

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

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DIVORCE
ALTERNATIVE DISPUTE RESOLUTION

HUSBAND NOT ENTITLED TO JUDGMENT ON MSA SIGNED PRIOR TO FILING FOR DIVORCE.

¶17-6-__. *Highsmith v. Highsmith*, No. 07-15-00407-CV, 2017 WL 4341466 (Tex. App.—Amarillo 2017, no pet. h.) (mem. op.) (09-28-17).

Facts: Husband and Wife separated, but did not file for divorce. They voluntarily attended mediation, during which they reached a settlement agreement. Subsequently, Husband filed for divorce and obtained a waiver of service from Wife. Wife filed an answer. Without notice to Wife, Husband appeared in court and obtained a judgment premised on the MSA. Wife filed a motion to set aside the judgement because she had not received notice of the hearing, had not waived notice of hearings, and she had revoked her consent to the agreement. The trial court denied Wife's motion. She appealed.

Holding: Reversed and Remanded

Opinion: An MSA in a divorce proceeding must meet the requirements of Tex. Fam. Code § 6.602 before a party is entitled to judgment on the MSA. The plain language of this section indicates the legislature's intent to provide a method of ADR for parties during the pendency of a divorce proceeding. Thus, because the agreement was reached before the divorce petition was filed, it was only enforceable as a contract, and once Wife revoked her consent, Husband was no longer entitled to judgment on the MSA.

Moreover, because Husband was not entitled to judgment on the MSA, it was improper for the trial court to sign a judgment without a hearing and notice to Wife.

DIVORCE
PROPERTY DIVISION

TRACTOR WAS SEPARATE-PROPERTY GIFT TO WIFE FROM HUSBAND; NOTE ON TRACTOR WAS OBLIGATION ASSUMED BY HUSBAND AND NOT A BASIS FOR A REIMBURSEMENT CLAIM.

¶17-6-__. *Waring v. Waring*, No. 09-16-00030-CV, 2017 WL 4171336 (Tex. App.—Beaumont 2017, no pet. h.) (mem. op.) (09-21-17).

Facts: Almost a year before the marriage, Husband purchased a tractor, for which he signed a five-year note. Two years later, Wife filed for divorce. Wife asserted that Husband gifted her the tractor as a Christmas present. Husband denied that he would have given Wife such an expensive gift. After hearing evidence, the trial court found that the tractor had been gifted to Wife and confirmed it as her separate property. However, the Court also ordered Husband to pay the remaining balance of the note on the tractor. Husband appealed.

Holding: Affirmed

Opinion: There was sufficient evidence existed to support the trial court's finding that the tractor was a gift to Wife. Further, circumstantial evidence supported a finding that Husband intended to continue making the monthly installment payments after gifting the tractor to Wife. Finally, a gift from one estate to another is not a proper basis for a reimbursement claim. Thus, "notwithstanding [Husband's] disappointment that his marriage was of a shorter duration than his note, the trial court did not abuse its discretion..."

SAPCR
PROCEDURE AND JURISDICTION

TRIAL COURT HAD MINISTERIAL DUTY TO SEVER AND TRANSFER SAPCR WHEN TWO OF FOUR CHILDREN LIVED IN DIFFERENT COUNTY.

¶17-6-__. *In re Yancey*, No. 12-17-00235-CV, 2017 WL 4321345 (Tex. App.—Tyler 2017, orig. proceeding) (mem. op.) (09-29-17).

Facts: The OAG filed suit for modification of child support in Rusk County and a motion to transfer from Rusk County to Smith County on the grounds that Mother and two of the four Children had lived in Smith County for more than six

months. Father filed a controverting affidavit, averring that he and two of the Children lived in Rusk County. After a hearing, the trial court denied the motion to transfer. Mother filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: While Mother was neither the petitioner nor the movant, the OAG’s motion to transfer was timely filed, and because her rights were directly affected by the trial court’s denial of the OAG’s motion, Mother had standing to challenge the denial by way of petition for writ of mandamus.

The plain language of Tex. Fam. Code § 155.207 recognizes that transfer as to some, but not all, children may be appropriate, and the section clearly contemplates severance in those instances because it prescribes the procedure for handling the case files when one child is transferred and another child is not. Here, the evidence established that two of the Children resided in Smith County for at least two months. However, no controverting affidavit was filed with respect to the other two Children. Thus, the trial court had a ministerial duty to sever and transfer the proceedings for the two appropriate Children.

**SAPCR
ALTERNATIVE DISPUTE RESOLUTION**

FATHER ENTITLED TO JUDGMENT ON MSA COMPLIANT WITH TEX. FAM. CODE § 153.0071 REGARDLESS OF ADDITIONAL LANGUAGE THAT MSA WAS “SUBJECT TO THE COURT’S APPROVAL.”

¶17-6-___. *In re C.C.E.*, ___ S.W.3d ___, No. 14-16-00571-CV, 2017 WL 4196542 (Tex. App.—Houston [14th Dist.] 2017, no pet. h.) (09-21-17).

Facts: Mother filed a petition to modify the child-related provisions of her and Father’s divorce decree. During the proceedings, the parties signed an MSA settling their issues. Subsequently, Mother sought to revoke her consent to the MSA. Among other complaints, Mother asserted that the inclusion of the words “subject to the Court’s approval” contracted away the parties’ right to judgment under Tex. Fam. Code § 153.0071.

Holding: Affirmed

Opinion: When an MSA complies with Tex. Fam. Code § 153.0071, the parties are entitled to judgment on the MSA. Including the language “subject to the Court’s approval” did not make the Agreement any less binding. Because the MSA satisfied all the requirements of the statute, the parties were entitled to judgment on the MSA.

**SAPCR
CHILD SUPPORT ENFORCEMENT**

CLAIMS FOR UNPAID CHILD SUPPORT DURING PERIOD BETWEEN DATE OF PETITION THROUGH DATE OF SIGNED ORDER WERE NOT BARRED BY RES JUDICATA IN SUBSEQUENT SUIT.

¶17-6-___. *In re J.A.L.*, No. 14-16-00614-CV, 2017 WL 4128947 (Tex. App.—Houston [14th Dist.] 2017, no pet. h.) (mem. op.) (09-19-17).

Facts: Mother filed an enforcement action, seeking relief for Father’s failure to pay child support through a date certain. Seven months later, the trial court held a hearing and signed an order finding Father in contempt and signing a judgment for arrearages through the date certain in Mother’s petition. Sixteen months later, Mother filed another enforcement action seeking a judgment for arrearages beginning the month after the date certain in the prior petition. Father argued that Mother was not entitled to judgment on unpaid child support prior to the date the trial court signed the order in the prior order. He argued that Mother was barred by res judicata from asserting her claims for child support in the seven-month period after the date in her prior petition and before the date in the prior order.

Holding: Reversed and Remanded

Opinion: The prior judgment specifically granted arrearages accrued through the date certain in Mother’s prior petition. Additionally, Mother-Hubbard clauses are open to interpretation, and thus, contrary to Father’s contention, the inclusion of one in the prior order did not change the meaning of the order. Further, the order specifically stated that the arrearage finding was made as of the date certain in Mother’s petition. Moreover, claims for unpaid child support during the complained of seven-month period were not mature when the prior enforcement was filed. Res judicata only applies to claims that were mature at the time of the earlier finding.

MISCELLANEOUS

APPELLEE MOTHER NOT REQUIRED TO FILE SPECIAL EXCEPTIONS FOR FATHER'S MOTION FOR CONTEMPT BECAUSE SHE WAS NOT THE PARTY SEEKING REVERSAL.

¶17-6-___. *In re A.G.*, ___ S.W.3d ___, No. 14-16-00341-CV, 2017 WL 4017839 (Tex. App.—Houston [14th Dist.] 2017, no pet. h.) (09-12-17).

Facts: A divorce decree gave Mother primary conservatorship and Father a standard possession order. Father filed a motion to modify. During the proceedings, Father filed a motion for contempt, alleging Mother had prevented his visitation with the Children. After hearing evidence and conferring with the Children, the trial court denied Father's motion for contempt and modified Father's possession so that his visits with the Children would be supervised. Father appealed, challenging the trial court's failure to find Mother in contempt and asserting that Mother waived any objection to the sufficiency of his motion by not raising special exceptions.

Holding: Affirmed

Opinion: Father's motion for enforcement failed to provide Mother with adequate notice because it did not identify any provisions of the decree that were allegedly violated. Rather, he only generically stated that Mother failed to comply with the divorce decree.

Special exceptions are waived if not timely raised. Here, Mother is the party at trial who could have specially excepted to Father's motion. Because Mother was not the party seeking reversal, whether she filed special exceptions was irrelevant.

HUSBAND NOT ENTITLED TO NEW TRIAL BECAUSE EVIDENCE SHOWED HIS FAILURE TO ANSWER OR APPEAR WAS DUE TO CONSCIOUS INDIFFERENCE.

¶17-6-___. *Lynch v. Lynch*, ___ S.W.3d ___, No. 01-16-00573-CV, 2017 WL 4054167 (Tex. App.—Houston [1st Dist.] 2017, no pet. h.) (09-14-17).

Facts: Wife filed a petition for divorce and hired a private process server to serve Husband. Husband was personally served, but he failed to answer or appear. At trial, Wife presented evidence of the extent and value of the multi-million-dollar community estate and was awarded a default judgment drastically disproportionate in her favor. Husband appealed, arguing that he had not understood that he had been served and that his failure to answer or appear was not the result of conscious indifference.

Holding: Reversed and Remanded in Part; Affirmed and Modified in Part

Opinion: While Husband testified that his interaction with the process server was only about 10 seconds, the process server testified that the interaction was closer to a full minute, that she identified herself and her occupation, and that she informed Husband that he had an upcoming court date. Husband asserted that because of his past experience with a Louisiana divorce, he did not think the casually-dressed process server's delivery of citation constituted service and believed that he would subsequently be "officially" served by a sheriff. However, he acknowledged knowing Wife was represented by an attorney and looking up that attorney's reputation. He claimed that he had not opened the email from Wife's attorney with the petition because he did not frequently use that email address, but there were emails sent to Husband around the same time to the same address with mortgage statements and trip itineraries.

WITHOUT EVIDENCE OF BAD ACTS AGAINST THE CHILDREN, TRIAL COURT ERRED IN SPECIFICALLY INCLUDING CHILDREN AS PROTECTED PERSONS IN PROTECTIVE ORDER.

¶17-6-___. *Martin v. Martin*, ___ S.W.3d ___, No. 08-16-00208-CV, 2017 WL 4161687 (Tex. App.—El Paso 2017, no pet. h.) (09-20-17).

Facts: When Husband returned from a tour in Korea, Wife described him as "a completely different person." After Husband pushed Wife's face into a wall, giving her a black eye, Wife sought a protective order and described additional instances of family violence against her. After hearing evidence, the trial court signed a protective order against Husband, and listed Wife and the couple's Children as protected persons. Husband appealed.

Holding: Affirmed as Reformed.

Opinion: Wife sought a protective order to protect herself from Husband. Wife presented evidence of domestic violence against her by Husband. No evidence was presented that Husband ever harmed the Children or that they needed protection from Husband.

CONTEMPT ORDER VOID BECAUSE UNDERLYING “ORDER” ONLY A DRAFT AND NOT AN ORDER OF THE COURT.

¶17-6-___. *In re Hightower*, ___ S.W.3d ___, No. 06-17-00088-CV, 2017 WL 4171595 (Tex. App.—Texarkana 2017, orig. proceeding) (09-21-17).

Facts: Shortly before filing for divorce, the parties purportedly transferred community property via warranty deed to Husband’s father. During the divorce, Wife joined Husband’s father as a third-party defendant. The trial court sent a document to the parties entitled “Notice of Draft Divorce Terms; Notice of Hearing Regarding Receiver.” After that document was sent, Husband’s father conveyed the property to another person not associated with the suit. Subsequently, the trial court held the Husband’s father in contempt for violating the court’s “ruling.” Husband’s father filed a petition for writ of habeas corpus.

Holding: Writ of Habeas Corpus Granted

Opinion: The document with which Husband allegedly failed to comply was, by its own terms, not an order of the court. Rather, it was a “draft” that was “subject to revision.” Moreover, even if the document were construed as an order of the court, it contained no command language setting out terms of compliance.