

# **FAMILY LAW APPEALS**

**GEORGINNA L. SIMPSON  
GEORGINNA L. SIMPSON, P.C.**

1349 Empire Central Drive  
Woodview Tower, Ste. 600  
Dallas, TX 75247-4042  
Phone: 214-905-3739 • Fax: 214-905-3799

**REBECCA TILLERY  
KOONS FULLER, P.C.**

1717 McKinney Avenue, Ste.1500  
Dallas, Texas 75202  
Phone: 214-872-2727 • Fax: 214-871-0196

**Dallas Bar Association—Appellate Section  
October 16, 2014  
GEORGINNA L. SIMPSON**

## GEORGINNA L. SIMPSON, P.C.

ATTORNEY AT LAW

1349 EMPIRE CENTRAL DRIVE

WOODVIEW TOWER, SUITE 600

DALLAS, TEXAS 75247-4042

PHONE 214-905-3739 \$ FAX 214-905-3799

EMAIL [georganna@glsimpsonpc.com](mailto:georganna@glsimpsonpc.com)

### **EDUCATION**

**PROFESSIONAL** Southern Methodist University School of Law/Juris Doctorate, May 1989

**GRADUATE** Amber University (f/k/a Abilene Christian at Dallas)/MBA-Marketing, May 1985

**UNDERGRADUATE** Baylor University/Bachelor of Science, Nursing, May 1976

### **LICENSES HELD**

Licensed to Practice Law in Federal District Court since February 1990 Northern Dist. of Texas

Licensed to Practice Law in Texas since November 1989

Licensed to Practice as a Registered Nurse in Texas since September 1976 (status: active)

### **ARTICLES AUTHORED/SPEAKER (partial listing)**

- - Post Trial/Appeals (Panel, Advanced Family Law Seminar 08/14)
- Appellate Staff Attorney CLE (Speaker, Texas A&M School of Law, 06/14)
- Family Law Appeals (Speaker, Soaking Up Some CLE 05/14)
- Case Law Update—SAPCR (Speaker, Advanced Family Law Seminar 08/12, 08/13)
- Case Law Update—Property (Speaker, Marriage Dissolution Seminar, 04/09, 05/10, 04/11, 04/13)
- Year in Review 2010-2013—Family Law, Texas Bar Journal, Vol. 76, No. 1 (Jan. 2013), Vol. 75, No. 1 (Jan. 2012), Vol. 74, No. 1 (Jan. 2011)
- Family Law Appeals and Accelerated Appeals (Speaker, Appellate Nuts and Bolts 2.0—7<sup>th</sup> Court of Appeals 08/12)
- Family Law and Other Accelerated Appeals (Speaker, Handling Your First Appeal 02/12)
- Preserving Error and Preparing for an Appeal (Speaker, CPS Advanced Topics Fall Seminar 11/11)
- Appellate and Post-Trial Motions (Speaker, Advanced Family Drafting Seminar, Dec. 2010)
- Cases to Consider in Calculating Net Resources for Child Support, Texas Lawyer (Aug. 9, 2010)
- Appellate Practice from Every Angle (Panel, Advanced Family Law Seminar 08/10, 08/11) (Article 08/12)
- Family Law Case Law Update, Associate Judge's Conference, Texas Center for the Judiciary 07/10
- Preserving the Record from Every Angle: The Art of Preserving the Record Throughout Your Case, Not Just During the Trial (Speaker w/Chief Justice Linda Thomas, 2009 Advanced Family Law Seminar, (08/09)
- Family Law Appeals—Looking Outside the TRAPs and TCRP (Dallas Bar Association Headnotes 08/09)
- TFC v. TRAP: Hidden Appellate Traps in the Texas Family Code and How to Use Them to Your Advantage (Speaker, Soaking Up Some CLE, a South Texas Litigation Seminar, 05/08)
- Appellate and Evidentiary Issues: Post-Trial Motions (Speaker, Advanced Family Law Drafting Course, 12/08).
- Dealing with the Death of a Parent (Speaker, UT Parent-Child Relationships Conference, 11/07)
- Avoiding an Appeal (Speaker, 29<sup>th</sup> Annual Marriage Dissolution Seminar, 04/06)
- Post-Trial Practice in Family Law/Tex. Family Law Practice Manual (Speaker, 2005 Poverty Law Conf., 04/05)
- Objections, Predicates, and Preservation of Error (Speaker, 2004 Ultimate Trial Notebook, 12/04)
- Family/Juvenile Law Case Update (Speaker, 2004 Tex. Center for the Judiciary Annual Conf., 09/04)
- Best Interest of the Child (Speaker, 2004 Tex. Center for the Judiciary Winter Regional Conf., 02/04)
- Mandamus and Accelerated Appeals (Speaker, 2003 Advanced Family Law Seminar, 08/03).
- New & Creative Uses of the Family Practice Manual (Speaker, 26<sup>th</sup> Annual Marriage Dissolution Sem., 05/03)
- Taking Me Higher: Preparing the Appeal (Speaker, 25<sup>th</sup> Annual Marriage Dissolution Seminar, 05/02)
- Family Violence Case Law Update (Speaker, 2002 Tex. Center for the Judiciary Family Violence Conf., 04/02)
- Appellate-Mandamus (Speaker, Advanced Family Law Drafting, 12/01)
- Tax Aspects of Divorce (Speaker, NBI, Sept. 2000)
- Child Custody and Time Sharing in Texas (Speaker, NBI, Feb. 2000)
- Multiple chapters and portions of chapters in Family Law Expert Witness Manual (08/99)
- International Travel with Children, Family Law Section Report (Aug. 1999)

### **REPORTED CASES**

- *Reisler v. Reisler*, \_\_\_ S.W.3d \_\_\_, 05-12-01586-CV, 2014 WL 3827854 (Tex. App.—Dallas 2014, no pet. h.).
- *Anderton v. Lane*, \_\_\_ S.W.3d \_\_\_, 08-12-00212-CV, 2014 WL 3644347 (Tex. App.—El Paso 2014, no pet. h.).
- *Hinton v. Burns*, 433 S.W.3d 189 (Tex. App.—Dallas 2014, no pet.).
- *In re A.M.*, 418 S.W.3d 830 (Tex. App.—Dallas 2013, no pet.).

- *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651 (Tex. 2013) (amicus brief)
- *In re Lee*, 411 S.W.3d 445 (Tex. 2013) (amicus brief).
- *In re Baby Girl S*, 407 S.W.3d 904 (Tex. App.—Dallas 2013, pet. filed).
- *IMOMO C.A.S. and D.P.S.*, \_\_\_ S.W.3d \_\_\_, 2013 WL \_\_\_\_\_ (Tex. App.—Dallas 2013, no pet. h.).
- *Litman v. Litman*, \_\_\_ S.W.3d \_\_\_, 2013 WL 2075356 (Tex. App.—Dallas 2013, no pet. h.).
- *In re M.C.B.*, \_\_\_ S.W.3d \_\_\_, 2013 WL 1606154 (Tex. App.—Dallas 2013, no pet. h.)(op. on rehearing).
- *In re Dean*, 393 S.W.3d 741 (Tex. 2012, orig. proceeding).
- *In re Saldana*, 380 S.W.3d 890 (Tex. App.—Waco 2012, orig. proceeding).
- *In re E.R.*, 385 S.W.3d 552 (Tex. 2012) (with J.Martin).
- *In re H.N.T.*, 367 S.W.3d 902 (Tex. App.—Dallas 2012, no pet.).
- *In re Baby Girl S.*, 353 S.W.3d 589 (Tex. App.—Dallas 2011, no pet.).
- *Collins v. Collins*, 345 S.W.3d 644 (Tex. App.—Dallas 2011, no pet.).
- *Iliff v. Iliff*, 339 S.W.3d 74 (Tex. 2011).
- *In re P.C.S.*, 320 S.W.3d 525 (Tex. App.—Dallas 2010, pet. denied).
- *Hidalgo v. Hidalgo*, 310 S.W.3d 887 (Tex. 2010).
- *Critz v. Critz*, 297 S.W.3d 464 (Tex. App. – Fort Worth 2009, no pet.).
- *Ingram v. Deere*, 288 S.W.3d 886 (Tex. 2009).
- *In re S.J.A.*, 272 S.W.3d 678 (Tex. App. – Dallas 2008, no pet.).
- *Waltenburg v. Waltenburg*, 270 S.W.3d 308 (Tex. App. – Dallas 2008, no pet.).
- *In re J.P.C.*, 261 S.W.3d 334 (Tex. App. – Fort Worth 2008, no pet.).
- *Duerr v. Brown*, 262 S.W.3d 63 (Tex. App. – Houston [14<sup>th</sup> Dist] 2008, no pet.).
- *In re M.P.B.*, 257 S.W.3d 804 (Tex. App. – Dallas 2008, no pet.).
- *Boufaissal v. Boufaissal*, 251 S.W.3d 160 (Tex. App.—Dallas 2008, no pet.).
- *In re Dobbins*, 247 S.W.3d 394 (Tex. App. – Dallas 2008, orig. proceeding).
- *Burnett-Dunham v. Spurgin*, 245 S.W.3d 14 (Tex. App. – Dallas 2007, pet. denied).
- *In re Lewis*, 223 S.W.3d 756 (Tex. App. – Texarkana 2007, orig. proceeding).
- *In re Green*, 221 S.W.3d 645 (Tex. 2007, orig. proceeding).
- *In re C.M.B.*, 204 S.W.3d 886 (Tex. App. – Dallas 2006, pet. denied).
- *Garner v. Garner*, 200 S.W.3d 303 (Tex. App. – Dallas 2006, no. pet.).
- *Kiefer v. Touris*, 197 S.W.3d 300 (Tex. 2006).
- *Nat'l Freight v. Snyder*, 191 S.W.3d 416 (Tex. App. – Eastland 2006, no pet.).
- *Schuchmann v. Schuchmann*, 193 S.W.3d 598 (Tex. App. – Fort Worth 2006, pet. denied).
- *Seligman-Hargis v. Hargis*, 186 S.W.3d 582 (Tex. App. – Dallas 2005, no pet.).
- *Peck v. Peck*, 172 S.W.3d 26 (Tex. App. – Dallas 2005, pet. denied).
- *In re E.A.C.*, 162 S.W.3d 438 (Tex. App. – Dallas 2005, no pet.).
- *Pace v. Pace*, 160 S.W.3d 706 (Tex. App. – Dallas 2005, pet. denied).
- *Beck v. Walker*, 154 S.W.3d 895 (Tex. App. – Dallas 2005, no pet.).
- *Critchfield v. Smith*, 151 S.W.3d 225 (Tex. App. – Tyler 2004, pet. denied).
- *In re S.L.P.*, 123 S.W.3d 685 (Tex. App. – Fort Worth 2003, no pet.).
- *In re A.A.F.*, 120 S.W.3d 517 (Tex. App. – Dallas 2003, no pet.).
- *Bailey-Mason v. Mason*, 122 S.W.3d 894 (Tex. App. – Dallas 2003, pet. denied).
- *Burns v. Burns*, 116 S.W.3d 916 (Tex. App. – Dallas 2003, no pet.).
- *In re P.D.M.*, 117 S.W.3d 453 (Tex. App. – Fort Worth 2003, pet. denied).
- *Pollard v. Merkel*, 114 S.W.3d 695 (Tex. App. – Dallas 2003, pet. denied).
- *In re D.L.R.M.* 84 S.W.3d 281 (Tex. App. – Fort Worth 2002, pet. denied).
- *In re R.R.*, 26 S.W.3d 569 (Tex. App. – Dallas 2000, orig. proceeding).

## **HONORS /ACTIVITIES**

- Member:** American Bar Association, Texas Bar Association, Dallas Bar Association  
State Bar College member since 1997  
Texas Bar Association, Family Law Section – Family Law Practice Manual Committee, 1999 to present  
(co-chair since 2010); Family Law Council member, 2008-2013, Editorial Advisor, 2013 to present  
Annette Stewart American Inn of Court – Master, 2003 to present  
Texas Family Law Foundation, sustaining member  
Sustaining Life Fellow, American Bar Foundation, 2006 to present
- Honors:** Briefing and Research Attorney for the Dallas Court of Appeals, 1989-1992

Editor-in-Chief – State Bar of Texas Family Law Section Report October 2007 to present  
Dedicatee of the 2014 (24<sup>th</sup>) Edition of *Sampson & Tindall's Texas Family Law Annotated*  
Named to Texas Super Lawyer List – Appellate Practice, 2003-2014 (Also named as a Top 50 Woman  
Lawyer in Texas and Top 100 Lawyer in Dallas/Ft. Worth area for 2012)  
Named Best Law Firm 2013—Dallas (Family Law—Tier 2)/2014—Dallas (Family Law—Tier 1)  
Named to Best Lawyers in America – Family Law 2010-2014/Appellate 2014  
Named to Best Women Lawyers in Dallas – Appellate 2010  
Named to Best Lawyers in Dallas—Appellate 2011, 2013, 2014  
Named to Baylor University Louise Herrington School of Nursing “100 Legends in the Line.”  
Course Director (with Jimmy Vaught)—Texas Academy of Family Law Specialists 26<sup>th</sup> Trial Institute  
(02/10)  
Dallas Bar Association—Family Law Section Board Member 2010 to present  
Winner of Franklin Jones Best Continuing Education Article Award for 2012 from the State Bar College  
for Appellate Practice from Every Angle  
Martindale-Hubbell A-V rated  
Cover Story, *Texas Lawyer*, Aug. 1, 2005

## Rebecca Tillery

### EDUCATION:

J.D. 2007, SMU Dedman School of Law, Dallas, Texas, *cum laude*  
B.B.A. in Finance 2003, University of Texas at Austin, Austin, Texas

### ACADEMIC HONORS:

The Order of the Barristers, *National Member*  
SMU Law Review Association, 2005-2007, *Articles Editor*  
National Criminal Procedure Moot Court Team  
2006: *2nd Place*  
2005: *Best Appellant Brief*  
Client Counseling Competition, 2005: *2nd Place*  
University Scholar  
Dean's List Scholar

### PROFESSIONAL ACTIVITIES:

Shareholder – KoonsFuller, P.C. (Practice Limited to Matrimonial Law)  
Board Certified, Texas Board of Legal Specialization: Family Law  
Texas Rising Star (2012) (2013)  
Winner of the 2012 *Franklin Jones Best CLE Article Award* for the article “APPELLATE PRACTICE FROM EVERY ANGLE” – co-authored and co-presented at the 37th Advanced Family Law (2011)  
Member – Dallas Bar Association

- Admissions and Membership Committee, Co-Chair
- Legal Lines Committee, Vice-Chair
- Family Law Section
- Appellate Law Section

Member – Dallas Association of Young Lawyers (DAYL)

- Judiciary Committee (2007-2011)

Member – State Bar of Texas (Family Law Section)

- Guest Editor of the Family Law Section Report (Volume 2010-4, Volume 2011-2, Volume 2011-3, Volume 2011-6, Volume 2012-2, Volume 2012-3, Volume 2013-2)

Member – Texas Academy of Family Law Specialists (TAFLS)

### AUTHOR AND PRESENTER:

Co-Author and Co-Presenter, **Preparing for the Board Certification Exam**,  
Advanced Family Law Course (2013)  
Co-Author and Co-Presenter, **Appellate Practice From Every Angle**,  
Advanced Family Law Course (2011)  
Co-Author, **Shared Custody: Solutions for Keeping the Lid on Pandora's Box**,  
Advanced Family Law Course (2010)  
Co-Author, **Discovery from Third Parties**,  
Marriage Dissolution Institute (2009)  
Co-Author, **Trying and Defending the Contempt Case – Details, Details, Details**,  
Advanced Family Law Course (2008)

Author, **Premarital Agreements and Public Policy Concerns**,  
 State Bar of Texas – Family Law Section Report (2008)  
 Co-Author, **Electronic Evidence in the Information Age**,  
 Marriage Dissolution Institute (2008)  
 • Winner – Best Family Law CLE Article 2008  
 Co-Author and Presenter, **Family Law Update - What You Don't Know Can Hurt You**, General Practice  
 Institute, Baylor University School of Law (2008 & 2007)  
 Co-Author, **Estate Planning and Divorce**,  
 Estate Planning Council of North Texas (2007)  
 Co-Author, **How to Get Above, Beyond, and Around the Child Support Cap**,  
 Parent Child Relationships: The Definitive Short Course (2007)  
 Co-Author, **Hearsay Revisited**,  
 South Carolina Bar Association, (2007)  
 Co-Author, **Husband and Wife**,  
 SMU Law Review Survey Article, with Joseph W. McKnight (2007)  
 Author, **Airline Liability – The Warsaw Convention – United States District Court of the Southern Dis-  
 trict of California Holds that the Passenger May Bring Suit in the United States Because it is KLM's  
 "Place of Business Through Which the Contract was Made": Polanski v. KLM Royal Dutch Airlines**,  
 Journal of Air Law and Commerce, Winter 71:1 (2005)  
 Author, **Comment: The Changing Face of General Aviation Security Regulation:  
 What is Being Done, What Needs to be Done, and Why Does Anything Need  
 to be Done in the First Place?**,  
 Journal of Air Law and Commerce, Spring 71:2 (2006)

#### **SELECTED APPELLATE CASES:**

*In Re Office of the Attorney General*, ---S.W.3d---, 2013 WL 854785 (Tex. 2013)  
*Milner v. Milner*, 361 S.W.3d 615 (Tex. 2012)  
*In re L.C.L.*, ---S.W.3d---, 2013 WL 1277879 (Tex. App. – Dallas 2013, no pet. h.)  
*In re D.J.E.*, 2013 WL 594021 (Tex. App. – Waco 2013, no pet. h.)  
*Bruce v. Elliott*, 2012 WL 260025 (Tex. App. – Dallas 2012, no pet.)  
*Sink v. Sink*, 364 S.W.3d 340, (Tex. App. – Dallas 2012, no pet.)  
*Halleman v. Halleman*, 379 S.W. 3d 443 (Tex. App. – Fort Worth 2012, no pet.)  
*In re Marks*, 2011 WL 4824287 (Tex. App. – Dallas 2011, orig. proceeding)  
*In re Nickelberry*, 2010 WL 5019270 (Tex. App. – Fort Worth 2011, orig. proceeding)  
*In re Marriage of Collier*, ---S.W.3d---, 2011 WL 13504 (Tex. App. – Amarillo 2011, no pet.)  
*In re Halleman*, 2011 WL 5247882 (Tex. App. – Fort Worth 2011, orig. proceeding)  
*Milner v. Milner*, 360 S.W.3d 519 (Tex. App. – Fort Worth 2010),  
*aff'd on other grounds by Milner v. Milner*, 361 S.W.3d 615 (Tex. 2012)  
*In re Honermann-Garinger*, 2010 WL 4644464 (Tex. App. – Fort Worth 2010, orig. proceeding)  
*In re Gladney Center*, 2010 WL 2105872 (Tex. App. – Fort Worth 2010, orig. proceeding)  
*In re E.A.E.*, 2010 WL 3618707 (Tex. App. – Fort Worth 2010, no pet.)  
*Roan v. Roan*, 2010 WL 4260974 (Tex. App. – Austin 2010, no pet.)  
*In re Marriage of Hughes*, 2009 WL 1491866 (Tex. App. – Fort Worth 2009, no pet.)  
*In re T.H.*, 2008 WL 4831374 (Tex. App. – Fort Worth 2008, no pet.)

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## I. INTRODUCTION

This article addresses various Family Code statutes, the Rules of Appellate Procedure, and case law that impact appeals of orders entered pursuant to the Texas Family Code, save and except for cases filed under Title 3, which addresses juvenile cases.

## II. PLEADINGS: Generally, the judgment must be supported by the pleadings, but in custody cases that is not the rule.

The generally accepted and longstanding rule in Texas is that the trial court's judgment must conform to the pleadings. Tex. R. Civ. P. 301. However, pleadings are of little importance in child custody cases and the trial court's efforts to exercise broad, equitable powers in determining what will be best for the future welfare of a child should be unhampered by narrow technical rulings. *Peck v. Peck*, 172 S.W.3d 26, 35 (Tex. App.—Dallas 2005, pet. denied); *MacCallum v. MacCallum*, 801 S.W.2d 579, 586 (Tex. App.—Corpus Christi 1990, writ denied); *Reid v. Horton*, 278 S.W.2d 626, 628 (Tex. Civ. App.—Amarillo 1954, writ ref'd n.r.e.); *see also Leithold v. Plass*, 413 S.W.2d 698 (Tex. 1967) (“Technical rules of practice and pleadings are of little importance in determining issues concerning the custody of children.”); *In re A.B.K.*, 10-06-00272-CV, 2007 WL 3293724 (Tex. App.—Waco Nov. 7, 2007, no pet.) (same).

## III. PROTECTIVE ORDERS: Depending on whether there is a divorce or SAPCR pending, a protective order may need to be challenged by mandamus rather than by appeal.

Family Code Section 81.009 governs the appeal of a protective order issued under subtitle B of title 4 of the Family Code. It provides as follows:

§ 81.009. Appeal

- (a) Except as provided by Subsections (b) and (c), a protective order rendered under this subtitle may be appealed.
- (b) A protective order rendered against a party in a suit for dissolution of a marriage may not be appealed until the time the final decree of dissolution of the marriage becomes a final, appealable order.
- (c) A protective order rendered against a party in a suit affecting the parent-child relationship may not be appealed until the time an order providing for support of the child or possession of or access to the child becomes a final, appealable order.

Tex. Fam. Code Ann. § 81.009; *see also, In re K.S.L.-C.*, 109 S.W.3d 577, 579 (Tex. App.—Tyler 2003, no pet.); *Bilyeu v. Bilyeu*, 86 S.W.3d 278, 282 (Tex. App.—Austin 2002, no pet.). However, it is not always easy to determine whether a protective order is part of a divorce or SAPCR, so it might be best to file both an appeal and a petition for writ of mandamus. *See In re Keck*, 329 S.W.3d 658, 661 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2010, no pet.) (appeal appropriate because protective order filed in a different court from the SAPCR [termination], “therefore it cannot be said that the protective order was issued ‘in’ the termination action.”).

## IV. TEMPORARY ORDERS/INTERLOCUTORY APPEALS: Interlocutory appeals are only available in relationship to receivers in family-law matters. Therefore, most temporary orders must be challenged by mandamus.

Pursuant to Family Code Section 6.507, temporary orders issued in suits involving the dissolution of marriage, except an order appointing a receiver, are not subject to an interlocutory appeal. Tex. Fam. Code Ann. § 6.507. Notably, except in a suit under the Family Code, an interlocutory order that grants or denies a special appearance under Texas Rule of Civil Procedure 120a, an interlocutory appeal is unavailable. *See id.* at (a)(7). Accordingly, in cases filed under the Family Code, an interlocutory order granting or denying a special appearance must be challenged by mandamus. *Knight Corp. v. Knight*, 367 S.W.3d 715, 723 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2012, orig. proceeding); *In re J.W.L.*, 291 S.W.3d 79, 83 (Tex. App.—Fort Worth 2012, orig. proceeding). Additionally, as of September 1, 2013, an interlocutory appeal filed in a suit brought under the Family Code does not stay the commencement of the trial pending resolution of the appeal. Tex. Civ. P. & Rem. Code Ann. § 51.014(b).

In regards to SAPCR suits, no interlocutory appeals are available. Therefore, as more fully discussed below, mandamus is the appropriate remedy to attack the issuance of temporary orders. *See Dancy v. Daggett*, 815 S.W.2d 548, 549 (Tex. 1991); *In re Lemons*, 47 S.W.3d 202, 203–04 (Tex. App.—Beaumont 2001, orig. proceeding); *see also, In re Chambless*, 257 S.W.3d 698 (Tex. 2008) (orig. proceeding); *In re Mays-Hooper*, 189 S.W.3d 777 (Tex.



2006) (orig. proceeding); *Proffer v. Yates*, 734 S.W.2d 671, 673 (Tex. 1987) (orig. proceeding); *Leonard v. Paxson*, 654 S.W.2d 440, 441 (Tex. 1983)(orig. proceeding); *Arias v. Spector*, 623 S.W.2d 312, 313 (Tex. 1981) (orig. proceeding); *In re Bradshaw*, 273 S.W.3d 851, 859-860 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding); *In re Burgett*, 23 S.W.3d 124, 127–28 (Tex. App.—Texarkana 2000, orig. proceeding).

**V. REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW: The Texas Family Code has several specific provisions that govern findings of fact and conclusions of law in family law matters.**

The Texas Family Code Sections 6.711, 153.258, and 154.130 govern requests for findings of fact and conclusions of law under certain circumstances.

**A. Specific findings related to the division of the marital estate.** Section 6.711 found under title 1 of the Texas Family Code provides as follows:

§ 6.711. Findings of Fact and Conclusions of Law

- (a) In a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, the court shall state in writing its findings of fact and conclusions of law concerning:
  - (1) the characterization of each party’s assets, liabilities, claims, and offsets on which disputed evidence has been presented; and
  - (2) the value or amount of the community estate’s assets, liabilities, claims, and offsets on which disputed evidence has been presented.
- (b) A request for findings of fact and conclusions of law under this section must conform to the Texas Rules of Civil Procedure.

Tex. Fam. Code Ann. § 6.711. When seeking these specific findings, the request for findings of fact and conclusions of law should specify not only Civil Rule of Procedure 296, but also Family Code Section 6.711, without the specific family code reference, the trial court is under no obligation to provide these specific findings of fact. Unless timely requested, a party waives his right to require the trial court to make findings pursuant to Family Code Section 6.711. *Moore v. Moore*, 383 S.W.3d 190, 200-01 (Tex. App.—Dallas 2012, pet. denied); *Sonnier v. Sonnier*, 331 S.W.3d 211, 216 (Tex. App.—Beaumont 2011, no pet.). Although Family Code Section 6.711 certainly assists the attorney in obtaining some of the findings needed to pursue an appeal of the division of the martial estate, it still leaves several hurdles for an appellant to overcome should a trial court limit itself to just the statutory findings. For example, although the Family Code allows the trial court to take into consideration the value of a party’s separate estate in making the division of property, it is not mandatory for the trial court to put a value on the separate estates of the parties. Without this information, it would be virtually impossible for an appellate court to determine whether the trial court had made a full and equitable division. See Sallee S. Smyth, *Findings of Fact and Conclusions of Law: The Rhyme and Reason of the Ruling*, Advanced Family Law Drafting Course, Dec. 2001.

**B. Specific findings related to possession and access.** Section 153.258 found under title 5 of the Texas Family Code provides as follows:

§ 153.258. Request for Findings When Order Varies from Standard Order

Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, on written request made or filed with the court not later than 10 days after the date of the hearing or on oral request made in open court during the hearing, the court shall state in the order the specific reasons for the variance from the standard order.

Tex. Fam. Code Ann. § 153.258. Findings in support of an order for possession of a child younger than three years are also required upon such a request. See Tex. Fam. Code § 153.254. The court may not simply state that the special needs of the child render the application of the standard possession order unworkable and inappropriate. *Voros v. Turnage*, 849 S.W.2d 353, 354–55 (Tex. App.—Houston [1st Dist.] 1992), *on appeal after remand*, 856 S.W.2d 759 (Tex. App.—Houston [1st Dist.] 1993, writ denied). Requiring a court to state specific reasons for variance is functionally equivalent to making findings of fact. *In re T.J.S.*, 71 S.W.3d 452, 458–59 (Tex. App.—Waco 2002, pet. denied).

**C. Specific findings related to child support.** Section 154.130 found under title 5 of the Texas Family Code provides as follows:

§ Section 154.130. Findings in Child Support Order

(a) Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in rendering an order of child support, the court shall make the findings required by Subsection (b) if:

- (1) a party files a written request with the court not later than 10 days after the date of the hearing;
- (2) a party makes an oral request in open court during the hearing; or
- (3) the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable.

(a-1) If findings under this section are required as a result of the request by a party under Subsection (a)(1) or (2), the court shall make and enter the findings not later than the 15th day after the date of the party's request.

(b) If findings are required by this section, the court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:

“(1) the monthly net resources of the obligor per month are \$ \_\_\_\_;

“(2) the monthly net resources of the obligee per month are \$ \_\_\_\_;

“(3) the percentage applied to the obligor's net resources for child support by the actual order rendered by the court is \_\_\_\_%; and

“(4) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable .”

Tex. Fam. Code Ann. § 154.130. Section 154.130 is triggered only when the trial court sets child support. *In re J.D.M.*, 221 S.W.3d 740, 743 (Tex. App.—Waco 2007, no pet.); *In re S.B.C.*, 952 S.W.2d 15, 19 (Tex. App.—San Antonio 1997, no pet.) (citing *Terry v. Terry*, 920 S.W.2d 423, 425–26 (Tex. App.—Houston [1st Dist.] 1996, no writ)).

## **VI. APPEALS GENERALLY UNDER FAMILY CODE TITLE 5: Family Code statutes that apply to certain appeals involving children.**

**A. UCCJEA.** Family Code Section 153.314 governs appeals of orders under the UCCJEA and provides as follows:

§ 152.314. Appeals

An appeal may be taken from a final order in a proceeding under [Chapter 152, Subchapter D] in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 152.204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Tex. Fam. Code Ann. § 152.314.

**B. Termination of Parental Rights.** Family Code Sections 109.002(a) and 161.211 address appeals of orders terminating parental rights and provide as follows:

§ 109.002. Appeal

(a) . . . . An appeal in a suit in which termination of the parent-child relationship is in issue shall be given precedence over other civil cases and shall be accelerated by the appellate courts. . . .

Tex. Family Code Ann. § 109.002(a).

§ 161.211. Direct or Collateral Attack on Termination Order

(a) Notwithstanding Rule 329, Texas Rules of Civil Procedure [Motion for New Trial on Judgment Following Citation by Publication], the validity of an order terminating the parental rights of a person who has been personally served or who has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child or whose rights have been terminated under Section 161.002(b) is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(b) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(c) A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

Tex. Fam. Code Ann. § 161.211.

**C. Adoption.** Family Code Section 162.012 addresses appeals of adoption orders and provides as follows: § 162.012. Direct of Collateral Attack

(a) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an adoption order is not subject to attack after six months after the date the order was signed.

(b) The validity of a final adoption order is not subject to attack because a health, social, educational, and genetic history was not filed.

Tex. Fam. Code Ann. § 162.012.

**D. TDFPS Placement of Children.** Family Code Section 263.405 governs appeals of final orders relating to the placement of children under the care of the Texas Department of Family and Protective Services and provides as follows:

§ 263.405. Appeal of Final Order

(a) An appeal of a final order rendered under this subchapter is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

(b) A final order rendered under this subchapter must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined: “A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.”

(c) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of a final order granting termination of the parent-child relationship rendered under this subchapter.

Tex. Fam. Code Ann. § 263.405. Subsequently, the Texas Supreme Court generated Texas Rule of Appellate Procedure 28.4, which is addressed below.

## **VII. TEXAS RULES OF APPELLATE PROCEDURE: Several rules of appellate procedure specifically address family law cases involving children.**

The rules of appellate procedure have the following special provisions for appeals involving children:

Rule 9.8. Protection of Minor’s Identity in Parental-Rights Termination Cases and Juvenile Court Cases

(a) *Alias Defined.* For purposes of this rule, an alias means one or more of a person's initials or a fictitious name, used to refer to the person.

(b) *Parental-Rights Termination Cases.* In an appeal or an original proceeding in an appellate court, arising out of a case in which the termination of parental rights was at issue:

(1) except for a docketing statement, in all papers submitted to the court, including all appendix items submitted with a brief, petition, or motion:

(A) a minor must be identified only by an alias unless the court orders otherwise;

(B) the court may order that a minor's parent or other family member be identified only by an alias if necessary to protect a minor's identity; and

(C) all documents must be redacted accordingly;

- (2) the court must, in its opinion, use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family member.

...

- (d) *No Alteration of Appellate Record.* Nothing in this rule permits alteration of the original appellate record except as specifically authorized by court order.

Tex. R. App. P. 9.8(a),(b),&(d).

#### Rule 20.1. Civil Cases

##### (a) *Establishing Indigence*

...

- (3) *By Presumption of Indigence.* In a suit filed by a governmental entity in which termination of the parent-child relationship or managing conservatorship is requested, a parent determined by the trial court to be indigent is presumed to remain indigent for the duration of the suit and any subsequent appeal, as provided by section 107.013 of the Family Code, and may proceed without advance payment of costs.

Tex. R. App. P. 20.1(a)(3).

#### Rule 24.2. Amount of Bond, Deposit, or Security

##### (a) *Type of Judgment.*

...

- (4) *Conservatorship or Custody.* When the judgment involves the conservatorship or custody of a minor or other person under legal disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

Tex. R. App. P. 24.2(a)(4).

#### Rule 25.1. Perfecting Appeal: Civil Cases

...

- (d) *Contents of Notice.* The notice of appeal must:

- (6) in an accelerated appeal, state that the appeal is accelerated and state whether it is a parental termination or child protection case, as defined in Rule 28.4;

Tex. R. App. P. 25.1(d)(6).

#### Rule 28.4. Accelerated Appeals in Parental Termination and Child Protective Cases

##### (a) *Application and Definitions.*

- (1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.

- (2) In Rule 28.4:

(A) a “parental termination case” means a suit in which termination of the parent-child relationship is at issue.

(B) a “child protection case” means a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

##### (b) *Appellate Record.*

- (1) *Responsibility for Preparation of Reporter's Record.* In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b) the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter's record. The trial court must arrange for a substitute reporter, if necessary.

- (2) *Extension of Time.* The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.

(3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code [Free Transcript of Statement of Facts on Appeal] does not apply to an appeal from a parental termination or child protection case.

(c) *Remand for New Trial*. If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

Tex. R. App. P. 28.4.

Rule 32.1. Docketing Statement: Civil Cases

Promptly upon filing the notice of appeal in a civil case, the appellant must file in the appellate court a docketing statement that includes the following information:

...

(g) whether the appeal's submission should be given priority, whether the appeal is an accelerated one under Rule 28<sup>1</sup> or another rule or statute, and whether it is a parental termination or child protection case, as defined in Rule 28.4;

Tex. R. App. P. 28.4(g).

### **VIII. TEMPORARY ORDERS PENDING APPEAL: If timely sought and obtained, the parties are entitled to temporary orders pending appeal.**

**A. Suit for Divorce, for Annulment, or to Declare Marriage Void:** Family Code Section 6.709 provides for temporary orders pending appeal in a marriage dissolution case and provides as follows:

§ 6.709. Temporary Orders During Appeal

(a) Not later than the 30th day after the date an appeal is perfected, on the motion of a party or on the court's own motion, after notice and hearing, the trial court may render a temporary order necessary for the preservation of the property and for the protection of the parties during the appeal, including an order to:

- (1) require the support of either spouse;
- (2) require the payment of reasonable attorney's fees and expenses;
- (3) appoint a receiver for the preservation and protection of the property of the parties; or
- (4) award one spouse exclusive occupancy of the parties' residence pending the appeal.

(b) The trial court retains jurisdiction to enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order.

Tex. Fam. Code Ann. § 6.709. The breadth of this section is broad including but not limited to such relief as temporary spousal support and attorney's fees. *See In re Marriage of Joiner*, 755 S.W.2d 496, 499 (Tex. App.—Amarillo 1988, no writ); *Love v. Bailey-Love*, 217 S.W.3d 33, 36 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2006, no pet.). The order granting temporary relief pending appeal must be signed within thirty days of the filing of the notice of appeal. *Love v. Bailey-Love*, 217 S.W.3d 33, 36–37 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2006, no pet.). Temporary orders pending appeal may be challenged by mandamus if the trial court abused its discretion and if the party does not have an adequate remedy by appeal. If there is no abuse of discretion, then the party has an adequate remedy by appeal and the temporary orders pending appeal may be challenged along with the pending appeal on the merits of the final judgment. *In re Merriam*, 228 S.W.3d 413, 414–15 (Tex. App.—Beaumont 2007, orig. proceeding).

**B. Suit Affecting Parent-Child Relationship:** Family Code Section 109.001 provides for temporary orders pending appeal in a SAPCR case and provides as follows:

§ 1.09.001. Temporary Orders During Pendency of Appeal

(a) Not later than the 30th day after the date an appeal is perfected, on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of the appeal as the court may deem necessary and equitable. In addition to other matters, an order may:

- (1) appoint temporary conservators for the child and provide for possession of the child;
- (2) require the temporary support of the child by a party;

- (3) restrain a party from molesting or disturbing the peace of the child or another party;
  - (4) prohibit a person from removing the child beyond a geographical area identified by the court;
  - (5) require payment of reasonable attorney's fees and expenses; or
  - (6) suspend the operation of the order or judgment that is being appealed.
- (b) A court retains jurisdiction to enforce its orders rendered under this section unless the appellate court, on a proper showing, supersedes the court's order.
  - (c) A temporary order rendered under this section is not subject to interlocutory appeal.
  - (d) The court may not suspend under Subsection (a)(6) the operation of an order or judgment terminating the parent-child relationship in a suit brought by the state or a political subdivision of the state permitted by law to bring the suit.

Tex. Fam. Code Ann. 109.001. The order granting temporary relief pending appeal must be signed within thirty days of the filing of the notice of appeal. *See Love*, 217 S.W.3d at 36–37. The clear intent of this section is to extend the power of the trial court to enter temporary orders after an appeal has been perfected to preserve and protect the safety and welfare of the child, preserve the community property and protect the parties, when such relief has not been ordered in the decree. *See In re Boyd*, 34 S.W.3d 708, 710-11 (Tex. App.—Fort Worth 2000, orig. proceeding). Temporary orders pending appeal may be challenged by mandamus if trial court abused its discretion and if the party does not have an adequate remedy by appeal. If there is no abuse of discretion, then the party has an adequate remedy by appeal and the temporary orders pending appeal may be challenged along with the pending appeal on the merits of the final judgment. *See Marcus v. Smith*, 2009 WL 4854755 at 6 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2009, no pet.) (“Mandamus is the appropriate remedy to attack a temporary order under section 109.001.”); *In re Merriam*, 228 S.W.3d 413, 414-15 (Tex. App.—Beaumont 2007, orig. proceeding).

**IX. ENFORCEMENT OF JUDGMENT PENDING APPEAL: While appeal is pending, trial court ability to enforce the property division is severely limited, but no limitation on the enforcement of child-related orders or spousal maintenance.**

**A. Property division.**

In family law matters, the courts of appeals disagree about whether the trial court retains enforcement authority over the property division during an appeal, and recent case law in this area has done little to clear up the confusion. Family Code Section 9.007(c) states: “The power of the court to render further orders to assist in the implementation of or to clarify the property division is abated while an appellate proceeding is pending.” Tex. Fam. Code Ann. § 9.007(c). Thus, the debate comes down to whether a court's order is one that is actually “assisting in the implementation of the property division.” The few reported decisions draw very subtle lines as to what constitutes a permissible order.

In *Fischer-Stoker*, both parties were ordered to deliver an accounting of their bank accounts along with a check made payable to the other spouse by a date certain. *In re Fischer–Stoker*, 174 S.W.3d 268 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding). Husband failed to comply and filed a notice of appeal. *Id.* at 269. Wife responded with a motion for enforcement and contempt, and Husband filed a motion to dismiss, claiming that the trial court did not have jurisdiction under Section 9.007(c) to consider the motion for enforcement/contempt. *Id.* The trial court denied his motion to dismiss, and Husband filed a mandamus. *Id.* The appellate court construed the relief sought as a request for an order to assist in the implementation of the property division: “The instant case, however, does not concern execution of the judgment, which is ‘merely a direction to a ministerial officer to permit enforcement of the judgment.’” *Id.* at 272 (citing *English v. English*, 44 S.W.3d 102, 106 (Tex. App.—Houston [14th Dist.] 2001, no pet.)). Rather, Wife proceeded against Husband in the trial court with a motion to enforce the terms of the property division in the final divorce decree by criminal contempt if he fails to provide an accounting of his bank accounts and a check for 50% of the money in those accounts on a date certain. *Id.* The appellate court granted the writ of mandamus and ordered the trial court to dismiss the motion for enforcement/contempt pending the appeal. *Id.*

In *Sheikh*, the appellate court found that the trial court had subject-matter jurisdiction, after former husband had noticed his appeal of the parties' final divorce decree, to enter a turnover and receivership order sought by former wife insofar as it assisted her in enforcing monetary judgment she obtained against former husband in divorce action, where former husband failed to supersede divorce decree. 248 S.W.3d 381, 391-92 (Tex. App.—Houston [1st Dist.] 2007, no pet.). The court found that the turnover-and-receivership order did not assist in implementing only the de-

cree's property division because the divorce decree itself not only divided property, but also awarded a money judgment of \$330,000. *Id.* at 389. However, ultimately, the court held that, to the extent that the turnover-and-receivership order allowed the receiver to take and to dispose of the property awarded to Wife and still in Husband's possession, the order violated Section 9.007(c). *Id.* at 392 (citing *Fischer-Stoker*, 174 S.W.3d at 272).

In *Phillips*, the parties' divorce decree provided for the sale of the marital home and the proceeds split between the parties for their separate property interests, plus a judgment to Wife. *In re Phillips*, 296 S.W.3d 682, 983-84 (Tex. App.—El Paso 2009, orig. proceeding). Wife appealed. During the appeal, the house sold and all the proceeds were paid into an interest bearing account with Wife's attorney. *Id.* at 684. Husband then filed a motion to disburse his share of the sale proceeds, which the court granted. *Id.* Wife then sought mandamus relief pursuant to Section 9.007(c). *Id.* The El Paso Court of Appeals distinguished the *Fischer-Stoker* case in holding that “[t]he order of which [Wife] complains is not an order of contempt. It provided for the distribution of the sale proceeds, including the payment of \$125,000 to each party for their separate property interest. Only then was [Wife] to be paid all or part of the money judgment. She had not filed a supersedeas bond. We conclude that the order of disbursement is not a further order assisting in the implementation of the property division. Rather, it is merely a direction to a ministerial officer to enforce the judgment.” *Id.* at 687. Accordingly, the court denied Wife's request for mandamus relief. *Id.*

In the more recent but mostly unhelpful *Mandell* case, Wife filed a notice of appeal from a divorce decree on July 7, 2008. *Mandell v. Mandell*, 2010 WL 5118347 at \*1 (Tex. App.—Fort Worth 2010, no pet.) (mem. op.). On November 12, 2008, the trial court issued an order granting husband's post-judgment motion to enforce the division of the marital estate provided in the couple's April 8, 2008 divorce decree. *Id.* On April 15, 2010, the appellate court issued an opinion on wife's appeal from the divorce decree. *Id.* Wife's appeal from the divorce decree was therefore pending when the trial court rendered its enforcement order. Wife appealed trial court's enforcement order, and the Fort Worth Court of Appeals reversed and remanded, holding that under Texas Family Code Section 9.007(c), the trial court had no power to render the November 12, 2008 enforcement order because the appeal from the divorce decree was then pending. *Id.* Although this case does not elaborate as to what relief husband was requesting in his post-judgment motion to enforce the division of the marital property, this case bolsters *Fischer-Stoker* and the like that suggest that only under very limited circumstances may the trial court enforce a property division pending an appeal. So far, the only example of those limited circumstances comes from the *Phillips* case, wherein it was determined that ordering the disbursement of funds was a “direction to a ministerial officer to enforce the judgment.” Obviously the distinction is a subtle one, but the *Phillips* case is the only case giving guidance on this issue so far.

## **B. Child-related issues.**

When it comes to enforcing child-related issues while an appeal is pending, the case law appears more clear – the trial court has the authority to enforce its orders. *In re Gonzalez*, 981 S.W.2d 313 (Tex. App.—San Antonio 1998, pet. denied), involved the trial court's dismissal of a post-judgment enforcement proceeding for child support and arrearages against the father. The father appealed but did not file a supersedeas bond. The Court of Appeals, relying in part on Family Code Section 109.002(c), held that the trial court retained jurisdiction to enforce its order unless the appellate court supersedes the order. *Id.* at 314-15. Specifically, Section 109.002 provides:

### § 109.002. Appeal

(c) An appeal from a final order, with or without a supersedeas bond, does not suspend the order unless suspension is ordered by the court rendering the order. The appellate court, on a proper showing, may permit the order to be suspended, unless the order provides for the termination of the parent-child relationship in a suit brought by the state or a political subdivision of the state permitted by law to bring the suit.

Tex. Fam. Code Ann. § 109.002(c).

## **C. Spousal maintenance.**

It also appears clear that the trial court may enforce an award of spousal maintenance pending an appeal. In *In re Sheshtawy*, 154 S.W.3d 114 (Tex. 2004), the Texas Supreme Court considered whether an award of spousal maintenance was enforceable by contempt during the pendency of an appeal. The Supreme Court was “unable to discern a compelling reason for withdrawing a trial court's authority to enforce a final judgment pending appeal when that judgment has not been superseded or stayed and no statute or rule of procedure removes the trial court's authority.”

*Id.* at 124. Because there was no statutory or procedural prohibition, the court concluded that the trial court could indeed enforce its judgment by contempt. *Id.* at 125.

**X. RELIEF BY MANDAMUS V. APPEAL: Certain types of family law orders may only be challenged by mandamus or at least challenge by mandamus should be considered.**

**A. Grandparent Possession and Access.** The trial court may not award grandparents possession and access unless there is evidence that the child's parent is unfit, that the child's health or emotional well-being would suffer if the court deferred to the parent's decisions, or that the parent intended to exclude the grandparents from access to the child. An order for grandparent access in such circumstances may be challenged by mandamus. *In re Chambless*, 257 S.W.3d 698 (Tex. 2008) (orig. proceeding); *In re Mays-Hooper*, 189 S.W.3d 777 (Tex. 2006) (orig. proceeding).

**B. Habeas Corpus.** The trial court may not deny the writ of habeas corpus based on the best interests of the child. On proof of the prior order, absent dire emergency, the grant of the writ of habeas corpus should be automatic, immediate, and ministerial, based on proof of the bare legal right to possession. *Schoenfeld v. Onion*, 647 S.W.2d 954, 955 (Tex. 1983) (orig. proceeding); *see also In re deFilippi*, 235 S.W.3d 319 (Tex. App.—San Antonio 2007, orig. proceeding) (even though father was a suspect in mother's death, such evidence of wrongdoing speculative and not dire emergency to children). If the trial court fails to grant the writ of habeas corpus, mandamus is the proper remedy to compel enforcement of a relator's right in habeas corpus proceedings to custody of a child. *Lamphere v. Chrisman*, 554 S.W.2d 935, 938 (Tex. 1977) (orig. proceeding); *In re Lau*, 89 S.W.3d 757, 759 (Tex. App.—Houston [1st Dist.] 2002, orig. proceeding); *see also Greene v. Schuble*, 654 S.W.2d 436, 437–38 (Tex. 1983).

**C. Third-Party Actions for Fraud on Community:** Mandamus was found to be proper in a situation where the trial court had severed out a third-party action involving fraud on the community. Third-party actions involving fraud on the community should not be severed and should be tried with, or before, the divorce action. *See In re Burgett*, 23 S.W.3d 124, 127–28 (Tex. App.—Texarkana 2000, orig. proceeding).

**D. Turnover Order during Pendency of Divorce:** Mandamus was found to be proper when the husband was ordered to turn over funds in the trial court's registry to pay the wife's attorney's fees in an ongoing divorce action. Without a final judgment, a turnover order is void. Further, a trial court may not include in a turnover order a non-judgment third party, such as the wife's attorney. *In re Alsenz*, 152 S.W.3d 617 (Tex. App.—Houston [1st Dist.] 2004, orig. proceeding).

**E. Venue:** Generally, venue determinations generally are incidental trial rulings that are correctable on appeal and are not appropriate for mandamus relief. *Bridgestone/Firestone, Inc. v. Thirteenth Court of Appeals*, 929 S.W.2d 440, 441 (Tex. 1996). An exception to this general rule include suits affecting the parent-child relationship. Specifically, the Family Code provides for mandatory transfer of a SAPCR in certain circumstances. *See Tex. Fam. Code* §§ 103.002, 155.201, 155.301. If the trial court refuses to transfer a case, in violation of the mandatory provisions, the proper remedy is mandamus. *See Leonard v. Paxson*, 654 S.W.2d 440, 441 (Tex. 1983); *see also Proffer v. Yates*, 734 S.W.2d 671, 673 (Tex. 1987) (orig. proceeding); *Arias v. Spector*, 623 S.W.2d 312, 313 (Tex. 1981) (orig. proceeding). If parties are sharing custody of a child on an every-other-week or similar basis and live in two different counties, suit must be brought in the county in which the parent in actual possession of the child on the date of the filing of the cause of action resides. *See In re Narvaiz*, 193 S.W.3d 695, 700 (Tex. App.—Beaumont 2006, orig. proceeding). If children are placed in foster care for six months or longer before a SAPCR is filed, the trial court has a mandatory duty to transfer the suit to the county in which the children reside with the foster parents. *In re Kerst*, 237 S.W.3d 441, 444–45 (Tex. App.—Texarkana 2007, orig. proceeding).

**XI. MODIFICATION SUITS PENDING APPEAL**

Generally, a trial court has no jurisdiction to vacate or change a judgment once the case has been appealed. *Robertson v. Ranger Ins.Co.*, 689 S.W.2d 209, 210 (Tex. 1985); *Stubbs v. Stubbs*, 685 S.W.2d 643, 644 (Tex. 1985). The Family Code, however, expressly provides a trial court with continuing, exclusive jurisdiction to modify an



order regarding child-related issues even if that order has been appealed. Tex. Fam. Code Ann. §§ 155.003(a), 156.001; *Hudson v. Markum*, 931 S.W.2d 336 (Tex. App.—Dallas 1996, no pet.).

In *Hudson*, the mother sued the father to establish paternity of her minor daughter and for child support and other damages. *Id.* At 336. While that case was pending on appeal, the father filed a motion to modify child support payments in the trial court. *Id.* The trial court dismissed the motion for want of jurisdiction, and the father appealed. *Id.* at 336. On appeal, the Dallas Court of Appeals unequivocally held that the trial court retained jurisdiction over the father's modification action:

Once the trial court decided the paternity and support of the child, it acquired continuing jurisdiction over the parent-child relationship. It retained continuing, exclusive jurisdiction to hear a new proceeding affecting that relationship.

That [the father] filed his motion to modify during the pendency of his appeal from the order he seeks to modify does not alter the trial court's jurisdiction.

*Id.* at 338. Thus, once the father filed his motion to modify during the pendency of his appeal from the order he sought to modify, the modification action did not alter the trial court's jurisdiction. Because the family code vested the trial court with continuing, exclusive jurisdiction to hear the father's motion to modify child support, the trial court erred in dismissing his motion to modify. *Id.*

A petition to modify an existing order affecting the parent-child relationship is a new law suit. Tex. Fam. Code Ann. § 156.004; *Hudson*, 931 S.W.2d at 338 n.6 (noting that the 1995 recodification of the Family Code refers to a modification actions as "a suit for modification" rather than "a motion to modify" which emphasized that the legislature intended the trial courts to continue to treat motions to modify as original lawsuits); *Normand v. Fox*, 940 S.W.2d 401, 403 (Tex. App.—Waco 1997, no writ). The entry of an appealable order in a previous modification proceeding concludes those proceedings and each subsequent filing of a new motion to modify requires issuance of citation and observation of the formalities of due process. Tex. Fam. Code Ann. §§ 156.003, 156.004; see *Rose v. Rose*, 117 S.W.3d 84, 88 (Tex. App.—Waco 2003, no pet.) (distinguishing motions to enforce existing judgments from motions to modify a SAPCR).

For the same reasons set forth above in regards to the modification of child-related issues, the modification of a spousal maintenance order should also be allowed while the original order is under appeal. See Tex. Fam. Code Ann. § 8.057.