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

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DIVORCE
INFORMAL MARRIAGE

EX-H'S CIRCUMSTANTIAL EVIDENCE THAT EX-W WAS INFORMALLY MARRIED COULD NOT OVERCOME DIRECT EVIDENCE THAT EX-W AND NEW BOYFRIEND NEVER AGREED TO BE MARRIED.

***Assoun v. Gustafson*, ___ S.W.3d ___, No. 05-14-01463-CV, 2016 WL 2747225 (Tex. App.—Dallas 2016, no pet. h.) (05-03-16).**

Facts: H and W divorced in 1997, and the divorce order required H to pay $132,000 in annual alimony to W until she remarried or until further order of the court. In 2013, the judgment was modified to increase the alimony to $380,000 per year. Subsequently, W sought to enforce the obligation. H filed a petition against W and her boyfriend asserting that the 2 were informally married. W and her boyfriend each filed an MSJ attaching affidavits explicitly stating that they had never agreed to be married. H served W and her boyfriend with extensive discovery requests, and TC limited the discovery to a few years and to tax returns and similar documents. TC granted SJ against H. H appealed, challenging the SJ and the court's refusal to allow further discovery.

Holding: Affirmed in Part

Majority Opinion: The circumstantial evidence of a marriage failed to create a fact issue on the first element of an informal marriage—an agreement to be married—in light of the putative spouse's direct evidence that they never agreed to be married and never held themselves out to government entities as anything other than single. H failed to establish he was entitled to further discovery because he did not explain with specificity why the desired evidence was necessary for his case. His conclusory allegations were insufficient.

Dissenting Opinion: (J. Whitehill) The question presented was whether any amount of circumstantial evidence could ever raise a genuine fact issue on the agreement-to-be-married element of an informal marriage if both putative spouse deny that they so agreed. The legislature did not bar adversely affected third parties from proving an informal marriage through circumstantial evidence. Further, the putative spouses did not proffer any legal impediment that would prevent them from marrying. Finally, despite the putative spouses' assertions to the contrary, H was not attempting to impose a marriage on them without their consent; he was trying to prove that they in fact consented.

DIVORCE
STANDING AND JURISDICTION

TC ERRED BY ENTERING TOs IN DIVORCE WHEN 90-DAY RESIDENCY REQUIREMENT NOT MET.

In re Paul, No. 10-16-00004-CV, 2016 WL 2609599 (Tex. App.—Waco 2016, orig. proceeding) (mem. op.) (05-05-16).

Facts: M was a TX resident, and F was an OK resident. The couple lived together in Johnson County but did not formally marry. F filed a petition to adjudicate parentage of the parties' Child. M filed a counterpetition, asserting an informal marriage. F moved to dismiss M's counterpetition because she had not lived in Johnson County for the 90 days prior to filing but had been living temporarily with her mother in Fort Worth. TC denied F's motion, held M made a prima facie showing of an informal marriage, and ordered F to pay interim attorney's fees. F filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: While not jurisdictional, the 90-day residency requirement is mandatory and cannot be waived. A trial court should abate the case if doing so will allow the petitioner or respondent to meet the residency requirements. Here, M did not live in Johnson County for the 90 days prior to filing her petition. However, the court noted that M testified that she currently lived in Johnson County and considered it her home.

DIVORCE
DIVISION OF PROPERTY

W HAD NO CAUSE OF ACTION FOR MALPRACTICE AGAINST ATTORNEY WHO AIDED H IN TRANSFERRING CP INTO H'S NAME DURING MARRIAGE.

Kite v. King**,** ___ S.W.3d ___, No. 07-15-00324-CV, 2016 WL 2766123 (Tex. App.—Amarillo 2016, no pet. h.) (05-11-16).

Facts: H and W acquired a home during the marriage, but H led W to believe the property was his SP. The couple hired an Attorney to assist them in setting up a residential trust, and W was asked to transfer whatever interest she had in the home to H. Although she signed the documents, W was unaware that she potentially had any interest in the home and was not advised about her potential interests. During the subsequent divorce, W began to question the transaction and raised the issue of fraud on the community. However, that claim was not formally adjudicated as part of the divorce. After a decree was entered, W sued the Attorney who had assisted setting up the trust and transferring the property for legal malpractice. The Attorney filed a MSJ, asserting that W's only remedy was for fraud on the community, which was required to be addressed during the divorce. TC a SJ, and W appealed.

Holding: Affirmed

Opinion: A third party cannot be held liable in tort when community property is taken by one of the spouses. The wronged spouse's remedy is restricted to pursuing a just and right distribution of the marital estate. However, if the claim itself is separate property, then the claim is susceptible to prosecution by the wronged spouse after the divorce. Here, W complained of "lost valuable rights in *community* property." Thus, her cause of action was community property, and TC presumably compensated W for any loss to the community in dividing the community estate.

DIVORCE
RETIREMENT BENEFITS

A JUDGE'S INTENTION TO RENDER A QDRO IN THE FUTURE CANNOT BE A PRESENT RENDITION OF A QDRO. FAMILY CODE REQUIRED A NEW PETITION FOR TC TO SIGN QDRO.

Araujo v. Araujo**,** ___ S.W.3d ___, No. 04-15-00503-CV, 2016 WL 3030942 (Tex. App.—San Antonio, no pet. h.) (05-25-16).

Facts: H and W divorced. The agreed divorce decree was signed by TC on April 21, 2015. The decree awarded H various assets including the following:

> All interest in the Railroad Retirement Board pension arising out of Miguel A. Araujo's employment during the parties' marriage, except that amount specifically awarded to Yolanda R. Araujo in this Decree and *the Order Dividing Railroad Retirement Benefits to be entered after this Decree*.

The decree awarded W in part the following:

> A portion of the community property interest in the Railroad Retirement Board pension non-tier I benefits arising out of [H's] employment during the parties' marriage . . . *as more particularly specified in the Order Dividing Railroad Retirement Benefits to be entered after this Decree*.

No appeal from the decree was taken, and the decree became final on May 21, 2015. On June 19, 2015, W filed a "Motion to Enter" in which she asked TC to sign her attached Railroad Retirement Order. H responded by arguing that TC lacked jurisdiction to sign the order because it had lost plenary power and its jurisdiction had not been properly invoked to sign the QDRO. TC signed the QDRO. H appealed.

Holding: Reversed and Rendered

Opinion: W asserted signing the Railroad Retirement Order merely a ministerial act because doing so reflected TC's judgment in the divorce decree and provisions of TFC applicable to obtaining a post-judgment QDRO

do not apply in this case because the divorce decree rendered the relief available—a QDRO—and, by doing so, TC retained plenary power until final Railroad Retirement Order was signed.

The language of the decretal paragraph awarding W her interest in H's Railroad Retirement Board pension does not constitute the rendering of a QDRO. A judge's intention to render a QDRO in the future cannot be a present rendition of a QDRO. In this case, the twice-used language "in the Order Dividing Railroad Retirement Benefits to be entered after this Decree" indicates an intention to render a QDRO in the future.

Here, TC rendered an agreed divorce decree that divided H's Railroad Retirement Board pension, but it did not render or sign a QDRO. Under such circumstances, TFC §§ 9.101. 9.103, and 9.104 "provide for limited, post-judgment jurisdiction that may be invoked only in particular circumstances, rather than for plenary, original jurisdiction." This limited, post-judgment jurisdiction is invoked when "[a] party. . . petition[s] [the] court to render a QDRO or similar order. . . ." W is required to comply with the provisions of TFC chapter 9 to obtain a post-judgment QDRO.

DIVORCE
Spousal Maintenance/Alimony

JURY LIKELY PREJUDICED BY ERRONEOUS, PARTIAL, NO-EVIDENCE SJ.

McDonald v. McDonald, No. 05-15-00338-CV, 2016 WL 2764881 (Tex. App.—Dallas 2016, no pet. h.) (mem. op.) (05-11-16).

Facts: In their agreed divorce decree, F agreed to pay M contractual alimony so long as she remained the primary caretaker for their Child. The decree provided that one of the reasons for which M would not be considered the primary caretaker would be if the child attended full-time after school care.

After the divorce, M allowed F more time with the Child than what was provided for in the decree. F was consistently late making his alimony payments. M attempted to condition F's visitation on his timely payment of alimony. When that did not work, M filed claims for breach and anticipatory breach. F raised an affirmative defense claiming that he had no obligation to pay because M was no longer the primary caretaker of the Child. After the parties exchanged some discovery, M filed a no-evidence MSJ, attacking F's affirmative defense. TC granted the SJ with respect to the past breach, but the claim for anticipatory breach went to a jury. Over F's objection, references to the SJ were made throughout the trial, and the order granting the SJ was entered into evidence as published to the jury. The jury found F anticipatorily breached the alimony agreement and awarded M damages. F appealed.

Holding: Reversed and Remanded

Opinion: A respondent to a no-evidence MSJ is not required to marshal its proof but only needs to point out evidence that raise a fact issue on the challenged element. F's wife's affidavit averred that the Child was in an after-school gymnastics program for 2 to 3.5 hours four days a week and that the M was working full-time. This evidence was sufficient to raise a fact issue. Further, TC's SJ permeated the entire trial and likely prejudiced the jury to such a degree that it would have been nearly impossible for them to consider the elements of anticipatory breach without the corresponding influences of the judge's opinion. Given that the ruling was incorrect, its impact was even more devastating and complete.

SAPCR
Procedure and Jurisdiction

F NOT ENTITLED TO MANDAMUS REVIEW WHEN DENIED UIFSA-BASED PLEA TO JURISDICTION BECAUSE TX ORDER FOR CS ONLY ORAL PRONOUNCEMENT, NOT SIGNED, WRITTEN ORDER.

In re Sanders, No. 05-16-00332-CV, 2016 WL 2935754 (Tex. App.—Dallas 2016, orig. proceeding) (mem. op.) (05-17-16).

Facts: M and F divorced in CO. Subsequently, M and the Child moved to TX. A few years later, an agreed order was signed in the CO TC that included orders relating to expenses of the Child. However, there was no

order specifically for "CS." A few years later, M filed a petition in a TX court asking that F be ordered to pay monthly CS. F objected to the court's jurisdiction, arguing that under UIFSA, only the CO court had jurisdiction to enter orders regarding monetary support of the Child. TX TC orally denied F's plea to the jurisdiction and ordered F to pay CS and health insurance premiums. After TC signed an order denying F's plea to the jurisdiction, he filed a petition for writ of mandamus.

Holding: Writ of Mandamus Denied

Opinion: Mandamus actions based oral pronouncements are generally discouraged, and the only written order here addressed a plea to the jurisdiction—not CS. Thus, without addressing whether TX TC had jurisdiction to hear argument or make orders regarding CS, the appellate court noted that rulings on pleas to the jurisdiction are considered incidental rulings, which are not usually entitled to mandamus relief. Here, there were no extraordinary circumstances—such as two conflicting orders for child custody—that would justify mandamus review.

W'S PLEADING FAILED TO PROVIDE H FAIR NOTICE THAT SHE SOUGHT POST-DIVORCE SPOUSAL MAINTENANCE.

In re Marriage of Day**,** ___ S.W.3d ___, No. 14-15-00326-CV, 2016 WL 2997141 (Tex. App.—Houston [14th Dist.] 2016, no pet. h.) (05-24-16).

Facts: W filed a petition for divorce and served it on H. H did not answer or appear. W presented evidence, and TC granted her a default judgment, divided the community property, and ordered H to pay spousal maintenance for 5 years. Subsequently, H filed a restricted appeal, arguing that TC abused its discretion in entering an order that did not conform to W's pleadings.

Holding: Affirmed as Modified

Opinion: W's pleadings asked only for temporary spousal support during the pendency of the divorce, not for spousal maintenance after the decree was signed. Despite W's contention to the contrary, her plea for general relief combined with her request for a disproportionate division of the property based on her "need for future support" was insufficient to support the award. W requested a disproportionate division of the *community*, but an award of post-divorce maintenance is an award of H's future SP.

SAPCR
MODIFICATION

WITHOUT EVIDENCE OF CURRENT IMPAIRMENT, TC COULD NOT MODIFY M'S RIGHT TO DESIGNATE CHILD'S PRIMARY RESIDENCE THROUGH TOs DURING PENDING SAPCR

In re Johnson, No. 07-16-00123-CV, 2016 WL 2609651 (Tex. App.—Amarillo 2016, orig. proceeding) (mem. op.) (05-05-16).

Facts: M had the exclusive right to designate the Child's primary residence within a geographical restriction. M sought to move outside that restriction in order to find a better job. On one occasion, when the parents were exchanging the Child for F's visitation, the parents argued about M's proposed move, and the Child became upset. F called the police. TC found that M was dishonest with the police officer who arrived on the scene. F left without the Child, and TC found that M interfered with F's visitation on that day. Subsequently, without notice, M and the Child moved outside the geographically restricted area. F filed a motion to modify, seeking SMC. M testified that the Child was healthy, happy, and well-cared for in her new home. F argued that the move negatively impacted his visitation with the Child. TC found M in contempt and granted F the temporary exclusive right to designate the Child's primary residence. M filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: A TO in a pending SAPCR may only modify a conservator's right to designate the child's primary residence under certain circumstances, including if the child's present circumstances would significantly impair the child's physical health or emotional development. This is a high standard imposed by the TFC.

Here, there was no evidence of impairing conduct by M in the Child's present circumstances. Rather, the evidence focused on M's pre-move conduct, which could not be used to infer the Child's present circumstances. Further, even if the prior conduct were to continue, there was no evidence that the conduct would significantly impair the Child's physical health or emotional development.

TC ERRED IN DENYING MOTION TO TRANSFER WHEN "CONTROVERTING AFFIDAVIT" WAS UNTIMELY AND UNVERIFIED AND FAILED TO ADDRESS THE CHILD'S RESIDENCE.

In re Sheard, No. 01-15-01027-CV, 2016 WL 2586777 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding) (mem. op.) (05-05-16).

Facts: In a prior order, M appointed PC of the Child, and Maternal Aunt and Uncle were appointed JMCs. M filed a petition to modify and a motion to transfer the case to the county where Aunt, Uncle, and the Child were living. M set her motion for a hearing. Aunt and Uncle filed a petition to terminate M's parental rights and sought to have the previously-appointed AAL appointed again to represent the Child. At the hearing on M's motion, Aunt and Uncle stated that the requested transfer was for their convenience, and they did not want the case transferred. They wanted to keep the same AAL and did not want to require that attorney to travel to a different county. M replied that the transfer was mandatory under the TFC. TC denied the motion to transfer. The next day, Aunt and Uncle filed an unverified "Controverting Affidavit" asserting that M failed to present evidence justifying a transfer. An order denying the transfer was signed that day. M filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: When a motion to transfer is filed pursuant to TFC § 155.204, a transfer is mandatory if no controverting affidavit is filed. Here, the only affidavit filed addressed the issue of convenience of the parties; it did not controvert the Child's residence. Moreover, the affidavit was filed 2 days after the deadline. Additionally, M setting her motion for hearing despite the lack of a controverting affidavit did not "invite the error." Although no hearing was necessary, M did not take any position contrary to the relief she was requesting.

SAPCR
CHILD SUPPORT ENFORCEMENT

TIME RESTRICTION ON COURT'S JURISDICTION TO CONFIRM AND ENTER MONEY JUDGMENT FOR CS ARREARAGES WAS NOT A SOL, AND LEGISLATURE'S REMOVAL OF THE TIME RESTRICTION DID NOT IMPOSE A NEW SUBSTANTIVE OBLIGATION ON F.

***Dise v. Dise*, ___ S.W.3d ___, No. 01-15-00407-CV, 2016 WL 2342346 (Tex. App.—Houston [1st Dist.] 2016, no pet. h.) (05-03-16).

Facts: M and F divorced in 1986, and F was ordered to pay CS. F failed to pay, and in 2003, the Child turned 18. In 2010, the OAG obtained an order confirming CS arrearages. Before he received notice of the arrearages order, F filed for bankruptcy. The OAG filed a complaint in the bankruptcy court seeking to have the CS debt exempt from discharge. F argued that under a prior version of TFC § 157.005, a judgment for arrearages could only be entered if the motion to confirm the arrearages was filed within 4 years of the Child's 18th birthday. F contended that the 4-year restriction was a SOL on the enforcement of his debt and that applying the Legislature's subsequent removal of the restriction to this case constituted an unconstitutional ex post facto law.

Holding: Affirmed

Opinion: The statute's prior restriction was on the court's jurisdiction to order withholding was not a SOL on the obligation itself. Allowing a court to confirm an arrearage and enter a writ of withholding is merely a procedural vehicle to secure fulfilment of the existing obligation. Additionally, the court noted that the statute was amended to remove the restriction before the Child turned 18.

FINAL DECREE'S PROVISION ABATING CS OBLIGATION DURING INCARCERATION WAS TRIGGERED DESPITE F'S "EMPLOYMENT" IN PRISON.

In re P.G.G., No. 05-14-01217-CV, 2016 WL 2621064 (Tex. App.—Dallas 2016, no pet. h.) (mem. op.) (05-06-16).

Facts: The parties' final decree provided:

> [s]hould [H] be incarcerated in a full detention facility that prevents him from any employment for a period in excess of thirty days, his CS and medical support shall be abated from the date of his incarceration until the first day of the month next after his release.

F was incarcerated in federal prison 6 months after the decree was signed, released to a halfway house 3 years later, and released on probation 6 months after that. While incarcerated, he was required to work at various prison jobs and was minimally compensated. While living in the halfway house, he temporarily worked for a tax-preparation company. He paid no support while incarcerated or while in the halfway house. About 6 months after being released on probation, during which time he failed to pay his CS obligations in full, he filed a motion to reduce his CS obligations, which TC granted. Subsequently, M filed a motion to enforce and confirm arrearages. M argued that F's CS was not abated while incarcerated or in the halfway house because F was consistently employed. TC disagreed and determined that F's prison employment did not count as employment under the incarceration provision of the decree. TC found that F's CS arrearages were $16,302.09, and the judgment included a provision stating that all relief not expressly granted was denied. M appealed, arguing TC erred in finding that F's obligation was abated while he was imprisoned. M further argued that the evidence did not support the arrearages finding.

Holding: Reversed and Remanded

Opinion: The incarceration provision of the final decree plainly intended to abate F's payment obligation while he was incarcerated. The evidence regarding F's "employment" while incarcerated did not qualify as employment within the plain meaning of the decree.

W presented evidence that F's total arrearages—including CS and medical support—was $16,302.09 and included dates beyond what the judgment for arrearages purported to include. The judgment provided that F's CS arrearages were $16,302.09 and made no explicit finding regarding medical support arrearages, so that requested relief was impliedly denied. There was no evidence to support TC's finding that the CS arrearage alone was $16,302.09 and medical support was $0.

★★★TX SUPREME COURT ★★★

COMPTROLLER'S DUTY TO DETERMINE COMPENSATION FOR UNPAID CS DURING WRONGFUL IMPRISONMENT PURSUANT TO TIM COLE ACT IS A MINISTERIAL DUTY WITH NO ROOM FOR DISCRETION.

***In re Phillips*, ___** S.W.3d ___, No. 14-0797, 2016 WL 2764576 (Tex. 2016) (orig. proceeding) (05-13-16).

Facts: In 1978, an Arkansas court ordered F to pay about $100 a month as CS. Over the next four years, he made 2 payments. In 1982, F was wrongfully convicted in TX for burglary and aggravated sexual abuse and sentenced to 30 years in prison. In 2001, the TX Legislature enacted a provision that permitted a convicted person to move for DNA testing, which F did. Six years later, F's DNA was tested, and he was exonerated. F

was given a lump sum of $2 million under the Tim Cole Act (the "Act"). M and F each requested from the State of TX compensation for F's unpaid CS, but the TX Comptroller stated that compensation could only be made to the state disbursement unit in Arkansas. Arkansas authorities refused payment because there was no open enforcement proceeding. M filed an enforcement action in TX and obtained a no-answer default judgment for $304,861.74. F asked the Comptroller to pay the CS. The Comptroller calculated that the compensation due under the act was $25,125.69 ($246,123.38 less than the Arkansas judgment). F petitioned the TX Supreme Court to direct the Comptroller to pay the remainder of the judgment.

Holding: Writ of Mandamus Conditionally Granted

Opinion: Under the Act, the Comptroller's authority is to determine the appropriate compensation for CS arrearages owed to the obligor by the State of TX, not the arrearages owed to the obligee by the obligor. The Comptroller was not required to adopt the Arkansas judgment. However, there is no room for any discretion, the Comptroller's duty is ministerial.

Based on Arkansas case-law precedent, the Comptroller misapplied the Arkansas statute regarding the application of post-judgment interest to CS arrearages. The Comptroller should have applied 10% interest on all of F's arrearages, not 6%.

Further, under UIFSA, when an out-of-state child-support order is registered in TX, the longer of the two states' statute of limitations applies. In TX, there is no statute of limitations on the accrual of interest. Thus, the Comptroller erred in terminating interest accrual in 1999.

Finally, the language of the Act applies to "interest on CS arrearages that accrued during the time served in prison." "*That accrued*" modifies "*interest*." Thus, the Comptroller erred in refusing compensation for interest that accrued during F's incarceration on his pre-incarceration arrearages. However, the Comptroller did not err in excluding interest that accrued post-incarceration.

MISCELLANOUS

F ENTITLED TO 45-DAY NOTICE OF FINAL TRIAL BECAUSE HE FILED ANSWER, EVEN THOUGH ANSWER FILED A YEAR AFTER DEADLINE.

In re L.H., No. 05-15-00886-CV, 2016 WL 2586148 (Tex. App.—Dallas 2016, no pet. h.) (mem. op.) (05-04-16).

Facts: M and 1 of the Children moved to TX. F and the other Child remained in Illinois. M filed for divorce in TX. F did not answer by the answer deadline. Almost a year later, M filed a motion to appoint a receiver to sell the house in Illinois. TC expressed concern about its authority to do that and asked M to provide a brief on the property issue. TC granted a default divorce that day but took the property issue under advisement. Less than 2 weeks after that hearing, F filed an answer. A year later, the court signed a no-answer default final decree. F timely moved for new trial and argued that he had not received notice of the final hearing. TC stated that because F's answer was untimely, M was entitled to a default judgment. F stated that he was not receiving timely notice of anything in the case. M did not object or otherwise argue that notice had been sent. TC denied F's motion for new trial. F appealed.

Holding: Reversed and Remanded

Opinion: A TC does not have discretion to grant a no-answer default judgment when an answer has been filed, even if the answer is filed late. Additionally, a party who has filed an answer is entitled to 45-days' notice of the contested trial setting. In a footnote, the court also noted that M's failure to object to F's unsworn statements at the hearing on his motion for new trial waived the oath requirement.

PRIOR WAIVER OF OBJECTION TO AJ DID NOT AFFECT W'S RIGHT AFTER A PARTIAL REMAND TO OBJECT TO AJ AND DEMAND A JURY.

***In re Baker*, ___ S.W.3d ___, No. 14-16-00101-CV, 2016 WL 2605766 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (05-05-16).

Facts: H and W waived their objection to their divorce being heard by an associate judge, and the associate judge signed a final decree of divorce. W appealed the final decree, and the appellate court affirmed the granting of divorce, but reversed and remanded for a new trial on the issues of conservatorship, various claims including assault and battery, and the division of the community estate.

On remand, W requested a jury trial and timely paid the requisite fee. The trial judge notified W that the case had been assigned to the associate judge. W timely filed an objection. The trial judge overruled W's objection, stating that "the affirmed issues have been ruled upon" and that the objection was raised "long after the trial on the merits commenced." Further, the trial judge held that "it is appropriate that the remanded portion be tried by the same trier of fact," which was the associate judge. W filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: Waiver of a jury in one trial does not affect either party's right to demand a jury in the second trial after remand. A partial remand should be treated the same as if the entire case had been reversed. W timely filed a request for a jury trial and an objection to the associate judge. Therefore, the trial judge was required to preside at a jury trial.

F'S AGREED OBLIGATION IN DIVORCE DECREE TO PAY CHILDREN'S COLLEGE TUITION WAS ENFORCEABLE AS A CONTRACT.

***Seabourne v. Seabourne*, ___ S.W.3d ___, No. 06-15-00088-CV, 2016 WL 2986067 (Tex. App.—Texarkana 2016, no pet. h.) (05-20-16).

Facts: In their final decree of divorce, M and F included a provision stating that each would pay 50% of their two Children's college tuition. The party receiving the tuition statement was to deliver the statement to the other parent, and each would pay the college within 30 days of receipt. Both Children went to college out of state. M received the tuition statement and delivered it to F. However, F refused to pay. M paid 100% of the tuition and filed a motion to enforce the college tuition provision of the final decree. F argued that he did not intend to pay because he had not agreed to pay out-of-state tuition. TC awarded M 50% of the tuition plus reasonable attorney's fees and costs. F appealed, arguing that TC erred in awarding post-majority support and that the provision was too ambiguous to enforce.

Holding: Affirmed

Opinion: This case did not involve a continuation of a preexisting CS obligation and was not included in the "CS" portion of the final decree. Rather, it was an independent contractual promise falling under the caption of "College Tuition." Thus, the agreement was enforceable as a contract. Further, since it was a private agreement, it did not need to be specific enough to be enforceable by contempt because the agreement, by its nature, could not be enforceable by contempt.