



DIGEST

WINTER 2025

Editors

Hon. James M. Mosley

316th District Judge

Kim Mosley

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ADMINISTRATIVE LAW

-Administrative Procedures Act

[Reynaldo "Rey" Gonzalez, Jr., M.D., J.D., Petitioner, v. Texas Med. Bd., Respondent](#), No. 24-0340, [2025 WL 3038973](#) (Tex. Oct. 31, 2025)

Redundant-remedies doctrine only bars claims if they are redundant of an APA claim

Facts: Gonzalez holds a medical degree and law degree but is only licensed to practice law. In 2020 he ran for the U.S. House of Representatives and referred to himself as “Dr. Gonzalez” and a “physician and attorney.” The Texas Medical Board (TMB) issued a cease-and-desist order prohibiting Gonzalez from using these titles without designating the authority giving rise to his use of that title. Gonzalez filed suit in the district court alleging that the TMB lacks authority to regulate him, that the statutes in question are facially unconstitutional and unconstitutional as-applied to him, and that the cease-and-desist order is not supported by the evidence. TMB filed a plea to the jurisdiction, arguing that his suit is untimely under the Administrative Procedure Act and that his declaratory-judgment claim is barred by the redundant-remedies doctrine. The trial court granted TMB’s plea. The court of appeals reversed in part, holding that his facial constitutional claim is not barred.

Issue: Are declaratory-judgment lawsuits complaining of adverse agency actions barred by the redundant-remedies doctrine?

Holding: No. The Supreme Court reversed in part and remanded to the trial court. The Court held that the court of appeals should also have remanded Gonzalez’s claims that the statute is unconstitutional as-applied to him and that TMB acted without lawful authority. The redundant-remedies doctrine only bars claims if they would be wholly redundant of an APA claim. But the APA would only have enabled Gonzalez to challenge the cease-and-desist order. Gonzalez’s as-applied and ultra vires claims seek relief from future orders of the TMB, not just the cease-and-desist order. The Court affirmed dismissal of Gonzalez’s claim that the cease-and-desist order is unsupported by substantial evidence. Gonzalez claims that he did not need to follow the APA’s thirty-day deadline because a TMB regulation gives him the right to judicial review, and that regulation does not specify a deadline. The Court held that the trial court lacks jurisdiction over that claim because only a statute, and not a regulation, can create a right to judicial review.

-Sovereign Immunity

[ONCOR ELECTRIC DELIVERY COMPANY LLC, Appellant v. PUBLIC UTILITY COMMISSION OF TEXAS, Appellee](#), No. 15-24-00042-CV, [2025 WL 2348434](#) (Tex. App. Aug. 14, 2025)

Oncor required to file second motion for rehearing in order to get judicial review of PUC order on rates.

Facts: In 2022, Oncor, an investor-owned electric utility, petitioned the PUC to raise its utility rates. A panel of Administrative Law Judges (ALJs) held a hearing on Oncor’s petition and issued a proposal for decision in which the ALJs recommended a decrease in Oncor’s requested annual retail base rate revenue. Oncor and several intervenors filed exceptions to the proposal for decision. After a lengthy open meeting, at which the PUC commissioners discussed the exceptions, the PUC issued an order that adopted in part and rejected in part the ALJs’ proposal for decision (Initial Order). The PUC’s Initial Order resulted in a rate higher than that recommended by the ALJs, but lower than the rate requested by Oncor. Oncor timely filed a motion for rehearing, Oncor also requested what it characterized in its motion as “Technical Corrections” to several Findings of Fact and to one Conclusion of Law. Oncor specifically stated that in requesting the Technical Corrections, it was not seeking reconsideration of the Commission’s decision on any issue. Instead, according to Oncor’s motion for rehearing, these portions of the Initial Order did not accurately reflect the PUC’s decision as announced at the open meeting, and Oncor proposed the revisions to the Findings of Fact and Conclusions of Law to conform with the PUC’s oral rulings. The PUC voted to grant Oncor’s motion for rehearing in part and to deny it in part, adopting Commissioner Cobos’s proposed changes in an order on rehearing. Although some of the intervenors filed subsequent motions for rehearing challenging the Order on Rehearing, Oncor did not. Rather than filing a second motion for rehearing, Oncor filed a petition for judicial review in district court. The PUC moved to dismiss Oncor’s petition for lack of jurisdiction because Oncor failed to file a second motion for rehearing following the Order on Rehearing. Oncor responded that it was not required to file a second motion for rehearing because the Order on Rehearing did not address the substantive issues raised by Oncor in its first motion for rehearing and in its petition for judicial review. The district court granted the Commission’s plea to the jurisdiction and dismissed Oncor’s petition for judicial review.

Issue: Did the district court have subject-matter jurisdiction to review an administrative order when the party seeking review filed a motion for rehearing from the order, but not from the order on rehearing?

Holding: No. The 15th Court of Appeals held that the failure of Oncor to file a motion for rehearing from the PUC order on rehearing deprived the district court of jurisdiction. Here, Oncor moved for rehearing, and the PUC modified its Initial Order on a subject raised in that motion by modifying its order favorably to Oncor in some respects and not modifying it in other respects. “That the agency did not modify its order on Oncor’s primary complaints is inapposite because the PUC made modifications to its Initial Order on the subjects of complaints made in Oncor’s motion for rehearing and those modifications were not identified as “clerical changes” by the PUC in its order. Under these circumstances, Oncor was required file a second motion for rehearing as a statutory prerequisite to its suit for judicial review. “ The plea to the jurisdiction was affirmed and Oncor’s case was dismissed.

CIVIL PROCEDURE

-Default Judgment

[IN RE Cortney AUSTIN](#), No. 04-25-00300-CV, [2025 WL 3084534](#) (Tex. App. Nov. 5, 2025)

Lack of diligence bars bill of review relief – relief under SCRA only available if no appearance is made

Facts: Cortney Austin filed for divorce and conservatorship of two children. Jacob See, represented by counsel, filed an answer and counterpetition. Austin properly noticed See's attorney of the December 4, 2023 trial setting. Neither See nor his attorney appeared at trial. At the default hearing, Austin testified in detail about domestic violence, child abuse, excessive alcohol use, and See's pending military charges under the Uniform Code of Military Justice. The court granted a default judgment awarding Austin sole managing conservatorship, supervised access for See, child support, spousal maintenance, property division, name changes, and attorney's fees. See received actual notice of the default judgment on January 17, 2024, but took no action within the time allowed for a motion for new trial under Rule 306a. Instead, more than seven months after judgment, he filed a bill of review, claiming deployment to Korea, limited communications, and attorney abandonment. He argued he had meritorious defenses to property division and conservatorship. At the bill-of-review hearing, See presented no evidence. The trial court nonetheless granted the bill of review and vacated the default judgment. Austin sought mandamus relief.

Issues: (1) Did the trial court abuse its discretion by granting the bill of review? (2) Was See entitled to relief under the Servicemembers Civil Relief Act (SCRA) despite having made a general appearance and failing to request a stay under section 3932?

Holding: No on both issues. The 4th Court of Appeals reversed the trial court's ruling. See received actual notice of the default judgment within 90 days (Jan. 17, 2024). Under Rule 306a(4)–(5), he had 30 days from actual notice to file a motion for new trial or other post-judgment relief. He took no action, showing a lack of diligence that bars bill-of-review relief. Even if his attorney abandoned him, attorney negligence does not satisfy the bill-of-review standard. Thus, See failed the third element (unmixed with his own negligence), requiring denial of the bill of review. As to the SCRA, the court held that Section 3931 applies only when the defendant "does not make an appearance." See filed an answer, appeared through counsel, and filed a counterpetition—thus making a general appearance. He did not request a stay under section 3932. Once a party has appeared, SCRA §3931's protections do not apply. Therefore, See was not entitled to relief under the SCRA, and the trial court erred by treating the SCRA as a basis to vacate the judgment. Mandamus relief conditionally granted.

-Discovery

[IN THE ESTATE OF Mitchell Boyd WILSON, Deceased](#), No. 04-24-00191-CV, [2025 WL 2458629](#) (Tex. App. Aug. 27, 2025)

2 years is adequate time for discovery – summary judgment affirmed as well as attorney’s fees award

Facts: Mitchell Boyd Wilson died on 5/4/21. At the time of his death, he was a shareholder, director and employee of Rebel Contractors, Inc. The company had been started by the father of his first wife, who gifted shares to Mitchell in 1991. Mitchell married Tamara, his second wife, in 2002. In his will, which was executed by Alex, a son from his first marriage, Tamara was given \$1, with the remainder going to Mitchell’s children from his first marriage. Tamara filed a plea in abatement in July 2021, two weeks after Alex filed the application to probate. She then filed a series of motions and pleadings in probate court. Finally she filed her Original Petition-In Intervention for Declaratory Judgment on June 9, 2023, seeking declaratory judgment that certain assets and properties are community property, as well as reimbursement for Mitchell’s underpaid compensation at Rebel, breach of fiduciary duty regarding Mitchell’s handling of the community estate. Finally, Tamara sought partition of the community estate, an accounting, and attorney’s fees. The estate filed 5 motions for partial summary judgment between July and November 2023, and Tamara filed her answers and motion to compel discovery and for a continuance in July 2024. The trial court denied Tamara’s motions and granted the estate’s motions for summary judgment. The parties agreed to have the issue of attorney’s fees tried by affidavit, and the case was severed from the probate case. Final judgment was issued, disposing of all issues raised by Tamara.

Issue: Did the trial court err in denying Tamara’s motion for continuance and granting the motions for summary judgment? Did the trial court err in dismissing all of Tamara’s claims that were not part of the motions for summary judgment and in awarding the estate \$58,140 in attorney’s fees?

Holding: No to all. Texas Rule of Civil Procedure 166a(g) requires *adequate* time for discovery but does not set a specific time frame. In this case, the court holds that the over 2 years between Tamara’s filing of opposition to the will to the dismissal was adequate time, and that the trial court was in the most ideal position to make that judgment. Regarding the summary judgments, the court holds that property owned by the corporation, including the ranch, is not subject to classification as community property. Tamara offered no evidence to support her claim for reimbursement to the community estate for Wilson’s unpaid labor or to knowledge of a Wells Fargo account containing community funds. Although the estate did not specifically move for summary judgment on Tamara’s claims of fiduciary duty, those claims were dealt with in other issues, especially regarding the existence of bank accounts and the corporate ownership of property. Finally, the court holds that sufficient evidence exists to support the attorney’s fees awarded to the estate. Affirmed.

-Dismissal

[GERALD DARGIN, Appellant v. NOBLE DRILLING SERVICES, INC. Appellee](#), No. 14-24-00300-CV, [2025 WL 3072636](#) (Tex. App. Nov. 4, 2025)

Plaintiff may nonsuit any time before judgment is rendered—even during or after a summary judgment hearing—unless the court has already orally or in writing actually rendered judgment

Facts: Plaintiff Gerald Dargin, a Noble employee, sued Noble Drilling Services, Inc., alleging Jones Act negligence, unseaworthiness, and maintenance and cure, asserting he was injured as a seaman aboard the Noble Globetrotter II. Noble filed (1) a traditional summary judgment motion arguing the vessel was not “in navigation,” and (2) a no-evidence motion on alleged medical negligence claims. At the February 5, 2024, hearing on those motions, no court order was signed, and no oral rendition of summary judgment occurred. Noble asserted the judge said she was “going to grant” the traditional motion but acknowledged no ruling was actually announced or signed. Two hours after the hearing, Dargin filed a notice of nonsuit without prejudice. At that time, Noble had no pending request for affirmative relief, attorney’s fees, or sanctions. The trial court initially signed a nonsuit without prejudice, but Noble then filed a “Motion to Declare Plaintiff’s Nonsuit a Dismissal with Prejudice,” claiming Dargin nonsuited solely to avoid an imminent adverse ruling. The trial court granted Noble’s motion and converted the nonsuit to with prejudice. Dargin moved for new trial with supporting counsel affidavit; the court denied it, and Dargin appealed.

Issue: Did the trial court err by converting Dargin’s nonsuit without prejudice into a dismissal with prejudice when (a) no judgment had been rendered, (b) Noble had no pending claims for affirmative relief, and (c) Noble did not seek sanctions or attorney’s fees.

Holding: Yes. The 14th Court of Appeals reversed the trial court. The court held that Dargin had an absolute right to take a nonsuit without prejudice because the trial court had not rendered judgment—either orally or in writing—on the summary judgment motions. Consequently, the trial court erred as a matter of law by converting the nonsuit to a dismissal with prejudice. The court ordered the case dismissed without prejudice. Reversed.

-Expert Disclosures

[AMERICAN HONDA MOTOR CO., INC., Appellant v. SFI 59 LP D/B/A BRIARWOOD APARTMENTS, Appellee](#), No. 14-24-00469-CV, [2025 WL 3210275](#) (Tex. App. Nov. 18, 2025)

Reversible error for trial court to allow expert to testify at trial to a new, undisclosed opinion as to causation

Facts: On June 15, 2020, Tao parked his six-month-old 2020 Honda CR-V at Briarwood Apartments in Houston. Approximately ten hours later, a fire started in the engine compartment of the parked, unoccupied vehicle. The fire spread to two adjacent vehicles and damaged the apartment building. Multiple investigators examined the fire origin: Houston Arson Bureau and investigators for Briarwood and for the insurers of other damaged vehicles concluded the fire originated inside the Honda CR-V’s engine compartment (forward of the battery on the driver’s

side). American Honda's investigators concluded the fire started externally on the passenger-side front corner. Briarwood Apartments sued American Honda Motor Co., Inc, alleging the fire was caused by a manufacturing defect in the vehicle—specifically, a high-resistance electrical connection in the power-distribution box (fuse box) on the driver's side. In his deposition, Briarwood's fire-cause expert, Nestor Camara, could not identify a specific manufacturing defect; said a high-resistance connection in the fuse box could have caused the fire but the evidence had been destroyed; explicitly testified he could not say how the vehicle deviated from its design specifications. At trial (over American Honda's objection), for the first time, Camara identified a specific high-resistance connection visible in a pre-existing post-fire photograph of the engine compartment as the manufacturing defect and cause of the fire. He testified this connection should not exist in any properly made fuse box and must have been present when the vehicle left the manufacturer because the fuse box was sealed and showed no evidence of ever being opened. The jury found the 2020 Honda CR-V had a manufacturing defect when it left American Honda's possession that was a producing cause of the fire and that American Honda was 100% responsible. \$322,423.66 was awarded for repair costs and \$203,005.71 was awarded for loss of use.

Issues: (1) Did American Honda conclusively prove it did not manufacture the vehicle and is therefore immune from liability as a non-manufacturing seller under Tex. Civ. Prac. & Rem. Code § 82.003? (2) Was the evidence legally insufficient to support the verdict? (3) Was the evidence factually insufficient to support the verdict? (4) Did the trial court reversibly err by allowing Briarwood's expert to testify to a new, previously undisclosed opinion and its factual basis at trial?

Holding: The Fourteenth Court of Appeals reversed the trial-court judgment and remanded the case for a new trial. The court rejected American Honda's arguments on manufacturer status, citing conflicting evidence (Manufacturer's Certificate of Origin listing only American Honda vs. testimony and VIN stickers pointing to Honda Development & Manufacturing of America, LLC). The evidence was legally and factually sufficient to support a finding that American Honda was a manufacturer and therefore had no statutory immunity. The court rejected American Honda's sufficiency challenges to the existence of a manufacturing defect and causation: The court did not reach the reliability/sufficiency arguments in detail because it resolved the case on the expert-disclosure issue. The court further held that the trial court committed reversible error by allowing Camara to testify at trial to a new opinion (identifying a specific high-resistance connection in a photograph as the defect) and the factual basis for that opinion, when he had explicitly disclaimed any such opinion or basis in his deposition. This violated discovery rules, surprised and prejudiced American Honda, and the error was harmful. Judgment reversed and the case remanded for a new trial.

-Foreign Judgments

[ELECTRIC RED VENTURES, LLC, MONZER HOURANI, AND MANFRED COMPANY, LC, Appellants v. RDF AGENT, LLC, Appellee](#), No. 14-23-00865-CV, [2025 WL 2446556](#) (Tex. App. Aug. 26, 2025)

Foreign judgment creditor did not abandon its right to domesticate judgment in Texas

Facts: The Venture Parties sued RDF in Texas in April 2022 arguing RDF fraudulently misrepresented that it would assist Venture Parties in locating and securing equity as required by the Term Sheet between them and would not enforce the Term Sheet’s liquidated damages provision (The Venture Suit). The Venture Parties also sought declaratory relief with respect to the parties’ rights and obligations under the Term Sheet, including that the Venture Parties did not breach their obligations under the Term Sheet and the Term Sheet’s liquidated damages provision was an unenforceable penalty. Shortly after the Venture Parties filed the Venture Suit, and before RDF was served with process in that suit, RDF filed a lawsuit for breach of contract in New York against the Venture Parties (the “New York Suit”). Both lawsuits continued simultaneously, although the New York court was the first to reach a judgment. In July 2023, the judge in the New York Suit granted RDF’s motion for summary judgment, ruled the Venture Parties had breached the Term Sheet and that the liquidated damages clause was not an unenforceable penalty. This ruling was reduced to a final money judgment of \$3,397,093.14 against all three Venture Parties jointly and severally in early August 2023. Before the New York court entered a final judgment, RDF filed a motion for summary judgment in the Venture Suit on July 12, 2023 seeking to dismiss that suit on res judicata grounds. In its motion, RDF argued that the Venture Suit should be dismissed because the New York court’s summary judgment foreclosed all of the Venture Parties’ affirmative claims. RDF supplemented its motion for summary judgment after the New York court entered a final judgment in August 2023. RDF filed a certified copy of the final New York judgment in the Venture Suit. RDF did not file any counterclaims in the Venture Suit or assert any claims for affirmative relief. On August 16, 2023, RDF filed a “Notice of Domestication of a Foreign Judgment” in Harris County district court (under a separate cause number than the Venture Suit). In this suit, RDF invoked its right to domesticate the New York judgment in Texas under the UEFJA. (The “UEFJA Suit”). RDF’s initial pleading in the UEFJA Suit complies on its face with the UEFJA requirements, and the Venture Parties do not contend otherwise. In the prayer, RDF prayed “that the exemplified copies of the judgment be filed in accordance with the law and that said judgment be domesticated having the same force and effect as if rendered in this State.” Within thirty days of August 16, the Venture Parties responded and filed a motion asking the trial court to strike the Notice of Domestication. On November 9, 2023, the trial court denied the Venture Parties’ motion to strike the Notice of Domestication in the UEFJA Suit. The court did not rule on the motion for new trial within 75 days after the Notice of Domestication was filed, and thus the motion was overruled by operation of law on October 30, 2023.

Issues: (1) Does a foreign judgment creditor abandon its right to domesticate the judgment in Texas under the UEFJA when it previously sought to dismiss the judgment debtor's separate lawsuit on res judicata grounds based on the foreign judgment? (2) Was the New York judgment entitled to full faith and credit in Texas? (3) did the trial court err in allowing domestication without an evidentiary hearing?

Holding: The 14th Court of Appeals held that a foreign judgment creditor does not abandon its right to domesticate the judgment. It also affirmed the trial court on Issues #2 and #3 as well. The court pointed out that, contrary to Venture's argument that RDF sought domestication via common law (by filing a res judicata summary judgment motion) and the UEFJA, "the sole domestication procedure invoked in this dispute is the UEFJA, which RDF invoked by filing the UEFJA Suit. RDF's res judicata summary-judgment motion in the Venture Suit did not invoke any domestication procedure. Assuming RDF had not filed the UEFJA Suit, once the trial court dismissed the Venture Suit for res judicata reasons, RDF would be left holding only a New York judgment, unenforceable in Texas. " Regarding Issue #2 the court held that the New York judgment was entitled to full, faith and credit in Texas. On Issue #3, the court held that there was no evidence that the trial court denied a request for an evidentiary hearing and therefore the issue was not preserved for appellate review. The trial court's judgment was affirmed.

-Jurisdiction

[THE STATE OF TEXAS, Appellant v. YELP, INC., Appellee](#), No. 15-24-00040-CV, [2025 WL 2936466](#) (Tex. App. Oct. 16, 2025)

Facts: Yelp, a Delaware corporation based out of San Francisco, CA, operates as an online yellow pages with customer reviews in the listings. In 2009, Yelp registered to conduct business in Texas as a foreign, for profit corporation. After the leak of the *Dobbs* case from the US Supreme Court in 2022, the Yelp CEO announced his intention to use his platform to promote abortion rights, and soon thereafter began marking the listings for crisis pregnancy centers as providing limited medical services with unlicensed medical professionals. Twenty-four state attorneys general, including Texas AG Ken Paxton, demanded Yelp remove the notice. Yelp altered it to say the centers do not provide abortion services. Texas filed suit against Yelp on 9/28/23 in Bastrop County, asserting that Yelp violated the Deceptive Trade Practices Act by misleading Texas consumers about the availability of medical services at Crisis Pregnancy Centers. Yelp filed a special appearance, arguing that the trial court lacked personal jurisdiction because (1) Yelp, as a nonresident, lacks sufficient minimum contacts with Texas to demonstrate purposeful availment of the Texas forum; (2) the State's Deceptive Trade Practices claim does not arise from Yelp's contacts with Texas; and (3) the exercise of jurisdiction over Yelp would offend traditional notions of fair play and substantial justice. The trial court granted Yelp's special appearance and dismissed the case with prejudice.

Issue: Did the trial court err in granting Yelp's special appearance based on the State of Texas holding (1) general jurisdiction or (2) specific personal jurisdiction?

Holding: No and yes. The State does not establish general jurisdiction over Yelp in its pleadings because it did not raise its argument that the Texas Business Organizations Code created jurisdiction by consent until the State filed its response to Yelp's plea to the jurisdiction. The court only considers allegations in plaintiff's pleadings, not responses. However, as to specific personal jurisdiction, the State established with its doing-business pleadings that Yelp is subject to specific jurisdiction under Texas's long-arm statute. Although Yelp does not have offices in Texas, it employs Texas residents remotely and generates profits from Texas residents. And though the notices were posted about crisis pregnancy centers in many states, they were posted on listings for all the centers in Texas and aimed at Texas consumers. As to the issue of fair play, the court holds that the interest of protecting Texans from deceptive trade practices outweigh the burdens placed on Yelp in litigating the case in Texas. The trial court's order granting Yelp's special appearance is reversed and the case is remanded.

-Motion to Show Authority

[COASTLINE PROPERTIES, INC., Appellant, v. LAS HACIENDAS TOWNHOMES ASSOCIATION, INC. AND GARY GRAHAM, Appellees.](#), No. 13-25-00030-CV, [2025 WL 3235688](#) (Tex. App. Nov. 20, 2025)

When party receives all the relief it sought failure to grant Rule 12 motion is harmless error.

Facts: Coastline owns four units in the Las Haciendas Townhomes development in Corpus Christi. In 2023, Coastline sued the homeowners association, Las Haciendas Townhomes Association, Inc. (LHTA), and individual Gary Graham, seeking declaratory relief that it owed no HOA assessments/dues dating back to 2001. LHTA claimed Coastline owed \$230,128 in delinquent dues since 2009. Coastline further alleged that any lien was void any cloud on title should removed, and alleged a 2016 agreement exempting it from dues. LHTA counterclaimed for breach of contract to collect the past-due assessments. Before trial, Coastline filed a verified "Motion for Attorney to Show Authority," under TRCP 12 asserting that since a March 6, 2010 owners' meeting (where LHTA admitted it had no board members), LHTA has had no duly elected board of directors or officers, never revived the board under Tex. Prop. Code § 209.014 and thus lacked capacity to hire counsel or litigate. Coastline sought to disqualify LHTA's three attorneys, strike all their pleadings, and effectively obtain default. The trial court denied the Rule 12 motion after a hearing. At the bench trial, the trial court ruled entirely in Coastline's favor: declared Coastline owes no assessments since creation in 2001, any lien void, awarded Coastline \$10,000 trial attorney's fees, up to \$60,000 conditional appellate fees, and Coastline took nothing on claims against Graham. The trial court issued findings of fact/conclusions of law confirming the 2010 admission of no board.

Issue: Did the trial court err in denying the Rule 12 motion to show authority?

Holding: The Thirteenth Court of Appeals affirmed the trial court's judgment. The court did not decide the merits of whether the Rule 12 denial was error, because Coastline failed to demonstrate reversible harm under Tex. R. App. P. 44.1(a). Coastline received everything it

asked for at trial. Granting Rule 12 does not automatically yield default judgment as pleadings are struck only "if no person who is authorized to prosecute or defend appears," and default is not guaranteed or necessarily broader than the favorable judgment obtained. Coastline's arguments about "ongoing harm" (LHTA allegedly making new claims without a board, spawning more litigation) were unpersuasive, as the declaratory judgment already barred the past claims and did not depend on Rule 12 relief. As Coastline received all the relief it requested at trial it could show no reversible harm. Therefore, the error, if any, was harmless. Judgment affirmed.

-Nunc Pro Tunc

[IN RE MICHAEL WAYNE LOWMAN](#), No. 09-25-00153-CV, [2025 WL 2664323](#) (Tex. App. Sept. 18, 2025)

Court could not grant nunc pro tunc that did more than correct a clerical error- plenary power expired

Facts: Default divorce hearing took place on June 3, 2024. On June 17, 2024, the trial court signed a Default Final Decree of Divorce, a provision of which was that "each party shall be responsible for his or her own attorney's fees, expenses, and costs incurred as a result of legal representation in this case." Nothing in the record indicates any clerical error was made in this or any other respect when the trial court's rulings were reduced to writing and signed on that date. On June 26, 2024, Michael filed a combined motion to set aside the default judgment and motion for new trial. On September 6, 2024, the trial court held a hearing on Michael's motion for new trial. During the hearing, Samantha's attorney requested attorney's fees that had been incurred "in order to respond to the motion and pleadings that were filed by Mr. Lowman and counsel." After receiving testimony regarding the amount of attorney fees, the trial court orally pronounced that it denied Michael's motion for new trial and awarded \$2,560 in attorney's fees in favor of the law firm representing Samantha. On January 29, 2025, Samantha filed a Motion for Judgment Nunc Pro Tunc in which she argued the trial court's oral pronouncement awarding attorney's fees "was never formally entered" and that the "omission of such an order is a clerical error which is capable of correction[]" by judgment nunc pro tunc, "plenary power notwithstanding." On March 4, 2025, the trial court signed an order granting Samantha's Motion for Judgment Nunc Pro Tunc and a separate order entitled "Order Denying Motion for New Trial [and] Judgment Nunc Pro Tunc" which denied Michael's motion for new trial and granted a judgment nunc pro tunc awarding \$2,560 in attorney's fees to the law firm representing Samantha "for the expense of defending against the motion for new trial."

Issue: Did the trial court abuse its discretion in signing the judgment nunc pro tunc because it was outside the trial court's jurisdiction?

Holding: Yes. The 9th Court of Appeals reversed the trial court. The final judgment in this case was signed on June 17, 2024. Ordinarily, the trial court would have retained plenary power over

the judgment for only 30 days, but because Michael timely filed a motion for new trial on June 26, the trial court's plenary power was extended until the 30th day after the date the trial court would eventually overrule Michael's motion. See Tex. R. Civ. P. 329b(d), (e). When a trial court does not rule on a motion for new trial by way of a written order signed on or before the 75th day after the final judgment was signed, the motion for new trial is overruled by operation of law on that 75th day. Id. 329b(c). Here, August 31 was the 75th day after the judgment was signed, but since that was a Saturday and September 2 was a holiday, the 75-day period extended to the end of the next business day which was September 3. Although it was orally pronounced during the September 6 hearing that the court was overruling Michael's motion for new trial, the motion had already been overruled by operation of law on September 3 because no written order had been signed by that date. The 30th day after September 3 was October 3, at which time the trial court's plenary power ended. This means the trial court still had plenary power on September 6 when it announced in open court that it was awarding attorney's fees to Samantha's lawyer. But it also means the orders signed by the trial court on March 4, 2025, were signed after the trial court's plenary power expired on October 3, 2024. Therefore, unless an exception applies, the March 4 orders are void. "The Judgment Nunc Pro Tunc did not correct a clerical error in the Default Final Decree of Divorce, because the difference between the two judgments required additional judicial reasoning and determination." Mandamus conditionally granted.

-Sanctions

[IRONOAK, INC., MICHAEL SYDOW, AND CHIDI ANUNOBI, Appellants v. MICHAEL EUGENE PORTER, JOHN T. PRESTON, CRISTEN DAVID FELDMAN, JEFFREY S. BAKER, GEOFFREY ALAN BERG, GABRIEL BERG, AND KATHRYN E. NELSON, Appellees](#), No. 01-23-00924-CV, [2025 WL 2933617](#) (Tex. App. Oct. 16, 2025)

Suit filed in bad faith – sanctions against attorney and client of over \$250k were reasonable

Facts: Iron Oak and CET have a long history of litigation against each other in various jurisdictions, including international. In a previous dispute mediation, all parties except Iron Oak entered into a settlement, and CET's claims against Iron Oak were assigned to Preston, Porter, and CET. Iron Oak moved to void the settlement, which the court denied. Iron Oak and its attorneys, Sydow and Anunobi, then sued CET's principals, Porter and Preston, as well as CET's attorneys (Berg, Berg, and Nelson), CET's receiver and his attorneys, claiming violations of TUFTA, conversion, and civil conspiracy. The suit alleged that the settlement wrongfully assigned claims previously assigned to Iron Oak. A few weeks later, Iron Oak applied for a temporary restraining order in the trial court, seeking to stop a hearing on Porter and CET's motion for summary judgment in a Massachusetts court. Iron Oak did not provide notice to the other parties of the first hearing on the TRO. Porter and Preston moved to dismiss Iron Oak's suit under Rule 91a and for sanctions. Iron Oak then filed a motion for nonsuit, which was granted. The trial court granted the motion for sanctions, imposing the following sanctions: (1) \$44,720 for attorney's fees; (2) \$250,000 penalty against Iron Oak and attorney Sydow, payable to the trial court; (3) \$25,000 penalty against attorney Anunobi, payable to the trial court; and (4) compulsory completion of 10 additional hours of CLE for the next 5 years.

Issue: Did the trial court err in awarding sanctions against Iron Oak, Sydow and Anunobi?

Holding: No. The court holds that the sanctions were reasonable. The appellants could not show they had a probable right of recovery in a trial on the merits based on either the redacted or the unredacted settlement agreement. The evidence in the record supports the trial court’s conclusion that Iron Oak, Sydow, and Anunobi filed this suit and TRO application in bad faith and for improper purpose. Regarding the amount of the sanctions, although Sydow’s and Iron Oak’s sanctions in particular were severe, they were supported by the evidence of their flagrant bad faith conduct, abuse of the court system, and blatant disregard of their responsibilities. The court does modify the award of appellate attorney’s fees to be contingent upon the receiving party’s success on appeal. Affirmed except as modified for appellate attorney’s fees.

[Higginbotham v. Bonilla](#), No. 13-24-00613-CV, [2025 WL 2933525](#) (Tex. App. Oct. 16, 2025)

No abuse of discretion by trial court for failure to sanction- but appellate court found conduct so egregious it is filing a grievance against trial counsel anyway

Facts: Higginbotham was formerly employed at Bonilla’s salon. During her employment, they entered into a sexual/romantic relationship. The nature of the relationship—whether consensual—was disputed. After the relationship ended, Higginbotham published a blog post accusing Bonilla of being a sexual predator and rapist, alleging grooming behavior. Others joined in online accusations. Bonilla filed a defamation suit in April 2022 seeking damages and injunctive relief. Higginbotham responded with an anti-SLAPP motion and later filed multiple motions for sanctions against Bonilla’s counsel, citing inflammatory and inappropriate conduct. The record is replete with unprofessional conduct.

Issues: (1) Did the trial court err by refusing to hold evidentiary hearings on Higginbotham’s motions for sanctions? (2) Did the trial court improperly exclude exhibits submitted by Higginbotham for those hearings? (3) Did the trial court abuse its discretion in denying all of Higginbotham’s motions for sanctions?

Holding: No. to all issues. The 13th Court of Appeals affirmed the trial court in all respects. The court held that Higginbotham was not entitled to evidentiary hearings before the trial court ruled on her motions for sanctions. The court cited precedent affirming that a party is not entitled to evidentiary hearings on sanctions prior to the denial of sanctions. The court further held that the trial court did not abuse its discretion in excluding exhibits or denying the motions stating that “...appellant failed to offer exhibits at the hearings in any capacity and did not obtain rulings from the trial court where it refused to enter the exhibits into evidence or refused to rule on admission of those exhibits.” Despite concerning language and conduct by Bonilla’s counsel—including personal insults and inappropriate comments—the court found no reversible error in the trial court’s decision to deny sanctions noting that no appellate court in Texas has ever found an abuse of discretion by a trial court in denying sanctions. However the court was so shocked and appalled at the conduct of Bonilla’s counsel in this case they stated “our Court will be filing a grievance with the State Bar’s Office of Chief Disciplinary Counsel to address

this behavior. But our Court will not be the first to break from decades of precedent and start making policy decisions for Texas on whether a trial court should be reversed for failing to sanction. Affirmed.

-Sealing Records

[IN RE DOLCEFINO COMMUNICATIONS, LLC D/B/A DOLCEFINO MEDIA, Relator](#), No. 14-25-00555-CV, [2025 WL 2471307](#) (Tex. App. Aug. 28, 2025)

Media had common law right of access to court records – trial court has discretion to limit that access

Facts: An Agreed Order Sealing Court Records in the divorce proceeding of Jay Keith Sears and Debra Louise MacLeod was signed in February 2021. The trial court signed additional protective orders and confidentiality orders applicable to Sears, MacLeod, and non-party entities, including NewQuest Properties. Three months before the July 2025 trial date, Dolcefino Media filed a “Petition in Intervention and Motion to Unseal Records”, claiming that it was investigating political contributions made by NewQuest Properties. After a 5/23/25 hearing, the trial court denied Dolcefino Media’s motion to intervene for lack of jurisdiction.

Issue: Does a media entity have a common-law right to access court records in a divorce case?

Holding: Yes. Although the court holds that Rule 60, which allows parties to intervene in a lawsuit, does not apply in this case, Dolcefino Media does meet the principles of ordinary standing. The Agreed Sealing Order directly affects Dolcefino Media’s common-law right of access. However, the right of access can be limited, and that limit is at the discretion of the trial court. Petition for writ of mandamus is conditionally granted in part, with all other requests for relief denied and Sears’ Motion to Seal Attachments to Mandamus Petition and Record also denied.

-Summary Judgment

[AABC TRAVELS, INC., Appellant v. DELTA AIRLINES, INC., Appellee](#), No. 01-24-00893-CV, [2025 WL 2665663](#) (Tex. App. Sept. 18, 2025)

Non-movant must file motion for new trial to contest lack of notice of summary judgment motion hearing or submission date

Facts: AABC Travels, a Houston travel agency, filed a small claims petition against Delta, an Air France Agency. AABC Travels alleged that it booked three seats on behalf of two of its customers on a flight between Mumbai, India and Houston. AABC Travels states that it booked this additional seating to give its customers extra room on the plane. According to AABC Travels, when the customers showed up to their flight, Air France did not honor the additional seat purchase. AABC Travels contends that this damaged its reputation in the community

amongst its customers and clients. AABC Travels sued Delta for damages to its business reputation in Harris County Justice Court. AABC Travels obtained a default judgment, and Delta’s motion to set aside the default judgment was denied. Subsequently, Delta perfected an appeal to the county court at law for a trial de novo. Delta filed an original answer in the county court. Delta thereafter moved for no-evidence summary judgment and attached a certificate of service. Delta set its summary-judgment motion for hearing by submission. AABC Travels did not respond to Delta’s no-evidence motion for summary judgment and the trial court granted summary judgment in favor of Delta. AABC Travels did not file a motion for new trial—but timely filed a notice of appeal based on alleged lack of notice.

Issue: Did the trial court err in granting summary judgment because non-movant did not receive notice of the motion for summary judgment or the submission date?

Holding: No. The First Court of Appeals held that AABC Travels (non-movant) must raise the issue of lack of notice in a post judgment motion. “[A] non-movant must file a motion for new trial to preserve a complaint that she did not receive notice of a summary judgment motion and hearing or submission date.” Because AABC failed to file a motion for new trial the trial court’s grant of summary judgment for Delta was affirmed.

-Venue

[IN RE ASTRAZENECA PHARMACEUTICALS LP, Relator](#), No. 15-25-00088-CV, [2025 WL 3251532](#) (Tex. App. Nov. 21, 2025)

Mandamus granted; plaintiffs offered no evidence that any alleged THFPA kickback acts occurred in Harrison County, so mandatory venue lies in Travis County.

Facts: Relators SCEF, LLC and Levin-Guzman filed a *qui tam* action in Harrison County under the Texas Health Care Program Fraud Prevention Act (formerly TMFPA), alleging AstraZeneca engaged in three unlawful kickback schemes involving remuneration to induce prescriptions for its drugs. AstraZeneca specifically denied that any part of the alleged unlawful conduct occurred in Harrison County and moved to transfer venue to Travis County, the mandatory venue under Human Resources Code § 36.052(d) unless the unlawful acts occurred elsewhere. Plaintiffs amended their petition to assert venue in Harrison County based on: (1) allegations that AstraZeneca’s sales and marketing representatives “targeted” certain Harrison County providers; (2) the availability of AstraZeneca’s nurse/support-service materials on its public websites; (3) and a brochure with a QR code found in a Harrison County clinic. Plaintiffs offered no affidavits or evidence tying any kickback-related unlawful acts to Harrison County. The trial court denied the transfer, and AstraZeneca sought mandamus.

Issues: (1) Did the plaintiffs present prima facie evidence that any part of the alleged unlawful acts occurred in Harrison County sufficient to satisfy the THFPA’s mandatory-venue statute? (2) Could the second amended petition (filed after denial of the transfer motion) be considered in mandamus review? (3) Did laches bar mandamus relief due to the 20-month delay in seeking it?

Holding: Mandamus conditionally granted; trial court directed to transfer venue to Travis County. The 15th Court of Appeals held plaintiffs failed to present any prima facie evidence that AstraZeneca committed unlawful acts in Harrison County. Pleadings alone are insufficient once the defendant specifically denies venue. The second amended petition could not be considered, because Texas’s “one-and-done” venue rules prohibit consideration of amended pleadings after the venue ruling. Laches did not bar mandamus, because plaintiffs showed no prejudice caused by the delay—only the ordinary consequences of a venue transfer. The Court emphasized its earlier decision in *In re Sanofi-Aventis U.S. LLC*, holding that, marketing visits by sales representatives, without evidence of the alleged kickback conduct, do not establish venue and nor does access to a company’s public website or brochure as it is not an “offer” of remuneration under the THFPA because it is not a legally binding promise. Because plaintiffs offered no probative evidence showing the unlawful kickback schemes occurred in Harrison County, mandatory venue lies in Travis County as a matter of law.

CIVIL RIGHTS

-Judicial Immunity

[Jones v. King](#), No. 23-50850, [2025 WL 2180442](#) (5th Cir. Aug. 1, 2025)

Presiding over jury proceedings covered by absolute judicial immunity.

Facts: Three registered Texas voters alleged that three local officials of Loving County—a justice of the peace, a sheriff, and a constable—conspired to punish them for political reasons. The plaintiffs were arrested after reporting for jury duty, which the plaintiffs claim was a sham jury selection, accused of falsely claiming residency in Loving County. The officials argued they were enforcing voter-eligibility rules, while the plaintiffs claimed it was retaliation to silence dissent. The plaintiffs sued under § 1983, alleging constitutional violations. The United States District Court for the Western District of Texas granted judicial and quasi-judicial immunity to the officials for some claims but denied judicial immunity for actions related to the jury proceeding. The officials appealed the denial of judicial immunity, and the plaintiffs cross-appealed the grant of immunity on other claims.

Issue: Was presiding over the jury proceedings a judicial act covered by absolute judicial immunity?

Holding: Yes. The Fifth Circuit held that the actions of the justice of the peace in presiding over the jury proceeding were judicial in nature and thus protected by absolute judicial immunity. The court therefore reversed the district court's denial of judicial immunity for the jury proceeding. Regarding the plaintiffs' cross-appeal, the court found it lacked jurisdiction to review those claims at this interlocutory stage and dismissed the cross-appeal. The court reversed the district court's decision in part and dismissed the cross-appeal for lack of jurisdiction.

BUSINESS LAW

-Shareholder Rights

In re UMTH Gen. Servs., L.P., No. 24-0024, 2025 WL 3180859 (Tex. Nov. 14, 2025)

Shareholders have standing but they cannot bring claims at issue – derivative claims must be brought in Maryland – mandamus conditionally granted

Facts: United Development Fund IV is a Maryland real estate investment trust formed by a declaration of trust that designates Maryland as the exclusive forum for derivative actions brought on the Trust's behalf. The Trust's board appointed UMTH General Services, L.P., to manage its daily operations in an advisory agreement executed by the Trust and UMTH, not the individual shareholders. The agreement states: "The Advisor shall be deemed to be in a fiduciary relationship to the Trust and its Shareholders." Relying on this provision, a shareholder and its subsidiary sued UMTH and affiliates in Dallas County for corporate waste and mismanagement, alleging that the advisory agreement permits them to sue the advisors to the Trust. UMTH filed a verified plea in abatement, arguing that the shareholders' claims are derivative claims, and thus the shareholders lack standing and the capacity to assert them. After the trial court denied the motion, UMTH unsuccessfully sought mandamus relief in the court of appeals.

Issues: May a corporate trust's shareholders directly sue a third party based on a contract between the trust and the third party?

Holding: Yes. The Texas Supreme Court conditionally granted relief, directing the trial court to grant the plea and dismiss the case with prejudice. Although the shareholders have constitutional standing to sue, they lack capacity to bring the claims at issue. The advisory agreement does not provide individual shareholders with a personal cause of action, either directly or as third-party beneficiaries. The shareholders' claims against the advisors are thus derivative claims, owned by the trust. Given the forum selection clause providing that derivative claims on behalf of the corporate trust must be brought in Maryland, the Court further held that the advisors lack an adequate remedy by appeal.

CONTRACT LAW

-Arbitration

[POOLRE INSURANCE CORP., Appellant v. STEWART A. FELDMAN, et al](#), No. 01-23-00629-CV, [2025 WL 2471794](#) (Tex. App. Aug. 28, 2025)

Plea to the jurisdiction and granting motion for confirmation of arbitration award affirmed.

Facts: Feldman, Capstone, and PoolRe initiated arbitration under arbitration agreements “contained in a December 2015 Joint Engagement Letter (“2015 Engagement Letter”) and the 2018 and 2019 Stop Loss Reinsurance Agreements and Quota Share Reinsurance Policies.” Under those provisions, the parties agreed to submit to arbitration “any and all other controversies, disputes or claims whatsoever” between the claimants and the respondents “arising under or in connection with or related to any of the parties’ agreements.” In the arbitration award, the arbitrator found Feldman and Capstone jointly and severally liable to the Doctors and the other respondents for “breaching fiduciary duties, committing professional malpractice, making negligent misrepresentations or omissions, and converting funds” and ordered them to pay “losses in the total amount of \$1,471,949.21 for the foregoing wrongful acts.” The arbitrator also issued a declaratory judgment for the Doctors and the other respondents and against Feldman, Capstone, and PoolRe. In their original petition and motion to confirm the arbitration award, Feldman and Capstone asked the trial court to confirm the award as authorized under the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TAA). They alleged that “[o]ne of the parties’ arbitration agreements” stated that venue was proper in Harris County and asserted that they had standing to request confirmation as to PoolRe because they participated as parties in the arbitration. PoolRe opposed Feldman and Capstone’s motion to confirm the arbitration award in a plea to the jurisdiction. In its plea, PoolRe argued that Feldman and Capstone lacked standing to seek confirmation of the arbitration award because the arbitration did not involve a dispute between PoolRe and Feldman or Capstone but one between the prevailing parties in the arbitration (who were not parties to the state court action), on the one hand, and PoolRe, Feldman, and Capstone, on the other. The trial court denied PoolRe’s plea to the jurisdiction and signed an order confirming the arbitration award.

Issues: Did the trial court err in confirming the arbitration award because (1) Feldman and Capstone were not adverse to PoolRe in the underlying arbitration and thus lacked standing to have the award confirmed as against PoolRe and (2) the arbitration was moot as to PoolRe?

Holding: No. The 1st Court of Appeals affirmed the trial court’s judgment. The court held that Feldman and Capstone were entitled to apply for confirmation because the arbitration award itself identifies them as parties to the arbitration. The FAA confers standing to apply for confirmation, modification, correction, or vacatur of an arbitral award on “any party to the arbitration.” Because Feldman and Capstone were parties to the arbitration award, they had standing to apply for confirmation of the award. The court also held that Feldman and Capstone’s application for confirmation was not moot as they were allowed to seek confirmation against PoolRe.. As a result, the trial court did not err in denying PoolRe’s plea to the

jurisdiction on that ground. The trial court's orders denying PoolRe's plea to the jurisdiction and granting Feldman and Capstone's motion for confirmation of the arbitration award were affirmed.

[HUMPHRIES CONSTRUCTION CORPORATION, Appellant v. HIGHLAND VILLAGE LIMITED PARTNERSHIP, et al](#), No. 01-23-00651-CV, [2025 WL 2471797](#) (Tex. App. Aug. 28, 2025)

Party did not substantially invoke the judicial process – did not waive right to arbitration

Facts: Humphries filed a demand for arbitration pursuant to the construction contract. Seven months later, Humphries filed a related lawsuit in state district court through which it acquired financial records from a third-party financial institution that it later used in the pending arbitration proceeding. Highland Village Limited Partnership filed pleas in abatement and motions for protection in the arbitration proceeding and in the district court, arguing that Humphries had waived its right to arbitration by its judicial conduct in the civil suit. Although the arbitration panel denied Highland Village Limited Partnership's plea and motion for protection, the trial court subsequently found that Humphries had waived its right to arbitration. The trial court granted Highland Village Limited Partnership's plea and abated the arbitration proceeding. The trial court also denied Highland Village's motion for sanctions, which Highland Village premised on Humphries' alleged discovery abuses stemming from its wrongful acquisition and use of Highland Village's financial records.

Issues: Did the trial court err in granting Highland Village's plea in abatement?

Holding: Yes. The 14th Court of Appeals held that the trial court erred in ruling that Humphries waived its right to arbitration by substantially invoking the judicial process and thus reversed the trial court's order granting Highland Village Limited Partnership's plea in abatement. The court found that (1) the parties did not clearly and unmistakably delegate the issue of waiver to the arbitrator; (2) the trial court did not impermissibly review the Arbitration's Panel Ruling on waiver; (3) Humphries did not waive its right to arbitration by substantially invoking the judicial process. As to Highland Village's Cross-Appeal the court agreed to treat it as a petition for writ of mandamus since the court found it did not have jurisdiction over the matter otherwise. However in doing so the court affirmed the trial court's denial of Highland Village's motion for sanctions, motion to quash, and request for protective order. The case was remanded to the trial court.

-Damages

[SHAFARI INVESTMENTS, LTD., RAJ SHAFARI, AND PARTY AND RECEPTION CENTER, INC., Appellants v. MELANIA ESTELA RIVERA BONILLA AND MARGARITA](#)

[ANGELINO TRUJILLO, Appellees](#), No. 01-21-00731-CV, [2025 WL 2485682](#) (Tex. App. Aug. 29, 2025)

Evidence was sufficient to support jury award of repair damages, mental anguish and attorney's fees

Facts: Bonilla and Angelino brought suit asserting claims for breach of contract, fraud, negligent misrepresentation, and violations of the Texas Deceptive Trade Practices Act (“DTPA”) against Shafaii. Rivera and Angelino alleged that Shafaii agreed to obtain insurance for their townhouses and charged them for insurance yet never procured insurance coverage. In addition, Rivera sued Shafaii to stop the wrongful foreclosure of her townhouse. She later sued for violations of the Texas Debt Collection Act (“TDCA”), alleging that Shafaii falsely threatened that she had committed a crime, collected unlawful fees and interest, and attempted to foreclose on her homestead without filing the requisite notice. The jury found for Rivera and Angelino and assessed damages. The jury awarded them both damages for repair costs, mental anguish damages, treble damages under the DTPA, and attorney’s fees. The trial court also issued a permanent injunction preventing Shafaii from further violating the Texas Debt Collection Act in dealings with Rivera.

Issues: Was the evidence legally and factually sufficient to support the jury’s award of repair damages, mental anguish damages, and attorney’s fees?

Holding: Yes. The 1st Court of Appeals affirmed the trial court's judgment in all respects. Regarding repair damages the court held that appellants did not preserve their complaint that the trial court erred in admitting the contractors estimates for repairs, that any error in the admission of the written construction agreements was harmless. Additionally, expert testimony was not required and that the evidence was legally and factually sufficient to prove that the repairs were necessary and the costs reasonable. Shafaii alleged on appeal that the economic loss rule barred the plaintiffs from recovery of mental anguish damages and treble damages. The court disagreed and held that the economic loss rule did not precluded recovery. “The jury found more than a mere breach of contract. The jury found that Shafaii Investments or Raj Shafaii engaged in false, misleading or deceptive acts that Rivera and Angelino “relied on to their detriment and that was a producing cause of damages.” As to attorney’s fees, Shafaii argued that the jury’s verdict for attorney’s fees was not supported by legally and factually sufficient evidence because the attorney’s fees were not properly segregated. However, the court ruled that Shafaii waived this challenge by failing to object at trial. Affirmed.

-Declaratory Judgments

[LUFKIN MALL REALTY HOLDING LLC, APPELLANT v. LUFKIN INVESTMENT PARTNERS LLC, APPELLEE](#), No. 12-24-00326-CV, [2025 WL 2346893](#) (Tex. App. Aug. 13, 2025)

PSA required buyer to pay 2022 property taxes in full not seller – partial summary judgment on declaratory judgment action affirmed

Facts: Investment Partners and Lufkin Mall executed a purchase and sale agreement (PSA), pursuant to which Lufkin Mall agreed to purchase from Investment Partners the shopping center known as “Lufkin Mall.” In November 2023, Lufkin Mall sued Investment Partners, alleging that Investment Partners failed to pay its prorated portion of the real property taxes for 2022. Lufkin Mall asserted claims for declaratory relief and breach of contract. Investment Partners counterclaimed, seeking (1) a declaratory judgment that Lufkin Mall is fully responsible for the 2022 property taxes and (2) attorney’s fees. Investment Partners filed a traditional motion for partial declaratory summary judgment, in which it sought a declaration that Lufkin Mall “is responsible for the 2022 taxes as a matter of law.” The trial court signed an order granting Investment Partners’ motion for partial summary judgment, in which the court (1) declared that Lufkin Mall was responsible for the full amount of the 2022 property taxes pursuant to Section 5.3 of the PSA; (2) dismissed Lufkin Mall’s causes of action for declaratory judgment and breach of contract with prejudice; (3) assessed costs against Lufkin Mall; and (4) ordered Lufkin Mall to pay Investment Partners’ attorney’s fees in the amount of \$50,424.50. Additionally, the trial court signed an order severing the claims resolved in its order granting partial judgment from the remainder of the cause.

Issue: Did the trial court err by granting partial declaratory summary judgment in favor of Investment Partners by misinterpreting the PSA’s unambiguous language?

Holding: The 12th Court of Appeals concluded that Texas law in conjunction with the rules of contract construction supported Investment Partners position that although property taxes are “due” between October 1 and January 31, January 31 is the date by which payment must be made, as evidenced by the fact that on February 1 of each year, unpaid property taxes become delinquent. The 2021 property taxes had to be paid on or before January 31, 2022, to avoid delinquency (i.e. January 31, 2022, was the date on which payment was required) and Investment Partners paid the 2021 property taxes in January 2022. Therefore, the 2021 taxes were the taxes “first coming due” in 2022 using a cash basis method of accounting as required by the PSA. Therefore, Lufkin Mall was responsible for the full amount of the 2022 property taxes under the PSA. The order granting partial summary judgment was affirmed, including attorneys fees.

-Derivative Claims

Derivative damages must reflect the entity’s actual loss, not speculative valuations of unrelated companies.

[Kay v. Yosowitz](#), No. 14-23-00710-CV, [2025 WL 2934047](#) (Tex. App. Oct. 16, 2025)

Facts: (An opinion in this matter was originally issued on 7/10/25. This opinion was issued after Yosowitz’s motion for rehearing.) Prior to their divorce, Martin Kay and Laura Yosowitz owned,

as community property, a 78% membership interest in Greenlet LLC, with Robert Salmons owning the other 22%. Their divorce decree included an Agreement Incident to Divorce (AID), which incorporated a Memorandum of Agreement in which Kay, Yosowitz, and Salmons would separate Greenlet's real estate brokerage business from its software business. Kay formed several entities in different states, not following the MOA. Yosowitz, who was supposed to receive almost \$4 million under the MOA, received a single check for \$39,000. On her own behalf and that of Greenlet's, she sued Kay, Salmons, and a number of Kay's companies on direct and derivative claims. The jury awarded Yosowitz \$378,000 on her direct claims and \$138 million on the derivative claims, which the trial court later reduced to \$53.9 million based on her share of the community interest. The Fourteenth Court issued an opinion on July 10, 2025. Yosowitz filed a motion for rehearing. The 7/10/25 opinion is withdrawn and replaced with this opinion.

Issues: (1) Did the trial court err in not capping Yosowitz's damages under the AID? (2) Did Yosowitz lack standing to bring a derivative claim on behalf of Greenlet? (3) Was the award to Greenlet of over \$56 million based on an improper measure of damages and legally insufficient evidence?

Holding: No, no, and no. On rehearing, the Fourteenth court affirmed the direct claims, that the MOA did not cap Yosowitz's claims at \$4.5 million based on its unambiguous language. Regarding the derivative claims, Yosowitz did have standing to bring a derivative claim on behalf of Greenlet based on her being a member from at least the date of the MOA in October 2016. However, her model for determining underlying damages was not legally sufficient because there is no comparison between Greenlet and the new company formed by Kay and no evidence that Greenlet would have equaled that company's value if Kay had complied with his fiduciary duties. The court allowed the attorney's fees for Yosowitz's direct claims but reversed the attorney's fees for the derivative claims. The court granted Yosowitz's request for the case to be remanded to the trial court for a new election of remedies on the derivative claim. Affirmed in part, reversed in part, remanded in part.

-Governmental Immunity

[ISI Contracting, Inc. v. Metro. Transit Auth. of Harris Cnty.](#), No. 14-24-00119-CV, [2025 WL 2213212](#) (Tex. App. Aug. 5, 2025)

Contract waived governmental immunity

Facts: Metropolitan Transit Authority of Harris County entered into an agreement with ISI Contracting in 2014 to perform roadwork and install storm sewer lines near the Burnett Street Transit Center. ISI began the work and was paid regularly until, in March 2015, it encountered undisclosed pipes not disclosed in the design documents, as well as newly installed power lines that interfered with the work. Metro put the work on hold to resolve the issues, and ISI maintained the barricades but demobilized workers. As the delays continued, Metro and ISI attempted to negotiate continuation of the project, but in January 2021, Metro gave notice that it

was terminating the contract for convenience. ISI sued after Metro failed to meet ISI's payment demands, and Metro filed a plea to jurisdiction, which the trial court granted.

Issue: Did the trial court err in granting the jurisdictional plea and dismissing all of ISI's claims with prejudice?

Holding: Yes. ISI's petition contains evidence sufficient to show the waiver of governmental immunity regarding the claim for unpaid retainage and termination for convenience, for additional work provided at Metro's request, and for breaches of contract regarding articles 10 and 23 of Section X.

[CITY OF CIBOLO, Appellant v. CIBOLO TURNPIKE, LP, Appellee](#), No. 04-24-00532-CV, [2025 WL 3223755](#) (Tex. App. Nov. 19, 2025)

Specific performance remains an available remedy under Chapter 271 for service or goods contracts with local governmental entities-immunity waived.

Facts: The City of Cibolo entered into a development agreement with Cibolo Turnpike, LP (CTLTP) for the construction of a privately funded toll road. The City later terminated the agreement, asserting CTLTP failed to meet required performance metrics. CTLTP sued for breach of contract, seeking damages and specific performance. After years of litigation, the city filed a plea to the jurisdiction, arguing CTLTP lacked standing and that governmental immunity barred the suit because the requested relief was not permitted under Chapter 271.

Issue: (1) Does CTLTP have standing? (2) Does Chapter 271's waiver of governmental immunity allow CTLTP's breach-of-contract claim, specifically one seeking specific performance, to proceed?

Holding: Affirmed. The 4th Court of Appeals held that CTLTP had standing as a party alleging a concrete injury traceable to the City's termination of the agreement. The court held that Chapter 271's waiver of governmental immunity applies to suits seeking specific performance, because §271.153 limits damages, not equitable remedies. The 2013 amendments permitting equitable relief for reclaimed-water contracts do not impliedly bar equitable relief for other Chapter 271 contracts. The trial court properly exercised jurisdiction. The court did not reach whether CTLTP may recover monetary damages.

- Insurance Claims

[ABRAHAM & CO. INC, Appellant v. MARKEL INSURANCE COMPANY AND HIRSCHFIELD RISK SERVICES, INC. D/B/A H&H CLAIMS CONSULTANTS, Appellees](#), No. 14-24-00242-CV, [2025 WL 2394088](#) (Tex. App. Aug. 19, 2025)

Unambiguous language of policy limited claims to \$750k: No claims in Texas for negligent claims handling but case survives on general negligence claims against adjuster

Facts: Abraham & Co. Inc. (“Abraham”) is in the business of selling Oriental rugs. Markel Insurance Company (“Markel”) issued a property insurance policy to Abraham. Under the Policy as to property at Abraham’s premises, Markel’s liability for all covered property in any one occurrence is limited to \$2 million. During Winter Storm Uri in February 2021, the pipes at the Woodway Drive location in Houston froze and burst, saturating numerous rugs stored at that location. The Woodway location was a leased showroom. According to Abraham a substantial number of Abraham’s rugs were damaged and the total damage to Abraham’s property exceeded the \$2,000,000 policy limit. The Policy contains an endorsement (“Endorsement”) providing that “[t]he most [Markel] will pay in any one loss or damage directly or indirectly caused by water damage as defined herein is \$750,000.” Abraham filed a claim under the Policy. H&H Claims Consultants (“H&H”) handled the claims adjusting services for Markel for Abraham’s claim. Relying on the Endorsement, Markel paid \$750,000 on Abraham’s claim and refused to pay the \$2 million that Abraham argues should be paid on its claim. Abraham filed suit against Markel and H&H. Abraham asserted claims against Markel for breach of contract, breach of an alleged common law duty of good faith and fair dealing, fraud, violations of chapters 541 and 542 of the Texas Insurance Code, and violations of the Texas Deceptive Trade Practices Act. Abraham asserted claims against H&H for negligence and violations of chapter 541 of the Texas Insurance Code. Markel and H&H (collectively the “Markel Parties”) answered and counterclaimed seeking declaratory relief and reasonable and necessary attorney’s fees under the Texas Declaratory Judgments Act.

Issues: (1) Did the trial court err in concluding as a matter of law that the Policy’s coverage limit for Abraham’s claim is \$750,000? (2) Did the trial court err in granting summary judgment as to Abraham’s extracontractual claims against Markel and as to Abraham’s claim against H&H for alleged violations of chapter 541 of the Texas Insurance Code? (3) Did the trial court err in granting summary judgment as to Abraham’s negligence claims against H&H?

Holding: The 14th Court of Appeals affirmed the trial court as to Issue #1 concluding that the Policy’s unambiguous language limited Abraham’s claim to \$750,000. As Markel paid the full amount of \$750,000 the trial court was correct in granting summary judgment and dismissing with prejudice Abraham’s breach of contract claim against Markel. Regarding Issue #2, the trial court did not err in granting summary judgment as to the Extra-Contractual Claims. To the extent the trial court granted summary judgment as to Abraham’s claim for negligent claims handling, dismissed the claim, and determined that H&H cannot be liable based on a theory of negligent claims handling, the trial court did not err as Texas does not recognize a cause of action for negligent claims handling. The court affirmed the trial court’s judgment on Issue #2. As to Issue #3, the court, noting it was taking a liberal construction of Abraham’s pleadings, reversed the trial court’s grant of summary judgment holding that H&H can be held liable on a general negligence claim. The court remanded the case back to the trial court on the general negligence claim against H&H.

-Liens

[W. Houston Airport Corp. v. Sweet Water Well Serv., LLC](#), No. 14-23-00369-CV, [2025 WL 2934046](#) (Tex. App. Oct. 16, 2025)

No evidence of fraudulent lien – no attorneys fees when jury found no liability

Facts: The Airport had a storage contract with Matthew Krause for his aircraft. Krause defaulted on payments. The Airport filed a lien with the FAA for \$7,177.47 in unpaid storage fees. Sweet Water later acquired the aircraft from Krause, agreeing to satisfy the lien. The Airport demanded over \$14,000 to release the aircraft. Sweet Water sued, claiming the lien was fraudulent and excessive. The Airport counterclaimed, alleging Sweet Water assumed Krause's contract and breached it.

Issues: (1) Did the Airport present a fraudulent lien under Texas Civil Practice and Remedies Code § 12.002? (2) Was Sweet Water entitled to damages or excess proceeds from the aircraft sale under Texas Property Code Chapter 70, Subchapter D? (3) Did Sweet Water assume Krause's storage contract, thereby breaching it? (4) Was either party entitled to attorney's fees? (5) Did the trial court err in submitting certain claims to the jury or in awarding damages and fees without liability findings?

Holding: The 14th Court of Appeals reversed and rendered against both parties. As to the fraudulent lien claim, the jury found the Airport did not present a fraudulent lien. The court upheld this finding, citing insufficient evidence of fraudulent intent. As to whether Sweet Water was entitled to damages or excess proceeds under Subchapter D, because Sweet Water failed to submit a jury question on the validity of the lien under Subchapter D, it waived this claim and could not recover damages or excess sale proceeds. The court further held that the trial court erred in awarding damages and attorney's fees to Sweet Water without a liability finding by the jury. The appellate court reversed these awards. As to whether Sweet Water expressly assumed Krause's contract, the court held that the Airport presented no evidence of such an agreement. As such, the trial court should have granted Sweet Water's directed verdict and rendered a take-nothing judgment on the Airport's counterclaim. The court rendered take nothing judgments against both the Airport and Sweet Water on all of their claims.

-Quantum Meruit

[GIBBONS & BRAVOS SURVEYING L.L.C. & Jean Michael BRAVO, Appellants v. Gary A. GIBBONS, Patricia A. Gibbons, Gibbons Surveying And Mapping, INC., Kevin W. Love, Sheila F. Love, Klove Eng'g, L.L.C. & Gibbons Surveying L.L.C., Appellees](#), No. 04-24-00249-CV, [2025 WL 2326062](#) (Tex. App. Aug. 13, 2025)

Trial court's decision to disregard the jury's findings as to quantum meruit and suit on sworn account affirmed – attorneys fees issue remanded due to failure to segregate

Facts: Bravo entered into agreement with the Gibbonses to purchase their surveying company, and Gary Gibbons worked for the LLC as a surveyor. The parties soon were in dispute over the agreements, and Gary Gibbons went to work for KLove Engineering. Bravo sued the Gibbonses, KLove, and GS&M for breach of contract, tortious interference with existing contracts, and civil conspiracy, and the Gibbonses for fraudulent inducement. He also sued KLove for suit on sworn account and *quantum meruit*, as well as breach of contract for failure to pay for surveying services. The Gibbonses countersued for breach of contract and fraud. The case went to a jury

trial. A directed verdict was granted in the Gibbonses' favor on Bravo's tortious interference and civil conspiracy claims, and the Gibbonses dropped their fraud claims. The trial court, on KLove's motion, disregarded the jury's findings as to sworn account and quantum meruit, and entered a take nothing judgment on all claims by Bravo. The trial court entered judgment on the rest of the jury's verdict in favor of the Gibbonses and awarded them attorney's fees.

Issue: Did the trial court err in (1) granting the take nothing judgment on KLove's *quantum meruit* and suit on sworn account; and (2) awarding attorney's fees from Bravo to the Gibbonses without segregating claims?

Holding: (1) No and (2) yes. (1) The court holds that KLove did pay for the services, but they paid Gibbons instead of Bravo due to Bravo's breach of the security agreement, which stated that Gibbons could accept payment for work in case of non-payment of the agreement. (2) The Gibbonses only prevailed on 2 of the 4 breach of contract claims, and in his affidavit on attorney's fees, their attorney did not attempt to segregate the claims or show why they could not be segregated. Reversed and remanded only for the portion of the trial court's judgment ordering attorney's fees for the Gibbonses for expenses related to trial. Affirmed as to the rest of the trial court's judgment, including the Gibbons parties' conditional appellate attorney's fees.

-Subject Matter Jurisdiction

[Giddy Holdings, Inc. v. Alpha Five Constr., LLC](#), No. 03-23-00659-CV, [2025 WL 2476170](#)
(Tex. App. Aug. 28, 2025)

Plaintiff's pleadings did not affirmatively request damages outside court at law's jurisdiction – reversed and remanded

Facts: Giddy Holdings alleged claims for breach of contract, breach of the duty of good faith and fair dealing, fraud, tortious interference with contract, unjust enrichment, and statutory violations of Texas Civil Practice & Remedies Code Chapter 12, which governs fraudulent liens. In addition, Giddy Holdings sought a declaratory judgment that Alpha Five's lien was unenforceable and invalid. Giddy pled for damages "within the jurisdictional limits of the Court"— "monetary relief of over \$100,000 but less than \$1,000,000." Alpha Five filed a plea to the jurisdiction asserting that the case should be transferred to district court because it sought "base damages of over \$195,000 and matching exemplary damages under [its] fraud claims, thus exceeding the \$250,000 jurisdictional limits" of the county court at law in its counterclaim. Alpha Five subsequently filed an amended plea to the jurisdiction. Although Alpha Five acknowledged that Giddy Holdings had not specified its exact damages, Alpha Five argued that Giddy Holdings had pleaded itself out of the court's jurisdiction by alleging that it sought damages of over \$100,000 but less than \$1,000,000 and by its factual allegations. Giddy Holdings filed its own plea to the jurisdiction arguing that Alpha Five's jurisdictional allegations did not establish on the face of the pleading that the amount in controversy for Alpha Five's counterclaim is over \$250,000, and even if it were over \$250,000, Alpha Five's counterclaim did not affect the county court's jurisdiction over Giddy Holdings' claims. In response to the amended plea, Giddy Holdings amended its petition and added this statement to the damages allegation quoted above: "The actual damages sought by Giddy [Holdings] are less than \$250,000." At the hearing on the pleas to the jurisdiction, the trial court granted Alpha Five's plea to the jurisdiction, indicating that the basis for the ruling was Giddy Holdings' claim for

restitution and its allegation of the amount that it had paid to Alpha Five. The trial court subsequently signed an order granting Alpha Five's plea to the jurisdiction and dismissing Giddy Holdings' claims without prejudice for lack of jurisdiction.

Issues: Did the trial court err in dismissing Giddy's original petition as it did not expressly allege damages outside the county court at law's statutory limit and given that its amended petition affirmatively alleged that the actual damages sought were less than \$250,000?

Holding: Yes. The 3rd Court of Appeals held that the county court at law had jurisdiction to consider Giddy Holdings' claims and reversed the county court at law's order dismissing Giddy Holdings' claims against Alpha Five for want of jurisdiction. The court remanded the case to the county court at law. The court applied a liberal interpretation of Giddy's pleadings to favor jurisdiction if possible. "Giddy Holdings' lack of a specific allegation in its original petition of a sum certain that was owed to it under its restitution claim is not fatal to the trial court's jurisdiction. We conclude that Giddy Holdings' allegations in its original petition, and specifically its allegation seeking restitution of the amount it paid Alpha Five in excess of the benefit it received, did not affirmatively negate the existence of jurisdiction." Further the Court ruled that "to the extent that Giddy Holdings' original petition was defective because it failed to state a proper range of the damages sought, or to state a sum certain that it sought, and thus Giddy Holdings did not affirmatively demonstrate the county court's jurisdiction, it should have been afforded the opportunity to amend its petition, and therefore, the county court should have considered Giddy Holdings' allegations in its amended petition. Those amendments to its petition cured any defects by clarifying that it sought actual damages that "are less than \$250,000." The court also affirmed Giddy's other issues regarding conferring jurisdiction. The trial court's order was reversed and the case remanded.

-Tortious Interference

[Victoriano Mendoza, Appellant v. Aaron A. Felix Sanchez, Appellee](#), No. 08-24-00402-CV, [2025 WL 3164673](#) (Tex. App. Nov. 12, 2025)

Tortious interference proven – trial court's judgment affirmed

Facts: In October 2022, Alex Montoya and Mendoza contracted the purchase of a piece of Montoya's land in exchange for \$120,000 from Mendoza, consisting of \$65,000 in cash and a BMW worth \$55,000. Montoya listed the BMW for sale on Facebook, and he sold it to Felix for \$36,200, consisting of \$10,000 in cash and an off-road vehicle worth \$20,200. A week later, Mendoza learned that Montoya had not had clear title to the land, and he demanded Montoya return the cash and the BMW. Montoya had the BMW towed from Felix's residence, and when Felix called 911 to report it as stolen, he was told it had been repossessed. Mendoza sued Montoya for breach of contract, fraud, and unjust enrichment and filed a lien against the title of the BMW. A bench trial on the right of possession was held in El Paso Municipal Court at Law, which ordered that the BMW be returned to Felix. When Felix attempted to title the BMW in his name, he learned of the lien and the lawsuit filed against Montoya. Felix filed an intervention in the Mendoza v. Montoya lawsuit. Felix's claims against Mendoza were tried in a bench trial, and the trial court ordered the BMW to be titled in Felix's name, the lien to be released, and awarded Felix costs and damages.

Issue: Did the trial court err in finding that Mendoza willfully and intentionally interfered with an existing contract?

Holding: No. The record shows that all four elements of tortious interference were proven. Mendoza had actual knowledge of the contract between Montoya and Felix for the sale of the BMW and intentionally interfered with it by having the BMW towed. Felix, after being named by a court as rightful owner, was kept from titling it in his name, and he was deprived of use of the BMW for 9 months and it decreased in value by \$8000 in that time period. Affirmed.

CRIMINAL LAW

-Ability to Pay

[Brimzy v. State](#), No. PD-0101-25, [2025 WL 3029267](#) (Tex. Crim. App. Oct. 30, 2025)

State must prove a probationer's ability to pay only if nonpayment is the sole ground alleged in revocation proceedings

Facts: Brimzy pled guilty to a lesser offense—misdemeanor assault on a family member—and received one year of deferred-adjudication community supervision. The trial court later extended her deferred adjudication for another year. During the extended period, the State filed a motion to adjudicate guilt, alleging that Brimzy: (1) Committed a new criminal offense, (2) Failed to participate in anger management training, and (3) Failed to pay community supervision fees and other monetary obligations. Brimzy pled not true to all allegations. At the hearing, the State abandoned the new offense allegation but proceeded with the other two (anger management and nonpayment). The trial court ultimately adjudicated Brimzy guilty and sentenced her to one year in jail. However, the court's written order listed only the failure to pay fees as the basis for adjudication.

Issue: Does the failure-to-pay statute (CCP Art. 42A.751(i)) apply to adjudication proceedings where the State alleges nonpayment and additional non-monetary grounds, but the trial court adjudicates solely on the nonpayment ground?

Holding: No. The Texas Court of Criminal Appeals held that Article 42A.751(i) requires the State to prove a probationer's ability to pay and failure to pay court costs and fees only if nonpayment is the sole ground alleged by the State in an adjudication/probation revocation proceeding. "Here, the motion to adjudicate alleged grounds in addition to Appellant's nonpayment of supervision fees; indeed, the State pursued those additional grounds in the revocation/adjudication hearing. Under these circumstances, Art. 42A.751(i) does not assign an additional burden of proof to the State—even where, as here, the trial court ultimately ordered

adjudication based on the nonpayment ground alone.” This decision settles a split on the issue among several appellate courts.

-Age finding

[Gonzalezsarcono v. State](#), No. 02-25-00042-CR, [2025 WL 2736521](#) (Tex. App. Sept. 25, 2025)

No affirmative finding for victim under 17 for online solicitation of a minor

Facts: Gonzalezsarcono pleaded guilty to the offense of online solicitation of a minor, and the trial court sentenced him to eight years’ confinement. On the judgment, the trial court made an Article 42.015(a) finding that the victim was younger than 17 years of age. For certain offenses, Article 42.015(a) charges the trial court to make an affirmative finding regarding the age of the victim. The Article provides that:

In the trial of an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 17 years of age at the time of the offense. *Tex. Code Crim. Proc. Ann. art. 42.015(a).*

Texas Penal Code Section 20.02 concerns unlawful restraint, Section 20.03 is for kidnapping, and Section 20.04 is for aggravated kidnapping. Tex. Penal Code Ann. §§ 20.02, .03, .04. The offense of online solicitation of a minor is found in Penal Code Section 33.021.

Issues: (1) Is an Article 42.015(a) finding unauthorized for the offense of online solicitation of a minor, and (2) is the evidence is insufficient to support the finding?

Holding: Yes at to both issues. The Second Court of Appeals reversed the trial court's finding. “Because online solicitation of a minor is not among the enumerated offenses in Article 42.015(a), we will reform the judgment by deleting the finding.” The trial court’s judgment was affirmed as modified.

-Appellate Jurisdiction

[Burton v. State](#), No. 14-25-00307-CR, [2025 WL 2447796](#) (Tex. App. Aug. 26, 2025)

Grant of new trial restores case to position prior to trial and appellate court has no jurisdiction after new trial granted

Facts: Burton was convicted of aggravated sexual assault and filed a notice of appeal on 4/17/25. The trial court granted Burton’s motion for a new trial on 6/27/25, and then the State filed a notice of appeal from the order granting the new trial on 7/9/25. The parties were notified

that Burton’s appeal would be dismissed, and the State and Burton together filed a “joint motion to retain jurisdiction.”

Issue: Can the court retain jurisdiction on both appeals?

Holding: No. Because granting the motion for new trial restores the case to its position before the former trial, Burton’s appeal is rendered moot. An appellant does not forfeit his right to challenge a conviction. However, his appeal could only continue if the court reverses the order granting the new trial. The court denies the joint motion to retain jurisdiction and dismisses Burton’s appeal.

-Civil Commitment

[IN RE: THE COMMITMENT OF RUSSELL LEE LAIRD](#), No. 14-24-00555-CV, [2025 WL 2962584](#) (Tex. App. Oct. 21, 2025)

Evidence legally sufficient to declare respondent a sexually violent predator

Facts: The State filed a civil petition to commit Laird for involuntary treatment and supervision as a sexually violent predator under the Texas Health & Safety Code. Laird, age 56 at trial, spent 25 years in prison for sexual offenses against five children aged fourteen and younger. His convictions included aggravated sexual assault of a ten-year-old girl and four convictions for indecency with boys by sexual contact, with offenses occurring between 1991 and 1999. At trial, two witnesses testified: Laird and Dr. Stephen Thorne, a forensic psychologist. Laird admitted to some offenses but denied sexual attraction to children and denied some details of the offenses. He claimed his offending was due to curiosity and low self-esteem, and stated he did not believe he was at risk of reoffending. Dr. Thorne reviewed Laird’s records, interviewed him, and testified that Laird had a history of sexual deviancy, had reoffended while on probation, and had protective factors (age, family support, employability, no obvious psychiatric illness, no substance abuse). Thorne diagnosed Laird with pedophilic disorder and adult antisocial behavior and opined that Laird had a behavioral abnormality making him likely to engage in predatory acts of sexual violence. The jury unanimously found beyond a reasonable doubt that Laird is a sexually violent predator. The trial court adjudged Laird as a sexually violent predator and signed an order civilly committing Laird for treatment and supervision the same day.

Issue: Was the evidence legally sufficient to support the jury’s finding that Laird suffers from a behavioral abnormality, making him likely to engage in predatory acts of sexual violence?

Holding: Yes. The 14th Court of Appeals affirmed the trial court's judgment. The court found the evidence legally sufficient. Dr. Thorne’s testimony, including Laird’s repeated sexual offenses after supervision and treatment, his denial of sexual attraction to children, and his diagnosis of pedophilic disorder, supported the jury’s finding. The court held that protective factors did not outweigh the evidence of behavioral abnormality, especially since Laird reoffended while those factors were present. The court rejected Laird’s arguments about his risk score, lack of certain

diagnoses, parole status, and lack of prison misconduct as insufficient to negate the jury's finding. Affirmed.

-Competency Restoration

[In the Matter of J.D.](#), No. 02-25-00168-CV, [2025 WL 3181152](#) (Tex. App. Nov. 13, 2025)

Commitment order was valid for forced-medication – defendant lacked capacity and forced medication in his best interest.

Facts: Jack was arrested for possession of a controlled substance and found incompetent to stand trial. Under court order, he was committed to the North Texas State Hospital on 11/7/24. His physician at the hospital filed an application with the probate court to authorize the forced administration of psychoactive medication on 12/3/24, and a hearing on the matter was held on 2/4/25. His doctor testified that Jack had been diagnosed with delusional disorder and prescribed Zyprexa to help with the delusions. Jack testified at the hearing, as well as making over 20 outbursts while his doctor was testifying. The probate court ordered the administration of the medication.

Issue: (1) Does a §46B.073 order satisfies § 574.106(a)? Does § 574.106(a-1)(1) apply to criminal-commitment patients? (3) Was the evidence sufficient regarding capacity and best-interest findings?

Holding: The 2nd Court of Appeals affirmed. The court held Art. 46B.073 commitment satisfies § 574.106(a). The statute requires only a “court order to receive inpatient mental-health services,” and expressly applies to orders issued “under this chapter or other law.” Art. 46B.073 fits within “other law.” Prior Fort Worth cases have repeatedly treated 46B.073 orders as sufficient. The commitment order was a valid predicate for forced-medication proceedings. The court also held that the evidence was sufficient on lack of capacity. Jack’s delusional disorder, refusal to acknowledge mental illness, irrational refusal of medication, inability to recognize risks and benefits, and impaired judgment established lack of capacity under § 574.101(1). Jack’s testimony was disorganized, contradictory, and paranoid. Dr. Shah testified no alternative treatments existed. Because either capacity OR dangerousness is sufficient, the court did not reach dangerousness. The court also rule that the evidence was sufficient on best interest. Of the seven required factors five favored forced medication (risks/benefits, consequences without treatment, prognosis with treatment, lack of alternatives, inability to secure voluntary compliance), one weighed against (Jack opposed medication) and one was neutral (no evidence of religious objections). Dr. Shah testified untreated delusions risked worsening mental and physical health; Zyprexa would reduce symptoms and allow participation in competency restoration. The probate court could reasonably find medication was in Jack’s best interest. The court also overruled Jack’s ineffective assistance claim and his recusal/disqualification claim.

-Confrontation Clause

[CHAMPAGNE SMITH, Appellant v. THE STATE OF TEXAS](#), No. PD-0230-24, [2025 WL 3236509](#) (Tex. Crim. App. Nov. 20, 2025)

Facts: Smith was indicted for aggravated assault and tried in January 2023. During the trial, the court required all participants, including witnesses, to wear surgical masks at all times, except when necessary for in-court identifications. Smith's counsel objected to the mask mandate on Sixth Amendment grounds, arguing that masking hindered the jury's ability to assess witness credibility by observing facial expressions. The objection was overruled, and the two key witnesses to the assault testified while masked. Smith was subsequently convicted. On appeal, the Fourteenth Court of Appeals reversed and remanded the conviction, finding that the mask mandate violated Smith's constitutional right to confrontation. The appellate court emphasized that concealing facial features impairs the fact-finder's ability to evaluate witness demeanor, citing *Romero v. State* and other precedents. When considering whether this constitutional error was harmless, the court relied on a procedural rule that places the burden on the State to show harmlessness beyond a reasonable doubt. Because the State did not substantively address the issue of harm in its brief, the court presumed harm and reversed the judgment.

Issue: Did the trial court's requirement for witnesses to wear masks while testifying violate the Confrontation Clause?

Holding: Yes. The Court of Criminal Appeals agreed that the trial court's mandatory masking policy violated Smith's Sixth Amendment right to confrontation, as it did not make any case-specific findings of necessity or individualized determinations for masking. However, the Court held that the appellate court erred by applying a rule of default and presuming harm solely because the State did not brief the issue. The Court clarified that appellate courts have an independent duty to assess harmlessness under *Chapman v. California* and Rule 44.2(a), regardless of the State's briefing. The judgment was reversed and remanded to the Fourteenth Court of Appeals to determine whether the error was harmless beyond a reasonable doubt.

[Lapear O'Neal Willrich, Appellant v. The State of Texas, Appellee](#), No. 03-23-00804-CR, [2025 WL 3187164](#) (Tex. App. Nov. 14, 2025)

Confrontation Clause violated – admission of written statement of accomplice required ability to cross him

Facts: After Demarcus Trey Allen was found shot to death in his apartment, surveillance footage from inside that apartment showed that he exchanged gunfire with two masked individuals who had broken into the apartment. Jon Hunter Jervis was found in the getaway vehicle two weeks later, and his DNA was linked to the crime scene. Jervis told police that Willrich had been his accomplice in the home invasion and shooting. Another person involved, Chelsy Mistretta, could not identify Willrich and had previously identified him as Atlantic Johnson, the man from whom the getaway vehicle had been stolen. No physical evidence tied Willrich to the scene. His cellphone data was linked to the scene, but Willrich claimed it had

been stolen 2 weeks earlier. Willrich was convicted of capital murder by a jury and sentenced to life without parole. Jervis did not testify at the trial.

Issue: Was the evidence sufficient to uphold Willrich's conviction? Did the trial court violate the Confrontation Clause in allowing Jervis's statement naming Willrich as accomplice to be entered without Jervis testifying?

Holding: Yes and yes. The court holds that the circumstantial evidence, including his phone's location pings and the wound on his arm, were sufficient to prove that Willrich was one of the gunmen involved in the murder. However, the submission by the detective of Jervis's written statement that Willrich was the other shooter, without the opportunity to cross-examine Jervis, is held to be a violation of the Sixth and Fourteenth Amendments to the U.S. Constitution. That statement was crucial to the State's case and was the only direct evidence identifying Willrich as the second gunman. The testimony of another accomplice contradicted the circumstantial evidence, and the State offered no other direct physical evidence, such as fingerprints or DNA to prove that Willrich was the other shooter. Reversed and remanded for new trial.

-Deadly Weapon

[HAROLD LOWDINS, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 14-24-00406-CR, [2025 WL 2962593](#) (Tex. App. Oct. 21, 2025)

Box cutter is a deadly weapon

Facts: The victim was walking in downtown Houston when Lowdins approached her and asked her to walk with him. He took her under a freeway overpass, pulled a box cutter, and forced her to perform various sex acts over the course of several hours. When she was permitted to leave, she approached Houston police and was taken to the hospital, where forensic exams were performed. The DNA found on her matched DNA collected from a buccal swab of Lowdin, and when arrested, he was carrying the box cutter she had described. Lowdin was convicted by a jury.

Issue: Was there sufficient evidence to show Lowdins used a deadly weapon in commission of the assault? Did the trial court err in allowing the knife to be called a deadly weapon without defining the term in the jury charge?

Holding: Yes and no. Lowdins's five appellate issues center around whether the box cutter/knife is a deadly weapon. The victim testified that Lowdin held the weapon on her throughout the attack, and a reasonable juror could have found that the knife was used in a manner capable of causing death or serious bodily injury. The court holds that the definition of a deadly weapon is common enough for a jury to understand without separate definition, and the jury had to believe beyond reasonable doubt that the State proved it was a deadly weapon. Finally, because the deadly weapon instruction was not needed, his counsel did not cause egregious error in not requesting that it be included in the charge. Affirmed.

[White v. State](#), No. 02-24-00404-CR, [2025 WL 3248104](#) (Tex. App. Nov. 20, 2025)

Deadly weapon finding cannot be based on the defendant’s “use” of a weapon to facilitate a felony other than the felony of conviction. Deadly weapon finding deleted.

Facts: White, a previously convicted felon, was prohibited from possessing a firearm outside his residence. In 2022, he worked as a security guard and carried a firearm to his job. During a workplace altercation, he fired the gun near another man’s head. The State indicted White for two counts of aggravated assault and one count of a felon’s unlawful possession of a firearm. The State later dismissed the aggravated-assault counts, and the case proceeded to trial solely on the unlawful-possession count. The jury found White guilty of unlawful possession and also found that he “used” a deadly weapon during the commission of the offense. The trial court entered a deadly-weapon finding and sentenced White—also found to be a habitual offender—to life imprisonment.

Issues: Can a deadly-weapon finding may be based on the defendant’s use of a weapon to facilitate a felony other than the felony of conviction (here, aggravated assault rather than unlawful possession)?

Holding: No. The 2nd Court of Appeals held that the deadly-weapon statute requires that the weapon’s “use” facilitate the felony offense of conviction, not a different felony—even if the other felony occurred during the same transaction. Because White’s conviction was solely for unlawful possession of a firearm, and mere possession does not constitute “use” unless it facilitates that possession-based offense, the deadly-weapon finding was not legally supportable. The trial court therefore erred in entering it. The court reformed the judgment to delete the deadly weapon finding.

-Dismissal with Prejudice

[THE STATE OF TEXAS v. IVAN GABALDON](#), Appellee, No. PD-0149-23, 2025 WL _____ (Tex. Crim. App. Sept. 3, 2025)

Dismissal with prejudice not necessary when speedy trial rights weren’t violated – trial court exceeded its authority

Facts: Gabaldon was initially indicted for murder following the stabbing death of an individual in El Paso. After his arrest, Gabaldon’s counsel repeatedly requested discovery and asserted readiness for trial, while the State delayed providing evidence and sought continuances, citing reasons such as incomplete forensic testing and missing witnesses. Gabaldon moved for dismissal on speedy trial grounds. In response, the State dismissed the murder indictment and reindicted the defendant for capital murder, announcing its intent to seek the death penalty. Gabaldon then moved to dismiss the new indictment, alleging prosecutorial vindictiveness—arguing that the State escalated the charges in retaliation for his assertion of speedy trial rights. The trial court found the State’s justifications not credible, determined that the reindictment was

vindictive, and dismissed the case with prejudice. The State appealed, and the Eighth Court of Appeals affirmed, agreeing that the State acted vindictively and that dismissal with prejudice was warranted to neutralize the taint.

Issue: Did the trial court abuse its discretion by dismissing the case with prejudice?

Holding: Yes. The Court of Criminal Appeals reversed the court of appeals. The court held that, while the record supported a finding of prosecutorial vindictiveness, dismissal with prejudice was not necessary to neutralize the constitutional violation because Gabaldon's speedy trial rights were not actually violated. The court concluded that the trial court exceeded its authority and modified the dismissal to be without prejudice, allowing the State to reindict Gabaldon for murder or a lesser-included offense at its discretion. The judgment of the Eighth Court of Appeals was reversed.

-DNA Testing

[LUZALBERT HERNANDEZ, Appellant v. THE STATE OF TEXAS](#), No. PD-0836-24, [2025 WL 2713312](#) (Tex. Crim. App. Sept. 24, 2025)

Unless agreed by the State, an unsworn motion under TRAP 4.6 cannot served as a notice of appeal

Facts: Hernandez was convicted of engaging in organized criminal activity and aggravated assault with a deadly weapon. He filed three post-conviction motions under Chapter 64 of the Texas Code of Criminal Procedure, seeking DNA testing on a golf club used in the offense. The trial court denied all three motions, finding that identity was not an issue and that exculpatory DNA results would not have affected the outcome. Hernandez received notice of the denial of his third motion several months after the order was signed. The Thirteenth Court of Appeals previously affirmed the trial court's denial of the first two DNA testing motions. When Hernandez attempted to appeal the denial of his third motion, he filed two separate motions for extension of time to file his notice of appeal: one under Texas Rule of Appellate Procedure 4.6, which is specific to DNA appeals, and another under Rule 26.3, which applies generally to criminal appeals. The Rule 26.3 motion was filed in the court of appeals, while the Rule 4.6 motion was filed in the trial court. The court of appeals dismissed the appeal for want of jurisdiction, noting that the notice of appeal was untimely and that the Rule 4.6 motion was pending in the trial court.

Issue: Can an unsworn motion under Texas Rule of Appellate Procedure 4.6 serve as a notice of appeal of a trial court's ruling on a Code of Criminal Procedure Chapter 64 DNA testing request?

Holding: Not unless the State agrees. A Rule 4.6 motion for extension of time may serve as a notice of appeal of trial court's ruling on a Chapter 64 DNA testing request if the motion meets certain requirements, including that it be sworn or include an unsworn declaration. Failure to swear to a Rule 4.6 extension motion is a procedural defect that is fatal unless the State agrees to the motion and waives the defect. Here, Hernandez's Rule 4.6 extension motion was fatally defective because it was unsworn and the record does not show that the State agreed to the motion or was even served with it. Further, Hernandez's argument that his unsworn Rule 4.6

extension motion automatically vested the trial court with jurisdiction to rule on the defendant's Chapter 64 DNA-testing motion was immaterial because the trial court's jurisdiction was not at issue; rather, only the appellate court's jurisdiction was contested, and Hernandez's defective Rule 4.6 extension motion did nothing to invoke the appellate court's jurisdiction. The court of appeals holding was affirmed.

-Double Jeopardy

[NATHAN SANGABRIEL, Appellant, v. THE STATE OF TEXAS, Appellee.](#), No. 13-24-00006-CR, [2025 WL 2470214](#) (Tex. App. Aug. 27, 2025)

Double jeopardy rights perhaps violated but issue not preserved for appeal

Facts: Sangabriel was convicted by a jury of continuous violence against the family, a third-degree felony; aggravated assault causing serious bodily injury, a second-degree felony; and assault-family violence by impeding breath or circulation, a third-degree felony for two assaults on his wife on 12/25/21 and 7/31/22. After his conviction, he entered into an agreement for the trial court to assess punishment and for the State to recommend 4 years' confinement.

Issue: Were Sangabriel's double jeopardy rights violated by convicting him of continuous violence and the two underlying assaults?

Holding: Maybe. In this case, Sangabriel did not raise the double jeopardy issue in the trial court. A double jeopardy violation may be raised for the first time on appeal only if (1) the violation is apparent from the face of the record, and (2) enforcement of the usual rules of procedural default would serve no legitimate state interest. *Gonzalez v. State*, 8 S.W.3d 640, 643 (Tex. Crim. App. 2000). But prior to the punishment phase, Sangabriel entered into the plea agreement of which he complains in the appeal. Therefore, assuming, but not deciding, that there is a double jeopardy violation apparent on the face of the record, the court overrules it as not preserved for appeal. The court does alter the written judgment to reflect the verbal judgment that the sentences run concurrently and to amend the dates of the offenses. Affirmed except as modified.

[Alvarez v. State](#), No. 13-24-00347-CR, [2025 WL 3028183](#) (Tex. App. Oct. 30, 2025)

State can get conviction on two crimes but only one crime can be entered

Facts: Alvarez drove his car into a crowd of people, killing 8 and injuring 10. He was indicted for eight counts each of intoxication manslaughter and manslaughter, as well as ten counts of aggravated assault with a deadly weapon for the ten people injured. After the jury was sworn in, Alvarez pleaded guilty to every charge except the eight counts of intoxication manslaughter, but over Alvarez's objection on grounds of double jeopardy, the State proceeded trial on the intoxication manslaughter charges. The jury found Alvarez guilty of intoxication manslaughter, and after the judge dismissed the manslaughter charges, the jury assessed punishment on the remaining eighteen counts, totaling 60 years confinement.

Issue: Does double jeopardy bar his conviction for both manslaughter and intoxication manslaughter? Did the trial court commit error in continuing with a bifurcated proceeding instead of a unitary proceeding after Alvarez pleaded guilty to the manslaughter charges?

Holding: No and no. A multiple-punishment violation occurs at “entry of judgment” and not before. The State can prosecute for two crimes, both can be submitted to the jury and the jury can convict on both. But only one can be entered. The trial court may have committed error in conducting the bifurcated proceeding instead of unitary proceeding, but it was harmless error. Alvarez also appealed on issues regarding his pre-trial confinement and bond, both of which were overruled. Affirmed.

[EX PARTE LOUIS ELIAS PULIDO](#), No. 09-25-00077-CR, [2025 WL 3221858](#) (Tex. App. Nov. 19, 2025)

No double jeopardy for prosecuting murder where defendant was previously prosecuted for reckless injury

Facts: In January 2009 Pulido was indicted for first-degree felony injury to a child (D.P.). In November 2010 he pleaded guilty to lesser-included offense of reckless injury to a child (second-degree felony) and placed on 5-year deferred adjudication community supervision. In January 2016 he successfully completed deferred adjudication and was discharged. D.P. remained alive until 2022, when he died (presumably from the earlier injuries). In April 2024 Pulido was indicted for felony murder (committing the felony of injury to a child and, in the course thereof, committing an act clearly dangerous to human life). Pulido filed a pretrial application for writ of habeas corpus, arguing the murder prosecution is barred by double jeopardy and collateral estoppel because it is based on the same conduct for which he already pleaded guilty and completed deferred adjudication. The trial court denied the writ.

Issues: (1) Does double jeopardy bar the current murder prosecution where Pulido was previously prosecuted (via guilty plea and successful deferred adjudication) for reckless injury to a child arising from the same conduct, but the victim did not die until years later? (2) Does collateral estoppel bar the murder prosecution?

Holding: The Ninth Court of Appeals affirmed the trial court’s denial of habeas relief. The court held that neither double jeopardy nor collateral estoppel bars the murder prosecution. Under *Blockburger* and the cognate-pleadings approach, reckless injury to a child is a lesser-included offense of the charged felony murder. Normally, prosecuting the greater offense after the lesser would violate double jeopardy. However, the *Diaz* exception applies: the murder offense was not complete (and Pulido was not in jeopardy for murder) until D.P. died in 2022. Death is an essential element of murder that did not exist at the time of the 2009–2016 prosecution. A defendant cannot be placed in jeopardy twice for an offense when he was never in jeopardy the first time because a necessary fact (death) had not yet occurred. A multiple-punishments double-jeopardy claim is not cognizable on pretrial habeas because it does not deprive the trial court of power to proceed or entitle defendant to immediate release; the remedy would be vacating one conviction after trial. Collateral estoppel does not apply because Pulido pleaded guilty in the first case — no fact was litigated and necessarily decided in his favor. Tex. Penal Code § 22.04(h) expressly authorizes prosecution under both the injury-to-a-child statute and another

statute (such as murder) for the same conduct. The murder prosecution may proceed. The trial court's order denying habeas corpus affirmed.

-Evidence

[Woolsey v. State](#), No. 14-23-00446-CR, [2025 WL 2414172](#) (Tex. App. Aug. 21, 2025)

Exclusion of defendant's pretrial offer to plead guilty to lesser of manslaughter was error but harmless error in this case

Facts: A jury acquitted Woolsey of murder, found her guilty of manslaughter, and assessed a punishment of five years' confinement. She contends that the trial court reversibly erred by denying her motion for a directed verdict on the murder charge and, during the punishment phase, excluding evidence of her pretrial offer to plead guilty to manslaughter.

Issues: (1) Did the trial court err by denying the motion for directed verdict on the murder charge and (2) did the trial court err in excluding evidence of Woolsey's pretrial offer to plead guilty to manslaughter?

Holding: No as to Issue #1 and Yes as to Issue # 2. The 14th Court of Appeals held that the trial court did not err in denying the motion for directed verdict on the murder charge. The court held that "[e]very Texas court of appeals to address this issue, including this one, has held there was no harm from a trial court's erroneous denial of a directed verdict on a charged offense when the jury did not find the defendant guilty of the charged offense but instead found the defendant guilty of a lesser-included offense" (citations omitted). As this was the case here, the court affirmed the denial of the motion for directed verdict. Regarding the exclusion of Woolsey's pretrial offer to plead guilty to manslaughter, the court held that it was error for the trial court to excluded this evidence the exclusion of the evidence was harmless and thus not reversible. The court held the evidence was relevant under Rules 401 and 410 and not excludable under Rule 403. However, the exclusion was harmless given that the State did not put on any aggravating evidence during punishment and the jury was allowed to hear ample evidence of Woolsey's acceptance of responsibility for the crime and other mitigation evidence. The trial court's judgment was affirmed.

[DENISE NICOLE JONES, Appellant, v. THE STATE OF TEXAS, Appellee.](#), No. 13-24-00651-CR, [2025 WL 2484980](#) (Tex. App. Aug. 28, 2025)

No requirement for State to scientifically prove substance is marijuana vs. hemp – state proved "usable quantity" by circumstantial evidence

Facts: A jury convicted Jones of possessing marijuana in an amount that was two ounces or less, a Class B misdemeanor, and assessed her a \$1,000 fine, but no jail time. The substance seized from Jones was not produced at trial because it had already been destroyed. No scientific testing was performed to prove the substance was marijuana. Only the arresting officer's testimony that the substance was marijuana was admitted at trial. Jones did not file any pretrial motion or lodge an in-trial objection that law enforcement's retention policy frustrated her right to independently test the substance.

Issues : (1) Is the state required to prove with scientific certainty that the substance in question is marijuana, rather than hemp; (2) did the state fail to provide evidence that Jones possessed a “usable quantity” and the weight of the marijuana?

Holding: No as to both issues. The 13th Court of Appeals affirmed the conviction. The court held that the state is not required to prove with scientific certainty that a substance in question is marijuana rather than hemp. In this case, the jury could convict based on the totality of the evidence including the officer’s testimony that it was marijuana as indicated by the smell and appearance, Jones’ actions indicating a consciousness of guilt and her arguably self-incriminating statement. As to the issue of “usable quantity” the court held that the deputy’s testimony that Jones possessed “quite a few small buds” was sufficient evidence regarding “usable quantity.” The state admitted the marijuana was not weighed, which the court noted was unusual and could have been fatal in a higher level possession case, but held that the failure to provide a weight was not fatal to the conviction. “[B]ecause the State proved beyond a reasonable doubt that Jones knowingly or intentionally possessed a usable quantity of marijuana, the State necessarily proved that Jones possessed some “amount” of marijuana.” Affirmed.

[BETHANIEL JEFFERSON, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 14-23-00738-CR, [2025 WL 2471309](#) (Tex. App. Aug. 28, 2025)

Evidence sufficient of recklessly causing serious bodily injury- statute applies to all under duty to act not just parents or guardians of child

Facts: Jefferson operated her own dental practice as a licensed dentist in Texas. At 4:29 p.m. on January 7, 2016, she called 911 because the four-year-old child she was performing a dental procedure on, N.H., had suffered multiple seizures. N.H. was transported to a hospital and ultimately diagnosed with brain damage resulting from hypoxia—an absence of oxygen. As a result, N.H. is now fully dependent on caretakers and unable to eat, speak, or walk. Jefferson was indicted for knowingly causing injury to N.H. by omission. The State alleged that Jefferson had a statutory duty to act pursuant to Texas Administrative Code § 108.7 and that she knowingly by omission caused serious bodily injury to N.H., a child younger than fifteen years of age, by failing to timely call 911 to seek emergency medical services. Jefferson pleaded not guilty and proceeded to trial before a jury. The jury found Jefferson guilty of the lesser included of recklessly causing serious bodily injury to N.H., assessed punishment at ten years imprisonment, and recommended that sentence be suspended in lieu of community supervision. The trial court accepted the jury’s recommendation of community supervision and placed Jefferson on community supervision for five years, and suspended her ten-year sentence.

Issue: Was the evidence sufficient that (1) Jefferson was consciously aware of the risk of failing to call 911 sooner and (2) Is injury to a child by omission applicable to professionals and not just parents and guardians?

Holding: Yes. The 14th Court of Appeals affirmed the jury verdict. The court found that the evidence supported a finding that Jefferson knowingly ignored a significant and unreasonable risk of harm to N.H. that caused serious bodily injury if she did not call 911. The court also

rejected Jefferson’s argument that the statute only applied to parents or guardians. “[C]ontrary to appellant’s arguments, the statute’s plain language contains no such limitation and instead explicitly provides that it applies to anyone under a legal or statutory duty to act, not just parents or guardians.” Affirmed.

[AUBREY FLOYD HART SR., Appellant, v. THE STATE OF TEXAS, Appellee.](#), No. 13-24-00075-CR, [2025 WL 2456535](#) (Tex. App. Aug. 26, 2025)

“On or about” jury instruction adequate and no evidence that defendant made any effort to notify authorities of new address

Facts: Hart was arrested on an offense, not the underlying sex offense, on 2/13/23. After he was released from jail, he was unable to return to his former residence due to a court order. Hart’s nephew, Bo, discovered several days after the arrest that Hart had moved to St. Louis, MO, and had set up a Facebook page under the name of Bo’s father, Hart’s brother. Bo’s father provided Hart’s location to law enforcement, and Hart was arrested in Missouri by U.S. Marshalls. Hart was indicted on 6/6/23 for failure to register change of address as a sex offender, and after trial, he was sentenced to 99 years confinement.

Issue: Did the trial court err in providing “on or about” instructions to the jury? Did the State fail to establish that Hart intended to change his address seven days before his move?

Holding: No and no. In this matter, the “on or about” instructions did not present a much broader chronological parameter than permitted by law. The indictment in this case was not specific to a particular reporting period. As to failing to establish that Hart did or did not intend to change his address, while the court admits Hart could not have known 7 days before his arrest that a protective order would prevent him from returning home, the record does not show any effort made between February and April 2023 to inform authorities that he was living in Missouri under an alias. Affirmed.

[Gonzales v. State](#), No. 03-24-00376-CR, [2025 WL 2621566](#) (Tex. App. Sept. 11, 2025)

Forensic interviewer qualified to testify – must object to failure of trial court to offer allocution at the time of allocution

Facts: During an “Adam and Eve” talk, J.T. (then age 8), outcried to her Mother that Gonzales (then Mother’s fiancé), had shown her videos of “a boy’s middle going into a girl’s middle” “multiple times” and had put his “finger in her middle.” A grand jury indicted Gonzales on two counts of continuous sexual abuse of a child—one alleging abuse of J.T., the other alleging abuse of R.T. Maggie Ortuno a forensic interviewer who interviewed the alleged victims testified about child sexual abuse and investigations, including delayed outcries, types of disclosures by children of abuse, grooming, and coaching. Gonzales objected to her testimony as an expert. Defense counsel stated that Ortuno “had a problem with the scientific method,” “hasn’t published any articles,” and “doesn’t know what the potential rate of error” is for the studies she relies on; he also stated her testimony “might be more confusing to the jury than helpful.” The trial court overruled the objections, designated Ortuno as an expert witness in child-sexual-abuse investigations and interviews and permitted her to testify The jury found

Gonzales guilty of both counts of continuous sexual abuse and the trial court sentenced him to 25 years' confinement on each count, stacked.

Issue: (1) Did the trial court abuse its discretion in permitting an unqualified "expert" to testify about patterns of behavior in victims of alleged child abuse to bolster the girls' testimony? (2) did the trial court violate Gonzales' right to due process by denying him the common-law right to allocution before sentencing?

Holding: No. The 3rd Court of Appeals affirmed the trial court's judgment. On Issue #1, the court held that the record supported findings that Ortuno qualified as an expert, that the subject matter of her testimony was an appropriate one for expert testimony, and that the expert testimony assisted the factfinder in deciding the case. There was no abuse of discretion under Rule 702. As to Issue #2, the court held that, although there is an absolute right to allocution under the law, Gonzalez failed to raise the issue with the trial court at the time of allocution and therefore waived his right to allocution. Affirmed.

[NATHAN GERARDO GARZA, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 14-24-00099-CR, [2025 WL 2797906](#) (Tex. App. Oct. 2, 2025)

Evidence from officer that defendant was untruthful must be excluded but harmless error in this case due to other overwhelming evidence of guilt

A jury convicted Garza of the first-degree felony offense of continuous sexual abuse of a child and the trial court assessed his punishment at 25 years in prison. The State's case was based on Artemis's allegations that Garza made her have sexual intercourse with him on three specific dates spanning a period longer than thirty days from January to March of 2021 while she was living with him, her mother (Samy), and her half-brother (Xeno) in a double-wide trailer home in Galveston County. On the third occasion, Garza was also alleged to have first forced Artemis to perform oral sex on him. Deputy Savage, who picked Artemis up in response to a 9-1-1 call, testified as an outcry witness roughly describing the acts and timeframes of these occurrences reported by Artemis. Later, the State called another detective who provided opinions that Garza was lying based on his background and experience and observations of Garza during his recorded interview.

Issues: (1) was there sufficient evidence to support the conviction despite evidence to the contrary? (2) did the trial court err in permitting a police officer to testify as an outcry witness; (3) did the trial court err in allowing a police officer to offer opinions on the credibility of appellant during his recorded interview?

Holding: The 14th Court of Appeals affirmed the trial court's judgment. As to Issue #1, the court, after a thorough review of all the evidence, held that there was sufficient evidence to uphold the conviction for continuous sexual abuse. Regarding Issue #2, the court ruled that "[b]ecause the record shows that appellant's trial counsel abandoned his objection to the designation of Deputy Savage, we hold the issue (outcry witness) was waived for appellate review." On Issue #3, the court concluded that "the trial court acted outside the zone of reasonable disagreement by allowing testimony exclusively devoted to conveying the opinion

that appellant was a liar in his recorded interview, because his methodology was and because his testimony was offered to decide the credibility issue for the jury based on his unique training and experience rather than assist them to understand the evidence or to determine a fact in issue. (citation omitted).” However, the court found that the error was harmless in this case. But the court warned trial courts that “[g]oing forward, trial courts should confine officers to what they actually observe under Texas Rules of Evidence 701, such as gestures, pauses, tone, and exclude an opinion that a witness is lying or “not truthful.” Stick with observations not diagnosis. The error is harmless here only because of the strength of the admissible proof. In a closer case this same conduct will warrant reversal.”

[PAUL-DAVID HALEY, Appellant v. THE STATE OF TEXAS, Appellee, No. 01-24-00835-CR, 2025 WL 2857120](#) (Tex. App. Oct. 9, 2025)

Vehicle met definition of “motor-propelled vehicle” because it was propelled by a motor regardless of poor condition and not having a working ignition

Facts: Haley was pulled over in a 2001 Ford F-250 truck for a defective headlight. The officer suspected upon seeing that the truck had no ignition and a damaged fuse box that the truck was stolen. Haley was arrested and charged with Unlawful Use of a Vehicle. He was convicted at trial and sentenced to 9 years in prison.

Issue: Is there sufficient evidence to prove that Haley was operating a “motor-propelled vehicle” under section 31.07 of the Texas Penal Code.

Holding: Yes. Haley argued that because the vehicle did not have an ignition and was in poor condition, so it did not meet the definition of a motor-propelled vehicle. However, all of the witness testimony and the body cam evidence established that the vehicle was being propelled by a motor prior to and after the traffic stop, so a rational juror could have found beyond a reasonable doubt that Haley operated a motor-propelled vehicle. Affirmed.

[Herbert Wayne Moten, Appellant v. The State of Texas, Appellee, No. 10-24-00183-CR, 2025 WL 2857533](#) (Tex. App. Oct. 9, 2025)

Jail phone calls from defendant to witness discovered Friday before trial admitted – not incriminating and admission did not affect substantial rights

Facts: Moten was indicted on the charge of causing serious bodily injury to Keiland Harris by stabbing or cutting him with a knife. More than seven months before trial began, Moten requested any audio recordings of himself or any witnesses in discovery. The Friday before trial began, after jury selection, the prosecutor discovered that there were recordings of two calls Moten made from jail to witness Teagan McGuire, which the prosecutor received the morning of trial. Moten objected that the production of this evidence was untimely, but the trial court overruled the objection and allowed the tapes to be played. Moten was found guilty by the jury and sentenced to 40 years confinement.

Issue: Did the trial court err in admitting evidence of phone calls he made while in jail?

Holding: No. The State was not aware of the phone calls until Teagan McGuire told prosecutors on the Friday before the trial began and did not receive them until the Monday morning trial began. The calls did not contain anything incriminating. The State did not refer to the calls in its

opening and only referred to them in closing because Moten raised the issue. The content of the calls was offered without objection from Moten. The trial court's admission of the jail phone calls did not affect Moten's substantial rights. Affirmed.

[Solis v. State](#), No. AP-77,109, [2025 WL 3029290](#) (Tex. Crim. App. Oct. 30, 2025)

Facts: Solis was stopped by a Harris County Sheriff's Deputy for a traffic violation. Solis, who was a convicted felon with an active warrant for a parole violation, was driving a car borrowed from his sister and was armed with her handgun. During the stop, Solis lied about his identity and, after his passenger left the scene, shot and killed the deputy at close range while the deputy was standing by his patrol car. Solis fled, disposed of the weapon, and was later apprehended at a nearby shopping center. At trial, he admitted to the shooting but claimed it was accidental, asserting he was attempting a citizen's arrest. The jury found Solis guilty of capital murder and, after considering evidence of his extensive criminal history and lack of remorse, answered the special issues in a manner that resulted in a death sentence. Solis represented himself at trial after waiving his right to counsel, but later unsuccessfully sought to withdraw that waiver and have counsel reappointed. He raised several points of error on appeal, including challenges to the sufficiency of the evidence, the denial of his request to withdraw his waiver of counsel, the admission of certain punishment-phase evidence, and the constitutionality of Texas's death penalty statute. The Texas Court of Criminal Appeals reviewed the case on direct appeal.

Issues: (1) Was the evidence sufficient for conviction? (2) Did the trial court err in denying Solis' request to withdraw his waiver of counsel? (3) Did the trial court err in admitting certain punishment phase evidence? (4) Is the Texas death penalty statute unconstitutional?

Holding: The Texas Court of Criminal Appeals held that the evidence was legally sufficient to support both the conviction for capital murder and the jury's finding of future dangerousness. It found no abuse of discretion in the trial court's denial of the request to withdraw the waiver of counsel, nor in the admission of the challenged evidence. The court also determined that the constitutional challenges to the death penalty statute were not preserved for review and, in any event, lacked merit. The conviction and sentence of death were affirmed.

[Mark Allen Gatten, Appellant v. The State of Texas, Appellee](#), No. 03-23-00654-CR, [2025 WL 3030591](#) (Tex. App. Oct. 30, 2025)

Sufficient non-accomplice evidence to corroborate accomplice testimony

Facts: The body of Charles Hardin was found in 1986, but after an investigation, no one was charged. In 2020, the Texas Rangers reviewed the case and charged Mark Gatten and Tracey Loy with capital murder. Loy pleaded guilty to murder and a 60 year sentence in exchange for his testimony against Gatten. At a jury trial, Gatten was found guilty of capital murder and given the mandatory sentence of life in prison.

Issue: Was there sufficient evidence to corroborate Loy's accomplice witness testimony? Was the evidence sufficient to show that Gatten caused Hardin's death?

Holding: Yes and yes. The jury in this case was presented with non-accomplice evidence from which it could have reasonably inferred that a murder and robbery occurred; that Gatten had

mean, motive, and opportunity to commit both offenses. There was substantial incriminating evidence other than Loy's statements and testimony. As to the second issue, the record shows that there was sufficient evidence that the murder occurred in the commission or attempt to commit robbery, and that Gatten was the only one who could have committed the murder. Affirmed.

[McKane v. State](#), No. AP-77,103, [2025 WL 3029298](#) (Tex. Crim. App. Oct. 30, 2025)

Facts: McKane, after a contentious visit to San Antonio Police Department headquarters regarding a child custody issue, returned later that day and fatally shot a police detective who was sitting in his patrol car. McKane was apprehended the following day by a SWAT team, and during and after his arrest, he made several incriminating statements to law enforcement, a detention officer, and a mental health assessor. At trial, McKane challenged the admissibility of these statements, arguing they were involuntary or obtained in violation of his rights. He also raised issues regarding jury selection, the presence of alternate jurors during deliberations, and the constitutionality of certain aspects of Texas's capital sentencing scheme. The jury convicted McKane of capital murder for killing a peace officer in the line of duty and, based on their answers to special sentencing issues, imposed a sentence of death. McKane raised multiple points of error on direct appeal to the Texas Court of Criminal Appeals, including claims that his statements should have been suppressed, that the State's peremptory strike of a Black venireperson was racially motivated, that the presence of alternate jurors during deliberations violated statutory and constitutional rights, and that the Texas capital sentencing statute is unconstitutional.

Issues: (1) Did the trial court err in not suppressing several incriminating statements? (2) Was the State's peremptory strike of a black venireperson racially motivated? (3) Did the presence of alternate jurors during deliberations violate statutory and constitutional rights? (4) Is the Texas capital sentencing statute unconstitutional?

Holding: The Texas Court of Criminal Appeals held that the trial court did not err in admitting the defendant's statements, as they were either voluntary or not the product of custodial interrogation. The court found no clear error in the trial court's rejection of the *Batson* challenge, concluding the State's reasons for the peremptory strike were race-neutral. The court determined that the presence of alternates during deliberations, while a statutory violation, was harmless error. The court also rejected the constitutional challenges to the sentencing scheme. The conviction and death sentence were affirmed.

[TAYLOR RENE PARKER, Appellant v. THE STATE OF TEXAS](#), No. AP-77,110, [2025 WL 3127402](#) (Tex. Crim. App. Nov. 6, 2025)

Evidence sufficient to find aggravated element of kidnaping or aggravated kidnaping in capital case

Facts: Parker was convicted of capital murder and sentenced to death after a jury found she intentionally killed a pregnant woman, Reagan Hancock, and removed the unborn child, Braxlynn, in the course of committing or attempting to commit kidnaping. The evidence showed Parker had a history of faking pregnancies and went to great lengths to convince her

boyfriend she was expecting a child, including purchasing a fake belly and staging events. On the day of the offense, she attacked Hancock, inflicted numerous fatal injuries, performed a crude C-section to remove the baby, and was later stopped by law enforcement with the infant, who was not breathing and later died.

Issues: Was the evidence sufficient to uphold the capital murder conviction regarding the aggravating element of kidnapping or attempted kidnapping?

Holding: Yes. Affirmed. On direct appeal the Court of Criminal Appeals affirmed the trial court judgment in all respects. The court reviewed twenty-five points of error, including challenges to the sufficiency of the evidence regarding the kidnapping element, pretrial publicity, evidentiary rulings, prosecutorial conduct, and the scope of expert testimony. The court held that the evidence was sufficient for a rational juror to find the aggravating element of kidnapping or attempted kidnapping, and that the trial court did not abuse its discretion in its evidentiary or procedural rulings. The court found no reversible error and affirmed the conviction and sentence of death.

[CARLOS LOBO, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 14-24-00443-CR, [2025 WL 3210274](#) (Tex. App. Nov. 18, 2025)

Forensic investigator proper outcry witness not first person to hear general outcry

Facts: Lobo was convicted of the first-degree felony of continuous sexual abuse of a young child for the abuse of his niece, Mary. In February 2016, Mary made an outcry statement to Linda Martinez, the ESL teacher's aide at her school. Later that day she spoke with Erika Gomez, the forensic investigator at the Children's Assessment Center in Houston. In that interview, Mary also disclosed that she had been sexually abused by Lobo in November 2015. Gomez was designated by the trial court as the outcry witness for both instances of abuse.

Issue: Did the trial court err in designating Gomez as the outcry witness for both instances of abuse?

Holding No. Although Mary made an outcry to Martinez regarding a solitary incident of abuse, she made an outcry to Gomez about multiple events of abuse which had occurred more than 30 days apart. Because Lobo was indicted and convicted of this charge, Gomez could serve as the outcry witness. Affirmed.

[DEMETRIO RODRIGUEZ, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 14-24-00464-CR, [2025 WL 3072635](#) (Tex. App. Nov. 4, 2025)

Defendant's porn searches admissible -relevant to and probative of offense charged

Facts: Rodriguez was charged with touching the genitals of his 12-year-old daughter, D.P., on two occasions—Thanksgiving 2019 and May 2020. During a clinic visit for stomach pain in May 2020, D.P. disclosed both incidents to the pediatrician. CPS investigator Leslie Burton, a Children's Advocacy Center interviewer, and a school counselor each received consistent

disclosures from D.P. Digital forensic analysis of Rodriguez’s cell phone revealed that, between May 10–12, 2020, he conducted extensive searches for incest-themed and father-daughter pornography, and his browser contained related bookmarks. Rodriguez objected under Rules 403 and 404(b) to this digital evidence. The trial court admitted it, and the jury convicted him of both counts, and he received two consecutive 13-year sentences.

Issues: (1) Did the trial court abuse its discretion in admitting appellant’s pornography-related search history under Rules 404(b) and 403? (2) Was the evidence legally sufficient to support the Count One conviction for indecency with a child by contact?

Holding: The 14th Court of Appeals affirmed the trial court’s judgment. The court held that the pornography-search evidence was admissible because it was highly probative of intent to arouse or gratify sexual desire, a required element of the offense, and Rodriguez failed to show unfair prejudice substantially outweighed this probative value. The evidence—including D.P.’s testimony and corroborating circumstantial evidence—was legally sufficient to support the conviction. Affirmed.

Fines and Court Costs

[VONQUALN RAASHAD FUGETT, APPELLANT v. THE STATE OF TEXAS, APPELLEE](#), No. 07-24-00361-CR, 2025 WL 2484195 (Tex. App. Aug. 28, 2025)

Fine must be orally pronounced at sentencing and indigent defendants cannot be assessed attorney’s fees.

Facts: Following pleas of not guilty, Fugett was convicted by a jury of two counts of indecency with a child by sexual contact. Punishment was assessed at concurrent sentences of fifteen years. Fugett was also assessed a fine of \$100 characterized as a “Child Abuse Prevention Fine” along with an assessment of attorney’s fees of \$840 in the Bill of Cost.

Issues: (1) Did the trial court err in assessing the \$100 fine as it was not announced at sentencing in open court and does such fine also violate the Double Jeopardy Clause and (2) Was the \$840 in attorney’s fees costs assessed in error due to his indigency?

Holding: As to Issue #1 the court held that the \$100 fine must be deleted as it was not orally pronounced during sentencing. As to Issue #2, the \$840 in attorney’s fees, although credited on the bill of costs are deleted entirely as well due to Fugett’s indigency. With these modifications, the trial court’s judgment was affirmed.

[Reyna v. State](#), No. 04-25-00217-CR, [2025 WL 2969309](#) (Tex. App. Oct. 22, 2025)

Fines not orally pronounced cannot be imposed

Facts: Reyna pled no contest to possession of a controlled substance (1-4 grams) and was sentenced to ten years’ confinement and a \$2,000 fine. The court suspended the sentence and

\$1,000 of the fine, placing Reyna on community supervision (probation) for three years. Court costs of \$325 were assessed. The State later moved to revoke Reyna's community supervision. Reyna admitted to violating a condition. The trial court revoked supervision and reformed the sentence to three years' confinement. No fine was orally pronounced at the revocation hearing. The written judgment revoking community supervision included a \$0 fine and \$2,325 in court costs. The judgment revoking community supervision also noted the original \$1,000 fine that was not probated. The bill of costs shows \$325 in properly assessed court costs and a \$2,000 general fine from the sentence assessed in the original plea hearing. Reyna argues the \$2,325 court costs improperly includes the \$2,000 fine previously assessed at Reyna's original plea hearing. The State concedes error.

Issue: Did the judgment revoking community supervision improperly include fines that were not orally pronounced at the revocation hearing?

Holding: Yes. The 4th Court of Appeals held that When there is a conflict between the oral pronouncement and the written judgment, the oral pronouncement controls. A non-probated fine pronounced at the original plea hearing may be included in the final judgment, even if not repronounced at the revocation hearing, as long as the defendant was placed on regular community supervision (not deferred adjudication). The trial court erred by including the entire \$2,000 fine in the assessment of court costs in the judgment revoking community supervision. The court modified the judgment to delete the \$2,000 fine from the court costs, leaving only \$325 in court costs. The judgment was also modified to reflect the \$1,000 non-probated fine from the original plea hearing. The judgment was affirmed as modified.

-Habeas Writs

[EX PARTE WILLIAM KEITH SPEER, Applicant](#), No. AP-77,119, [2025 WL 2713150](#) (Tex. Crim. App. Sept. 24, 2025)

Constitutional habeas writ in death penalty case can only be filed in Court of Criminal Appeals

Facts: Speer was convicted of capital murder and sentenced to death in October 2001. The CCA affirmed his conviction and sentence on direct appeal, denied relief on his initial application for a writ of habeas corpus filed under Code of Criminal Procedure Article 11.071, and dismissed as an abuse of the writ his first subsequent 11.071 application. Speer subsequently filed a constitutional writ challenging the method-of-execution to be used against him in the district court that convicted him.

Issue: May a defendant challenge his method of execution on an active death warrant through a constitutional writ filed in district court?

Holding: No. “Method-of-execution claims raised in the face of an active death warrant may not be raised via a constitutional writ filed in the convicting court. When raised on habeas, such claims must be raised via a constitutional writ filed in [the Court of Criminal Appeals]. For only this Court retains the jurisdiction and authority necessary to afford relief on such claims, should they state a valid basis for habeas corpus relief.”

[EX PARTE ERIC TODD WILLIAMS, Applicant](#), No. WR-96,658-01, [2025 WL 2985919](#) (Tex. Crim. App. Oct. 23, 2025)

Habeas relief granted – online solicitation conviction unconstitutional under Lo decision

Facts: Williams was convicted of online solicitation of a minor and sentenced to three years’ imprisonment. He filed an application for a writ of habeas corpus contending that the statute under which he was convicted was found to be unconstitutional by the CCA in *Ex parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013).

Issue: Should William’s application for writ of habeas corpus be granted after he was convicted for online solicitation of a minor under the former version of Penal Code Sec. 33.021(b) found unconstitutional in *Ex parte Lo*?

Holding: Yes. The Texas Court of Criminal Appeals, in a per curiam opinion, concluded that Williams was entitled to habeas relief, to which the State had agreed, and William’s conviction should be set aside.

-Indictments

[State v. Payne](#), No. 14-24-00798-CR, [2025 WL 2934049](#) (Tex. App. Oct. 16, 2025)

Indictment sufficient to provide notice of crime of continuous sexual abuse – specific manner and means not needed

Facts: Brian Keith Payne was indicted for continuous sexual abuse of a young child, a first-degree felony. Payne moved to quash the indictment arguing that it did not plead the elements or manner and means of the predicate offenses and thereby violated his due-process right to notice of the crime with which he was charged. He further argued that the indictment was not specific enough for him to discern which offense would be an issue at trial and that it could lead to a non-unanimous verdict. The trial court granted the motion to quash on the grounds that the indictment did not expressly exclude the possibility that the State would attempt to prove the predicate offense of indecency by contact with evidence of touching of the breast, which cannot support a conviction for continuous sexual abuse of a young child under Texas Penal Code section 21.02.

Issue: Did the trial court err in granting the motion to quash the indictment?

Holding: Yes. The indictment includes the victim’s initials, the dates of the predicate offenses, and the names of the predicate offenses—indecent with a child by contact and aggravated sexual assault of a child. The heading of the indictment states the charged offense is continuous sexual abuse of a child, and the indictment specifies the alleged child victim was younger than fourteen years of age. Because the offense of continuous sexual abuse of a young child cannot be predicated on touching of the breast, the indictment in this case necessarily excludes touching of the breast as the manner and means of the alleged indecent by contact. When charging an offense for continuous sexual abuse of a young child, the State need not allege the specific manner and means by which the defendant allegedly committed the predicate “acts of sexual abuse” to provide constitutionally sufficient notice of the crime with which the defendant is charged. Reversed and remanded.

-Ineffective Assistance

[JAMES MICHAEL SOTELO, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 01-24-00562-CR, [2025 WL 2312273](#) (Tex. App. Aug. 12, 2025)

No harm shown on ineffective assistance of counsel claim – court costs can only be charged for highest degree offense

Facts: Sotelo was convicted of murder, acquitted on the charge of aggravated assault, but found guilty of the lesser-included offense of deadly conduct. He was sentenced to 40 years confinement for the murder charge and 2 years for the deadly conduct.

Issue: Did Sotelo have ineffective counsel at trial? Did the trial court err in assessing duplicate court costs for his two convictions and in assessing costs for the subpoena of witnesses?

Holding: No, yes and no. Sotelo based his appeal for ineffective counsel on his attorney’s request for the trial court to impose community supervision as a punishment, despite this punishment not being available in this situation. However, Sotelo fails to show how he was harmed or if his belief that he could receive community supervision affected his decision making in any matter. Regarding the court costs, for a case in which a defendant is convicted of multiple offenses in the same matter, court costs can only be assessed for the highest degree offense of conviction. But Sotelo does not show that the amount assessed for summoning is incorrect or unreasonable. Sotelo also appealed as to deficiency of the indictment and when to pay court costs, which were overruled. Modified to remove court costs for the deadly conduct conviction, affirmed to the rest of the judgment.

-Interpreters

[SOSTENES LORENZO TOLENTINO, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 01-22-00442-CR, [2025 WL 2471800](#) (Tex. App. Aug. 28, 2025)

Evidence sufficient to show defendant understood Spanish enough for DWI trial – court asks CCA to weigh-in if standard should be higher

Facts: Tolentino was charged with DWI. A jury found him guilty. The trial court sentenced him to one year in jail, suspended for 15 months of community supervision. The trial was conducted in English, with a Spanish interpreter. Mr. Tolentino, however, speaks very little Spanish. His first language is Nahuatl, an indigenous language spoken in parts of Mexico by an estimated 1.5 million people. Appellate counsel timely filed a motion for new trial due to the trial court's failure to provide a Nahuatl interpreter. After a hearing the trial court denied the motion. The 1st Court of Appeals agreed with Tolentino and reversed. The State was granted this rehearing.

Issue: Did Tolentino understand Spanish well enough to go to trial with a Spanish-language interpreter, rather than a Nahuatl interpreter?

Holding: The 1st Court of Appeals changed its mind on rehearing and affirmed the trial court's conviction but not without great pause. The court, in applying the leading case on the use of interpreters, *Linton v. State*, 275 S.W.3d 493 (Tex. Crim. App. 2009), noted that constitutional due process "requires that a defendant sufficiently understand the proceedings against him such that he is able to assist in his own defense." In applying abuse of discretion review and leaving room for the trial court to resolve conflicts in the evidence, the court held that the trial court could have reasonably perceived that Tolentino understood enough Spanish for a "a simple DWI trial." However, the court also saw plenty of evidence that Tolentino may not have adequately understood the proceedings. Therefore, the court specifically left it to the Texas Court of Criminal Appeals to decide if *Linton* required more from the trial court than was provided to Tolentino in this case. "If *Linton* requires more than what was afforded here, or if it creates a burden-shifting scheme that required something more from the State, we believe that such a holding should originate with the Court of Criminal Appeals and not with this Court." Conviction affirmed.

-Jurisdiction

[THE STATE OF TEXAS, Appellant, v. YEFREY ANTONIO BRAVO, Appellee.](#), No. 08-24-00248-CR, [2025 WL 2484031](#) (Tex. App. Aug. 28, 2025)

County Court at Law lacked jurisdiction on case indicted by district court grand jury-dismissal is only remedy

Facts: In April 2024, a grand jury empaneled by an El Paso County district court returned an indictment charging Bravo with the Class B misdemeanor offense of participating in an alleged April 12, 2024 riot. The exact same indictments were obtained against 140 other defendants as well for the same riot. The indictment stated that the "Grand Jurors for the County of El Paso, State of Texas, duly organized as such, at the January Term, A.D., 2024, of the 120th Judicial District Court for said County, upon their oaths in said Court, present that on or about the 12th day of April, 2024, and anterior to the presentment of this indictment, in the County of El Paso and State of Texas . . . Bravo [committed the offense of participating in a riot]." It was signed by the grand jury foreperson. On its face, the indictment contains no district clerk file stamp, no district court cause number, and no indication it was filed in the district court or with the district

court clerk. The case was assigned to County Court at Law No. 7. Bravo filed a plea to the jurisdiction in the county court, alleging it lacked subject-matter jurisdiction over his case, and thus he sought a dismissal. The State obtained an “Order of Certification and Transfer” from the district court, in which it stated, “the Grand Jury inquired into misdemeanors and returned indictments relating to those misdemeanor cases listed in the [attached] Charging Instrument Report,” which consists of a list of the 141 cases, including Bravo’s, for which the grand jury returned indictments charging the defendants with participating in the alleged April 12, 2024 riot. The order was signed on May 9, 2024. All of the cases listed in the Charging Instrument Report were identified by their county court cause numbers. The district court “certifie[d] to the County Courts . . . that said indictments were returned into the District Court,” and ordered that the indictments be “transferred to the County Courts having jurisdiction to try them for trial.” The order, though signed by the district court judge, was file-stamped by the County Clerk, not the District Clerk; it included a county court cause number in the caption, indicating that it was entered in “Cause Nos.: 20240C02820 et[.] seq.”; and it was captioned as pending “IN THE GRAND JURY FOR THE 120TH DISTRICT COURT,” rather than in the district court. No district court cause number appears anywhere in the transfer order or the Charging Instrument Report it referenced. At the conclusion of the hearing on Bravo’s plea to the jurisdiction, the county court ruled that Bravo’s case had not been properly transferred to the county court and it lacked jurisdiction to hear his case. The county court at law dismissed the case and the other 140 cases were dismissed as well.

Issue: Did the county court lack jurisdiction to hear the case and if so was dismissal the only legal action it could take?

Holding: Yes. The 8th Court of Appeals held that the county court at law lacked jurisdiction to hear the case and therefore dismissal was the only proper action the court could take. “As the State did not come forward with evidence to establish that Bravo’s case was properly filed with the district court and thereafter transferred from that court so as to give the county court jurisdiction over his case, we conclude that the county court acted properly in granting Bravo’s plea to the jurisdiction and dismissing his case.” Fifty-seven other cases that were dismissed en masse with these same exact facts were affirmed by the court as well.

-Jury Argument

[WILLIAM TRAVIS KITCHENS, Appellant v. THE STATE OF TEXAS](#), No. PD-0541-24, 2025 WL _____ (Tex. Crim. App. Sept. 3, 2025)

Prosecutors comments about defendant’s racial prejudice improper

Facts: Desoto rode his motorcycle to Kitchens’s auto shop, entered, and was shot by Kitchens after a brief, heated encounter. The incident was captured on surveillance video without audio. Testimony at trial described Desoto as a large, intimidating man who used threatening language toward Kitchens. Kitchens and his employees testified about Desoto’s size, appearance, and behavior, emphasizing that he was not a typical customer and that his actions were menacing. Kitchens claimed he acted out of sudden terror, fearing for his life due to Desoto’s threats and

demeanor. After Kitchens was convicted of murder, the First Court of Appeals in Houston reversed and remanded for a new punishment trial, finding error in the trial court's failure to submit a "sudden passion" instruction. At the new punishment trial, defense counsel continued to focus on Desoto's intimidating appearance and alleged threats. During closing argument, the prosecutor suggested that Kitchens was prejudiced against Hispanics and that Desoto was perceived as "scary" because he was Hispanic. Defense counsel objected, arguing there was no evidence of racial motivation, but the trial court overruled the objection. The court of appeals later held that the prosecutor's comments were a reasonable inference from the evidence and a permissible response to defense arguments.

Issue: Were prosecutor's comments suggesting Kitchens was prejudiced against Hispanics a reasonable inference from the evidence and permissible response to defense arguments?

Holding: No. The Texas Court of Criminal Appeals held that the prosecutor's comments about Kitchens's alleged prejudice against Hispanics were improper because there was no evidence in the record to support a finding of racial motivation. The court found that the prosecutor's argument was not a reasonable deduction from the evidence nor a legitimate response to defense counsel. The judgment of the court of appeals was reversed, and the case was remanded for a harm analysis.

-Jury Charge

[Speed v. State](#), No. 10-23-00340-CR, [2025 WL 2356318](#) (Tex. App. Aug. 14, 2025)

Possession crimes are nature of the conduct crimes not result of conduct crimes.

Facts: Speed was indicted on five counts of possession of child pornography. A jury found Speed guilty of Counts one, two, and three, and acquitted him on Counts four and five. The trial court assessed punishment at six years' confinement on each of the three counts and ordered the sentences to run consecutively.

Issue: Did the trial court caused Speed egregious harm by failing to include all necessary culpable mental states in the jury charge?

Holding: No. The 10th Court of Appeals affirmed the trial court's judgment. Speed argued that the trial court erred in charging the jury because all three conduct elements—nature of conduct, result of conduct, and circumstances surrounding the conduct—were required in the charge. He complained that the trial court's charge defined intentionally and knowingly only as to nature of conduct. The court held that while the Texas Court of Criminal Appeals has not squarely addressed the issue of the classification of possession-type offenses the reasoning of other courts of appeals holding that possession offenses such as this case are nature of the conduct offenses and not result of conduct offenses is persuasive. "The gravamen of the offense is the conduct of possessing the child pornography because the offense focuses on the nature of Speed's conduct rather than any result that might occur." The act of knowingly possessing or accessing the child

pornography is punished, regardless of any result. Therefore, the trial court did not err in defining intentionally and knowingly in the charge nor was there any egregious harm. Judgment affirmed.

[Willingham v. State](#), No. 14-24-00418-CR, [2025 WL 3275374](#) (Tex. App. Nov. 25, 2025)

Facts: At about 3:00 a.m., Galveston police stopped a vehicle driven by Willingham, with Zavala as the passenger. While one officer ran warrants, another officer looked through the passenger-side window and saw “a bong.” Officers searched the vehicle and found: Methamphetamine (11 grams) in the center console on the driver’s side; A baggie with narcotics-type markings in the driver’s door; A bong, empty baggies, a digital scale, and a glass pipe with burned residue. Body-cam footage depicting the search was admitted. Willingham was charged with possession with intent to deliver $\geq 4\text{g}$ but $< 200\text{g}$ of methamphetamine. In the guilt-innocence charge, the court included a “joint-possession” instruction, stating: “Two or more people can possess the same controlled substance at the same time.” Willingham objected, but the trial court overruled the objection. The jury convicted him of the lesser-included offense of possession of a controlled substance (Penalty Group 1). The trial court sentenced him to six years’ TDCJ.

Issues: (1) Did the trial court err by including a non-statutory “joint-possession” instruction that the Court of Criminal Appeals has condemned as an improper comment on the weight of the evidence? (2) Did the erroneous instruction cause “some harm”—the standard that applies when the defendant timely objects?

Holding: The 14th Court of Appeals held that the “joint-possession” instruction was erroneous but did not cause “some harm” to the defendant. Consistent with *Beltran de la Torre v. State*, the instruction was unnecessary because the statutory definition of “possession” already includes the concept of joint possession and highlighting joint possession improperly draws the jury’s attention to evidence favorable to the State. The State conceded this point. As to “some harm” the court held the erroneous instruction did not cause “some harm.” Reviewing the charge under *Almanza* the statutory definition of possession was correctly included; the joint-possession language was in the abstract section, not the application paragraph. This factor was neutral or slightly favoring harm, but not strongly. Evidence of Willingham’s possession was substantial—he owned and drove the car; drugs and paraphernalia were on the driver’s side or otherwise accessible; he was present during the search; and he did not challenge evidentiary sufficiency. This factor weighed heavily against harm. The State’s arguments about joint possession were permissible; the defense largely conceded that if the jury believed the officers and the video, Willingham was at least guilty of simple possession. This factor weighed against harm. Given the strong evidence of possession and the limited role of the erroneous instruction, the court held Willingham failed to demonstrate actual harm. Affirmed.

-Motion for New Trial

[The State of Texas, Appellant v. William Navarro, Appellee](#), No. 03-23-00637-CR, [2025 WL 2942231](#) (Tex. App. Oct. 17, 2025)

Facts: Navarro pleaded guilty to indecency with a child by sexual contact and, through a plea agreement, was sentenced to deferred adjudication community supervision for 10 years. The State moved to revoke his community supervision after Navarro was stopped with a 9 year old girl in his car, and the trial court, finding six of the allegations true, sentenced him to 10 years with the intention to retain the case for 180 days for “shock probation”. Navarro filed a motion for new trial on the following grounds: (1) “the verdict is contrary to the law and the evidence,” (2) he was “denied his right to [c]onfrontation of the [w]itnesses under the 6th Amendment of the United States Constitution,” and (3) his detention following the traffic stop was unreasonably prolonged in violation of the Fourth Amendment. The trial court granted the new trial, but stated that it was doing so not for any issues raised in Navarro’s motion, but because it had made an error regarding the shock probation, which is not available to defendants with charges of indecency with a child, and therefore wanted to restore him to the position he was in before the hearing. The trial court amended the conditions of Navarro’s probation to require him to serve 180 days in jail. It did not make written findings of fact or conclusions of law.

Issue: Did the trial court err in granting new trial for grounds not listed in the motion? Did the motion contain grounds on which new trial could have been granted?

Holding: Yes and no. Under *State v. Herndon*, 215 S.W.3d 901 (Tex. Crim. App. 2007), a trial court cannot grant a new trial on sympathy or because the defendant “received a raw deal”. Navarro did not challenge the attempted grant of shock probation in his motion for new trial, and the trial court cannot grant a new trial on an issue that the defendant did not show he is entitled to under the law. Further, the sentence of 10 years in this case was not illegal in that it fell within the sentencing guidelines for the offense. Under review of the issues raised in Navarro’s motion for new trial, the evidence that he had violated six of the terms of his probation was uncontroverted, and the State met its burden of proof. Regarding the Confrontation Clause, Navarro’s only objection during the hearing was to the entries made by his probation officer on his record. He did not make any Confrontation Clause objections during the hearing. Further, the Court of Criminal Appeals has not made a determination as to whether the Confrontation Clause applies to probation revocation proceedings, but this court holds it does not. Finally, the court holds that the traffic stop did not violate Navarro’s Fourth Amendment rights, as the officer determined in running Navarro’s license that he was not allowed to have the young girl in the vehicle with him due to his probation restrictions. The order for new trial is vacated and the case remanded to the trial court.

-Necessity Defense

No necessity instruction if given a deadly force self-defense instruction

[JAMARCUS RENARD TOLIVER, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 01-23-00802-CR, [2025 WL 3028897](#) (Tex. App. Oct. 30, 2025)

Facts: After taking his friend of five years, Joseph Lewis, to the mall, Jamarcus Toliver shot Lewis in the parking lot of the motel where Lewis lived. Before going to the mall, Lewis had shown his two guns to Toliver and then placed one of the guns in his pants. As they were returning to the motel, Toliver testified that Lewis was fidgeting with his pocket, then Lewis yelled at Toliver to get out. Toliver exited the vehicle, fired two shots into the car, striking Lewis in the front and back of the head, then pushed Lewis's body out and drove off. Lewis's gun was still located in his pants by Houston police officers on the scene. Toliver was convicted of murder and sentenced to 15 years confinement.

Issue: Did the trial court err in denying Toliver's request for a jury instruction (1) on the defense of necessity and (2) the State's burden of proof related to the presumption of reasonableness?

Holding: No and no. As to the defense of necessity, the trial court did allow a jury instruction of deadly force self-defense. The majority of Texas appellate courts have held that the necessity defense is negated by an instruction for deadly force self-defense. Regarding the burden of proof, the jury was instructed about the law of self-defense, that the State retained the burden of proof and that the jury must find Toliver not guilty if it believed he acted in self-defense. Toliver did not show any actual harm caused by the failure to include the reasonableness instruction, therefore the court holds that the trial court's error was harmless. Affirmed.

[Navarro v. State](#), No. PD-0222-22, [2025 WL 3144210](#) (Tex. Crim. App. Nov. 6, 2025)

Resisting arrest exclusion in self defense statute also applies to necessity statute

Facts: Police responded to a business after several 911 hang-up calls and found the Navarro's mother covered in transmission fluid. Navarro, after a verbal exchange with officers, retreated into an office and refused commands to come out. Officers entered, and a struggle ensued as they attempted to arrest him. Navarro resisted, was tased, and continued to resist while being handcuffed. During the struggle, he bit an officer, causing a serious injury. Navarro claimed he bit the officer because he feared for his life, alleging the officer was impeding his breathing. At trial Navarro was charged with assault on a public servant. He requested a jury instruction on the necessity defense, arguing his actions were immediately necessary to avoid imminent harm. The trial court denied this request but included a self-defense instruction. The jury convicted him. On appeal, the First Court of Appeals held Navarro was not entitled to the necessity defense because he provoked the difficulty and, under the self-defense statute, was not justified in using force to resist arrest after he had already resisted. The court also found any error in the self-defense instruction was harmless, as Navarro was not entitled to it under the law.

Issue: May a defendant who illegally resists arrest and then claims necessity to justify assaulting an officer use the necessity defense?

Holding: No. The Texas Court of Criminal Appeals held that if a defendant is barred from using self-defense to resist arrest under the statutory resisting-arrest exclusion, he is likewise barred from using the necessity defense for the same conduct. The court overruled its prior decision in *Bowen v. State*, clarifying that the resisting-arrest exclusion in the self-defense statute also applies to the necessity statute, and affirmed the judgment of the court of appeals.

-Post-Conviction DNA

[In re Anthony Roberson](#), No. 03-24-00325-CR, [2025 WL 2798551](#) (Tex. App. Oct. 2, 2025)

New DNA results did not create reasonable likelihood of a different outcome

Facts: Roberson moved for re-testing of samples associated with his 1998 conviction—including the vaginal swab from R.P.’s sexual assault kit. Roberson noted that comparisons between the DNA from the vaginal swab and Roberson were made in 1995, but the evidence could now be “subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test.” See Tex. Code Crim. Proc. art. 64.01(b)(2)(A). The State did not oppose the motion on the conditions that (1) DNA analysis be conducted in all five of the aggravated sexual assault cases that were attributed to Roberson via DNA, and (2) all analysis be conducted in the same lab. The convicting court ordered re-testing of the samples associated with the convictions; the State sent the samples associated with the unadjudicated offenses. Bode Technology conducted all the testing. The convicting court concluded that the results of the DNA testing were “not exculpatory,” and that, if they had been available during the 1998 trial, “it is reasonably probable that [Roberson] would have been convicted.”

Issues: (1) Did the trial court err in its conclusion that the DNA results were “not favorable” to Roberson; (2) Did the trial court violate Roberson’s due process rights under Chapter 64 and (3) was Roberson wrongfully convicted in the 1998 trial?

Holding: The 3rd Court of Appeals overruled all of Roberson's issues and affirmed the trial court's findings under Chapter 64. On Issue #1, the court held that “[g]iven the complete post-conviction results and trial evidence, the weakened inculpatory inference from the DNA evidence did not create a reasonable likelihood of a different outcome.” As to Issue #2, the court held that Roberson was given trial counsel as required under Chapter 64 and the court was not obligated to provide him a trial court record under Chapter 64 therefore his due process rights were not violated. The court ruled on Issue #3 regarding Roberson’s attacks on his 1998 conviction that chapter 64 “does not confer jurisdiction on an appellate court to consider collateral attacks on the trial court’s judgment or to review anything beyond the scope of the

articles in it. (citation omitted). We therefore lack subject matter jurisdiction over Roberson’s complaints about the 1998 trial and dismiss those complaints.” Affirmed.

-Preemption

[ANNA MERCEDEZ GUTIERREZ, Appellant, v. THE STATE OF TEXAS, Appellee.](#), No. 13-24-00208-CR, [2025 WL 2393597](#) (Tex. App. Aug. 19, 2025)

Texas Human Smuggling statute not preempted by federal law

Facts: A Kinney County jury convicted Gutierrez of three counts of smuggling of persons, a third-degree felony, enhanced to a second-degree felony after Gutierrez pleaded true to a repeat-offender enhancement paragraph. The jury sentenced Gutierrez to ten years’ imprisonment.

Issues: (1) Is § 20.05(a)(1)(A), (Human smuggling) as applied to Gutierrez’s prosecution, preempted by federal law; (2) Was the trial court’s denial of Gutierrez’s for-cause challenges to two venire panel members reversible error; (3) Was Gutierrez’s right to confrontation violated by the admission of certain evidence which was inadmissible hearsay; and (4) Did the trial court err in admitting certain evidence over Gutierrez’s hearsay challenge.

Holding: The 13th Court of Appeals in this en banc reconsideration affirmed the trial court’s judgment in all respects. The court first held, in a very long and detailed discussion of federal preemption, that “§ 20.05(a)(1)(A) is not federally preempted by 8 U.S.C. § 1324, which governs different criminal conduct prohibited by a different sovereign with its own punishment scheme in accord with its own priorities, and which does not make a distinction between citizens and illegal aliens on its face. Texas has the right to enact and enforce § 20.05(a)(1)(A)— a neutral criminal statute applicable to all who smuggle, and all who are smuggled, regardless of nationality—to prevent criminal conduct that Texas determines should be prohibited and to punish such conduct in accordance with Texas’s priorities. We further conclude that § 20.05(a)(1)(A) is not unconstitutional as applied to the specific facts and circumstances of Gutierrez’s case.” Regarding Issue #2 the court affirmed the trial court’s denial of Gutierrez’s for-cause challenges. The court held that because Gutierrez’s trial counsel did not identify any “objectionable” veniremembers against whom the additional preemptory strikes would have been used **at the time he requested the additional strikes** the issue was not preserved. Counsel **cannot** wait until after the jury is seated, sworn and excused to identify the specific veniremembers they would have struck if given the additional strikes. On Issue #3, the court also affirmed the trial court’s admission of a deputy’s testimony over Gutierrez’s hearsay and Confrontation Clause objections. The deputy’s testimony regarding the fact that Gutierrez’s passengers provided Mexican National I.D. and that she confirmed with Border Patrol they were illegally in the country was non-constitutional error. As such the harm analysis revealed that the admission of the alleged hearsay did not affect Gutierrez’s substantial rights. As to the Confrontation clause because the out-of-court statement by Border Patrol confirming the passengers’ immigration status was not testimonial, the trial court did not abuse its discretion in denying Gutierrez’s confrontation clause objection. Judgment affirmed in all respects.

-Punishment

[BRIAN LUKE JACOBS, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 11-23-00269-CR, [2025 WL 2346890](#) (Tex. App. Aug. 14, 2025)

Trial court not required to state it considered the full range of punishment on the record.

Facts: Pursuant to a plea agreement, Jacobs pleaded guilty to possession of methamphetamine in the amount of four grams or more but less than 200 grams, a second-degree felony. In accordance with the plea agreement, Jacobs was sentenced to ten years' incarceration, his sentence was suspended, and he was placed on community supervision for a period of five years. Eight months later, the State filed a motion to revoke Jacob's community supervision. Following a hearing on the State's motion, the trial court found that Jacobs violated certain terms and conditions of his community supervision, revoked his community supervision, and assessed his punishment at ten years' imprisonment.

Issue: Did the trial court refuse to consider the full range of punishment prior to imposing the maximum sentence by not definitively stating on the record it considered the full range?

Holding: No. The 11th Court of Appeals affirmed the sentence. The court first held that Jacobs could first raise the full range of punishment issue on appeal even without preserving it at the trial court level. The court rejected Jacob's argument that the trial court must announce on the record that it considered the full range of punishment holding that "[A]ppellant cites no authority, and we have found none, requiring a trial court to make an express statement that it considered the full range of punishment prior to assessing punishment." Affirmed. The court did modify the judgment in the section entitled "Statute for Offense" to replace "Penal Code" with "Health & Safety Code."

[MATHEW TIMOTHY JONES, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 14-24-00474-CR, [2025 WL 2446555](#) (Tex. App. Aug. 26, 2025)

Failure to properly prove up habitual felony status requires new punishment trial

Facts: Jones was convicted of murder and sentenced to 75 years of imprisonment. During the punishment phase of trial, the State admitted evidence showing that Jones had been convicted of a felony offense in 2010 and another in 2017. However, the State did not use those convictions to enhance Jones' sentence. To prove that Jones was a habitual felony offender, the State instead relied on the two felony convictions identified in the indictment, both committed in 2015: one for robbery and one for burglary. At the conclusion of the punishment portion of the trial, the trial judge assessed punishment at 75 years of imprisonment. Shortly after announcing sentence, the trial court commented, "For the record, the Court will make a finding that the State has proven the enhancement paragraphs that are enumerated in the indictment."

Issues: (1) did the jury charge fail to instruct the jury that they must be unanimous as to whether Jones committed murder under subsection (b)(1) or subsection (b)(2); (2) is the evidence legally insufficient to prove the proper enhancement sequence; (3) does the judgment incorrectly state that Jones pleaded “true” to the enhancement paragraphs; (4) did the judgment improperly Assess an extra \$85 in court costs; and (5) should the bill of costs should be modified “to remove all of the costs, which are not yet payable.”

Holding: The 14th Court of Appeals reversed and remanded on Issue #3, modified the bill of costs and affirmed the remainder of the judgment. On Issue #1 regarding jury unanimity the court held that when “the charge presents two legal theories of murder— knowingly causing death or intending to cause serious bodily injury and committing an act clearly dangerous to human life that causes death—the theories are alternative manners and means of committing the offense of murder, rather than distinct offenses.” And because unanimity is generally not required on the alternate manner and means of committing a single offense, the trial court did not err in thus charging the jury” (citations omitted). Regarding Issue #2, the habitual felony enhancement, the State conceded that the evidence did not show that Jones was convicted of two alleged offenses in the proper sequence to support the enhancement of his sentence under the habitual felony statute. The court held that because binding precedent has ruled that if the evidence is insufficient to support the habitual enhancements alleged in the indictment, the analysis is over because such a lack of proof “can never be considered harmless”. Therefore, the punishment portion of the judgment was reversed and the case remanded for a new punishment hearing. Issue #3 was considered moot by the court since the case was remanded on punishment and the alleged error could be corrected at that time. On Issue #4 the State agreed with Jones that the bill of costs must be reduced by \$85 for charges for 17 subpoenas that were never served. Issue #5 was overruled as there was no conflict between the bill of costs and the judgment.

-Revenge Porn

[Pokhrel v. State](#), No. 02-25-00123-CR, [2025 WL 3119093](#) (Tex. App. Nov. 6, 2025)

“Revenge porn” statute is constitutional

Facts: After his girlfriend decided to break up with him, Pokhrel threatened to publish intimate photos of her on a pornographic website and send them to her parents. Pokhrel was found guilty by a jury of one count of unlawful disclosure or promotion of intimate visual material, a state-jail felony, and sentenced to twenty months’ confinement and a \$10,000 fine.

Issue: Is Texas Penal Code § 21.16(c), which addresses a person threatening to publish intimate photos of another person without that person’s consent, constitutionally applied to Pokhrel?

Holding: Yes. Pokhrel argued that the statute imposes a criminal penalty without showing proof of intent. However, the court holds that the statute requires the proof of knowledge that the

person depicted in the photographs did not consent to them being published. Pokhrel's texts to his girlfriend showed that he knew that his conduct was not innocent. Affirmed.

-Search and Seizure

[JOSEPH ANGEL ALVAREZ, Appellant, v. THE STATE OF TEXAS, Appellee.](#), No. 08-24-00004-CR, [2025 WL 2346165](#) (Tex. App. Aug. 13, 2025)

Geofence warrants were proper, social media warrants proper, video properly admitted and no insanity defense

Facts: Alvarez shot and killed Georgette Kaufmann and injured her husband, Daniel, at their home in El Paso on 11/14/20. Using a geofence search, police located his device and that of another witness. Police found a 22-page email on Alvarez's social media account, which detailed how he would go to houses in the Kaufmanns' neighborhood with his pistol. Alvarez filed pretrial motions to suppress evidence, claiming that the geofence search was invalid, and for an assessment of his mental health and sanity, as he planned to offer an insanity defense. The motion to suppress was denied. He was convicted of murder and aggravated assault with a deadly weapon and sentenced to life for murder and 20 years for aggravated assault.

Issue: Did the trial court err in denying Alvarez's motion to suppress evidence gained from the geofence warrants, warrants for Google, Facebook and Instagram, and the video of the walkthrough of his residence? Did the jury err in rejecting his insanity defense?

Holding: No to all. The geofence warrants were supported by probable cause and properly limited to the location and time of the crime. Regarding the e-mail and social media warrants, probable cause existed to show that Alvarez's posts would have revealed evidence implicating him or linking him to the victims, so the search was not unreasonable under the 4th amendment. As to the search of Alvarez's home and dump of his cell phone, probable cause existed that the murder weapon and other evidence of the crime would be found in his home, and photos of the area in which the crime were committed were found on his phone and offered at trial by the State without objection. In the matter of the walkthrough video, the court holds that Alvarez failed to preserve error by failing to specify which portions of the video should have been inadmissible. Finally, as to the jury's rejection of the insanity defense, the court holds that Alvarez's testimony that he understood his actions were against the law when he committed the offense supported the jury's decision. Affirmed.

[WAYLON OUTLAW, Appellant, v. THE STATE OF TEXAS, Appellee.](#), No. 13-25-00189-CR, [2025 WL 2484981](#) (Tex. App. Aug. 28, 2025)

Smell of marijuana enough for probable cause to search

Facts: Outlaw (yes this is his actual name) pled guilty to and was convicted of 3rd degree possession of methamphetamine and sentenced to 4 years in prison. Prior to his plea Outlaw filed

a motion to suppress the evidence of the park ranger who arrested him. Ranger Teel's testimony at the suppression hearing revealed that he had been searching for Outlaw's vehicle because it was seen traveling on the park road without a valid entrance permit. Ranger Teel testified that Outlaw's vehicle had been seen in Bastrop State Park that day prior to his encounter with Outlaw. Ranger Teel also stated that he had found Outlaw's vehicle parked at a different location, just outside the fenced area of a property located near the entrance of Buescher State Park. Ranger Teel also testified that, based on his training and experience, he had smelled and confirmed the odor of marijuana emanating from Outlaw's vehicle. The court denied Outlaw's motion to suppress.

Issue: Did the trial court err in denying Outlaw's motion to suppress the evidence obtained as a result of the warrantless search of his vehicle because, among other things, the odor of marijuana was insufficient probable cause?

Holding: No. Judgment was affirmed. The 13th Court of Appeals, upholding the precedent set by Texas sister courts of appeals and the 5th Circuit, concluded that the odor of marijuana emanating from a vehicle gave an officer probable cause to search the vehicle and its occupants, even though the odor of marijuana is indistinguishable from the odor of hemp, a legal product. Since marijuana is still illegal, when the smell of marijuana is evident, probable cause exists.

[The STATE of Texas, Appellant v. Matthew D. MARTIN, Appellee](#), No. 04-23-01087-CR, [2025 WL 2471844](#) (Tex. App. Aug. 28, 2025)

Suppression of child porn images affirmed – private search was illegal and search warrant tainted by that illegal private search

Facts: Matthew D. Martin was charged with one count of stalking and thirty-nine counts of possession of child pornography. He moved to suppress evidence discovered from searches of his cell phone conducted by his ex-girlfriend and later by the police, first without a warrant and then with a warrant. The motion was referred to an associate judge, who held a *Franks* hearing. The evidence at the *Franks* hearing showed that Martin's cell phone was first searched by his ex-girlfriend, Ashley Pacheco. Martin contended that Pacheco did not have effective consent to take or access his phone or actual or apparent authority to consent to a later police search of his phone. The State disagreed and argued also that the police officers acted reasonably and in good faith when they searched the phone pursuant to a warrant. Thereafter, the associate judge made findings of facts and conclusions of law, reaching the ultimate conclusion that the challenged evidence should be suppressed. The trial court adopted the associate judge's findings and conclusions and issued an order suppressing all evidence alleged to constitute child pornography obtained from searches of Martin's cell phone.

Issue: Did the trial court err in suppressing the evidence from the cell phone?

Holding: No. The 4th Court of Appeals affirmed the suppression of the evidence. In a lengthy 41-page opinion, the court held that Pacheco effected a private search, which violated criminal laws. Specifically, the court found that Pacheco committed theft when she took the phone from Martin's residence without his knowledge or consent when they broke up. The court also found

that Pacheco also committed the offense of breach of computer security when she accessed the phone by retrieving photos stored on the phone through her use of the Zip Extractor application. These criminal offenses required exclusion under Texas's statutory exclusionary rule, Article 38.23(a) of the Texas Code of Criminal Procedure. Regarding the searches conducted by law enforcement the court applied the fruit of the poisonous tree doctrine and held that the evidence obtained from Ms. Heywood's and Officer McLeroy's searches was properly excluded as indirect products of Pacheco's unlawful search because these searches were done at Pacheco's prompting shortly after she discovered photos that could constitute child pornography and were not obtained "by means sufficiently distinguishable to be purged of the primary taint." The more difficult question was whether evidence obtained through the police's forensic search of the phone, which was authorized by a warrant, must be suppressed. In this light the court considered Article 38.23(b), which provides evidence is admissible if obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause. On this issue the court held that "an objectively reasonable officer preparing the warrant affidavit should have known that the evidence of child pornography provided by Pacheco was obtained by theft and breach of computer security. Either crime alone would suffice for the statutory exclusion of the evidence." The court affirmed the trial court's order granting Martin's motion to suppress and lift our previously-imposed stay of trial court proceedings.

[Blackwell v. State](#), No. 04-24-00373-CR, [2025 WL 2458634](#) (Tex. App. Aug. 27, 2025)

Officer had reasonable suspicion for traffic stop and sufficient evidence to require sobriety tests even if defendant was coerced.

Facts: Sergeant Martinez was traveling northbound in his patrol vehicle when he encountered Blackwell's pickup truck traveling toward him. The trial court found that Blackwell's truck was driving across the double yellow lines of the road into the opposite lane of travel. Martinez testified that he had to maneuver his patrol vehicle to the right to avoid a collision with Blackwell's truck. Martinez's dash-cam video, also depicts Blackwell's truck driving across the double yellow lines of the road in the opposite lane of travel. Based on these observations, Martinez executed a traffic stop of Blackwell's vehicle. During the initial contact, Martinez informed Blackwell of the reason for the stop. Martinez observed that Blackwell had "heavily slurred" speech, "red, bloodshot, glassy eyes," and detected "a slight odor of alcohol inside the vehicle." When Martinez asked about alcohol consumption, Blackwell admitted he had "picked up his friend from Pioneer Bar" and had consumed "two Lone Star Lights." Martinez requested that Blackwell perform pre-exit tests, which he refused. Martinez then asked Blackwell to step out of the vehicle for field sobriety tests. When Blackwell refused and stated he could not perform the tests, Martinez reached into the vehicle, unlocked the door, and ordered Blackwell to exit. Blackwell exited the vehicle and eventually performed standardized field sobriety tests, which he failed. Based on these results and his other observations, Martinez arrested Appellant for driving while intoxicated. Blackwell moved to exclude evidence obtained from the alleged unlawful detention of the defendant and suppress all statements, admissions, or confessions that were a product of compulsion or persuasion. The trial court denied Blackwell's motion to suppress, finding that Martinez had reasonable suspicion to initiate the traffic stop based on Blackwell's violation of driving across double yellow lines.

Issues: Did the trial court err in denying Blackwell’s motion suppress because: (1) Officer Martinez lacked reasonable suspicion to conduct the initial traffic stop; (2) Officer Martinez improperly extended the detention by physically compelling Blackwell to exit his vehicle based solely on his refusal to perform pre-exit tests; and (3) the field sobriety test results should be suppressed because they were obtained through coercion.

Holding: No on all issues. The 4th Court of Appeals affirmed the trial court's denial of the motion to suppress. As to Issue #1 the court held that because Officer Martinez observed Blackwell’s vehicle cross the double yellow center line, the trial court did not abuse its discretion in determining reasonable suspicion existed for the traffic stop. Regarding Issue #2 the court held that the officer had reasonable suspicion for a DWI investigation based on the traditional indicators observed during the traffic stop, and his extension of the detention by ordering Blackwell to exit the vehicle was constitutionally permissible. As to Issue #3, the court held that Texas law permits enforcement to compel field sobriety tests as non-testimonial physical evidence, even through explicit threats of arrest or physical intervention. Accordingly, Martinez’s actions fell well within constitutional boundaries for investigating DWI with reasonable suspicion. Affirmed.

[Fraser v. State](#), No. PD-0964-24, [2025 WL 2543457](#) (Tex. Crim. App. Sept. 3, 2025)

Search of electronic devices unconstitutional – insufficient nexus

Facts: Fraser operated a daycare center for infants and was charged with felony murder after a four-month-old child in her care died. Toxicology tests revealed a fatal level of diphenhydramine (an ingredient in Benadryl) in the infant’s blood. The prosecution’s theory was that the woman administered the drug to the child via a baby bottle, causing the child’s death. Evidence at trial included testimony from medical experts, daycare employees, and parents, as well as circumstantial evidence about the woman’s control over bottle preparation and the presence of diphenhydramine and related equipment in her home.

After her initial conviction and a series of appeals, the Texas Seventh Court of Appeals ultimately affirmed her conviction following a retrial. The appellate court also upheld the trial court’s denial of her motion to suppress evidence obtained from electronic devices seized from her home and ruled that she had not preserved certain evidentiary objections for appeal because she failed to request a limiting instruction.

Issues: (1) Was the evidence sufficient to show that giving diphenhydramine to a four-month-old infant is an act clearly dangerous to human life; (2) Did the court of appeals err when evaluating Fraser’s pre-trial motion to suppress evidence obtained from electronic devices that were seized when officers searched her home; (3) Did the court of appeals improperly rely upon Texas Rule of Evidence 105 when it held that Fraser did not preserve objections to extraneous offense evidence admitted at trial?

Holding: The Texas Court of Criminal Appeals affirmed the sufficiency of the evidence on the conviction for felony murder finding that a rational juror could conclude beyond a reasonable doubt that Fraser administered a lethal dose of diphenhydramine to the infant, constituting an act clearly dangerous to human life. However, the court found that the search warrants for the

electronic devices lacked a sufficient nexus between the alleged offense and the devices, making the search unconstitutional. The court also determined that the appellate court erred in its application of evidentiary rules regarding preservation of objections. The judgment was affirmed in part, reversed in part, and remanded for further proceedings.

[State v. Chavez](#), No. 03-25-00124-CR, [2025 WL 2942230](#) (Tex. App. Oct. 17, 2025)

Oath must be sworn – failure to swear to facts in warrant = defective warrant

Facts: Chavez was arrested by New Braunfels police for DWI following a traffic stop. He refused breath or blood test, so police applied for a warrant, which was granted by the magistrate, and Chavez’s blood was drawn at the hospital. Chavez moved to suppress the blood evidence, arguing that the officer’s affidavit had not been sworn or made under oath. Both Officer Lima, who made the affidavit and Officer Roy, who signed as notary public, testified that at no time was Officer Lima placed under oath or asked if the affidavit was true and correct. Roy did ask Lima to sign in the position stating that she was the one swearing to it. Bodycam footage shows Roy directing to sign in the proper places but does not show her placing Lima under oath or asking if the affidavit was true and correct. The trial court granted the motion to suppress.

Issue: Did the trial court err in granting the motion to suppress because (1) the affidavit was sworn, and (2) Officer Lima acted in objective good-faith reliance on the warrant, and evidence obtained through it should therefore have been admitted under the good-faith exception to the exclusionary rule?

Holding: No and no. The Texas Constitution and Code of Criminal Procedure require oaths to be made in obtaining a search warrant, and the Texas Criminal Court of Appeals has held that swearing an oath is not the same as signing an affidavit. *Smith v. State*, 207 S.W.3d 787, 794 (Tex. Crim. App. 2006). Further, failing to swear to the facts renders the search warrant defective. *Wheeler v. State*, 616 S.W.3d 858, 864 (Tex. Crim. App. 2021). Finally, the bodycam footage demonstrates that, besides not containing an explicit oath, Lima’s conversation with Roy lacks the solemnity and gravity needed to make an oath. Regarding the good faith exclusion, the court holds that a reasonable officer would have known that the search warrant in this case was invalid because no oath was sworn. The order suppressing the evidence is affirmed.

[Rosales v. State](#), No. 01-23-00876-CR, [2025 WL 3275147](#) (Tex. App. Nov. 25, 2025)

Facts: Dropbox detected multiple uploaded files in a user account belonging to Rosales and determined the files contained apparent child pornography. Pursuant to federal law, Dropbox submitted a “cyber tip” to the National Center for Missing and Exploited Children (NCMEC), identifying Rosales’s username, email, user ID, associated IP addresses, and providing nine files (images and videos). The cyber tip stated Dropbox had “viewed the entire contents” of each file. NCMEC reviewed the files, confirmed they depicted child pornography, and forwarded the tip to the Houston Police Department (HPD). HPD subpoenaed Comcast for subscriber information tied to one IP address, which led police to Rosales. HPD Officer Wilson viewed only the same nine files that Dropbox viewed. He then sought and obtained a warrant to search Rosales’s entire Dropbox account. Rosales moved to suppress, and the trial court denied suppression, finding

Dropbox was a private actor, police stayed within the private-search scope, and probable cause remained after excision.

Issues: (1) Was Dropbox acting as a government agent when it reviewed Rosales’s files and reported them to NCMEC, such that the Fourth Amendment applied? (2) Did HPD’s pre-warrant viewing exceed the scope of Dropbox’s private search, violating the Fourth Amendment? (3) Did the search-warrant affidavit still establish probable cause after the trial court excised three *Franks*-violating statements.

Holding: No as to all 3 issues. Affirmed. The 1st Court of Appeals held Dropbox acted as a private party pursuing its own business interests (maintaining service integrity, complying with federal reporting statutes). There was no evidence law enforcement knew of or acquiesced in Dropbox’s file review, nor evidence that Dropbox intended to assist law enforcement rather than act for its own purposes. The agreements between Dropbox and NCMEC did not create an agency relationship. Thus, the Fourth Amendment was not implicated by Dropbox’s review. HPD did not exceed the scope of Dropbox’s private search. Officer Wilson viewed only the nine files that Dropbox had already fully viewed—the cyber tip explicitly stated Dropbox viewed the “entire contents” of each file. Because police replicated, but did not expand upon, the private search, no Fourth Amendment violation occurred. Probable cause remained after excising the *Franks* statements. Even with three statements removed (one incorrect IP address, an incorrect claim that police sent a preservation notice, and an incorrect upload date), the remaining affidavit showed: Dropbox reported apparent child pornography; HPD received the cyber tip in July 2019; Dropbox identified Rosales’s account and provided an IP address; Comcast subscriber records tied that IP address to Rosales; Officer Wilson personally viewed two videos showing prepubescent girls exposing their genitals; Officer Wilson knew from experience that Dropbox preserves data after a cyber tip. Under the totality of the circumstances, there was a “fair probability” that evidence of child pornography would be found in Rosales’s Dropbox account. The information was not stale, given the preservation practices and the general principle that collectors of child pornography tend to retain such material. The trial court properly denied the motion to suppress. Convictions affirmed.

[DARIUS JAMAL FRAZIER, Appellant v. THE STATE OF TEXAS, Appellee](#), No. 01-24-00662-CR, [2025 WL 3095501](#) (Tex. App. Nov. 6, 2025)

Affidavit established fair probability that cell phone location information contained relevant evidence

Facts: During a home-invasion aggravated robbery, victims Alejandra Gomes and Jeancarlo Zelaya identified one of the perpetrators as “Dre,” someone they knew personally because he had previously helped them move into their apartment. Both victims were “100% certain” of his identity. Gomes had Dre’s cell phone number and gave it to Harris County Sheriff’s Office Investigator Pope. Using a law-enforcement database, Pope confirmed the number belonged to Darius Jamal Frazier. Both victims later selected Frazier from a six-person photo array. Pope

sought a search warrant for two days of historical CSLI from Verizon (the day before and the day of the robbery) to confirm whether Frazier’s phone—and thus Frazier—was in the vicinity of the robbery at the relevant times. A magistrate issued the warrant. Frazier moved to suppress the CSLI, arguing the affidavit lacked probable cause. The trial court denied the motion, and Frazier appealed.

Issue: Did the search-warrant affidavit supply probable cause to obtain Frazier’s historical cell-site location information, such that the trial court properly denied the motion to suppress?

Holding: Yes. Affirmed. The 1st Court of Appeals held that the affidavit established a fair probability that the CSLI would contain evidence relevant to the robbery—specifically, that it would corroborate Frazier’s presence at the crime scene—providing a substantial basis for the magistrate’s finding of probable cause. The trial court therefore did not err in denying the motion to suppress.

-Self Defense

[Ruben Brador, Appellant v. The State of Texas, Appellee](#), No. 03-24-00501-CR, [2025 WL 3187165](#) (Tex. App. Nov. 14, 2025)

Self defense jury instructions inadequate – new trial required

Facts: On 6/8/21, Richelle Soat called 911, claiming that her boyfriend, Ruben Brador, had slammed her face into her kitchen island, causing injuries. Brador was located and arrested for assault family violence. Brador, Soat, friends and police officers testified at trial of continuing discord between the couple. After both sides rested, the trial court submitted to the jury a charge setting out the elements of the offense of assault family violence, applying the law to the allegations at issue in this case, and containing instructions pertaining to self-defense. The jury found Brador guilty.

Issue: Did the trial court err in failing to properly instruct the jury on the burden of proof for self-defense and when an acquittal is warranted?

Holding: Yes. Although the jury charge did instruct the jury that it should acquit if Brador was found to have acted in self-defense, it did not instruct the jury that it must acquit if any reasonable doubt existed as to whether he acted in self-defense. The instructions did not include anything about the State’s burden to prove beyond a reasonable doubt that Brador did not act in self-defense. Self-defense was a vital defensive issue in this case, for which the burden of proof was never sufficiently explained to the jury, whether in the charge or elsewhere. Reversed and remanded.

-Speedy Trial

[Berryman v. Huffman](#), No. 23-60627, [2025 WL 2936176](#) (5th Cir. Oct. 16, 2025)

When speedy trial violation found the only possible remedy is dismissal of entire indictment

Facts: Berryman was arrested after an incident in which he was accused of firing a gun into a neighbor's trailer. Law enforcement recovered evidence at the scene and, following his arrest, Berryman gave a written statement after being advised of his rights. He was indicted on two counts: shooting into a dwelling and possession of a firearm by a convicted felon. Due to a series of administrative errors, judicial conflicts, and continuances, Berryman remained incarcerated for over three years (1233 days) before trial. During this period, a key defense witness died. Berryman repeatedly asserted his right to a speedy trial through pro se motions. The Circuit Court of Tishomingo County, Mississippi, applied the four-factor test from *Barker v. Wingo* to the petitioner's speedy trial claim. The court found a violation as to the first count (shooting into a dwelling) but not the second (firearm possession), and dismissed only the first count. The petitioner was tried and convicted on the remaining count and sentenced as a habitual offender. The Mississippi Court of Appeals affirmed, holding that the speedy trial right could be analyzed and remedied on a count-by-count basis in a multi-count indictment. The Mississippi Supreme Court and the United States Supreme Court denied further review.

Issue: Did the appellate court unreasonably apply *Barker v. Wingo* in not dismissing the entire indictment?

Holding: Yes the writ is granted. The Fifth Circuit held that, under clearly established federal law as determined by the Supreme Court, when a speedy trial violation is found, the only permissible remedy is dismissal of the entire indictment, not just the affected count. The Fifth Circuit concluded that the Mississippi appellate court's approach was an unreasonable application of federal law. The judgment of the district court was reversed, and the case was remanded with instructions to grant the writ of habeas corpus.

-Statutory Interpretation

[RAY LEE COCKRELL, Appellant v. THE STATE OF TEXAS](#), No. PD-0760-24, 2025 WL _____ (Tex. Crim. App. Aug. 20, 2025)

822.042 of Health and Safety Code can serve as duty to act under injury to a child by omission statute.

Facts: Cockrell owned several pit bulls on his rural property near Texarkana. Despite a fence, the dogs repeatedly escaped and attacked people and animals in the area. After a series of incidents—including attacks on a neighbor's horse and a woman on a scooter—Cockrell was formally notified by law enforcement that his dogs were considered dangerous under Texas law. Despite this notice, the dogs continued to escape and, in September 2022, attacked a ten-year-old boy, causing serious injuries that required surgery. Cockrell was indicted for injury to a child by omission, with the prosecution alleging he failed to restrain or enclose his dangerous dogs as required by Section 822.042(a) of the Texas Health and Safety Code. A jury found him guilty and sentenced him to thirty-five years in prison. On appeal, the Sixth Court of Appeals reversed the conviction, holding that the State failed to prove the owner had a statutory duty to protect the

child, reasoning that only duties arising from the Texas Family Code had previously been recognized for this type of offense.

Issue: Can Section 822.042(a) of the Texas Health and Safety Code serve as a statutory duty to act for purposes of the injury to a child by omission statute?

Holding: Yes. The Court of Criminal Appeals reversed the 6th Court of Appeals. The court held that Section 822.042(a) does impose a mandatory statutory duty on owners of dangerous dogs to restrain or enclose them, and that this duty can be imported to satisfy the statutory duty element required for conviction under Penal Code Section 22.04(b)(1). The court reversed the judgment of the court of appeals and remanded the case for further proceedings.

[EX PARTE ROBBIE GAIL CHARETTE](#), Appellant, No. 0523-24, [2025 WL 2405747](#) (Tex. Crim. App. Aug. 20, 2025)

State prosecution in election law cases can proceed without a TEC referral

Facts: Charette ran for the office of Judge of the Washington County Court at Law as a Republican candidate in 2018. After receiving allegations of misconduct during her primary campaign, a Washington County grand jury indicted Charette for (1) knowing misrepresentation of the true source of campaign communications, (2) falsely representing in campaign communications, with knowledge of the falsity, that she held a public office she in fact did not, (3) failing to timely file her personal financial statement, and (4) failing to maintain proper records of political expenditures. Charette filed a pretrial writ of habeas corpus in the district court, urging the indictment be quashed as void because the exclusive authority to investigate and initiate prosecution was, by her argument, vested in the Texas Ethics Commission. The trial court disagreed and denied habeas relief. The Fourteenth Court of Appeals affirmed, finding that the district court properly maintained jurisdiction over misdemeanors involving “official misconduct,” including alleged misconduct of political candidates.¹⁷¹, which authorizes the Texas Ethics Commission (TEC) to refer potential election violations to local prosecutors, require an investigation by and referral from the TEC before a state prosecutor can proceed?

Issue: Does Government Code §571.171, which authorizes the Texas Ethics Commission (TEC) to refer potential election violations to local prosecutors, require an investigation by and referral from the TEC before a state prosecutor can proceed?

Holding: No. On rehearing, the Court concluded: “We reject the categorical claim that no prosecution can be brought to enforce criminal laws concerning the conduct of elections simply because their subject matter may overlap with civil jurisdiction conferred on the TEC.” The Court noted that the Legislature has not taken any action to limit the role of prosecutors in election law cases. “This is telling and unhelpful (if not fatal) to [the] appellant’s argument.”

[EX PARTE KYLE PRASAD GEORGE](#), No. 14-24-00882-CR, [2025 WL 2906700](#) (Tex. App. Oct. 14, 2025)

See Charette above – State can proceed without TEC referral

Facts: KP George was under investigation by the Texas Rangers for a misdemeanor charge of misrepresentation under Section 255.005 of the Texas Elections Code for making Facebook posts, threatening himself, under a false name. Two days after making the administrative complaint to the Texas Ethics Commission, and before obtaining the result, the prosecutors obtained a true bill of indictment, on the last day of the 2-year limitations period. A week later, the Commission notified George that it had accepted jurisdiction over the allegations. Three days later, George filed a pretrial application for writ of habeas corpus in county court, relying extensively on *Ex parte Charette*, Nos. PD-0522-21, PD-0523-21, PD-0524-21, & PD-0525-21, 2024 WL 4138710 (Tex. Crim. App. Sept. 11, 2024). Four days after that, and before George filed an administrative response, the Commission issued an order referring his case for criminal prosecution. The habeas corpus court signed an order denying George’s application.

Issue: Before seeking an indictment for an alleged violation of the Texas Elections Code, must the prosecution wait for an authorizing referral from the Texas Ethics Commission or for any other exhaustion of the administrative process?

Holding: No. Although George’s claim is cognizable, his remaining arguments are foreclosed by *Charette*. The Commission has parallel enforcement powers. The prosecution did not have to wait for an authorizing referral from the Commission before seeking an indictment, and the indictment here was not void from its inception for lacking such a referral. Affirmed.

[DARYL JOE, Appellant v. THE STATE OF TEXAS](#), No. PD-0423-23, [2025 WL 3259396](#) (Tex. Crim. App. Nov. 20, 2025)

Cargo theft statute, like the organized retail theft statute, requires proof of conduct distinct from the acts inherent in stealing

Facts: Joe drove his semi-truck into the shipping yard of a bedding company and attempted to attach his truck to a trailer loaded with mattresses and box springs. The trailer was scheduled for authorized pickup by a specific carrier, but Joe was neither driving an authorized vehicle nor had he followed the required check-in procedures. An employee grew suspicious, documented the incident, and involved supervisors and police. Joe claimed he believed he was lawfully dispatched to pick up the load, but the person he named as his dispatcher denied involvement. The State charged him with cargo theft, alleging that he intentionally conducted an activity—connecting his truck to the trailer—in which he possessed stolen cargo. A jury convicted Joe of cargo theft under Texas Penal Code § 31.18(b)(1), and the trial court sentenced him to thirty-seven years’ imprisonment. On appeal, the Tenth Court of Appeals affirmed, finding that the evidence showed Joe possessed the cargo and that his actions met the statutory definition of conducting an activity involving stolen cargo. The Texas Court of Criminal Appeals initially agreed on some points and remanded for clarification on whether Joe’s conduct constituted the requisite “activity” under the statute. On remand, the court of appeals again affirmed the conviction, concluding that backing under the trailer and trying to connect brake lines constituted activity in which he possessed stolen cargo.

Issue: Does the cargo theft statute require proof of conduct distinct from the acts inherent in stealing as does the organized retail theft statute?

Holding: Yes. The Court of Criminal Appeals held that the cargo theft statute is not materially different from the organized retail theft statute and requires proof of conduct distinct from the acts inherent in stealing. Because the only conduct proved was inherent in the theft itself, the evidence was insufficient to support a conviction for cargo theft. The judgment of the court of appeals was reversed, and the case was remanded to consider possible lesser included offenses.

EMPLOYMENT LAW

-Arbitration

[BFS GROUP LLC AND BUILDERS FIRSTSOURCE, INC., Appellants v. JOSE GUSTAVO DE LEON, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GUSTAVO DE LEON, DECEASED, AND ELIZABETH MARTINEZ SILVA, INDIVIDUALLY, Appellees](#), No. 14-24-00548-CV, [2025 WL 2394091](#) (Tex. App. Aug. 19, 2025)

Arbitration agreement applies to employees survival and wrongful-death claims

Facts: In November 2020, Builders FirstSource - South Texas, L.P. (“Builders South Texas”) hired Elizabeth Martinez Silva (“Martinez”) to work in its window manufacturing facility on Brittmoore Road in Houston. At this facility Martinez worked in various roles related to the manufacture of windows and other building materials. At the start of her employment Martinez accepted and agreed to comply with the arbitration requirements of a mandatory company policy in which Martinez agreed that certain claims or disputes must be submitted to final and binding arbitration (the “Arbitration Agreement”). Under the Arbitration Agreement Martinez must arbitrate “any legal or equitable claim by or with respect to [Martinez] for any form of physical or psychological damage, harm or death which relates to an accident, occupational disease, or cumulative trauma, including . . . claims of negligence or gross negligence.” The Arbitration Agreement provides that it applies to any claims that may be brought by Martinez’s spouse and children, including any survival or wrongful- death claims. Jose Gustavo De Leon (“Jose”) is Martinez’s husband and Gustavo’s father. Martinez and Jose sued BFS and FirstSource (collectively the “BFS Parties”) after Martinez miscarried Gustavo in January 2024. The BFS Parties filed a motion asking the trial court to compel arbitration under the FAA and to stay the case under section 3 of the FAA pending arbitration (“Motion”). The De Leon Parties opposed the Motion, and the trial court denied it.

Issue: Did the trial court err in denying the Motion to Compel Arbitration?

Holding: Yes. The 14th Court of Appeals reversed the trial court's decision to deny the motion to compel arbitration. First, the court ruled that the “transportation worker” exception to arbitration under the FAA did not apply to this case as there was insufficient evidence to support the trial court’s implied finding that Martinez falls within the transportation-worker

exemption under Section 1, and the trial court abused its discretion to the extent it found that Martinez falls within this exemption or concluded that the FAA does not apply to the Arbitration Agreement. Furthermore, the court held that under the Arbitration Agreement's unambiguous language, Martinez exercised her right to bind her children to the Arbitration Agreement, and to the extent Jose or Martinez assert survival claims based on personal injury to Gustavo before his death, Gustavo is bound by the Arbitration Agreement, and the BFS Parties may compel arbitration of these claims under this agreement. As a result the court sustained the BFS Parties' sole issue, reversed the trial court's order, and remanded with instructions to the trial court to issue an order (1) granting the Motion, (2) compelling the parties to proceed to arbitration before the AAA under the Arbitration Agreement, (3) requiring the arbitrator (a) to determine the Arbitrability Disputes, and (b) to the extent that the arbitrator determines that the Arbitration Agreement requires arbitration of some or all of the De Leon Parties' claims, to determine the merits of the claims that the arbitrator concludes are arbitrable; and (4) staying the proceeding in the trial court until arbitration has been had in accordance with the terms of the Arbitration Agreement, as long as the BFS Parties are not in default in proceeding with the arbitration.

--Disability Discrimination

[The Univ. of Texas at El Paso, Appellant v. Sergio Aranda, Appellee](#), No. 08-25-00083-CV, [2025 WL 3164675](#) (Tex. App. Nov. 12, 2025)

Plaintiff can succeed on a "regarded as" disability claim under TCHRA

Facts: Aranda applied for a position as a Police Communications Operator with the UTEP PD on 1/1/22. In a phone call about submitting documents in the application process, Aranda disclosed that he did not drive because he suffers from amaxophobia, a fear of driving. UTEP did not continue with Aranda's application process and did not investigate when notified Aranda had made a claim of discrimination. In the meantime, the UT systems police office sent an email to departments clarifying that a drivers' license is not required for the PCO job. Aranda filed a discrimination charge with the EEOC in May, alleging disability discrimination based on his amaxophobia. After receiving a right-to-sue letter, Aranda sued UTEP for disability discrimination and failure to accommodate. UTEP responded with a plea to the jurisdiction, claiming that a fear of driving is not a qualifying disability. Aranda amended his pleading to assert only a "regarded as" discrimination claim under the Texas Commission on Human Rights Act (TCHRA). UTEP then filed its combined plea to jurisdiction, traditional motion for summary judgment and no-evidence motion for summary judgment, which the trial court denied.

Issue: Did the trial court err in denying UTEP's plea to jurisdiction and motions for summary judgment despite Aranda's amaxophobia not falling under TRCHA's qualifying disabilities?

Holding: No. Under TCHRA, to demonstrate a prima facie case of discrimination under a "regarded as" claim, Aranda would have to demonstrate that (1) he was perceived as having an impairment, and (2) that he was discriminated against because of that impairment. UTEP did not continue moving Aranda through the application process because it perceived Aranda as

impaired based on his responses in the brief telephone interview. Despite the interviewer's belief that not having a driver's license precluded Aranda from pursuing the position, other inconsistencies in the record bring up a fact issue of whether this was a pretext for discrimination. Affirmed.

-Restraint of Trade

[DIANA GARCIA, Appellant v. DALLAS COUNTY HOSPITAL DISTRICT \(D/B/A PARKLAND HOSPITAL\), Appellee](#), No. 05-23-01295-CV, [2025 WL 3012830](#) (Tex. App. Oct. 28, 2025)

Court vacates previous opinion, affirms that penalty for leaving a job early is not unlawful restraint of trade.

Facts: Garcia entered into the Resident/Graduate Nurse Program Employment Agreement with Parkland in September 2015. The agreement stated that she would pay Parkland \$20,000 if she left employment between February 2016 and February 2019. Garcia left employment at Parkland in March 2018 and did not pay the \$20,000. Parkland sued Garcia for breach of contract. Garcia filed a traditional motion for summary judgment alleging restraint of trade and unenforceable penalty, which the trial court denied. Parkland then filed a motion for summary judgment against Garcia for breach of contract, which the trial court granted, awarding Parkland \$20,000. Garcia timely appealed, and on 12/31/24, the Fifth Court reversed the summary judgment and remanded the case to the trial court. Garcia filed a motion for rehearing challenging the Fifth Court's rejection of her restraint-of-trade argument, and Parkland filed a motion for reconsideration en banc, seeking affirmance of its summary judgment.

Issue: Is the agreement an unlawful restraint of trade? Is it invalid on its face as a one size-fits-all liquidated-damages clause?

Holding: No and no. Section VII of the contract, which imposes the \$20,000 penalty for leaving Parkland's employment before February 2019, is not a non-compete covenant because it does not impose limitations based on time, geographical area, or scope of activity, and it does not limit competition with Parkland. The penalty is imposed whether she works as a nurse at another hospital or if she leaves nursing altogether. Regarding the liquidated damages clause, Parkland would incur the cost of replacing Garcia no matter when she left during her contract period. The out-of-pocket losses to Parkland of Garcia's training would not diminish no matter how long Garcia worked for Parkland. Further, the face of the agreement does not permit the court to assume that Parkland's damages decrease over time. The 12/31/24 opinion is vacated, and the ruling of the trial court is affirmed.

-Retaliatory Termination

[Houston Classical, Inc. v. Richards](#), No. 14-24-00696-CV, [2025 WL 3006631](#) (Tex. App. Oct. 28, 2025)

Charter school employee does not garner protection for retaliatory termination under Family Code chapter 261

Facts: Kimberley Richards was the director of operations for the Houston Classical Charter School, founded by Deyvis Salazar, who also served as CEO. In October 2022, she witnessed an incident in which Salazar caused a first-grade student to fall. The next day, a colleague told her Salazar had grabbed the same student by the arm and caused him to cry. Richards, believing she was required by Texas law to report the incident to CPS, did so without telling Salazar. She informed the principal of the school, who stated that she also had reported Salazar to CPS. When Salazar learned he was under investigation, he confronted the principal, who told him that both she and Richards had made reports. Richards was fired in February 2023. She filed suit in January 2024, and Houston Classical filed a plea to jurisdiction, claiming that Richards did not fall under the definition of “professional” under Texas Family Code section 261.110, which prohibits adverse employment actions against individuals who report child abuse or neglect. The trial court denied the plea, and Houston Classical brought this interlocutory appeal.

Issue: Does Richards qualify for employment protection under Texas Family Code chapter 261?

Holding: No. To qualify for the protections under section 261.110, a person must be a professional employed by “a facility licensed, certified, or operated by the state”. Although open-enrollment charter schools are publicly funded, they are privately operated. As a result, they fall outside the scope of facilities that are licensed, certified, or operated by the state for purposes of section 261.101 of the Family Code. Reversed as to the trial court’s order denying Houston Classical’s plea to jurisdiction and judgment is rendered to dismiss Richards’ lawsuit.

-Sovereign Immunity

[SUSAN KEEN, Appellant v. LANCASTER INDEPENDENT SCHOOL DISTRICT, Appellee](#), No. 05-24-00654-CV, [2025 WL 2484024](#) (Tex. App. Aug. 28, 2025)

Plaintiff failed to exhaust administrative remedies and disclosure of information not required per litigation exception to 552.103.

Facts: Keen sued her former employer, Lancaster Independent School District (the District), asserting causes of action for “action without authority or jurisdiction” and violation of article I, § 19 of the Texas Constitution. As to the former, Keen argued the School Board lacked jurisdiction because she had been offered and had accepted a contract for the upcoming school year. As to the latter, she argued the District denied her fundamental fairness given that she “had a property interest in her continued employment”. She argued she was not required to exhaust any administrative remedies because she was challenging the District’s authority and jurisdiction to conduct a nonrenewal hearing or to terminate her employment without following the

independent hearing examiner process applicable to terminations prior to the expiration of a contract. Keen requested (1) a permanent injunction compelling the District to reinstate her and (2) lost wages from July 1, 2023 onwards. The trial court granted the District's plea to the jurisdiction as to two of those claims and its motion for summary judgment as to the remaining claim.

Issues: Did the trial court err in granting the plea to the jurisdiction and the summary judgment on Keen's claims?

Holding: No. the 5th Court of Appeals affirmed the trial court's judgment. As to the issue of exhaustion of administrative remedies the court noted that it was undisputed that Keen failed to pursue the administrative process through an appeal to the Commissioner of Education. Therefore, the court must only consider whether Keen met her burden to show that her claims fall within an exception to the administrative exhaustion requirement. The court held that Keen did not meet any of the four exceptions she claimed and therefore she failed to exhaust her administrative remedies. "The trial court lacked jurisdiction to consider Keen's claims for acting without authority and violating article I, § 19 of the Texas Constitution, and consequently, did not err in granting the District's plea to the jurisdiction." As to the summary judgment issue, the Court held that the litigation exception under Gov't Code 552.103 applied in this case and that the District could have reasonably anticipated Keen would request a nonrenewal hearing and further proceedings. Therefore, summary judgment was affirmed and the District was not required to provide the information requested by Keen.

ENERGY LAW

-Assignments

[THE THAGARD MINERAL PARTNERSHIP, LP, Appellant v. MICHAEL L. CASS ET AL., Appellees MICHAEL L. CASS, Appellant](#), No. 11-23-00207-CV, [2025 WL 2412837](#) (Tex. App. Aug. 21, 2025)

Assignments unambiguous – all interests conveyed at all depths – summary judgment proper

Facts: In 1990, Michael Cass and Greg Thagard executed a series of assignments, which Thagard understood were to facilitate a transaction between Cass and Plains Petroleum. Thagard thought he was making the assignments in exchange for the ORRI. Shortly after the Thagard Assignment was executed, Cass executed an assignment that conveyed to Plains Petroleum certain interests that he owned, including those conveyed from Thagard. Thagard also executed division orders on these same properties to other companies, including XTO, and he received ORRI on the properties until 2018. Thagard sued Cass and XTO for declaratory and equitable relief. Cass and XTO each answered and asserted counterclaims that Thagard had been wrongly receiving ORRI payments. In 2020, the RIM parties intervened, alleging that they were the owners of certain mineral and royalty interests in those sections that Cass had conveyed to Plains. In the title dispute between Thagard and Cass, the trial court granted partial summary judgment to Cass, and in the dispute between Cass and RIM, awarded partial summary judgment

to RIM. The trial court originally limited RIM's holdings to 8700 feet and above but amended its order to all depths.

Issue: (1) Did the Thagard assign all of the rights to Cass, including the ORRI? (2) Did the assignment from Cass to Plains Petroleum include Cass's entire mineral fee interest in all depths in the subject property? (3) Did the trial court err in granting the RIM parties' summary judgment?

Holding: Yes, yes, and no. The court holds that the assignments from Thagard to Cass were unambiguous. Because the assignment covers ALL of the rights in Sections 32 and 41, it does not need to be more specific. (2) Cass's subsequent assignment to Plains Petroleum did contain minor ambiguities, but it also had broad granting language and no express depth limitations. Therefore, it conveyed all of Cass's interest in these same properties to Plains. (3) Given these holdings, the trial court did not err in granting the RIM parties' summary judgment.

-Breach of Oral Promise/Contract

[EVANS RESOURCES, L.P.; EVANS I, LTD.; EVANS I DEVELOPMENT, LTD.; MICHAEL SCOTT EVANS AND ROSE ELAINE EVANS SHOCK, AS INDEPENDENT CO-EXECUTOR AND CO-EXECUTRIX OF THE ESTATE OF GLORIA A. EVANS, DECEASED; JONATHAN J. EVANS; AND MOCKINGBIRD OIL & GAS L.P., Appellants v. DIAMONDBACK E&P, LLC AND DIAMONDBACK O&G, LLC, Appellees.](#) No. 11-24-00107-CV, [2025 WL 2980661](#) (Tex. App. Oct. 23, 2025)

Party cannot rely on oral promise that is contradicted in written agreements

Facts: The Evans entities (landowners and mineral interest holders) sued Diamondback E&P, LLC and Diamondback O&G, LLC (oil and gas operators). The litigation arose from an alleged oral promise by Diamondback to drill and pay for horizontal wellsite locations on the Evans entities' land, and from disputes over the construction and performance of several oil and gas agreements (lease, surface use agreement, net profits interest agreement). The Evans entities asserted claims for fraud, accounting of profits for cotenant wells, royalty underpayment, breaches of the parties' agreements, and declaratory relief. The trial court granted Diamondback's motions for partial summary judgment on several claims (fraud, breach of surface agreement, declaratory relief regarding perpetuities). The remaining claims (royalty underpayment and cotenant accounting) went to a jury trial. The jury found that Diamondback did not fail to pay royalties in accordance with the lease and, although Diamondback failed to account to the Evans entities as mineral cotenants, the Evans entities suffered no damages.

Issues: (1) Did the trial court err in granting summary judgment for Diamondback on claims for fraud, breach of the surface agreement, and declaratory relief regarding perpetuities (2) Did the trial court abuse its discretion in excluding certain expert testimony and evidence not timely disclosed in discovery (3) Did the Evans entities abandon their claim for breach of the lease based on Diamondback's failure to obtain consent to pool. (4) Did the trial court err in denying the Evans entities' motion for mistrial after disposing of their fraud claim mid-trial (5) Was the

evidence legally and factually sufficient to support the jury's findings that Diamondback did not underpay royalties and that the Evans entities suffered no damages for Diamondback's failure to account for cotenant wells?

Holding: No. The 11th Court of Appeals affirmed the trial court's judgment in favor of Diamondback. The court held that the Evans entities could not justifiably rely on Diamondback's alleged oral promise to drill horizontal wells because the written agreements did not require drilling, negating the fraud claim. The trial court did not abuse its discretion in excluding expert testimony and evidence that was speculative, based on assumed facts contradicted by facts in the record, or not timely disclosed. The Evans entities' counsel's statements in court constituted abandonment of their pooling claim. The trial court acted within its discretion in denying the motion for mistrial. The jury's findings that Diamondback did not underpay royalties and that the Evans entities suffered no damages for failure to account for cotenant wells were supported by legally and factually sufficient evidence.

-Pipeline Burial

[Byrne Oil Co. v. Walraven](#), No. 11-23-00157-CV, [2025 WL 2617716](#) (Tex. App. Sept. 11, 2025)

Lessor cannot use self-help and bury lessee's pipelines below plow depth

Facts: Walraven purchased the surface of the leased tract in 2016. He also acquired a partial royalty interest in the leased tract. Walraven sent a letter to Joe Byrne, the principal of Byrne Oil, in November 2016 that stated "I am requesting that you please . . . [b]ury all of your lines connecting the oil and gas wells" on the lease. There were ten wells on the property at the time, and there were over 10,000 feet of above-ground flow lines on the lease. Byrne testified that Walraven's threats to remove and burn the flow lines prompted him to seek legal action. Byrne Oil filed suit against Walraven on February 8, 2019, wherein it sought an injunction against Walraven to prevent interference with the flow lines. In April 2021, Walraven hired US Ecology to bury additional portions of flow lines on the property. US Ecology began work on April 5, 2021. After a bench trial, the trial court awarded Walraven \$30,000 for a portion of the cost he incurred to bury a portion of the pipeline on the leased tract. The trial court also awarded the successor lessor attorney's fees in the amount of \$125,000.

Issues: (1) Can the lessor undertake to bury the lessee's pipelines when the lessee delays in burying them, and then (2) seek compensation from the lessee for his cost in burying the pipelines?

Holding: No on both issues. The 11th Court of Appeals reversed the trial court's judgment. The court held that "[o]il and gas law also supports a conclusion that the owner of the surface estate should not be permitted to remedy the breach of a pipeline burial provision through self-help. The flow lines on the lease are the property of Byrne Oil as the lessee and owner of the dominant mineral estate. Irrespective of the breach of the pipeline burial provision, allowing the owner of the surface estate to move or relocate the lessee's equipment has the potential for disturbing

mineral production as well as creating an environmental risk in the event of an accident. The lessee or its operator is better suited to either perform the work of relocating production equipment or retain a third party to perform such work rather than the owner of the surface estate. No doubt Walraven was frustrated by Byrne Oil's delay and refusal to bury all of the flow lines. Frustration, however, cannot justify self-help when the legal remedies of damages and injunctive relief were available, particularly in a case that had been in litigation for over two years by the time Walraven hired US Ecology to bury the flow lines. Accordingly, we sustain Byrne Oil's first issue asserting that Walraven was not permitted to obtain a recovery for his use of an unwarranted self-help remedy." The court reversed the award of compensatory damages to Walraven in the amount of \$30,000 and rendered judgment that Walraven only recover \$1,869.32 in compensatory damages (an amount not challenged by Byrne). The court also reversed the award of \$125,000 in attorney's fees to Walraven based on the reversal of the damage award and remanded the issue of attorney's fees back to the trial court.

-Right of First Refusal

[SM Energy Co. v. Buzzard Roost Farms, Inc.](#), No. 11-23-00222-CV, [2025 WL 3275033](#) (Tex. App. Nov. 25, 2025)

Facts: Buzzard Roost Farms and C&L Solutions ("Surface Owners") entered into a Surface and Subsurface Use and Compensation Agreement with SM Energy's predecessor. Paragraph 2(e) granted the Surface Owners a right of first refusal (ROFR):

If SM Energy chose to drill a saltwater disposal (SWD) well within five miles of the Surface Lands, it had to first offer the Surface Owners the opportunity to have "said well" placed on the Surface Lands or adjacent land owned by the Surface Owners.

SM Energy later purchased two unrelated tracts within five miles (the "Hydra" and "Delphin" tracts) and drilled two SWD wells without offering the Surface Owners an opportunity to have those wells drilled on their land. SM Energy admitted it had overlooked the ROFR clause. After learning of the wells, the Surface Owners demanded damages. SM Energy offered only to purchase the Surface Lands—not to drill an SWD well on them—an offer the Surface Owners rejected. They sued for breach of the ROFR. The trial court held that the ROFR was enforceable, the ROFR was triggered when SM Energy chose to drill an SWD well within five miles, found the provision ambiguous and submitted intent, breach, and damages questions to the jury. The jury found the ROFR required SM Energy to offer to place the SWDs on the Surface Owners' land, SM Energy failed to comply and the Surface Owners were ready, willing, and able to accept proper performance. Damages of \$9.3 million (value of wells, disposal fees, skin-oil royalties) were assessed. The court also awarded \$1.35 million in attorney's fees.

Issues: (1) Was the ROFR ambiguous? (2) Did SM Energy breach the ROFR as a matter of law?

(3) Was the "value of the wells" award an impermissible double recovery or unsupported by evidence? (4) Should attorney's fees stand if the damages award is reversed in part?

Holding: The 11th Court of Appeals affirmed in part, reversed and rendered in part, and reversed and remanded in part. The court found the ROFR unambiguous as a matter of law. The court

held as a matter of law that the ROFR unambiguously required SM Energy to offer the Surface Owners the opportunity to have any SWD well drilled on their land, not to offer to buy their land or impose conditions beyond the ROFR's scope. SM Energy's property-acquisition strategy did not define the "terms" of the ROFR. The court also held that SM Energy breached the ROFR as a matter of law. SM Energy drilled SWD wells within five miles and never offered the Surface Owners the contractual opportunity to have "said well" placed on their land. The trial court erred in submitting interpretation questions to the jury, but the error was harmless because the jury answered consistently with the legally correct construction. As to damages the court reversed and rendered the "value of the wells" award because it was an improper measure of damages and constituted a double recovery. It was legally unsupported and therefore no recovery for value of wells. Disposal-fee damages (lost benefit of the bargain damages) in the amount of \$2.89 million were affirmed based on legally sufficient evidence. The award for skim-oil damages was reversed and rendered as legally insufficient. Surface Owners had no right to skim oil from SWD wells fed by water produced from others' lands, and the model was too speculative. Because the damages were substantially modified, the attorney's fee award required reconsideration and was reversed and remanded.

ESTATE AND PROBATE LAW

-Uniform Fraudulent Transfer Act

[Est. of Friend](#), No. 04-24-00445-CV, [2025 WL 2969307](#) (Tex. App. Oct. 22, 2025)

Probate court had jurisdiction over TUFTA claims under Estates Code

Facts: Before her death, Friend left her estate to one daughter, Suzanne Friend Johnston, excluding her other daughter, Sarah Friend Neutze. She also conveyed hundreds of acres to Johnston via gift deeds. Neutze challenged the will and gift deeds, alleging undue influence by Johnston. The jury found in Neutze's favor, voiding the will and three gift deeds. Johnston was removed as executor, and Friend therefore died intestate. A separate 67-acre tract ("the Tract") in Real County was owned as tenants in common by Johnston, Neutze, and the Estate. Johnston received her share through earlier transfers not challenged by Neutze. In December 2021, while acting as executor, Johnston sold her undivided interest in the Tract to Wayne and Betty Boyce. Neutze claimed this sale violated the Texas Uniform Fraudulent Transfer Act (TUFTA), alleging Johnston acted to insulate herself from liability and breached fiduciary duties to the Estate and Neutze. Neutze sought to void the transfer, enjoin further transfers, and place the Boyces' interest in a constructive trust. The Boyces filed a plea to the jurisdiction contesting the trial court's subject matter jurisdiction over the claims filed against them by Neutze. The trial court granted the Boyces' plea.

Issue: Did the statutory probate court have subject matter jurisdiction over Neutze’s TUFTA claim against the Boyces as a “probate proceeding” or “matter related to a probate proceeding” under the Texas Estates Code?

Holding: Yes. The 4th Court of Appeals held that the probate court did have jurisdiction over Neutze’s TUFTA claim against the Boyces. The court reasoned that the claim directly impacted the settlement, partition, and distribution of the Estate therefore was a “probate proceeding” under Texas Estates Code § 31.001(6). The court also held that severing Neutze’s claims against the Boyces from the rest of the probate proceeding was improper. The trial court’s order granting the Boyces’ plea to the jurisdiction and the order for severance were reversed. The case was remanded for further proceedings.

[ELAINE T. MARSHALL, AS TRUSTEE OF THE MARSHALL GRANDCHILDREN'S TRUST, Appellant v. PRESTON MARSHALL, Appellee](#), No. 14-23-00276-CV, [2025 WL 3165810](#) (Tex. App. Nov. 13, 2025)

Facts: J. Howard Marshall formed a trust for the benefit of his grandchildren, including Preston, in 1987. Preston’s mother, Elaine, was among the trustees, serving until she resigned in 2021. This dispute centers around the appointment of Stephen Cook as a co-trustee in 2015, Preston’s firing from the family business by Elaine after Preston asked for an accounting of the trust in 2015, Elaine’s distributions of stock and promissory notes instead of cash from the trust, and her use of the trust’s funds to pay her attorney’s fees. Preston sued to be named the trustee of the trust in 2015, and the trial court granted his motion for partial summary judgment, naming Legacy Trust Company as co-trustee. In 2017 the trial court prohibited Elaine from making any further non-cash distributions from the trust. After Preston filed his third amended petition in 2018, Elaine and Preston filed motions for summary judgment. The trial court denied Elaine’s motions and granted Preston’s, finding that Elaine failed to make an accounting and disclosures to Preston, that she breached her fiduciary duties in failing to make the disclosures and in the way she made distributions, and that she improperly used trust funds to pay her legal expenses. A jury trial was held to determine damages, and Preston was awarded about \$350,000 in actual damages and \$2 million in attorney’s fees.

Issue: (1) Does the evidence support the amount of actual damages awarded? (2) Did the trial court err in granting the motion for summary judgment, finding that Elaine did not act in “good faith”? (3) Should the attorney’s fees be reversed?

Holding: No, yes and yes. (1) Preston’s expert witness for actual damages relied solely on his speculation of what could have happened if the stock had been invested another way, not based on how Preston actually invested or what Elaine actually earned. However, because the evidence supports a lesser amount, this issue is remanded to the trial court. (2) The trust provides that the trustee shall not be liable for good faith mistakes of law or good faith errors of judgment, and fact issues exist as to whether Elaine did act in good faith. Her motives and credibility should be assessed by the trier of fact. (3) The court holds that the issue of attorney’s fees should be

remanded along with the other issues. Multiple other issues were overruled. Reversed in part and remanded for new trial.

FAMILY LAW

-Conservatorship

No abuse of discretion by trial court in modification and no error in awarding attorney's fees

IN THE INTEREST OF A.P.L. AND T.D.L., MINOR CHILDREN IN RE L.L., Relator, No. 01-23-00725-CV, [2025 WL 2412903](#) (Tex. App. Aug. 21, 2025)

Facts: The parents divorced in 2017. They were named joint managing conservators with Mother having the right to designate residence, joint rights to consent to medical treatment, etc. The children's pediatrician was named as tiebreaker in case of disagreements over medical care. Three years later, Father filed to modify the decree and Mother counterpetitioned. A 10-day bench trial showed that the parties were unable to coparent and manage the children's multiple medical and mental health issues. The trial court modified the order, giving Father the right to designate primary residence and make the medical, mental health, and education decisions for the children. Mother filed an emergency motion to abate, claiming that Father had failed to meet the children's medical, mental health and educational needs. After an evidentiary hearing, the trial court denied the motion and, in a temporary order, awarded Father \$103,006 in attorney's fees and \$173,250 in conditional appellate fees.

Issue: Did the trial court err in granting modifying the final divorce decree to give Father the right to designate residence, etc.? Did the trial court err in issuing a temporary order awarding attorney's and appellate fees to Father?

Holding: No and no. The trial court does not abuse discretion when it weighs the evidence presented against the credibility it observes in witnesses. The trial court did not have to find a less disruptive solution before modifying the decree to Father make the exclusive decisionmaker for medical and educational issues. Regarding the temporary order awarding attorney's fees, although previously a temporary order was not subject to interlocutory appeal under Texas Family Code section 109.001(c), the code was modified by the Legislature to allow review by filing a petition for writ of mandamus or "proper assignment in the party's brief". The court holds that because this temporary order is not part of accelerated interlocutory appeal, but as part of appeal of a final judgment, it can address the temporary order for attorney's fees. The temporary order is not void by prematurity because the court finds nothing in the statute to give a consequence for a premature order. Further, although the trial court may have erred in awarding attorney's fees for work done prior to the appeal may have been in error, it does not void the temporary order, and sufficient evidence exists to show the temporary order was not arbitrary or unreasonable. Affirmed.

Int. of C.T.H., No. 05-22-01202-CV, [2025 WL 3285467](#) (Tex. App. Nov. 25, 2025)

Permanent injunctions constitutional and supported by sufficient evidence – grandparents could not overcome fit parent presumption

Facts: Maternal grandparents intervened in a SAPCR modification seeking sole managing conservatorship. They relied on a 2012 MSA from the prior divorce case, that gave them some possession rights and alleged parental unfitness. Mother sought permanent injunctions due to grandparents’ intrusive and harassing conduct. After a bench trial, the court denied grandparents’ conservatorship request, found both parents fit, granted permanent injunctions, and declined to enforce the decade-old MSA.

Issues: (1) Was the permanent injunction constitutional under prior restraint analysis? (2) Did the evidence support the issuance of the permanent injunctions? (3) Was the evidence sufficient on parental fitness?

Holding: The 5th Court of Appeals affirmed the trial court’s judgment. The court held that the grandparents failed to preserve any First Amendment/prior-restraint argument. Even if preserved, the injunctions were not content-based—they restricted contact and proximity, not the content of speech—so traditional prior-restraint analysis did not apply. As to the permanent injunctions, the court held that the trial court may issue conduct-based injunctions in SAPCRs upon a showing of best interest. Evidence of Grandparents’ intrusive, boundary-violating behavior—including uninvited school attendance, disruptive conduct at events, harassing communications, and attempts to influence third parties—supported the injunctions. The trial court reasonably concluded the restrictions protected the children’s welfare. The court also found that the evidence was sufficient regarding parental fitness. The fit-parent presumption controls unless rebutted. Grandparents did not show Mother or Father were unfit: The Mother provided extensive mental-health treatment for C.T.H. Counselors and psychiatrists testified she followed recommendations and acted appropriately. Evidence of conflict was within normal bounds for divorced co-parents. Alleged personality-disorder evidence was excluded or dated and not persuasive. Avoiding “toxic” grandparents did not constitute unfitness. Because parents were fit, Grandparents were not entitled to managing conservatorship. On other minor issues, the court held that any conflict between findings and the judgment were harmless; the trial court lacked plenary power to enforce the 2012 MSA, and res judicata barred it and there was no abuse in denying the motion to reopen.

[In the Int. of A.M.G., a Child.](#), No. 08-24-00335-CV, [2025 WL 3192601](#) (Tex. App. Nov. 14, 2025)

Geographic restriction not unreasonable

Facts: The parents of A.M.G. divorced in February 2021, with Mother as possessory conservator with the exclusive right to designate A.M.G.’s primary residence and Father as possessory conservator. The divorce decree includes a geographical restriction to El Paso County or within 100 miles of El Paso County. Father had standard possession order. Mother remarried a man who lived in Manchester, England, and advised Father that she intended to move to England. Father filed a petition to modify the parent-child relationship seeking modification of possession, conservatorship, and child support, seeking to be designated the primary managing conservator with the exclusive right to designate A.M.G.’s primary residence. On 9/12/24, the

trial court ruled in Father’s favor, designating Father as the managing primary conservator with Mother as possessory conservator, maintaining the El Paso County geographical restrictions, and ordering Mother to pay child support.

Issue: Did the trial court err in modifying the terms conservatorship, possession, and access of A.M.G.?

Holding: No. The trial court did not act unreasonably or arbitrarily in determining that it was in A.M.G.’s best interest to maintain the El Paso County, Texas geographic restriction, and in designating Father as managing conservator with Mother retaining visitation rights as the trial court’s determination was supported by both legally and factually sufficient evidence. Affirmed.

-Informal Marriage

[In re Est. of Guadalupe Lopez, Sr., Deceased](#), No. 24-0315, [2025 WL 3114451](#) (Tex. Nov. 7, 2025)

Reversible error to allow former family court judge testify as expert on informal marriage

Facts: Elvira Gonzalez filed a bill of review from a judgment declaring heirship, alleging that she was the decedent’s common-law wife and seeking a declaration that she was an heir. A jury was asked to determine whether she and the decedent were informally married. Gonzalez offered expert testimony from a former district court judge who opined, based on her experience as a family-law judge, that the evidence clearly showed Gonzalez and the decedent were informally married. The jury agreed, and the trial court rendered judgment awarding Gonzalez a share of the estate. The estate’s representative appealed, arguing that the trial court erred by admitting the former judge’s testimony. The court of appeals affirmed, concluding that any asserted error in admitting this testimony was harmless.

Issue: Did the trial court err by allowing a former family court judge to testify as an expert on whether the evidence established an informal marriage?

Holding: Yes. The Texas Supreme Court held that the trial court abused its discretion by admitting the former judge’s testimony. The Court concluded that the issue on which she opined—whether the evidence established an informal marriage—was within the average juror’s knowledge and therefore she did not provide specialized knowledge to help the jury determine a fact in issue. The Court held that the error was harmful because (1) the former judge’s testimony was crucial to the only contested issue, on which the evidence conflicted; (2) the testimony was not cumulative; (3) Gonzalez’s use of the testimony was calculated and not inadvertent; and (4) Gonzalez emphasized the expert’s role as a former family-law judge. The Court remanded the case to the trial court for a new trial.

-Property Division

[IN THE MATTER OF THE MARRIAGE OF PAULA GRIGSBY AND JEFFREY GRIGSBY](#), No. 13-24-00513-CV, [2025 WL 2470215](#) (Tex. App. Aug. 28, 2025)

Craddock factors not met on new trial request- disproportionate share ok based on fault – not sufficient evidence to show eligibility for spousal maintenance

Facts: Paula and Jeffrey were married in 1999 and separated in November 2023. Paula filed an original petition for divorce on 2/13/24, asking for a disproportionate share of the marital estate based on fault in the breakup of the marriage, disparity in earning power, and reimbursement. Jeffrey claims he was served at his worksite, but he did not file an answer, nor did he attend the temporary hearing on 4/1/24 or the final hearing on 4/22/24. The divorce was granted on the grounds of infidelity and insupportability. In the final decree, Paula was awarded the residence, three vehicles, and \$1000 per month spousal maintenance until May 2029, as well as arrearages. Each party was given their respective retirement accounts and personal property. Jeffrey filed a “Motion to Set Aside Default Judgment and Motion for New Trial” on July 3, 2024, contending that he was entitled to a new trial under *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124 (Tex. 1939). After Paula filed a response, the trial court denied the motion.

Issue: Did the trial court err (1) in denying Jeffrey’s motion for new trial, (2) in awarding Paula a disproportionate share of the marital estate, and in awarding Paula spousal maintenance until 5/29?

Holding: No, no, and yes. (1) The first element of *Craddock* is that the failure to answer a lawsuit was not intentional or due to indifference, but due to mistake or accident. However, in Jeffrey’s affidavit, he states that he did not answer because he was very busy at work. He admits that he did receive the notices to appear, and that Paula called to remind him of the hearings. (2) Jeffrey argues that there was not sufficient evidence that he had committed adultery, but the court holds that there was evidence that Jeffrey had depleted his 401K and other accounts on gambling and spending money on “paramours”, which supports the trial court’s unequal distribution of the community estate. (3) On the issue of spousal maintenance, no evidence exists to show that Paula exercised diligence in earning an income or developing skills to do so, meaning that the trial court abused its discretion in awarding spousal maintenance. Reversed and remanded as to spousal maintenance; affirmed as to the rest of the final decree.

[MAGGY HORGAN, Appellant v. JOHN HORGAN III, Appellee](#), No. 14-22-00893-CV, [2025 WL 3236342](#) (Tex. App. Nov. 20, 2025)

Trial court abused its discretion in upholding jury findings on unfair transactions and improperly characterized community property as separate property

Facts: Maggy and John Horgan III married in California in May 1991 and built a successful jewelry business together starting in 1993. They moved to Houston in 2007. Marital problems emerged around 2018. Maggy filed for divorce in January 2019 alleging insupportability and cruel treatment by John. John counter-petitioned. The case centered on allegations of fraud on the community estate, primarily Maggy's numerous transfers of funds to her mother, Rene Papas Artin. The parties agreed to a jury trial on actual/constructive fraud and reconstitution of the estate, with the trial court handling the final just-and-right division. At the September 2022 jury trial, the jury found both spouses committed actual fraud on the other's community rights. It valued John's fraud at \$0 and Maggy's at \$23,833.83. Of 21 transactions to Artin reviewed in Question 5, the jury found 13 unfair, 6 fair, and 2 duplicates. The jury calculated Maggy's unfair depletion of the community estate at \$1,269,720.35. It found John did not commit constructive

fraud. In the bench trial phase, the trial court reconstituted the estate at over \$4.5 million in assets and over \$470,000 in debts. It initially allocated assets roughly 50.51% to Maggy (charging the full \$1.27M depletion against her share) and 49.49% to John (including 100% of the business, valued at \$188,666, and real properties worth nearly \$1.9 million). Debts were split 70.34% to Maggy and 29.66% to John. After a \$131,710 equalizing payment from Maggy to John, the final division was 45% to Maggy and 55% to John. The court also characterized \$250,000 in registry funds (from a bond during marriage) as Artin's separate property and returned it to her.

Issues: Maggy's Three Issues: (1) Did the trial court err in refusing to disregard jury findings that three specific transactions to her mother were unfair (\$250,000 brokerage transfer; \$215,000 BBVA deposit; \$200,000 Chase transfer)? (2) Did the trial court miscalculate the reconstituted estate by (a) adding unsubmitted fraud instances (~\$242,528); (b) refusing to offset Maggy's fraud with over \$1 million her mother returned to the community; and (c) inconsistently stating Maggy's fraud value (\$23,833.83 in judgment vs. higher in findings)? (3) Was the evidence insufficient to support the \$188,666 valuation of the jewelry business awarded entirely to John? John's Two Cross-Issues: (1) Was the jury's \$23,833.83 fraud value for Maggy supported by evidence (John claimed depletion exceeded \$5 million in missing diamonds/inventory)? (2) Did the trial court mischaracterize \$250,000 in registry funds as the mother's separate property rather than community property?

Holding: The Fourteenth Court of Appeals affirmed in part, reversed in part, and remanded in part for a new property division, finding multiple errors that materially affected the just-and-right division. Specifically, as to Maggy's Issue 1, the court ruled that the trial court abused its discretion by not disregarding findings on the \$215,000 deposit as it was proven duplicate of two other transactions and the \$200,000 Chase transfer as there was no evidence it occurred. These overstated Maggy's depletion by \$415,000 total. The trial court was correct in upholding the jury finding that the \$250,000 brokerage transfer was unfair. Regarding Maggy's Issue 2 the court sustained it in part and held that the trial court erred by including three unsubmitted fraud transactions (~\$242,528) in reconstitution, violating Tex. Fam. Code § 7.009 and the parties' jury-trial agreement. The court upheld the trial court on the issue of offset (Maggy failed to trace returned funds) and inconsistency (immaterial clerical error). Maggy's Issue 3 was overruled as the value of the business was supported by John's testimony and financial records. John's Issue 1 was overruled as the fraud value was within the range of the evidence and the court deferred to that amount. John's Issue 2 was sustained. The \$250,000 registry funds were presumed community and were mischaracterized as separate property without clear and convincing rebuttal evidence. The court affirmed the divorce itself, the bulk of the jury's fraud/reconstitution findings (as corrected), the business award/valuation to John, and denial of offset. It reversed the reconstituted estate value and property division due to the cumulative errors (\$415,000 overstatement + \$242,528 improper inclusion + \$250,000 undivided community funds) and remanded for a new just-and-right division incorporating the correct amounts and upheld jury findings.

-Protective Orders

[Garza v. Renteria](#), No. 14-24-00079-CV, [2025 WL 2413260](#) (Tex. App. Aug. 21, 2025)

Trial court's orally rendered judgment sufficient for a 10 year protective order.

Facts: The Renterias' live pleading for a protective order alleged that: Garza and Patrick Renteria were previously in a dating relationship; Garza committed family violence by threatening the Renterias and reasonably placed them in fear of imminent physical harm, bodily injury, assault, or sexual assault; Garza committed stalking and harassment of the Renterias; and Garza was reasonably likely to harass the Renterias in the future. The Renterias sought a protective order pursuant to the Family Code and the Code of Criminal Procedure. On November 27, 2023, following an evidentiary hearing, the trial court orally rendered judgment in favor of the Renterias, stating that Garza had committed family violence, dating violence, stalking, and harassment of Patrick and was likely to engage in that conduct in the future and awarding Renterias with a protective order for a period of ten years. On January 4, 2024, the trial court signed the protective order in favor of the Renterias, but the order only provided that Garza had committed dating violence and family violence.

Issues: Did the trial court err in entering a protective order for a period longer than two years because: (1) the trial court failed to make the necessary findings for a protective order under the Family Code and under the Code of Criminal Procedure; and (2) there was insufficient evidence supporting the necessary findings?

Holding: The 14th Court of Appeals affirmed the trial court's issuance of a 10 year protective order. The court held that the trial court's **oral rendition** included the finding challenged by Garza and required by the Code of Criminal Procedure for the issuance of a protective order—that there were reasonable grounds to believe that Garza committed stalking and harassment and that Garza is likely to engage in stalking in the future. “In sum, when the trial court orally rendered judgment, it made the necessary findings under both the Family Code and the Code of Criminal Procedure—which were supported by sufficient evidence—for the entry of the protective order here for a period of ten years.” The court modified the trial court's protective order to include the following findings by the trial court: (1) “Probable cause exists to believe that Garza committed the offense of stalking under Penal Code § 42.072, which is a felony-level offense, involving family violence and (2) The nature of the scheme or course of conduct engaged in by Garza in committing the offense indicates Garza is likely to engage in stalking in the future.”

-Spousal Maintenance

[Harwood v. Harwood](#), No. 03-23-00455-CV, [2025 WL 2233982](#) (Tex. App. Aug. 6, 2025)

Spousal maintenance award cannot be increased by a finding of intentional underemployment

Facts: Quinn and Kimberley married in 1998 and separated over 20 years later in 2019. Their three children were between ages 16 and 21 at the time of trial. Quinn filed for divorce on

the ground of insupportability. Kimberley's counterpetition alleged cruel treatment and insupportability grounds for divorce and requested, among other things, an award of spousal maintenance. The case was tried to a jury, which found only the insupportability ground for the divorce. This was followed by a bench trial on the remaining nonjury issues, including Kimberley's spousal-maintenance request. After trial, the court signed a divorce decree ruling that Kimberley was unable to earn sufficient income to provide for her minimum reasonable needs because of an incapacitating physical injury (lymphedema) and ordering Quinn to pay spousal maintenance of \$1500/month based on a finding that Quinn was intentionally underemployed and could make \$120,000/year.

Issue: Did the trial court abuse its discretion by (1) awarding spousal maintenance because Kimberley did not prove that her lymphedema is an incapacitating disability and; (2) by awarding spousal maintenance based on its finding that Quinn was intentionally underemployed and could make \$120,000 annually, rather than considering his actual gross income at the time of trial, and by failing to determine that he had the ability to pay the spousal-maintenance ordered?

Holding: The Austin Court of Appeals affirmed the trial court's determination that Kimberley is eligible for spousal maintenance but reversed the spousal-maintenance amount and remanded the case for a new trial on that issue. On issue #1 the court held that the trial court was presented with legally sufficient evidence to support the court's (1) determination that Kimberley's lymphedema was an incapacitating physical disability, (2) determination of Kimberley's minimum reasonable needs, and (3) determination that her lymphedema renders her unable to earn sufficient income to provide for her minimum reasonable needs. On issue #2 the court noted that Section 8.055 of the Family Code caps the amount of spousal maintenance at the lesser of (1) \$5,000; or (2) 20 percent of the spouse's average monthly gross income. Quinn's monthly gross income was \$3300 per month so the maximum allowable spousal maintenance would be \$660.00 The court held that the trial court's \$1,500 spousal-maintenance award which relied on a finding of intentional underemployment was not authorized by section 8.055 of the Family Code to deem income of \$120,000 annually to Quinn rather than basing the award on his actual gross income. The court further held that there was no evidence that Quinn's average monthly gross income of \$3,300 supported a spousal-maintenance award of \$1,500, and that amount, which exceeds 20% of Quinn's average monthly gross income under section 8.055, constituted an abuse of the trial court's discretion. New trial ordered on issue of amount of spousal maintenance.

[McCartney v. McCartney](#), No. 14-24-00310-CV, [2025 WL 2213213](#) (Tex. App. Aug. 5, 2025)

Community Estate can be reimbursed from spousal support – Terms of contractual maintenance agreement supersede Chapter 8

Facts: Thomas and Ashley McCartney married in 2006 and had 3 children. In 2020 they executed a Marital Property Partition and Exchange Agreement, designating 2 properties as Ashley's sole and separate property. Thomas, however, paid the mortgage and HOA fees for these properties out of his community property income. When they divorced in 2022, the trial court ordered Ashley to reimburse the community estate \$225,499 for the two separate properties, arrears, and checks deposited into her separate account "by forgery". The trial court

further ordered that the balancing payments would be taken from spousal maintenance payments due to Ashley, and it set 4 conditions under which spousal support would cease.

Issue: Did the trial court err in ordering that reimbursement for Ashley's separate properties would be taken from spousal support payments and in setting conditions for termination of spousal support?

Holding: No and yes. The trial court did not order that Thomas should be awarded reimbursement, but that the community estate should be reimbursed. Even if the Marital Property Partition and Exchange Agreement executed by Ashley and Thomas shows that Thomas gave up his right to reimbursement for the properties, the community estate is still owed reimbursement when community funds are used for separate property. Regarding termination of spousal maintenance based on one of four conditions, the court holds that the terms set out in the MPPE agreement supersede those in Chapter 8 of the Family Code. Chapter 8 applies only to court-ordered maintenance, not contractually agreed spousal-support obligations. Absent express language indicating that Chapter 8 of the Family Code governs a contractual maintenance provision, courts will enforce the maintenance provision as a matter of contract law. Modified to remove provisions regarding termination of spousal support for death, remarriage, or cohabitation from the final decree.

-Termination of Parental Rights

[IN THE INTEREST OF G.M.M., a Child](#), No. 04-25-00236-CV, 2025 WL 2458625 (Tex. App. Aug. 27, 2025)

Evidence insufficient to terminate parental rights

Facts: In June 2023, the Department was notified of a physical altercation between G.M.M.'s mother and Grandmother, E.D., in the child's presence. Mother was located by the investigator in January 2024, and she was arrested when she tried to flee with G.M.M. She was found in possession of a meth pipe. When Mother refused to follow the safety plan, G.M.M. was placed with E.D. Mother took a plea deal for the aggravated assault on E.D., and as part of that she completed SAFF substance abuse program, which had requirements similar to the safety plan. Although Mother struggled to find a counselor, as required by the plan, who could accommodate her work schedule, she did attend almost every virtual visit and, after she was prevented by E.D.'s protective order from doing those visits, wrote 25 letters to G.M.M., as recommended by her caseworker. After a 2 day trial in January and March 2025, Mother's parental rights were terminated by the trial court based on Texas Family Code subsections 161.001(b)(1)(N) and (O). The trial court found that the 25 letters written by Mother were insufficient to maintain significant contact under (N), and for ground (O), that Mother failed to complete the counseling as required under the plan.

Issue: Was there sufficient evidence for termination of rights under sections (N) and (O)?

Holding: No and no. As to the visitations under section (N), the record shows that Mother attended almost every virtual visit, including one right before her incarceration. After those were

ended due to the protective order, Mother wrote 25 “loving” letters in 9 months’ time. In-person visits were difficult to schedule due to the distance between Mother’s residence and G.M.M.’s placement. As to section (O), although Mother did fail to attend counseling sessions with the provider listed in the plan, she did obtain weekly counseling through the SAFP program. Reversed and rendered as to the termination of Mother’s parental rights; affirmed as to the naming of the Department as managing conservator, etc.

[In re R.E.S. and P.R.S.](#), No. 08-24-00350-CV, [2025 WL 2646170](#), (Tex. App. Sept. 15, 2025)

Trial court abused its discretion in granting new trial based on insufficient evidence and juror misconduct

Facts: Following Father’s release from a 13-month prison sentence, he filed his Petition to Modify. At the time, the Child was three years old and had been living with Aunt and Uncle for 2 years. Father sought to modify the June 7, 2018 Agreed Order which had appointed Mother and Father as joint managing conservators of the Child, with Mother having the exclusive right to designate and maintain the Child’s primary residence. Through his Petition to Modify, Father sought to have the exclusive right to designate and maintain the Child’s primary residence. Aunt and Uncle learned of Father’s release from prison through this petition and intervened.. As of this date, Aunt and Uncle had actual care, control, and possession of the Child for approximately two years. Aunt and Uncle intervened to terminate Father’s parental rights or, alternatively, to be appointed as joint managing conservators with exclusive rights over the Child. The jury returned a verdict terminating Father’s parental rights under Subsections D and E of § 161.001(b)(1) of the Texas Family Code, and found termination was in the Child’s best interest. Father filed his motion for Judgment Notwithstanding the Verdict (JNOV) and motion for new trial on the same day. Father’s JNOV argued that the evidence was legally insufficient to support the jury’s endangerment and best interest findings, and that an inconsistent juror poll further warranted setting aside the jury’s verdict. The motion for new trial challenged the legal and factual sufficiency of the jury’s endangerment and best interest findings. Father also asserted grounds of juror confusion, an inconsistent juror poll, juror misconduct, and bailiff misconduct, as additional grounds for a new trial. In support of the new-trial motion, Father submitted his own affidavit, the jury charge, and affidavits from three jurors. A hearing on both motions was held on November 20, 2024. At the hearing, no live testimony was heard, and the trial court admitted the three juror affidavits. The trial court ultimately denied Father’s JNOV and granted his motion for new trial. The trial court provided two grounds in granting the motion for new trial: (1) the evidence was legally and factually insufficient to support the jury’s findings, and (2) newly discovered evidence of certain misconduct warrants a new trial.

Issues: Was the evidence legally and factually insufficient to support the jury’s findings and (2) did newly discovered evidence of certain misconduct warrant a new trial?

Holding: No. The 8th Court of Appeals reversed the trial court's granting of a new trial. As to Issue #1, the court held that “[b]ecause the trial court’s stated bases do not meet *Columbia* and

United Scaffolding's facial requirements, the order is not facially valid as required by the Texas Supreme Court. The trial court therefore abused its discretion in granting a new trial based on its articulated ground of insufficient evidence to support the jury's endangerment and best interest findings." The trial court, in other words, substituted its findings in place of the jury's findings and therefore abused its discretion. Regarding Issue #2, the court held that "[b]ecause no evidence, apart from the affidavits, was presented at the hearing on the motion for new trial, we conclude the trial court abused its discretion in setting aside the jury's verdict on these grounds." The court held that in order to find juror misconduct that warrants a new trial the trial court must hear live testimony and not just affidavit testimony as occurred in this case.

[IN THE INTEREST OF D.M.W. AND J.J.W., CHILDREN](#), No. 05-25-00534-CV, [2025 WL 2821557](#) (Tex. App. Oct. 3, 2025)

Bill of review on termination based on fraudulent inducement to sign relinquishment denied

Facts: Mother's two youngest children, D.M.W. and J.J.W., were the subjects of two separate underlying court cases. Both cases were mediated, apparently in a single mediation. Mother, the Department of Family and Protective Services, and the Wilsons (adoptive parents) all participated in that mediation, and two separate mediated settlement agreements (MSAs) were reached in each case. The first MSA in each case concerned pre-adoption issues. In those MSAs, Mother promised to execute affidavits of relinquishment for D.M.W. and J.J.W. The Department promised to place the children with the Wilsons and not to remove them from the Wilsons absent endangerment of the children's physical, mental, or emotional wellbeing. The first MSA in each case also provided that Mother would have monthly visitation until the Department accepted Mother's voluntary relinquishments. The second MSA in each case addressed post-adoption events and created a possibility for Mother to have some contact with the children after their adoptions by the Wilsons. Mother testified that she signed an unrevoked affidavit of relinquishment "to both children." In April 2024, the judge in D.M.W.'s case signed an order terminating Mother's rights as to D.M.W. based on Mother's affidavit of relinquishment and the best interest of the child. In October 2024, an associate judge signed an order terminating Mother's rights as to J.J.W., also based on Mother's affidavit of relinquishment and the best interest of the child. Between those two events, however, Mother's scheduled August 21, 2024 visitation was canceled. Mother testified that she was told that Jenie Wilson had a family emergency. Although Mother had a visit with the children in September, she did not get a visit in October or thereafter. In November, Mother learned that the children had been removed from the Wilsons' home in October because James Wilson had been arrested for possession of child pornography. Later, she learned of an allegation that James Wilson had been producing child pornography. After these events, the Department took the position that Mother was no longer entitled to visitation with the children because the MSAs' visitation provisions depended on the children's being placed with the Wilsons. Mother testified that James Wilson did not disclose at the mediation that he was addicted to child pornography or that his home was endangering. She further testified that she would not have signed any voluntary relinquishments if she had known those alleged facts. Mother filed a bill of review to overturn the terminations which the trial court denied.

Issue: Did the trial court err in denying mother’s bill of review based on fraudulent inducement to sign the affidavits of relinquishment?

Holding: No. The 5th Court of Appeals affirmed the trial court’s denial of the mother’s bill of review. The court held that Family Code section 161.211(c) does not relieve a bill-of-review petitioner from proving that she was prevented from making a meritorious defense in the underlying case by the fraud, accident, or wrongful act of her opponent, or by official mistake as required under the bill of review standard. Because the Mother cannot meet those elements first the court does not get to an analysis under section 161.211(c). The mother’s bill of review is overruled.

[D.V., Petitioner, v. Texas Dep’t of Fam. & Protective Servs., Respondent](#), No. 24-0840, [2025 WL 3038976](#) (Tex. Oct. 31, 2025)

Trial court cannot terminate parental rights when Dept. orally abandons request to terminate

Facts: In January 2021, the Department removed D.V.’s child from her home and sued to terminate her parental rights after receiving reports of domestic violence. At trial, the Department’s designated representative—one of its caseworkers—testified both on direct and cross-examination that the Department no longer sought to terminate D.V.’s parental rights but to limit her status to parent non-conservator with no rights of visitation or contact. The Department took no steps to controvert this assertion, but the trial court terminated D.V.’s rights. The court of appeals affirmed, holding that the Department had not abandoned its pleading, relying on what it regarded as the trial’s larger context.

Issue: Did the Department orally abandon its request for termination of D.V.’s parental rights at trial?

Holding: Yes. The Texas Supreme Court reversed. It held that in parental-termination cases, which are distinct from other civil litigation for various reasons, an unequivocal assertion by the Department, including its designated representative, constitutes withdrawal of a request for termination. A court may not order termination, therefore, unless the Department clearly repudiates the assertion that termination is no longer sought. In this case, the caseworker’s statement was unequivocal. No contextual features at trial that the court of appeals or the Department identified constitute repudiation of that unequivocal statement, so the trial court lacked authority to order termination. The Supreme Court therefore remanded to the trial court with instructions to appoint D.V. a parent non-conservator, consistent with the caseworker’s testimony and D.V.’s request.

[IN THE INTEREST OF K-K.J.B., a Child](#), No. 04-25-00489-CV, [2025 WL 3223754](#) (Tex. App. Nov. 19, 2025)

Jury had sufficient evidence to terminate Father’s parental rights

Facts: DFPS filed its first petition in December 2021 seeking protection, conservatorship, and termination of the parental rights of both Mother and Father to their child, K-K.J.B., a nonverbal autistic child with significant special needs. At the first jury trial in May 2023, Mother’s rights were terminated, but the jury did not terminate Father’s rights. Instead, DFPS was appointed permanent managing conservator. DFPS filed a second petition for termination in December 2023. A second jury trial was held in July 2025. By this time, K-K.J.B. required extensive daily therapy, functioned cognitively like a toddler and needed highly consistent, trained caregiving to continue progressing. Evidence presented to the jury showed that Father did not complete his service plan (parenting classes, counseling, drug treatment), failed to engage in specialized caregiver training, removed the child’s post-surgical leg braces during a visit without medical direction, had unstable housing and employment, and tested positive for cocaine, which he attempted to attribute to medical procedures. He also faced a criminal indictment for robbery. While Father attended most visits and was loving towards the child, workers testified he did not understand her level of disability or needs. The jury terminated Father’s rights under Texas Family Code §161.001(b)(1)(D), (E), (N), (O), and (P) and found termination to be in the child’s best interest.

Issue: Was the evidence legally and factually sufficient to support the jury’s finding that terminating Father’s parental rights was in the best interest of the child?

Holding: Yes. Affirmed. The 4th Court of Appeals held that the evidence was both legally and factually sufficient. The court concluded that the child has significant, long-term special needs, requiring extremely consistent, trained caregiving and that Father failed to complete required parenting, counseling, and drug-treatment programs. Father also did not undergo or participate meaningfully in special-needs training necessary for her development. He had unstable housing and employment and could not say when that would change. He had drug-use issues, including a verified positive cocaine test. He also faced criminal charges, relevant to parental fitness. The Department had a viable adoption plan, potentially nationwide, offering stability and resources.

Even though Father showed love and attended most visits, the entirety of the evidence allowed a reasonable jury to conclude that termination was in the child’s best interest. The termination of Father’s parental rights was affirmed.

[SHERI TAYLOR, Appellant v. MELODY ANN NORTON, Appellee](#), No. 06-25-00014-CV, 2025 WL 3248186 (Tex. App. Nov. 21, 2025)

Termination and adoption do not extinguish consanguinity so granddaughter had standing to seek a protective order for her grandmother

Facts: Norton filed an application for a family-violence protective order to protect her grandmother, Hatridge, from alleged abuse by Taylor. Norton is Taylor’s biological daughter and Hatridge’s biological granddaughter, but Norton was adopted as an infant after termination of Taylor’s parental rights. Taylor argued Norton lacked standing under Family Code §82.002(a), asserting that the termination and subsequent adoption severed all “family” relationships—

including the consanguineous link—thereby preventing Norton from qualifying as an “adult member of the family” entitled to seek a protective order for another “family” member. The trial court rejected the standing challenge and granted the protective order. Taylor appealed.

Issues: (1) Does termination of a parent’s rights and the child’s adoption terminate the child’s biological consanguinity for purposes of the Family Code’s definition of “family” (§71.003) and the right to seek a protective order (§82.002(a))? (2) Do the Family Code’s termination and adoption provisions (§§161.206(b), 162.017) override the Government Code’s statutory definition of consanguinity (§573.022(a))?

Holding: No on both issues. The 6th Court of Appeals held that termination and adoption do not extinguish consanguinity for purposes of the Family Code’s definition of “family.” Because the Legislature expressly preserves inheritance rights “from and through” biological parents in §161.206(b), the biological descent relationship retains legal effect. Thus, Norton remained a biological descendant of Hatridge under Government Code §573.022(a), making the two “family” under Family Code §71.003. As an adult member of that family, Norton had standing to seek a protective order protecting her grandmother under §82.002(a). The court emphasized statutory harmony: preserving biological descent for inheritance but denying it for consanguinity would be inconsistent. No statutory text compelled such a contradiction. Affirmed.

[Int. of M.B.](#), No. 14-25-00418-CV, [2025 WL 3275376](#) (Tex. App. Nov. 25, 2025)

Termination was supported by the evidence as findings regarding reasonable efforts and continuing danger were sufficient

Facts: After a THC-gummy ingestion incident and chronic school neglect, DFPS removed 10-year-old Max from Mother, who used drugs, failed services, left children with unsafe caregivers, and disappeared for weeks. Max thrived in kinship placement. The trial court terminated Mother’s rights and appointed DFPS permanent managing conservator.

Issues: (1) Did the trial court make the specific written findings required by Family Code § 161.001(f)–(g) (reasonable efforts + continuing danger)? (2) Was the evidence legally and factually sufficient to support termination? (3) Was the evidence legally and factually sufficient to support the best-interest finding? (4) Did the trial court err by appointing DFPS as managing conservator instead of the child’s relatives?

Holding: The 14th Court of Appeals affirmed the trial court’s findings. The trial courts written findings under § 161.001(f)–(g) were sufficiently specific. There was clear-and-convincing evidence that supported termination under subsection (E). The evidence supported the trial court’s best-interest finding under *Holley*. The appointment of DFPS as conservator was not an abuse of discretion. Termination of parental rights was affirmed.

GOVERNMENTAL ENTITIES

-Public Information Act

CITY OF DALLAS, Appellant v. KEN PAXTON, ATTORNEY GENERAL OF TEXAS, AND THE DALLAS MORNING NEWS, INC., Appellees, No. 15-24-00081-CV, 2025 WL 2413927 (Tex. App. Aug. 21, 2025)

Public Information Act litigation exception request needs to include specific facts

Facts: In February 2022, HUD notified the City of Dallas that it had received a formal complaint of housing discrimination against the City. Darryl Baker, an African American resident of Dallas, complained that the City was discriminating against him by building low-income housing in his neighborhood. HUD informed the City that it was investigating the merits of the complaint and requested information from the City. Meanwhile, the Dallas Morning News filed an open records request for that same information. On 1/25/23, the City wrote to the Texas AG, requesting a decision as to whether it could withhold the information requested, saying it was involved in potential or active litigation, but not mentioning Darryl Baker by name. The AG decided that, because the information had already been provided to HUD, it could not be withheld from the DMN. The City filed suit against the AG for declaration that some of the information could be withheld under section 552.103, not mentioning Baker or his potential litigation in the original petition. The DMN intervened with a writ of mandamus, and the City and DMN filed motions for summary judgment. The trial court granted the DMN's motion for summary judgment and denied the City's.

Issue: Did the trial court err in granting the Dallas Morning News' motion for summary judgment, denying the City's motion for summary judgment?

Holding: No to all. Because the City did not mention Baker or his potential litigation neither in its 1/25/23 letter nor its original petition, the AG could have had no way of knowing there was any potential litigant other than HUD. Because it had supplied all the information to HUD already, while not mentioning Baker's potential litigation, the AG could not make a determination of the basis of the potential litigation. Although the City argued that simply mentioning that potential or actual litigation existed, the statute requires the City to have "properly raised" the litigation exception with the AG, which would have entailed giving the AG enough factual detail to make an informed decision. The court also upheld the award of attorney's fees to DMN. Affirmed.

-Religious Exemption -Property Tax

The term “owner” in the Tax Code includes equitable owner – religious use entitles them to full exemption.

Facts: The First Church of Christ, Scientist (the *Church*) purchased property at 104 Trinity Street in 1993 and operated a Christian Science Reading Room there, long receiving a religious-organization property-tax exemption. In 2012, the Church and two neighboring landowners formed *South ½ Block 8 Venture* (the *Venture*) as a partnership to combine and potentially redevelop their properties. Under the partnership agreement: Each partner conveyed its tract to the Venture, each partner retained control of the tract it contributed, each partner bore all costs and liabilities for its own tract and any partner could withdraw at any time, and upon withdrawal the Venture had to convey back the withdrawing partner’s original tract if still held. In 2014, the Church conveyed the Reading Room parcel to the Venture, which then leased it back to the Church. The Church continued operating the Reading Room until mid-2017. TCAD initially granted the religious exemption for 2015 but later revoked it retroactively for 2015–2017, claiming the exemption “belonged to the previous owner.” The Appraisal Review Board reduced the exemption to 0% (2015) and 33.33% (2016–17). The Venture sought judicial review, claiming the Church was the equitable owner and used the property for religious purposes. The trial court granted summary judgment for TCAD and denied the Venture’s cross-motion.

Issues: (1) Does the Texas Tax Code’s term “owner” in § 11.20 (religious-organization exemption) include an equitable owner, not just the legal title holder? (2) If so, did the Church qualify as the equitable owner of the parcel under the partnership agreement? (3) If the Church was the equitable owner, did its religious nature and religious use of the parcel entitle the property to full exemption for 2015–2017?

Holding: Yes as to all 3 issues. The term “owner” in Tax Code Chapter 11 includes equitable owners, consistent with the Texas Supreme Court’s reasoning in *AHF-Arbors v. Walker County Appraisal District*. Statutory definitions should be applied consistently across tax exemptions. The Church was the equitable owner as a matter of law because it had an unrestricted right to withdraw from the partnership and thereby force the Venture to reconvey the parcel. This was an unqualified power to compel return of legal title—meeting the AHF-Arbors equitable-ownership test. The Church’s uncontested evidence established that it was a qualifying religious organization under § 11.20(c), and that it used the property as a Reading Room—a use that constitutes “religious worship” under § 11.20(e). Therefore, the parcel was fully exempt from property tax for 2015, 2016, and 2017. The court reversed the trial court’s judgment and rendered judgment in favor of the Venture.

-Rule 202 Pre-Suit Depositions

[IN RE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS, Relator](#), No. 15-24-00106-CV, [2025 WL 2414653](#) (Tex. App. Aug. 21, 2025)

OAG failed to meet its burden of showing benefit of pre-suit depo outweighed burden to TBI

Facts: The OAG filed a Rule 202 petition on July 8, 2024, in Travis County. The petition alleges that TBI has used funds it received as grants for “unauthorized, and potentially illegal, practices.” More specifically, the OAG alleges TBI is potentially violating Texas Penal Code, Sections 37.10 (tampering with a governmental record), 37.101 (fraudulent filing of financial statement), and 31.03 (theft). Such violations, according to the petition, would give the OAG the right to seek forfeiture of TBI’s corporate charter. After an evidentiary hearing, the trial court denied the petition.

Issue: Did the trial court err in denying the Rule 202 petition?

Holding: No. The 15th Court of Appeals affirmed the trial court's dismissal of the Rule 202 petition. The court held that “the OAG, as petitioner, was required to introduce evidence to support a finding that “the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure.” Id. R. 202.4(a)(2). It did not meet its burden and, as a result, we cannot conclude that the trial court abused its discretion based on the record before it.” The court noted the thin record submitted at the trial court by the OAG that included only 3 exhibits which were printouts and excerpts of publicly-available governmental publications. “Rule 202 is not intended as a vehicle to probe facts for the sake of probing. The OAG has the right to fully investigate TBI using all the tools in its toolbox, be it a Rule 202 deposition or a lawsuit, so long as the requisite procedures are followed.”

-Sovereign Immunity

[THE STATE OF TEXAS v. NONPARTY PATIENT NO. 1, NONPARTY PATIENT NO. 2, et al Appellees IN RE THE STATE OF TEXAS](#), No. 15-25-00023-CV, [2025 WL 2355380](#) (Tex. App. Aug. 14, 2025)

Rule 176 motion to protect does not implicate sovereign immunity.

Facts: In October 2024, the State filed suit in Collin County against Dr. May Lau, claiming that Lau had violated provisions of Senate Bill 14 and the Deceptive Trade Practices Act by providing gender-transition treatments to minors. As part of that suit, on January 16, 2025, the State served subpoenas on two hospitals, Children’s Health System of Texas and UT Southwestern Medical Center (the Hospitals). The subpoenas, served in Dallas County, require the Hospitals to produce documents “relating to the care and treatment,” including “medical records, billing records, psychiatry notes, and correspondence,” of twenty-one patients. On

February 3, 2025, eleven of the twenty one patients (the Nonparty Patients) filed a “petition for motion for protection from discovery subpoenas” in Dallas County (the petition or petition for protection). According to the Nonparty Patients’ petition, the subpoenas require the production of medical records and other materials that are protected from disclosure under the Rules of Evidence. In response, on March 3, 2025, the State filed a plea to the jurisdiction, seeking dismissal of the Dallas County proceedings on the ground that they are barred by sovereign immunity. The State also filed a plea in abatement, asserting that the Collin County court has dominant jurisdiction over the dispute. On March 6, 2025, immediately before the hearing on the Nonparty Patients’ petition for protection, the Dallas County district court denied the State’s plea to the jurisdiction and its plea in abatement. The court then proceeded to hear argument on the Nonparty Patients’ petition for protection. Before the proceedings on the petition could conclude, however, the State announced in open court that it had filed an interlocutory appeal from the denial of its plea to the jurisdiction, staying the proceedings.

Issue: Is a motion for protection under Rule 176.6 a suit to which sovereign immunity applies when it is filed in the “district court in the county where the subpoena was served” and not “the court in which the action is pending”?

Holding: No. The 15th Court of Appeals affirmed denial of the State’s plea to the jurisdiction and plea in abatement. The court also denied the State’s mandamus as well. The court held that “the Nonparty Patients have not asserted a substantive “claim” against the State that would risk the public fisc, or hamper government actions. Instead, the Nonparty Patients seek protection from discovery, albeit in a separate court, in the context of a suit filed by the State. The petition for protection is not, in itself, a “suit” to which sovereign immunity applies.” In sum, the petition for protection does not implicate those interests of the State that sovereign immunity is intended to protect. Consequently, based on the undisputed facts presented in the “petition for motion for protection from discovery subpoenas,” we conclude that sovereign immunity does not apply to the Nonparty Patients’ subpoena challenge in Dallas County. The court also concluded however, that the record regarding the standing issue regarding the unrepresented patients was insufficiently developed given the State raised it for the first time in this appeal. “Because the record does not show that the Nonparty Patients had a full and fair opportunity in the district court to amend their pleadings and develop the record on this issue, we remand the case to allow the Nonparty Patients an opportunity to cure the jurisdictional defect by repleading or presenting evidence.” As to the mandamus because the State’s issues were disposed of the State could not show an abuse of discretion therefore it was denied.

[Curadev Pharma Pvt. Ltd. v. Univ. of Texas Sw. Med. Ctr.](#), No. 15-25-00004-CV, [2025 WL 2414661](#) (Tex. App. Aug. 21, 2025)

All claims including takings, tort and statutory claims dismissed under sovereign immunity

Facts: Curadev sued Southwestern and the other defendants alleging misappropriation of trade secrets, conversion, and an unlawful taking under Article I, Section 17 of the Texas Constitution. Curadev alleged that the defendants misappropriated Curadev's trade secrets by continuing to conduct research using Company Material beyond the term of the Research Agreement between Takeda and Southwestern. The trial court granted the plea to the jurisdiction filed by the defendants based on sovereign immunity.

Issue: Did the trial court err in granting the defendant's plea to the jurisdiction based on sovereign immunity?

Holding: No. The 15th Court of Appeals affirmed the trial court's granting of the plea to the jurisdiction. As to the Takings Claim, the court held that "Curadev has not affirmatively shown that Southwestern had the requisite intent to take property under its sovereign powers as required for a constitutional takings claim. Southwestern, in using Company Material given to it by Takeda pursuant to the Research Agreement, acquired the test compound by contract, not by its eminent domain powers. Therefore, Southwestern lacked intent to take Curadev's property without compensation and is immune from suit." Regarding the tort claims of misappropriation and conversion the court ruled that "[b]ecause the Tort Claims Act does not waive Appellees' sovereign immunity from suit for Curadev's claims for the intentional torts of misappropriation of trade secrets and conversion, the trial court did not err in dismissing those claims for want of jurisdiction". The statutory claim under the Texas Uniform Trade Secrets Act was dismissed as well because the Act did not unambiguously provide a waiver of immunity. All other claims were dismissed as well under sovereign immunity.

-Takings

[HENRY JONES, ET AL., Appellants v. PORT FREEPORT, Appellee](#), No. 14-23-00948-CV, [2025 WL 2666066](#) (Tex. App. Sept. 18, 2025)

Port failed to plead a specific public use for this specific property – general plans to expand not sufficient

Facts: Port Freeport is a 7,600-acre port in Freeport, Texas; 2,800 of those acres are undeveloped. The Landowners are co-owners of property close to the Port's existing terminal. The Port and other navigation districts are authorized by Chapter 62 of the Water Code to take property for "the operation and industrial and business development of ports and waterways." Tex. Water Code § 62.107(c). When the Port desired to expand, therefore, its governing body adopted a resolution authorizing it to take property immediately adjacent to its existing terminal for "expansion of the Port Facilities" and "the development of business and industries." The next year, the Port filed a petition to condemn the Landowners' property, making the same allegation—that it was seeking to acquire it for "expansion of [Port] facilities" and "the development of business and industries." The Port did not identify any specific plans for the Landowners' property. The trial court granted the Port's motion for summary judgment, holding that the Port had the power of eminent domain pursuant to Texas Water Code section 62.107 and

had a plan for the public purpose and public necessity of expanding the Port's current operations into the East End of Freeport. The parties stipulated that the amount of compensation owed to the Landowners was \$100,000, and the trial court signed a final judgment.

Issues: (1) Was this taking unconstitutional as a matter of law because economic development takings do not satisfy the Constitution's public use requirement, and (2) did the Port fail to plead a public use with specificity?

Holding: Reversed and remanded. The 14th Court of Appeals held that the Port's failure to plead a public use with specificity (the second issue) prevented them from determining whether this taking was constitutional (the first issue). "The Port's pleading that it was taking the Landowners' property for "expansion of [Port] facilities" and "the development of business and industries" was not explicit or related to a particular named thing. The Port parrots much of that language from the Water Code section 62.107(c). But that is the general statute that gives ports their condemning authority; any port attempting to take property could plead exactly that language. But the Port is required to plead a public use that is specific to these Landowners' property." The trial court's judgment was reversed and the case remanded the cause to the trial court to (1) give the Port an opportunity to replead its case with the specificity required by Texas Property Code section 21.012(b)(2); and (2) if the Port cannot do so, dismiss the case and consider awarding the Landowners reasonable and necessary attorney's fees pursuant to Texas Property Code section 21.019.

[San Jacinto River Auth. v. Ross](#), No. 14-23-00923-CV, [2025 WL 2934051](#) (Tex. App. Oct. 16, 2025)

River Authority immune from takings claims – actions taken to prevent grave and immediate threat

Facts: During Hurricane Harvey in 2017, the San Jacinto River Authority (SJRA) released water from Lake Conroe into the West Fork of the San Jacinto River. Downstream property owners (in Kingwood and Humble, Texas) alleged that SJRA's water release caused or worsened flooding on their properties. This is one of several cases in which the property owners sued SJRA, asserting statutory takings claims under Chapter 2007 of the Texas Government Code (the Private Real Property Rights Preservation Act). SJRA argued that its actions were protected by governmental immunity and that the statutory exclusion in section 2007.003(b)(7) applied, because the water release was done out of a reasonable good faith belief that it was necessary to prevent a grave and immediate threat to life or property. The trial court denied SJRA's plea to the jurisdiction.

Issues: (1) Was SJRA immune under the statutory exclusion for emergency actions? (2) What does "reasonable good faith belief" mean under section 2007.003(b)(7), and did SJRA's actions meet this standard? (3) Did the property owners fail to present sufficient evidence to create a genuine issue of material fact that SJRA's actions were not taken in reasonable good faith or were not necessary to prevent a grave and immediate threat?

Holding: The 14th Court of Appeals reversed. The court found that SJRA conclusively established that its release of water was done out of a reasonable good faith belief that it was necessary to prevent a grave and immediate threat to life or property. The property owners did not create a genuine issue of material fact on this point. The evidence showed that Harvey was an unprecedented storm, that the dam's integrity was at risk, and that SJRA followed its gate operations policy designed to minimize harm and comply with legal requirements. Because the statutory exclusion applied, the Legislature did not waive SJRA's governmental immunity, and the trial court lacked jurisdiction over the statutory takings claims. The court reversed the trial court's order and rendered judgment dismissing the property owners' statutory takings claims with prejudice. The ruling did not affect their constitutional takings claims pending elsewhere.

-Texas Open Meetings Act

[WEBB COUNTY, TEXAS, Appellant v. CYNTHIA MARES, Appellee](#), No. 14-23-00617-CV, [2025 WL 3165692](#) (Tex. App. Nov. 13, 2025)

TOMA violated due to inadequate meeting notice – can recover attorneys fees but no back pay

Facts: The Webb County Commissioners voted in September 2016 to split its Administrative Services Department into two departments, Human Resources and Risk Management, during discussion of Item 49 on the agenda of the 9/26/16 Commissioners' Court meeting. With this vote, it simultaneously moved Mares, the director of the Administrative Services Department, to the newly formed Human Resources Department and reduced her annual salary from \$105,000 to \$75,000. Mares sued the County, alleging Item 49 gave inadequate notice under TOMA that the Administrative Services Department might be restructured into two departments. When she was terminated in August 2017, she added a whistleblower claim to her suit. The suit was moved to federal court, where the county was granted summary judgment on all claims except the whistleblower and TOMA. Mares dropped the whistleblower claim, and the trial court granted her motion for summary judgment on the TOMA claim, including monetary awards for back pay and attorney's fees. The Fourteenth court issued an opinion on 12/17/24; that opinion and dissent are vacated.

Issue: (1) Did the trial court lose subject matter jurisdiction because Mares filed her TOMA claim late? (2) Did the Commissioners' Court meeting agenda give sufficient notice of subject? (3) Does governmental immunity preclude Mares's claim for declaratory judgment? (4) Did the trial court err in awarding attorney's fees to Mares?

Holding: No, no, yes and no. (1) The record does not show that Mares filed her TOMA claim in an untimely fashion. She first filed it on 11/18/16. (2) Item 49 of the meeting agenda called for discussion of the county budget but did not mention possible restructuring of the Administrative Services Department. By comparison, other items on the agenda called for changes in specific job descriptions. (3) However, because TOMA does not waive governmental immunity with respect to declaratory judgment claims, Mares cannot recover monetary damages for back pay

and lost retirement benefits. (4) She can recover attorney's fees. Reversed as to the monetary awards for back pay and retirement; otherwise affirmed.

-Tort Claims Act

[KIMBERLY SOMER, CODY JANSSEN, AND ALLINE HENDERSON, Appellants v. OAKBEND MEDICAL CENTER AND OAKBEND MEDICAL GROUP, Appellees](#), No. 01-24-00187-CV, [2025 WL 2446015](#) (Tex. App. Aug. 26, 2025)

Facts: Plaintiffs sued OakBend Medical Center and its subsidiary OakBend Medical Group after their personal identifying information and personal health information (“personal information”) were potentially stolen in a cyberattack. The two OakBend entities filed pleas to the jurisdiction, arguing that the claims asserted against them did not fall within a waiver of governmental immunity. The trial court granted the pleas to the jurisdiction and dismissed all claims with prejudice.

Issue: Did the trial court err in granting the plea to the jurisdiction?

Holding: Yes, as to OakBend Medical Group and no as to OakBend Medical Center. The 1st Court of Appeals held that while OakBend Medical Center was a municipally created hospital authority and therefore protected from suit by governmental immunity that immunity does not pass down to its subsidiary OakBend Medical Group. The court came to this conclusion, a case of first impression, after a lengthy review of Texas Supreme Court cases in similar cases holding that “[b]ased on the relevant provisions of the Health and Safety Code, caselaw, and the state of the record, we conclude that OakBend Medical Group most closely resembles the economic development corporation at issue in *Rosenberg Development*—rather than open-enrollment charter schools and *ERCOT*—and therefore does not have immunity as an arm of the State government.” Regarding derivative immunity, the court held that OakBend Medical Group did not provide adequate evidence to establish derivative immunity based on OakBend Medical Center’s immunity. Regarding whether the patients’ tort claims fall within the tangible personal property waiver of the Tort Claims Act the court held that the plaintiff’s alleged damages such as financial losses, expended time, and an increased risk of future identity theft are not “personal injuries” such that the Tort Claims Act’s tangible personal property waiver applies to waive OakBend Medical Center’s governmental immunity. The unjust enrichment claims were also barred with the court holding that “the unjust enrichment allegations come within the normal rule that “regardless of the nature of the equitable claim, if money damages are the remedy sought, then the claim is barred by governmental immunity.” The court therefore reversed the trial court’s order granting OakBend Medical Group’s plea to the jurisdiction, and remanded Somer’s claims against OakBend Medical Group for further proceedings. The court affirmed the trial court’s orders granting OakBend Medical Center’s pleas to the jurisdiction.

[CITY OF HOUSTON, Appellant v. CHRISTOPHER GRINER, Appellee](#), No. 14-24-00530-CV, [2025 WL 2485781](#) (Tex. App. Aug. 29, 2025)

City not immune from suit – plaintiffs pleadings sufficient and City failed to establish it lacked actual knowledge

Facts: Griner sued the City for negligence, gross negligence, and premises liability, claiming he suffered severe injuries when he slipped and fell on “a slippery, water- like substance” in terminal D’s restroom floor on January 9, 2019 at Bush Intercontinental Airport. Almost five years later, the City filed a plea to the jurisdiction, asserting Griner could not establish a premises defect waiver under the Texas Tort Claims Act because the City lacked knowledge that a dangerous condition—the wet floor—existed at the time of his accident. Griner filed a response to the City’s plea. He attached a string of emails titled “Flooding in restroom D6” showing that the airport infrastructure manager and airport workers had emailed about flooding in the terminal D restroom beginning November 7, 2018, with one worker telling the manager: “[t]he drain issue was not resolved and clogged again today leading to the flooding/overflow,” and the manager replying, “[w]e have talked about this but not fixed it.” The trial court denied the plea after a hearing.

Issues: Was the City immune from Griner’s suit because (1) his pleadings do not allege facts showing it had actual knowledge of an unreasonable risk of harm at the time of his accident, and (2) its affidavit established it lacked actual knowledge.

Holding: No. The 14th Court of Appeals held that the City was not immune from suit. The court first held that Griner’s pleadings were sufficient to survive a plea to the jurisdiction because they asserted actual knowledge by the City. The court stated that “Griner pleaded that the City “had actual knowledge . . . of the unreasonably dangerous condition,” which he identified as “a slippery, water-like substance on the floor.” Griner’s pleading satisfied his burden of affirmatively demonstrating the trial court’s jurisdiction because he alleged a valid waiver of immunity.” The court then held that the affidavit submitted by the City to establish it lacked actual knowledge was deficient. The affidavit offered by the City “does not conclusively establish that the City lacked actual knowledge of the dangerous condition, so it doesn’t matter whether Griner’s evidence was sufficient to show actual knowledge; Griner can’t be put to his proof until the City shows its lack of knowledge. The trial court’s denial of the plea to the jurisdiction was affirmed.

INSURANCE LAW

[LISA ALLEN, AS EXECUTOR OF THE ESTATE OF GRACE M. ALLEN, DECEASED, Appellant, v. TEXAS WINDSTORM INSURANCE ASSOCIATION, Appellee.](#), No. 13-23-00065-CV, [2025 WL 2797280](#) (Tex. App. Oct. 2, 2025)

Case was a coverage dispute not merely a dispute on the amount of loss – subject to judicial review

Facts: Lisa Allen, as independent executor of her mother’s estate, filed a first-party insurance suit against TWIA alleging that TWIA partially denied coverage when it refused to pay the estate’s claim under a replacement cost endorsement. In explaining its decision, TWIA informed Allen that she had failed to provide sufficient documentation showing that the estate had “actually and necessarily spent” any amount of money to replace the damaged personal property, as required by the endorsement. It is undisputed that the documentation supplied by Allen showed that the replacement items came from her antique store and that Allen credited the cost of the items towards personal loans she previously made to her business. Allen believed the transactions constituted a covered loss under the endorsement because she is the sole beneficiary of her mother’s estate. Under the Texas Insurance Code, coverage disputes between Texas Windstorm Insurance Association (TWIA) and an insured are subject to judicial review, but if TWIA fully accepts coverage, appraisal is the exclusive remedy for disputes about the amount of a covered loss. Contending that this was a dispute about the amount of loss, rather than coverage, TWIA filed a motion for summary judgment arguing that Allen’s exclusive remedy under the Texas Insurance Code is to demand appraisal. The trial court granted the motion.

Issue: Did the trial court err in granting summary judgment to TWIA based on its ruling that the dispute was about the amount of loss rather than a coverage dispute?

Holding: Yes. The 13th Court of Appeals reversed the trial court’s grant of summary judgment and remanded the case back to the trial court. The court ruled that the dispute between Allen and TWIA was in fact a coverage dispute and not merely a disagreement on the amount of loss. TWIA’s determination that Allen’s documentation was insufficient was based on TWIA’s underlying conclusion that the estate had not suffered a covered loss under the replacement cost endorsement which the court determined is a coverage dispute and therefore subject to judicial review. Furthermore, the court held that this dispute is a coverage dispute because resolving it goes beyond mere valuation questions statutorily committed to the appraisal process. “[T]o resolve the current dispute, an appraiser would be required to “construe the policy,” a legal question generally reserved for the judiciary. (citation omitted). An appraiser would also have to consider the propriety of Allen’s claim that the transactions qualified as estate losses because she is the sole beneficiary of the estate, another legal matter not within an appraiser’s area of expertise. (citation omitted.) Most importantly, the appraiser would ultimately be tasked with determining whether TWIA “should pay” the estate’s recoverable depreciation claim, a question that goes beyond the scope of appraisal.” Reversed and remanded.

-Underinsured Motorist

[IN RE LIBERTY COUNTY MUTUAL INSURANCE COMPANY](#), No. 11-25-00257-CV, [2025 WL 3179755](#) (Tex. App. Nov. 14, 2025)

Plaintiff must resolve p.i. claim before pursuing UIM claim – abatement granted

Facts: Sharron Ann Sibley filed suit against Liberty on 12/1/23 for injuries she suffered in a collision with underinsured driver Eric Bonilla. Sibley was seeking a declaration that her damages were covered by the underinsured provision of her policy with Liberty. Liberty filed a

negligence suit against Bonilla and his employer, Extreme Exteriors. The trial court granted Bonilla's and Extreme Exteriors' motions to continue and bifurcate, but it denied Sibley's motion to sever. Sibley amended her suit to include Bonilla and Extreme Exteriors. Liberty moved to sever the UIM claim from the personal injury claim. Sibley nonsuited Bonilla and Extreme, and her case against Liberty was set for trial. Then in July 2025, Sibley filed a separate personal injury suit against Bonilla and Extreme. Liberty filed a motion to intervene and moved to abate the UIM suit until the conclusion of the personal injury matter. The trial court denied the motion to abate, and Liberty filed the petition for writ of mandamus.

Issue: Did the trial court err in denying Liberty's motion to abate?

Holding: Yes. Liberty has agreed in writing to be bound by the judgment in Sibley's personal injury suit, and there is no indication that the tortfeasors in this case are, in fact, underinsured. Texas law states that an insurer has no duty to pay UIM until the insured obtains a judgment establishing the liability and underinsured status of the other motorist. Sibley must resolve her personal injury suit before she may pursue the UIM suit against Liberty. Writ of mandamus granted; trial court must vacate its order denying the motion to abate and issue an order granting the motion.

JUVENILE LAW

IN THE MATTER OF K.L.W., A CHILD, No. 14-25-00232-CV, 2025 WL 3165694 (Tex. App. Nov. 13, 2025)

Juvenile court has no jurisdiction until it receives a referral

Facts: K LW was adjudicated for the offense of aggravated robbery and committed to TJJD and sentenced to seven years confinement on 9/6/22. This sentence was probated, and he was placed in his mother's care. On 3/17/25, the State filed to revoke the probation and transfer the case to district court. The trial court conducted a transfer hearing under section 54.051 of the Family Code on 3/28/25, after which the court erroneously signed an order transferring K LW to the TDCJ. K LW appealed, and the trial court withdrew the order on 8/29/25, substituting with an order finding that it retained jurisdiction under section 51.0412 of the Family Code and ordering the transfer of the juvenile's determinate sentence probation to the district court.

Issue: Did the trial court err in issuing the 3/28/25 order?

Holding: Yes. Section 54.11(a) of the Family Code contains the phrase "on receipt of a referral", which means that the juvenile court cannot act until it receives such a referral. In this case, the trial court held the March hearing before the referral had been received, and therefore, it did not have jurisdiction over the case. Because the trial court withdrew the order and substituted it with the 8/29/25 order, this appeal is dismissed for want of jurisdiction.

REAL ESTATE AND PROPERTY

-Adverse Possession

All Known, Unknown, & Known but Unfound Heirs, Executors, Adm'rs, Successors, Assigns, & Pers. Representatives of Louis & Eliza ECKFORD, et al., Appellants v. Lou Eda KORTH Stubbs Nixon, FRJK Legacy Fam. Ltd. P'ship, Ellen Ann Korth Vickers, John Frederick Vickers, Michael Steven Vickers, Ellen Ann Vickers, & William Korth Vickers, Appellees, No. 04-24-00183-CV, [2025 WL 2845033](#) (Tex. App. Oct. 8, 2025)

Question of first impression: what does the phrase “prima facie evidence that the title to the property has passed” mean?

Facts: Louis Eckford died in 1896 without a will. Under estate laws of that time, half of the property rights went to his wife, Eliza, and the other half was split amongst 9 children. After the death of a child, 1/18 was split amongst Eliza and the other children, leaving Eliza with 19/36th interest. Upon her death in 1925, a deed conveyed her share to Fritz Korth. The Korth family occupied the land continually since. Seventy years later, while negotiating the oil and gas rights to the property with the Korth family, Burlington Resources Oil & Gas Company and West 17th Resources, LLC, discovered the Eckfords’ interest in the property. Burlington petitioned for a receivership to represent unknown Eckford heirs, and the Korths intervened, winning summary judgment on a claim of adverse possession. The 4th Court of Appeals court reversed the summary judgment ruling, and the case proceeded to a 6-day jury trial in which the jury ruled for the Eckford family. The Korths filed a post judgment motion seeking modification and a *judgment non obstante veredicto* (JNOV), which the trial court granted, giving 100% ownership to the Korths.

Issue: Did the trial court err in granting the JNOV?

Holding: No. The 4th Court of Appeals affirmed the trial court’s JNOV> The trial court awarded the property to the Korths based on the dominion statute, which allows a presumption that title was conveyed from the record titleholder to the party paying taxes. The court holds that any presumption afforded by the dominion statute—standing alone—cannot entitle the Korths to judgment as a matter of law. However, the record establishes constructive ouster based on the Korths exclusive possession of the land for more than 73 years, longer than any statute of limitation. There is no genuine issue of material fact regarding the Korths’ actual, visible, hostile, and peaceable possession of the property at issue for three-quarters of a century. Accordingly, the record establishes adverse possession as a matter of law. Affirmed.

-Deed Restrictions

BK PARK, LTD, Appellant v. WBRE, LLC, Appellee, No. 14-24-00448-CV, [2025 WL 2471825](#) (Tex. App. Aug. 28, 2025)

Buyer of sister tract did not have actual or constructive notice of restriction in deed on other tract outside the chain of title

Facts: This case involves two adjacent tracts of land that were once owned by a common grantor. In 1991, the Resolution Trust Corporation conveyed to Sheila Ann Ross 1.1139 acres in Tomball, Harris County, Texas. The 1.1139 acres was referred to as “Reserve D” of Tomball Park and was recorded in the Harris County real property records. Ross replatted Reserve D into tracts D-1 and D-2. In April 1992, Ross sold the first section, tract D-1, to Whataburger, Inc. The deed to Whataburger contained a restriction stating the land “shall not be leased or sold to any restaurant or fast food chain which is engaged in the sale of prepared hamburger products” and “shall remain in effect so long as a Whataburger restaurant is in operation on the property conveyed herein.” In 2005, Ross sold the second section, tract D-2, to Quick Car Wash, L.P. through a warranty deed with vendor’s lien. The Quick Car Wash deed does not include the restaurant restriction. In February 2018, Quick Car Wash conveyed tract D-2 to BK Park via Special Warranty Deed (“BK Park’s deed”). BK Park’s deed does not contain the restaurant restriction but the deed was made subject to conveyances recorded in Harris County and listed in an exhibit to BK Park’s deed. BK Park was unaware of the deed restriction and began negotiations in 2023 for the construction and operation of a Wendy’s restaurant on tract D-2. During negotiations, the restaurant restriction was discovered. BK Park requested that Whataburger waive the restriction and Whataburger declined. BK Park filed this suit in August 2023 against appellee WBRE, successor in interest to Whataburger, Inc., seeking declarations regarding the enforceability of the restrictive covenant pursuant to the Uniform Declaratory Judgments Act. In January 2024, the trial court considered the cross-motions for summary judgment on submission and granted Whataburger’s motion while denying BK Park’s motion. Whataburger then sought its attorney’s fees for defending the declaratory action. The trial court held a trial on attorney’s fees following which Whataburger was awarded \$98,777.00.

Issues: Did the trial court err by granting summary judgment in favor of Whataburger because Whataburger did not conclusively prove that BK Park had constructive or actual notice of the restaurant restriction?

Holding: Yes. The 14th Court of Appeals reversed the trial court's grant of summary judgment to Whataburger and granted BK Park’s declaratory judgment. After a lengthy review of Texas restrictive covenant law and chain of title law, the court held “there is nothing in BK Park’s chain of title that would provide notice to BK Park of the restrictive covenant. There is also nothing in BK Park’s chain of title that would alert a person that they need to make a diligent inquiry regarding a servitude on tract D-2 that existed only outside BK Park’s chain of title. We conclude that Whataburger did not meet its summary judgment burden to establish the existence of a restrictive covenant running with the land. Therefore, the trial court erred in granting Whataburger’s motion for summary judgment.” The court also held that the trial court erred by denying BK Park’s summary judgment motion. “BK Park conclusively established that the restaurant restriction was not in its chain of title. Without this notice, the restriction could not run

with the land.” The court ordered the trial court to render declaratory judgment in favor of BK Park. As a result of these rulings the attorney’s fees issue was remanded to the trial court for reconsideration.

-Eminent Domain

[LOUIS A. TSAKIRIS FAMILY PARTNERSHIP, LTD. AND ALEX TSAKIRIS FAMILY LIMITED PARTNERSHIP LTD., Appellants v. WALLER COUNTY ROAD IMPROVEMENT DISTRICT NO. 1, Appellee, No. 01-22-00821-CV, 2025 WL 2445992 \(Tex. App. Aug. 26, 2025\)](#)

Summary judgment reversed-material facts exist on estoppel and express dedication claims

Facts: The Tsakiris parties, at one time, owned all of the property contained within the boundaries of the Waller County Road Improvement District No. 1 is a special district created by the Texas Legislature. In 2004, Waller County and various entities entered into an agreement for the construction of Kingsland Blvd. and Igloo Rd. Over the following years, the parties amended the Road Agreement several times, each time executing a new modification. In the negotiations for a Ross Dress for Less property purchase, there was some confusion about whether the property included an right-of-way dedicated to the county for the extension of Kingsland. When Tsakiris declined to sign the final plat, the District authorized proceedings in eminent domain. Special commissioners assigned to hear the case in Waller County Court of Law awarded the Tsakiris parties \$1,333,020 for the District’s condemnation of the fee simple title to the Kingsland Extension. The Tsakiris parties objected to the award and asked for a trial *de novo*, and the case was moved into district court. In July 2022, the District filed its Third Amended Petition seeking statutory condemnation and declaratory judgment. The District filed a motion for summary judgment in September 2022 on claims for statutory condemnation and declaratory judgment based on express dedication and easement by estoppel based on claims by Louis Tsakiris and Michael Magness that an easement had been created by express dedication. The trial court granted the motion for summary judgment, awarding the ownership of the Kingsland Extension to the District and ordering that the Tsakiris parties are entitled to no compensation.

Issue: Did the trial court err in granting summary judgment because 1) the District lacked standing; 2) Waller County failed to comply with Chapter 281 of the Texas Transportation Code; 3) the District failed to prove that the Tsakiris parties made the representations to the District on the estoppel claim; and 4) on the express dedication claim?

Holding: No, no, yes and yes. (1) The Tsakaris parties’ issue of whether or not the Waller County Road Improvement District has standing in the case is actually an issue of capacity. Although the District is not a party to the agreements, it has the capacity to act for Waller County regarding the construction of roads contained in the District. The Tsakaris parties did not challenge the capacity of the District in trial court, and therefore they cannot challenge it in the

appeal. (2) Chapter 281 of the Transportation Code governs how a county may acquire a public interest in a private road. The Tsakaris parties did not present evidence to show that the Kingsland Extension was a private road when it was dedicated to Waller County in 2009, so Chapter 281 did not preclude summary judgment in favor of the District. (3) The court holds that questions of material fact exist as to whether the District relied on claims by Louis Tsakiris or Michael Magness concerning the Kingsland Extension, which precludes summary judgment. (4) Also precluding summary judgment is the holding that the evidence shows questions about whether Waller County intended to accept a dedication of the Kingsland Extension in 2009. Reversed and remanded.

-Quiet Title

Suits to recover real property or quiet title must be brought in county where property located

[In re Campbell](#), No. 11-25-00040-CV, [2025 WL 2247544](#) (Tex. App. Aug. 7, 2025)

Facts: This matter involves an attempt to recover and quiet title to real property that is located in Wheeler County. It pits a suit filed in the district court of the county where the land is located (Wheeler County) against a suit filed in the county court of the county where the deceased record owner of the land resided (Brown County) at the time of his death and where the decedent's probate was pending. In this regard, the district court in Wheeler County has already denied a request to transfer venue to Brown County. *See In re Harbin*, No. 07-23-00437-CV, 2024 WL 3682791, at *1 (Tex. App.—Amarillo Aug. 6, 2024, no pet.) (orig. proceeding) (mem. op. on reh'g). This proceeding arises from the Brown County Court's denial of a motion to transfer venue to Wheeler County. The Campbells seek a writ of mandamus compelling the Brown County Court to (1) vacate its order denying the Campbells' motion and (2) sign an order granting either the motion to transfer venue or the plea in abatement based on dominant jurisdiction in Wheeler County. Harbin is the dependent administrator of the estate of Benny D. Eads. Harbin asserts that the mandatory venue statute is inapplicable because, among other things, the Brown County Court exercises exclusive jurisdiction over the case.

Issue: Did the Brown County Court abuse its discretion in denying the motion to transfer venue to Wheeler County?

Holding: Yes. The Eastland Court of Appeals conditionally granted mandamus. The Texas Civil Practice and Remedies Code § 15.011 provides that “[a]ctions for recovery of real property . . . or to quiet title to real property shall be brought in the county in which all or a part of the property is located.” The court agreed with the Amarillo Court of Appeals and held that the Brown County Court does not have exclusive or mandatory jurisdiction over Harbin's claim for trespass to try title. See *Harbin*, 2024 WL 3682791, at *3 & n.2. The court further concluded that venue of Harbin's claims is mandatory in Wheeler County under Section 15.011 of the Civil

Practice and Remedies Code. See *id.* The court therefore sustained the Campbell’s first issue and did not reach the issue of the plea in abatement.

-Tax Liens

[VINH HUU CAO & MAI HONG LUU, Appellants v. KELLY HANCOCK, IN HIS OFFICIAL CAPACITY AS ACTING TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, Appellee](#), No. 15-24-00012-CV, [2025 WL 2621887](#) (Tex. App. Sept. 11, 2025)

State tax lien does not apply to homestead

Facts: Vinh Huu Cao and Mai Hong Luu filed suit for a declaration that a state tax lien securing over \$30,000 in unpaid taxes and fees is not valid as against their homestead. The Acting Comptroller of Public Accounts, Kelly Hancock, agrees the lien does not attach to their homestead, though it may do so in the future if the property loses its homestead status. But he also filed a plea to the jurisdiction asserting immunity from suit, which the trial court granted and dismissed without prejudice.

Issues: (1) whether the state tax lien created by Tax Code chapter 113 applies to their residential homestead; (2) whether immunity is waived because chapter 113 is unconstitutionally vague; and (3) whether application of the state tax lien to their homestead is an ultra vires act.

Holding: The 15th Court of Appeals affirmed the trial court’s grant of the plea to the jurisdiction. As to Issue #1, The court held that the plain language of Chapter 113 is clear that the state tax lien did not apply to a residential homestead. On Issue #2, the court found no conflict or ambiguity in § 113.001. The homeowners therefore did not and could not plead a facially valid argument that it is unconstitutionally vague. Regarding Issue #3, the court ruled that because the Comptroller’s tax lien did not apply to exempt homestead property as a matter of law, the homeowners could not plead a viable ultra vires claim. Affirmed.

TORTS

-Certificate of Merit

Affiants area of practice should be “practice are at issue in the litigation”

[Boynton Williams & Assocs., PLLC v. Dilley Indep. Sch. Dist.](#), No. 04-25-00046-CV, [2025 WL 3018246](#) (Tex. App. Oct. 29, 2025)

Facts: Dilley ISD sued its general and other contractors, including BWA, alleging both direct and vicarious liability for construction defects in Dilley High School. BWA moved to dismiss under Chapter 150, which requires plaintiffs to file a certificate of merit when suing licensed professionals, arguing that Michael Fiebig, the architect who prepared Dilley ISD’s certificate of

merit, has never performed K-12 school architectural work in Texas. The trial court denied the motion.

Issue: Does Fiebig meet statutory qualifications, namely that he “practices in the area of practice”, to prepare a certificate of merit?

Holding: Yes. The court holds that the affiant’s area of practice should be the “practice area at issue in the litigation” as opposed to the defendant’s general practice area, as held in *Levinson Alcoser Assocs., L.P. v. El Pistolón II, Ltd.*, 513 S.W.3d 487. Affiants for a certificate of merit are not expected in COA to face the same scrutiny as the admissibility of expert witness testimony for summary judgment or trial purposes. The record reflects that Fiebig has performed architectural work on public schools in Texas, the same type of work that forms the basis of the claims against BWA. Affirmed.

-Chapter 95 -

[CenterPoint Energy Houston Elec., LLC v. Wilder](#), No. 01-22-00853-CV, [2025 WL 2248569](#) (Tex. App. Aug. 7, 2025)

Chapter 95 defense barred claims against property owner who did not have “actual knowledge” of the danger

Facts: Wilder was employed by L.E. Myers and worked with a crew near Tomball, Texas. On March 15, 2019, Wilder ascended CenterPoint’s transmission pole to install step-bolts with fall protection eyelets. Wilder climbed approximately forty feet up the concrete transmission pole, but then “one of the step-bolts to which [Wilder] was tied off complete[ly] detached from the transmission pole causing [Wilder] to fall to the ground.” Upon impact, Wilder’s heart stopped. Another L.E. Myers employee performed CPR on Wilder and revived him. Wilder was taken to the hospital with severe injuries. The jury found in favor of Wilder on his negligence claim. Specifically, the jury found that CenterPoint “exercise[d] some control over the manner in which the defect-producing work was performed, other than the right to order the work to start or stop or to inspect progress or receive reports.” Further, the jury found that the negligence of CenterPoint “proximately cause[d] the occurrence in question,” and the jury determined that CenterPoint was fifty-one percent responsible for “the occurrence.” The jury awarded Wilder \$15,466,597 in damages on his negligence claim.

Issue: Does Texas Civil Practice and Remedies Code chapter 95 bar Wilder’s negligence claims against CenterPoint?

Holding: Yes. The 1st Court of Appeals held that when Texas Civil Practice and Remedies Code chapter 95 applies to a case, the plaintiff must prove that the property owner “had actual knowledge of the danger or condition resulting in the personal injury, death, or property damage” before the property owner may be held liable for its negligence. In this case, Wilder did not

conclusively establish at trial that CenterPoint had “actual knowledge of the danger or condition” that resulted in Wilder’s injury. The court reversed and rendered against Wilder on all claims.

-Defamation

[Amell v. Van Pelt](#), No. 14-24-00297-CV, [2025 WL 3275373](#) (Tex. App. Nov. 25, 2025)

Evidence sufficient to prove defamation per se and exemplary damages.

Facts: Billy and Kimberly Van Pelt sought to start their own independent insurance agency after working for Leonard and Sabrina Amell’s agency. When Billy joined the Amell Agency, Leonard repeatedly assured him—verbally and in the written contract—that Billy would “own” and be able to take his book of business if he ever left. The agreement contained no non-compete. After Billy announced in January 2020 that he and Kim were opening their own agency, the relationship soured. The Amells sent multiple emails to insurance carrier representatives and directly to Billy’s clients. These communications accused Billy of: Dishonesty (“had not been very honest in our dealings”); Unethical behavior (“unethical to the core”); Misrepresentation of his agency status; Violations of his “agreement”; Acting deceptively “to fly under the radar”; Conduct suggesting licensure problems or criminal history. Recipients responded by cutting off or questioning dealings with Billy. Several clients expressed concern and hesitated to continue doing business with him. The Van Pelts sued for defamation. Following a bench trial, the court found the Amells’ liable for defamation *per se*, awarded Billy \$141,140.62 in reputational damages, and awarded an equal amount in exemplary damages. The court awarded no damages to Kimberly.

Issues: (1) Was the evidence legally and factually sufficient to support the trial court’s finding that the Amells’ statements constituted defamation *per se*? (2) Was the evidence sufficient to support the award of general (reputational) damages to Billy? (3) Were exemplary damages supported by clear and convincing evidence of constitutional “actual malice” and Chapter 41 “malice.” (4) Did the trial court err in awarding zero damages to Kim Van Pelt?

Holding: The 14th Court of Appeals affirmed defamation *per se* liability. The court held the February 2020 emails were defamatory *per se*, as they directly accused Billy of dishonesty, unethical behavior, misrepresentation, and conduct threatening his licensure—injuring him in his business and profession. A reasonable factfinder could conclude the statements were false or misleading. Legal and factual sufficiency supported defamation *per se*. Because this was defamation *per se*, damages for loss of reputation were presumed. The court found ample direct evidence that Billy’s reputation suffered. The award of \$141k was supported by the evidence and consistent with amounts approved in similar Texas cases. Exemplary damages were also affirmed. The Amells’ own communications showed a specific effort to harm Billy’s business, including intent to “slow him down” and prevent him from obtaining carrier appointments. Their accusations contradicted their own prior assurances to Billy and relied on facts uniquely within their knowledge. The court held this constituted clear and convincing evidence of both forms of

malice necessary (constitutional “actual malice” and Chapter 41 “malice”) to uphold the award of exemplary damages. Kimberly Van Pelt’s cross-appeal was denied as she could not prove reputational injury.

-Livestock Liability

[Mullins v. McWhirter](#), No. 11-23-00085-CV, [2025 WL 3028602](#) (Tex. App. Oct. 30, 2025)

Liability for livestock comes only with knowingly permitting livestock to roam at large as a “matter of course”

Facts: Rowdy Roy Escobar was riding his motorcycle on US Hwy 84 at approximately 1:30 am when he struck a black cow owned by Charlotte Mullins and was killed. Escobar had been in the area fighting fires. Mullins, who owned the cattle and property in Coleman County but was at her home near Dallas, had spoken with her sister-in-law that evening about the fires possibly spooking the cattle, but the sister-in-law had not seen any cows loose. Mullins testified that she had checked the fences a week before and did not see any problems. The jury found Mullins liable for permitting her cows to roam unattended on the highway and awarded Escobar’s child \$250,000, plus \$10,000 in funeral expenses.

Issue: Was the evidence legally sufficient to support the jury’s verdict of liability?

Holding: No. Liability is only imposed under [Texas Agricultural Code] Section 143.102 against livestock owners that knowingly permit their livestock to roam at large along state highway rights-of-way as a “matter of course.” *Pruski v. Garcia*, 594 S.W.3d 322. The record does not show that she permitted the cattle to escape as a matter of course, and although an expert testified that her fence was deficient in places, there was no evidence of recent escapes to show that Mullins knew the fence was insufficient. Reversed and rendered in favor of Mullins.

-Pandemic Liability Protection Act

[J. Davis Auto. Grp. Inc. v. Armitage](#), No. 01-23-00964-CV, [2025 WL 2248566](#) (Tex. App. Aug. 7, 2025)

Expert report failed to show causation as required under the PLPA

Facts: This lawsuit arises from the death of Deborah Armitage from COVID-19. Armitage worked at Gulfgate, a car dealership in Harris County. Ms. Armitage contracted COVID-19 in June 2020, was hospitalized, and passed away on July 20, 2020. In October 2020, Ms. Armitage’s children sued Gulfgate for wrongful death, gross negligence, and other claims, alleging that Armitage’s contraction of COVID-19 and ultimate death were caused by Gulfgate’s failure to provide adequate protective measures against COVID-19. While this case was pending, the Texas legislature enacted the Pandemic Liability Protection Act (PLPA), which applied to any pending action filed after March 13, 2020. The PLPA requires, among other things, that claimants alleging pandemic-disease-related negligence claims timely serve an expert

report on the defendant that meets specified requirements, including that the expert provide “a factual and scientific basis” for asserting that “the defendant’s failure to act caused the individual to contract a pandemic disease.” See TEX. CIV. PRAC. & REM. CODE § 148.003(a), (b)(1). In this interlocutory appeal, Gulfgate challenges the trial court’s December 6, 2023 order denying its motion to dismiss. Gulfgate argues the trial court erred in denying its motion to dismiss because appellees’ amended expert report did not satisfy the causation requirement of the statute. Id. § 148.003(b)(1).

Issue: Did the trial court err in denying Gulfgate’s motion to dismiss because the expert report did not show causation as required under the PLPA?

Holding: Yes. The 1st Court of Appeals reversed the trial court and rendered judgment against Armitage. The court held that under the PLPA the expert report cannot just point out failures; it must also provide “a factual and scientific basis” for the assertion that these failures in fact “caused the individual to contract a pandemic disease.” The court explained that the expert report “does not explain how or why the asserted failure to warn that other employee(s) tested positive for COVID-19 months earlier (or to minimize risk) *caused* Ms. Armitage to contract COVID-19” nor does the report “explain how or why the other alleged failures he asserts caused her to contract COVID-19 at the workplace.” (Emphasis in original). Because the report did not meet the causation requirements under the PLPA the case required dismissal.

-Self – Insured

[Argueta v. Harris Cnty.](#), No. 14-24-00259-CV, [2025 WL 3028891](#) (Tex. App. Oct. 30, 2025)

“Self-insurer” means having a TDPS certificate under Transportation Code § 601.124; Plaintiff did not conclusively prove Harris County had such a certificate for summary judgment purposes

Facts: Argueta’s vehicle collided with a Harris County constable’s vehicle on 3/10/20. Harris County sued Argueta for damages. Although she had been insured by ACCC Insurance Company, the company became insolvent after the accident. Argueta filed a traditional motion for summary judgment under the Texas Property and Casualty Insurance Guaranty Act § 462.207(b), which states that when an insurance company becomes insolvent, a self-insured party (Harris County) cannot sue that company’s insured client. The trial court denied Argueta’s motion for summary judgment.

Issue: What is the definition of “self-insured”? Did the trial court err in denying Argueta’s motion for summary judgment, because a self-insured is barred from bringing suit against an insured whose insurer has become insolvent under the Guaranty Act?

Holding: In an issue of first impression, the court holds that the phrase “self-insured” in Insurance Code § 462.207 has the same definition as in the Safety & Responsibility Act, Transportation Code § 601.124, which provides that TDPS may issue a certificate of self-insurance to a person with more than twenty-five registered vehicles if (1) the person applies for

the certificate, and (2) the department is satisfied that the person has and will continue to have the ability to pay judgments obtained against the person. Regarding the summary judgment, Argueta could have easily prevailed by attaching a self-insurer certificate from TDPS as provided for in Transportation Code § 601.124. Because she failed to do so, the trial court did not err in denying the motion. Affirmed.

-Tort Claims Act

[CITY OF HOUSTON, TEXAS, Appellant v. CHELSEA MANNING, INDIVIDUALLY AND AS NEXT FRIEND OF T.N., AALIYAH MITCHELL, AND CIERRA WILLIAMS, Appellees](#), No. 14-23-00087-CV, [2025 WL 3165693](#) (Tex. App. Nov. 13, 2025)

Facts Issues exist regarding speed, green light exist – no immunity

Facts: A City of Houston firetruck struck a passenger vehicle driven by Chelsea Manning and containing three juvenile passengers en route to a dumpster fire at an apartment building. Manning and her passengers sued the City for negligence, including ordinary negligence and negligence per se. They claimed that they had the green light and that the City was vicariously liable for the driver's negligence in proceeding through the intersection against a red light and striking Manning's vehicle, specifically alleging that the Texas Tort Claims Act (TTCA) waives the City's immunity. The City filed a motion for summary judgment, which the trial court denied. After several appeals, the Texas Supreme Court held that the negligence per se claims lay outside the realm of the TTCA.

Issue: Did the trial court err in denying the City's second summary-judgment motion with respect to the grounds of official immunity, the emergency exception, and the 9-1-1 exception?

Holding: No. Fact issues exist regarding the speed at which the firetruck was traveling, whether the driver of the firetruck slowed for the intersection, and which party had the green light. The City did not prove that it retains immunity while these issues are in dispute. Affirmed.
