D.B.A. Family Law Section Case Law Update

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DIVORCE
SPOUSAL MAINTENANCE/ALIMONY

WIFE OVERCAME PRESUMPTION AGAINST SPOUSAL MAINTENANCE BECAUSE SHE ATTEMPTED TO FOCUS ON HER EDUCATION, BUT FATHER AND CPS IMPEDED HER EFFORTS.

Arellano v. Arellano, No. 01-16-00854-CV, 2018 WL 284333 (Tex. App.—Houston [1st Dist.] 2018, no pet. h.) (mem. op.) (01-04-18).

Facts: Husband and Wife began living together as a couple since she was 16 years old. Over the next 16 years, Wife tended to the house, prepared meals, and cared for the couple's two Children, plus Husband's son from a previous relationship. Wife had only a high-school education and attempted to bolster her education during the marriage, but Husband caused her to miss classes. After separation, Wife worked low paying jobs because she lacked the educational background to find better employment. She testified that educational programs were available that would enable her to earn a higher income and would take five years to complete. However, because of CPS's involvement in the case, she could not work fewer hours to focus on education.

The trial court granted a divorce, divided the marital estate, and ordered Husband to pay spousal maintenance for five years. Husband appealed the spousal maintenance award, arguing in part that Wife failed to rebut the presumption against spousal maintenance.

Holding: Affirmed

Opinion: Wife exercised diligence in earning sufficient income, but her efforts were hindered by her lack of education and by CPS's requirement that she maintain full-time employment. The evidence supported the trial court's finding that Wife overcame the presumption against spousal maintenance.

DIVORCE
INFORMAL MARRIAGE

HUSBAND COULD NOT RELY ON QUASI-ESTOPPEL IN DEFENSE OF WIFE'S COMMON LAW MARRIAGE CLAIM BECAUSE IRS WAS A "STRANGER" TO MARRIAGE.

Leyendecker v. Uribe, No. 04-17-00163-CV, 2018 WL 442724 (Tex. App.—San Antonio 2018, no pet. h.) (mem. op.) (01-17-18).

Facts: Wife filed for divorce, alleging an informal marriage. Husband denied the existence of a marriage. Husband filed no-evidence and traditional motions for summary judgment. Husband argued that because the parties ceased living together more than two years before Wife filed her petition, there was a rebuttable presumption the parties never agreed to be married, and that Wife failed to rebut that presumption. Additionally, Husband argued that because Wife filed her taxes some years as "single," that she was precluded by the quasi-estoppel doctrine from alleging that the parties were married. The trial court granted Husband a summary judgment, and Wife appealed.

Holding: Reversed and Remanded

Opinion: Wife raised no more than a scintilla of evidence that she was still living in the house after 2011. Thus, Wife had to overcome the rebuttable presumption that the parties never agreed to be married. Nevertheless, Wife's presented sufficient evidence to raise a question of fact as to whether the parties agreed to be married.

Quasi-estoppel is an equitable doctrine that prevents a party from maintaining a position inconsistent with one to which he acquiesced or from which he accepted a benefit. The doctrine cannot be asserted by or against a "stranger" to the transaction that gave rise to the estoppel. Thus, Husband could not rely on Wife's representations to the IRS on a few tax returns that she was single for support of a quasi-estoppel claim because the IRS was a stranger to the transaction of a possible common-law marriage between Husband and Wife.

SAPCR
Temporary Orders

TRIAL COURT COULD NOT ENTER TEMPORARY ORDERS IMPOSING GEOGRAPHICAL RESTRICTION ON MOTHER'S RIGHT TO DESIGNATE CHILDREN'S PRIMARY RESIDEENCE WITHOUT EVIDENCE OF SIGNIFICANT IMPAIRMENT.

In re Coker, No. 03-17-00862-CV, 2018 WL 6763227 (Tex. App.—Austin 2018, orig. proceeding) (mem. op.) (01-23-18).

Facts: In their divorce proceedings, the parties signed an MSA giving each parent the exclusive right to designate the primary residence of three of their six minor Children without geographical restrictions. At the time the MSA was signed, Mother lived more than 100 miles away from Father, but the possession schedule in the decree tracked the Family Code's language for conservators living within 100 miles of each other. Before the decree was signed Mother voluntarily moved closer to Father. However, shortly after the decree was signed, Mother moved further away again because her new husband found a better job. Father filed a petition seeking to prevent Mother's move, but she was not served with the petition until after she had moved and signed a lease on a new home.

At a temporary orders hearing, Father asserted that his agreement not to impose a geographical restriction was an "emotional mistake," the move could increase the health care costs for the Children, the Children were not excited about the move, and the siblings remaining with Father had a strong relationship with the ones living with Mother. In an affidavit filed after the hearing, Father averred that Mother intended to move to disrupt the Children's relationship with Father, they were not being consistently home schooled, their sleep schedules were inconsistent, and Mother had sent Father mean text messages.

The trial court signed an order restricting Mother to the county in which Father lived and contiguous counties. Mother filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: Because the trial court's temporary order imposed a geographical restriction on Mother's right where previously there had been none, the order had the effective of changing the person who had the exclusive right to designate the Children's primary residence. Here, even if the evidence presented in Father's affidavit and at the hearing was taken as true, it was insufficient to meet the high burden of establishing that the Children's present circumstances would significantly impair their physical health or emotional development.

SAPCR
Modification

TRIAL COURT HAD AUTHORITY TO CONSIDER MODIFICATION SUIT DESPITE PENDING APPEAL OF PRIOR CHILD-CUSTODY ORDER.

In re G.E.D., No. 05-17-00160-CV, 2018 WL 507673 (Tex. App.—Dallas 2018, no pet. h.) (mem. op.) (01-02-18).

Facts: The trial court signed an order giving Mother the exclusive right to designate the Child's primary residence with a geographical restriction. Mother appealed that order. While the appeal was pending, Mother lived outside the geographically restricted area. Father filed a motion to enforce the order. At the courthouse before a hearing, the parties reached an agreement that Father would be granted the exclusive right to designate the Child's primary residence because the Mother would not move to live within the geographically restricted area. The trial court signed and entered the parties' agreement that day. Subsequently, Father filed a petition to modify the parent-child relationship. Mother challenged the entry of a final order on Father's petition, alleging the agreement was unclear and ambiguous and that she had revoked her consent. The trial court signed a final order incorporating the parties' agreement. Mother appealed, arguing in part that the trial court lacked authority to consider a new modification petition while the appeal of the prior order was still pending.

Holding: Affirmed

Opinion: Acknowledging a split of authority on the issue, the Dallas Court of Appeals, affirmed its earlier holding in *Hudson v. Markham*, holding that a court with continuing exclusive jurisdiction has jurisdiction over a new proceeding to modify the parent-child relationship even if an appeal is pending from a previous order regarding that relationship.

MISCELLANOUS

FATHER NOT INDIGENT; HE FAILED TO SHOW HE COULD NOT PAY COURT COST OF REPORTER'S RECORD IF HE REALLY WANTED TO DO SO.

¶18-2-__. *In re J.P.N.*, No. 04-17-00633-CV, 2018 WL 626526 (Tex. App.—San Antonio 2018, orig. proceeding) (mem. op.) (01-31-18).

Facts: After the parties divorced, they continued to be involved in ongoing litigation regarding custody provisions in their divorce decree. Father filed a petition for writ of mandamus challenging certain temporary orders. Father then filed an affidavit of indigence, which the court reporter contested.

At the hearing on Father's ability to pay, he testified he had significant debt, limited property, and that his monthly income was less than his monthly expenses. However, evidence showed that Father had a law degree, a bachelor's degree in biochemistry, an associate's degree in cardiopulmonary technology, and a Master's Level Certification in Education. Father had passed the bar exam and had earned income as an attorney. He was recently employed as a teacher but claimed he could not continue functioning "in this case" and teach. He said his employer fired him because "there were so many trials." Father's mother had loaned him significant sums of money to cover legal expenses, and although she stated that she intended for Father to repay her, she also stated that she would not impose legal collection practices to recoup any of the money. The trial court signed an order stating that Father had the ability to pay costs. Father appealed.

Holding: Affirmed

Opinion: A litigant who voluntarily remains unemployed and lives by the generosity of relatives is not entitled to require the officers of the court to render services free while other citizens are required to pay for similar services. Here, Father failed to make a good-faith effort to obtain funds to pay for the fee for the court reporter's record.