's intervention in case seeking to use community property to pay child support judgment was "frivolous, unreasonable or without foundation" and warranted attorney's fees and costs.
OA v. Kalenkosky, No. 04-09-00762-CV, 2011 WL 1499419 (Tex. App.—San Antonio 2011, no pet. h.) (mem. op.).

Courts may not condition child support on whether a parent is allowed possession of or access to a child.
In re B.F.K., No. 11-10-00217-CV, 2011 WL 2732540 (Tex. App.—Eastland 2011, no pet. h.) (mem. op.).

The doctrine of estoppel is available in a child support enforcement lawsuit initiated by the OAG because the OAG is not acting as a governmental agency, but is standing in for the obligee.
In re C.E.S., ___ S.W.3d ___, 2011 WL 2185663 (Tex. App.—Fort Worth 2011, no pet. h.).

Trial court abused discretion by not awarding health insurance reimbursement to Mother who was ordered to obtain insurance and Father was ordered to reimburse her; purchasing insurance was not condition precedent to Father reimbursing Mother for such insurance.
In re A.I.S., ___ S.W.3d ___, 2011 WL 692224 (Tex. App. –Houston [14th Dist.] 2011, no pet. h.).

TFC 157.007 does not bar writ of withholding where Mother sought judicial liens despite dormancy provisions of TCPRC 34.001 (c).
Isaacs v. Isaacs, ___ S.W.3d ___, 2011 WL 1238381 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.)

Writ of withholding appropriate on Father's social security benefits because dormancy provisions of TCPRC 34.001(c) don't apply to child support judgments.
Horton v. Horton, ___ S.W.3d ___, 2011 WL 833807 (Tex. App.—Beaumont 2011, no pet. h.).

Father's writ of habeas corpus granted where trial court's contempt order fails to contain a commitment order.
In re Johnson, ___ S.W.3d ___, 2011 WL 1173941 (Tex. App.—Dallas 2011, orig. proceeding).

Trial court must schedule a hearing on obligor's motion once oblige files a notice of application for writ of withholding and obligor files a motion to stay the writ.
In re R.G., ___ S.W.3d ___, 2011 WL 1796135 (Tex. App.—San Antonio 2011, no pet. h.).

IX. ADR

A. Legislative Changes

Determining validity and enforceability of agreement to arbitrate
Tex. Fam. Code §§ 6.6015, 153.00715

If a party is opposing arbitration, claiming that the agreement to arbitrate is not valid or enforceable, the court shall promptly try that issue and may only order arbitration following that trial. However, this requirement does not apply to agreements to arbitrate contained in: MSAs, collaborative law agreements, informal settlement conference agreements, agreed parenting plans, or any agreement that is approved by a court.

Uniform Collaborative Law Act added, prior collaborative statute repealed
Repealed: Tex. Fam. Code § 6.603
Added: new Tex. Fam. Code Ch. 15, §§ 15.001 – 15.116

Texas is the third state to adopt the UCLA as approved by the Uniform Law Commission. Chapter 15 is a significant change from the previous § 6.603, so practitioners of collaborative law should carefully study the new language.

B. Featured Cases

✯ Texas Supreme Court – Not Yet Ruled ✯
A trial court's entry of a judgment on an MSA is not ministerial; trial court was within its power to determine MSA was not in the child's best interests even though no family violence involved.
In re Lee, No. 14-11-00714-CV, 2011 WL 4036610 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (mem. op.).

Mother and Father entered into a mediated settlement agreement concerning custody of their seven-year old daughter. Mother filed a motion to enter. Father objected that the agreement was not in the best interests of the child because Mother's husband is a registered sex offender. The trial court conducted an evidentiary hearing. At the hearing, Mother testified that her husband is a registered sex offender, he violated his probation because of his unsupervised contact with the parties' daughter, and Mother permitted her husband to be around her daughter. The trial court denied Mother's motion to enter and found that the mediated settlement agreement was not in the child's best interest. Mother petitioned for mandamus, and the appellate court stated that "the question is whether the trial court has a ministerial duty to enter the judgment on mediated settlement agreement even where, as here, there is no dispute (and the trial court found) that the mediated settlement agreement is not in the child's best interest." The appellate court found that the trial court did not commit a clear abuse of discretion in refusing to enter judgment on the MSA.

The Texas Supreme Court heard oral argument in this case on February 28, 2012. The decision has not yet been issued, but stay tuned for updates on this case. You can follow the Texas Supreme Court's online docket for this case at:
http://www.supreme.courts.state.tx.us/opinions/Case.asp?FilingID=32873

✯ ***Texas Supreme Court – Opinion Issued*** ✯

Where MSA is ambiguous, the trial court must resolve the fact issue of the ambiguity before entering judgment

Milner v. Milner, No. 2-08-442-CV, ___ S.W.3d ___, (Tex. 2012).

Husband and Wife entered into a mediated settlement agreement where they agreed that Husband would transfer to Wife "all of his beneficial interest and record title in and to" two companies. The MSA had two attachments, labeled "Required Consents to Transfer of Record Title and Beneficial Ownership Interests," which had signature lines for all owners of the businesses. After the MSA was signed, one owner refused to sign the consents to substitute Wife in place of Husband as a limited partner. Husband argued that Wife was only entitled to become an assignee (a much less valuable right) under the MSA if the other owners would not agree to the substitution. The trial court entered Husband's proposed decree, with consents attached that did not match the ones in the MSA, and Wife appealed. The Texas Supreme Court held that "[t]he issue is not what [Husband] was capable of transferring, but what he promised to deliver. The answer to that question is not clear from the MSA's text and therefore the parties' intent is a question of fact." The Supreme Court remanded the case to the trial court to conduct the factual determination before entering a final decree.

C. Additional Cases

✯ ***Texas Supreme Court*** ✯

Parties may seek judicial review of an award under the Texas Arbitration Act for reversible error.

Nafta Traders, Inc. v. Quinn, ___ S.W.3d ___, 2011 WL 1820875 (Tex. 2011).

Trial court does not need to determine whether property division is just and right if Husband and Wife entered into an MSA pursuant to TFC 6.602.

Koelm v. Koelm, No. 03-10-00359-CV, 2011 WL 216879 (Tex. App.—Austin 2011, no pet. h.) (mem. op.).

Mediator who is named the sole arbitrator in an MSA with respect to drafting and intent of the MSA may also divide real property not specifically awarded to either party in the MSA.

In re Marriage of Allen, ___ S.W.3d. ___, 2011 WL 1167643 (Tex. App.—Texarkana 2011, no pet. h).

X. Protective Orders

A. Legislative Changes

Defensive measures are not dating violence

Tex. Fam. Code § 71.0021

The definition of "dating violence was revised to clarify that a defensive measure to protect oneself is not dating violence.

Child hearsay

Tex. Fam. Code § 82.002, 82.009, 84.006

An application for a protective order may be filed by a member of the dating relationship, regardless of whether the member is an adult or a child. A child's statement signed under oath

for an ex parte order is valid. A statement made by a child under 12 is admissible in the same way as a child outcry statement under § 104.006 (SAPCR).

Procedures
Tex. Fam. Code § 81.010, § 83.006, § 84.002

§ 81.010 was added to clarify which courts may enforce protective orders. § 83.006 provides that when an ex parte order requests exclusion of a party from the residence, the court may recess the hearing to contact the respondent by telephone and offer him/her the opportunity to be present, but the court must resume the hearing before the end of the day. § 84.002 extends the time to set a hearing in counties larger than 2 million or in multi-county judicial districts.

Duration longer than 2 years
Tex. Fam. Code §§ 85.001, 85.025

A court may enter a protective order lasting longer than two years if the person caused serious bodily injury or was the subject of two or more previous protective orders. If the subject of the order moves to shorten the duration of the order, evidence of compliance with the protective order does not by itself support a finding that there is no continuing need for the order.

Pets
Tex. Fam. Code §§ 85.021, 85.022; Tex. Penal Code § 25.07

A protective order may prohibit a party from removing a pet and from harming, threatening, or interfering with a pet. The penal code was revised to include pets in the offense.

New statutory warning language to be included in protective orders
Tex. Fam. Code § 85.026

B. Cases

Evidence that father blocked mother's car with his body and jumped on the hood of her car, combined with evidence that he sent text messages under a fake name to lead mother to believe he had committed suicide, was sufficient to support trial court's award of a protective order
Boyd v. Palmore, ___ S.W.3d ___, 2011 WL 4500825 (Tex. App.—Houston [1st Dist.] 2011, no pet. h.).

XI. Same Sex Issues

Ex-same sex partner could establish standing where she could show actual care, control and possession of the child for six months ending not more than 90 days before filing of suit, even though prior partner was sole adoptive parent of the child.
In re Fountain, No. 01-11-00198-CV, 2011 WL 175550 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding) (mem. op. on rehear'g).

XII. Military Issues

A. Legislative Changes

Jurisdiction, venue, and residence qualifications expanded to include spouses of military members
Tex. Fam. Code § 6.303 – 6.304

Protective orders sent to military for commanding officer
Tex. Fam. Code § 85.042

The clerk shall also send a protective order to the staff judge advocate or the provost marshal of the military installation with the intent that the respondent's commanding officer will be notified.

No requirement to show material and substantial change of circumstances beyond a military deployment
Tex. Fam. Code § 153.702, 153.703

Either conservator can request temporary orders if one conservator is deployed. A nonparent can be designated in the place of the deployed parent. A nonparent appointed as a designated person in the place of the conservator with the right to determine primary residence has the rights and duties of a sole managing conservator.

B. Featured Case

Court does not have authority to amend QDRO where spouse erroneously paid benefits over and beyond what was court ordered because community property had been unambiguously divided in decree.
Joyner v. Joyner, ___ S.W.3d ___, 2011 WL 371629 (Tex. App.—San Antonio 2011, no pet. h.) (op. on rehearing).

Husband and Wife divorced and Wife was awarded a portion of Husband's military pension and the specifics were detailed in a QDRO and was incorporated by reference in the decree. After Husband retired, the Department of Finance and Accounting Services overpaid Wife for six months. Husband filed a motion to amend the QDRO and one was subsequently entered. Subsequently, Husband moved for a new trial alleging that the amended QDRO did not address the issue and impermissibly changed the terms of the divorce decree. Husband's motion for new trial was denied and he subsequently filed a petition for bill of review which was also denied. On appeal, the COA found that while a trial court retains power to clarify or enforce a property division in a divorce decree, it may not enter an order that amends, alters or changes the substantive division of property in a divorce, even if it is attempting to correct a situation like the one that occurred here where one party was inadvertently overpaid. While the COA acknowledged that Husband was the one who sought the clarification and then appealed the clarification, this does not give rise to the right of a trial court to modify an unambiguous property division.

C. Additional Case

Wife of member of the armed forces was only entitled to Husband's retirement income up to the time of divorce and was not entitled to Spousal Benefit Plano (SBC) unless specifically set out in the decree.
Hicks v. Hicks, ___ S.W.3d ___, 2011 WL 256302 (Tex. App.—Houston [14th Dist. 2011, no pet. h.).

XIII. International Issues

A. Legislative Changes

A false statement relating to a child custody determination made in a foreign country is a felony
Tex. Penal Code § 37.14

Court reporter required for determinations relating to international UCCJEA proceedings
Tex. Fam. Code § 152.105

Procedures for a warrant to take physical custody of a child in international cases
Tex. Fam. Code § 152.311

B. Cases

Mexican court's orders affecting custody were not enforceable in a Texas court because father failed to provide mother with adequate notice of the Mexican hearing
Razo v. Vargas, ___ S.W.3d ___, 2011 WL 5428956 (Tex. App.—Houston [1st Dist.] 2011, no pet. h.).

Mother failed to properly serve father with notice of her Hague/ICARA action because she did not serve him through Mexico's "Central Authority"
In re J.P.L., ___ S.W.3d ___, 2011 WL 5869456 (Tex. App.—San Antonio 2011, orig. proceeding).

Abduction prevention measures imposed on father because he had withheld the children from mother, and he had strong ties to Egypt, which is not a signatory country of the Hague Convention on the Civil Aspects of International Child Abduction
Elshafie v. Elshafie, No. 13-10-00393-CV, 2011 WL 5843674 (Tex. App.—Corpus Christi 2011, no pet. h.) (mem. op.).

Divorce did not relieve Husband of contractual obligation created by affidavit of sponsorship of an alien seeking residency in the United States
In re Marriage of Kamali, ___ S.W.3d ___ 2011 WL 6076865 (Tex. App.—Texarkana 2011, no pet. h.).

Texas court did not have jurisdiction over SAPCR when child was residing in Germany and a child custody proceeding had already been convened in Germany.
In re Green, ___ S.W.3d ___, 2011 WL 3715075 (Tex. App.—San Antonio 2011, orig. proceeding).

XIV. Termination

A. Legislative Changes

Changes in ad litem statutes
Tex. Fam. Code §§ 107.004, 107.006, 107.013 – 107.016

The amendments to these statutes address a variety of issues. One section requires that an ad litem have sufficient time to meet with a child before the hearing in a private setting to prepare. Another allows the ad litem access to health records of the child without further court orders. Several sections were added to give specific guidance for an ad litem's duties when they are appointed to represent a parent or alleged father in a termination or other governmental suit. 107.013 claries that once a parent is determined to be indigent, that parent is presumed to remain indigent unless there is a material and substantial change in circumstances.

Termination decree must have warning about right to appeal
Tex. Fam. Code § 263.405(a)

The decree terminating parental rights must now have a prominently displayed warning about a parent's right to appeal and the accelerated appeal procedure.

B. Featured Case

✯ Texas Supreme Court – Not Yet Ruled ✯
Challenging termination after two years is too late, even though service by publication was alleged improper
In re E.R., 335 S.W.3d 816 (Tex.App.—Dallas 2011).

DFPS became temporary managing conservator of four children in 2006. The mother subsequently failed to appear, and DFPS filed a petition for termination in 2007. After failing to effect personal service on Mother, the DFPS served her with citation by publication. She did not appear at the termination hearing, but was represented by an attorney ad litem. Mother filed a motion for new trial in 2009, three years after the DFPS was made the temporary managing conservator of the children and two years after the termination order was signed. She alleged that DFPS committed extrinsic fraud in procuring service of citation by publication, and that the termination was void. The appellate court held that the six-month deadline in family code section 161.211 is not a statute of limitations or affirmative defense that can be waived if not pleaded, but is instead a complete bar to challenging a termination order more than six months after it is signed. This serves public policy and the interest of the child in a final decision on termination so that adoption to a stable home or return to the parents is not unduly prolonged.

The Texas Supreme Court heard oral argument in this case on February 28, 2012. The decision has not yet been issued, but stay tuned for updates on this case. You can follow the Texas Supreme Court's online docket for this case at:
http://www.supreme.courts.state.tx.us/opinions/Case.asp?FilingID=32440

C. Additional Cases

Parents' parental rights terminated because family home was deplorable fire-hazard, the children were used in panhandling, the children tested positive for cocaine, and the needs of the children were better served by foster care
In re J.L.B., ___ S.W.3d ___, 2011 WL 3862875 (Tex. App.—Texarkana 2011, no pet. h.).

Incompetent father's motion for continuance in termination proceedings denied because the procedures in TFC meet the minimum due process requirements of the constitution and because father presented no evidence indicating he would regain competency before the "drop dead date"
In R.M.T., ___ S.W.3d ___, 2011 WL 4578328 (Tex. App.—Texarkana 2011, no pet. h.).

Mother remained a party in termination suit after signing an affidavit voluntarily relinquishing her rights; there was no need to include mother on non-party witness list
In re J.L.J., ___ S.W.3d ___, 2011 WL 4827652 (Tex. App.—El Paso 2011, no pet. h.).

Even though father did not live with the children, father's parental rights were terminated because he knew that the children were in an environment that endangered their physical and emotional well-being, and father did nothing to remove the children from the environment
In re M.C., ___ S.W.3d ___, 2011 WL 4908747 (Tex. App.—Dallas 2011, no pet. h.).

Mother's restricted appeal was barred by the plain language of TFC 161.211(a) because her notice of appeal was filed more than six months after the trial court's final order was signed
L.J. v. DFPS, ___ S.W.3d ___, 2011 WL 5617756 (Tex. App.—Houston [1st Dist.] 2011, no pet. h.).

Mother's parental rights were terminated because she voluntarily surrendered her child to CPS, and her mental retardation made it impossible for her to provide adequate care for the child
In re D.W., ___ S.W.3d ___, 2011 WL 5600538 (Tex. App.—Texarkana 2011, no pet. h.).

Father was not entitled to a restricted appeal because he did not satisfy the jurisdictional requirements; father was not a party to the original termination proceedings
In re Baby Girl S., ___ S.W.3d ___, 2011 WL 5975155 (Tex. App.—Dallas 2011, no pet. h.).

Mother and Father's incarceration was legally and factually sufficient to support termination of parental rights.
In re N.R.T., ___ S.W.3d ___, 2011 WL 1004866 (Tex. App.—Amarillo 2011, no pet. h.).

Different judge may preside over a motion for new trial and order termination after trial court orders termination for parent.
In re J.A.R., ___ S.W.3d ___, 2011 1402780 (Tex. App.—San Antonio 2011, no pet. h.).

A home study is not necessary in a termination case where the parent abandons the child and moves out of state.
In re J.B., ___ S.W.3d ___, 2011 WL 2151283 (Tex. App.—Waco 2011, no pet. h.).

Termination of Mother's parental rights was appropriate where Mother was repeatedly physically and verbally abused by Father and Mother failed to show any indication that she would remove herself from abusive situation with Father and protect herself and child from his abuse.
In re M.V., ___ S.W.3d ___, 2011 WL 2163724 (Tex. App.___-Dallas 2011, no pet. h.).

Mother's parental rights were properly terminated where she repeatedly made unsubstantiated allegations of sexual abuse of daughter by Father, which endangered the child's well being.
In re J.K.F., ___ S.W.3d ___, 2011 WL 2716779 (Tex. App.—Dallas 2011, no pet. h.).

TDFPS constructively abandoned its termination pleadings against Father where such pleadings were contingent upon Mother's termination of parental rights and such termination by Mother was not granted.
In re J.M., ___ S.W.3d ___, 2011 WL 3847235 (Tex. App.—San Antonio 2011, no pet. h.).

XV. Appellate Issues

A. Featured Case

Trial court abused its discretion in ordering wife to prepay $95,000 to cover attorney's fees on appeal
Halleman v. Halleman, No. 02-11-00238-CV, 2011 WL 5247882 (Tex. App.—Fort Worth 2011, orig. proceeding) (mem. op.).

The divorce court awarded Father a $50,000 judgment for attorney's fees. Mother filed a motion for new trial and an appeal. Father requested interim attorney's fees pending appeal. The trial court held a hearing, heard testimony about the parties' incomes and attorney's fees, and ordered Mother to prepay $95,000 into the court's registry before the appellate court rendered judgment in the appeal. The appellate court granted Mother's petition for mandamus because the record showed that she did not have the funds available to prepay $95,000 into the trial court's registry, and, thus, that the trial court's order would, in effect, preclude her right to appeal.

B. Additional Cases

Tex. R. App. P. 20.1 gave trial court jurisdiction to conduct hearing on contest of appellant's affidavit of indigence even though trial court's plenary power over the original matter had expired
In re A.L.V.Z., ___ S.W.3d ___, 2011 WL 4953444 (Tex. App.—Dallas 2011, no pet. h.).

Although both parties agreed that wife did not receive adequate notice of a hearing, and both parties asked COA to reverse trial court's judgment, there was no error to reverse and COA was prohibited from reversing the judgment
Culver v. Culver, ___ S.W.3d ___, 2011 WL 5042070 (Tex. App.—Texarkana 2011, no pet. h.).

Trial court lacked jurisdiction to order counsel not to file notice of appeal
In re J.R.J., ___ S.W.3d ___, 2011 WL 6260861 (Tex. App.—Fort Worth 2011, orig. proceeding).

Failure of trial court to file findings of fact and conclusions of law did not cause Father harm because trial court denied Father's petition to modify finding no material change of circumstances and Father was able to brief his appeal without findings of fact and conclusions of law.
Rumscheidt v. Rumscheidt, ___ S.W.3d ___, 2011 WL 977495 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.).

XVI. Miscellaneous

A. Featured Case

United States Supreme Court – Not Yet Ruled
Astrue v. Capato, No.11-159 (argued March 19, 2012).

The U.S. Supreme Court is considering whether a child who was conceived after the death of the biological father can receive Social Security survivor benefits due to the father's death. Robert Capato had two children from a prior marriage, and a biological son with his wife Karen at the time of his death. His will addressed only his existing children, although a notarized

document did say that future children conceived with the use of their embryos should be considered their children for all purposes. Following his death, Karen used banked semen to conceive twins. She applied for child survivor benefits for the twins, and was denied. Under the Social Security Act, a "child" must be dependent on an insured individual at the time of the individual's death. Alternatively, a child may qualify if the child would qualify under the intestate property laws of the individual's state. Florida does not provide for children conceived after a parent's death. The administrative judge and the district court both found that the twins were not entitled to benefits. The appellate court held that the twins did qualify for survivor benefits, because they were the biological child of a married couple. The Supreme Court heard arguments on March 19, 2012, but has not yet ruled. Follow the case at: http://www.oyez.org/cases/2010-2019/2011/2011_11_159

B. Additional Cases

Owners were entitled to seek damages for the sentimental or intrinsic value of their dog, which was negligently euthanized by animal control employee
Medlen v. Strickland, ___ S.W.3d ___, 2011 WL 5247375 (Tex. App.—Fort Worth 2011, no pet. h.).

Limitations period barred the child's claim that parents were common-law spouses because parents' relationship ended in 1961 and proceedings did not commence prior to September 1, 1989.
Humphries v. Humphries, ___ S.W.3d ___, 2011 WL 3837973 (Tex. App.—Tyler 2011, no pet. h.).

Trial court ordered to rule on appellant's motions that had been pending for over a year
In re Armstrong, No. 06-11-00100-CV, 2011 WL 5561705 (Tex. App.—Texarkana 2011, no orig. proceeding) (mem. op.).

Changing child's surname from Mother's surname to Father's surname based upon claim that it was tradition found to be error.
In re H.S.B., ___ S.W.3d ___, 2011 WL 1005559 (Tex. App.—Houston [14th Dist.] 2011, no pet.h.).

Trial attorney may properly intervene in a subsequent enforcement action to collect fees because intervention was essential to protect trial attorney's interests.
Collins v. Moroch, ___ S.W.3d ___, 2011 WL 783619 (Tex. App.—Dallas 2011, no pet. h.).

Court has discretion to award expert witness fees as court costs.
Diaz v. Diaz, ___ S.W.3d ___, 2011 WL 246455.

Death penalty sanctions striking pleadings not appropriate where associate judge failed to apply the two-prong TransAmerican test and (1) determine if there is a direct relationship between the conduct and the sanction and (2) ascertain that the sanction was not excessive.
Olmos v. Olmos, ___ S.W.3d ___, 2011 WL 3240533 (Tex. App.—El Paso 2011, no pet. h.).

XVII. Conclusion

Family law in Texas is a specialized and always-changing practice. It is important to remain up-to-date on the regular changes to the law by courts and the legislature. The goal of this paper is to illustrate some of the highlights and to remind the general practitioner to continue to update your family law practices as the law changes.