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McClure Law Group Newsletter | Fall 2020



AWARDS

We are so proud of partners Kelly McClure, Robert Epstein, and Francesca Blackard for being named "Best Lawyers in Dallas 2020" by D Magazine! Congratulations to them and all other honorees!



Case Law Updates

We take pride in the Dallas Bar Association Family Law Section case law updates written by two McClure Law Group attorneys, Georganna Simpson and Spencer Page, every month. This month, Robert Epstein, presented their [September Case Law Update](#) to the Dallas Bar Association Family Law Section. Check out previous months' important case law updates by clicking on the links below:

- **September**
- **July**
- **June**
- **May**
- **April**
- **March**

Three significant appellate court opinions in recent months on child custody in the State of Texas, including an opinion from the Supreme Court of Texas, are summarized below:

PARENTAL PRESUMPTION NOW APPLIES TO MODIFICATION SUITS.

In re C.J.C., S.W.3d , No. 19-0694, 2020 WL 3477006 (Tex. 2020) (06-26-20).

Facts: Father and Mother lived together for the first 2 years of Child's life, but never married. When they separated, Father filed an original SAPCR. At the conclusion of that proceeding, the trial court appointed Mother and Father as JMCs, awarded Mother the exclusive right to designate Child's primary residence, and awarded Mother and Father nearly equal periods of possession. Mother became involved in a relationship with Boyfriend and, eventually, Mother and Child moved into Boyfriend's home. Thereafter, Mother filed a modification suit. Father filed an answer thereto, asking the trial court to deny the requested modification. Several months thereafter, Mother died in a car accident while the suit was still pending, and Child began living exclusively with Father. Father filed to dismiss the suit, but Maternal Grandparents and Boyfriend both intervened, each requesting conservatorship and possession and access. Father moved to dismiss both interventions, which the trial court denied. In response, Father filed a petition for writ of mandamus. The Court of Appeals dismissed Maternal Grandparents' intervention, because no evidence existed that Father's conservatorship would significantly impair Child's physical health or emotional development. However, the Court of Appeals determined that Boyfriend had standing to intervene, because he had exercised actual care, control, and possession of Child for at least 6 months preceding Mother's death. The trial court then held a temporary orders hearing, while vague concerns were raised regarding Father's parenting style, nobody asserted that Father was an unfit parent. The trial court entered temporary orders naming Boyfriend a Possessory Conservator of Child; awarding him a possession schedule; and awarding him an unrestricted duty of care, control, protection, and reasonable discipline during his periods of possession. Father filed a petition for writ of mandamus, challenging the temporary orders. When the Court of Appeals denied relief, Father filed a petition for writ of mandamus with the Supreme Court of Texas. The Petition for Writ of Mandamus was Granted.

Father argues that he has a fundamental due process right to the presumption that, as a fit parent, he is acting in the best interests of Child and should be able to do so free from state interference. While the Supreme Court of Texas has previously held that a parental presumption does not apply in modification suits, it has done so on the ground that the Legislature did not express its intent to apply the presumption to modification suits, without specifically addressing Troxel. The plurality in Troxel emphasized that there is a presumption that fit parents act in the best interest of their child. Here, neither Boyfriend nor Maternal Grandparents argue that Father is an unfit parent. By awarding Boyfriend possession of Child over Father's objection, the trial court essentially substituted its determination of Child's best interest for Father's. This decision was exactly the opposite of a parental presumption, because the trial court placed the burden on Father (a fit parent) to disprove that Boyfriend's visitation would be in Child's best interest.

TRIAL COURT DID NOT ERR IN APPOINTING FATHER AS SOLE MANAGING CONSERVATOR AND DENYING MOTHER ALL POSSESSION OF CHILDREN WHERE MOTHER SHOT AND ATTEMPTED TO KILL FATHER, HAD A HISTORY OF SUICIDAL AND HOMICIDAL TENDENCIES, AND ABSCONDED WITH CHILDREN TO CALIFORNIA.

In re R.S., No. 01-18-00058-CV, 2020 WL 3393069 (Tex. App.-Houston [1st Dist.] 2020, no pet. h.) (mem. op.) (06- 18-20).

Facts: Mother and Father separated. Father filed an original SAPCR and the trial court entered agreed temporary orders. Thereafter, Mother absconded with Children to California. As a result, Father filed for a writ of attachment and further temporary orders. The day before the hearing thereon, Mother traveled back to Texas, where she went to Father's office and asked to speak with him in the parking lot. While outside, Mother shot Father once in the leg. Father ran and was able to hide while Mother circled the parking lot looking for him. Mother thereafter broke into Father's girl- friend's house (where Father was residing) and waited for him. When Father's girlfriend arrived home first, Mother told Father's girlfriend that she was either going to kill Father or kill herself. Father's girlfriend called the police, who arrested Mother. The next day at the temporary orders hearing, the trial court awarded Father possession of Children and suspended Mother's possession of Children. Mother was released from jail after not being indicted and Father immediately filed for and obtained a protective order. After trial, the trial court appointed Father SMC and denied Mother possession of Children. Mother appealed. However, the Holding was affirmed.

TRIAL COURT ERRED IN ORDERING FATHER TO PAY RETROACTIVE CHILD SUPPORT WHERE PRIOR CHILD SUPPORT ORDER WAS IN EFFECT. TRIAL COURT DID NOT ERR IN ORDERING FATHER TO PAY PROSPECTIVE CHILD SUPPORT FOR ADULT DISABLED CHILD WHERE TRIAL COURT HEARD EVIDENCE ON ALL FACTORS SET FORTH IN TEXAS FAMILY CODE.

In re N.E.C., No. 05-18-01156-CV, 2020 WL 3286522 (Tex. App.-Dallas 2020, no pet. h.) (mem. op.) (06-18-20).

Facts: Mother and Father were previously divorced. Child, who is an adult, is disabled and Father is under a continuing child support obligation for her. Father filed a petition to modify, seeking to lower his child support obligation. Mother filed a counterpetition to modify, seeking to increase Father's child support obligation. During final trial, multiple witnesses testified to Child's disability, her existing and future needs as a result of her disability, and the substantial care and personal supervision required for her. Mother testified to many of the expenses she incurred for Child, including expenses that were in excess of Child's monthly Social Security benefits. After the new trial, the trial court entered a final order, further decreasing Father's child support obligation, but also ordering him to pay retroactive child support and \$20K in attorney's fees to Mother. Father appealed. However, the Holding was Affirmed in Part; Reversed and Rendered in Part; Remittitur Suggested.

The Texas Family Code (TFC) only authorized retroactive child support where there is no order for child support currently in place. Because there was a prior order (the parties' divorce decree) requiring Father to pay child support, Father cannot be ordered to pay retroactive child support. This was an abuse of discretion.

Father next argues that the trial court failed to consider the factors set forth in TFC § 154.306, which must be considered when determining the amount of child support to be paid after a child's 18th birthday. Specifically, a trial court must consider: (1) the existing or future needs of the child, (2) whether the parents pay or will pay, or provide or will provide, for the child's care and supervision, (3) the parents' financial resources, and (4) any other resources or programs available for the child. Here, the trial court heard evidence regarding Child's present and future needs, the costs incurred by Mother for Child, both parties' income and assets, and the resources and programs (like Child's group home and Social Security benefits) available to Child. As such, the trial court did not err in ordering Father to pay prospective child support, because it considered the requisite factors under TFC § 154.306.

Finally, Father argues that the trial court erred in awarding Mother \$20K in attorney's fees. Here, Mother's attorney only put on evidence of \$8.5K in attorney's fees. As such, it was an abuse of discretion to require Father to pay \$20K in attorney's fees.



20 Things That People Should Do Before Getting Married



While we might be in the midst of a global pandemic, that does not change the fact that Texas wedding season is upon us with the beautiful October weather just around the corner. Check out our latest blog on 20 Things That People Should Do Before Getting Married!

[Read More](#)

Relocation of Children



In addition to the case law updates above, the Texas Court of Appeals has recently issued an important opinion on the always trendy topic of geographic relocation of children after a divorce.

[Read More](#)

McClure Law Group writes blog posts on a weekly basis. In case you missed some of our blog posts, check them out on **our website** or click on any of the selections below which are some of our more recent ones:

Possession Schedules While on the Front Line of COVID-19



Find out how COVID-19 is affecting possession schedules for front line workers and first responders.

[Read More](#)

Can I Still Get Divorced Under Quarantine?

Learn about your options for divorce during these unprecedented times.

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The Effects of COVID-19 on Child Custody Matters



Find out how child custody matters are being handled by Texas courts.

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Texas Appeals Court Upholds Denial of Mother's Petition to Change Custody



Learn how modifications of child custody are viewed by Texas courts.

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Learn about your options of Moving or Staying in the house during a divorce.

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