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From: Law Office of Steven K. Hayes <shayes@stevehayeslaw.com>
Sent: Tuesday, January 14, 2025 4:30 PM
To: shayes@stevehayeslaw.com
Subject: Second Court Newsletter: New Case Summaries

January 14, 2025

Dear Friends:

Hey, folks. Sorry for the delay. The pesky day job and Bar related stuff has completely gotten in the way recently. Luckily, the Court generates its opinions just like clockwork and unlike my bumbling efforts to keep up, so we have a few opinions to look at.

Recent opinion issued by the Court in a civil case covers the following issues

- *Parent Child Relationship (Child Support Modification, Change in Circumstances, Net Income, Preservation)*
- *Parental Rights Termination (Sufficient Evidence, Endangering-Conduct Finding, Best-interest Finding, Conservatorship Finding)*
- *Pre-Suit Deposition (Burden of Pleading/Proof)*

Recent opinion issued by the Court in a civil case covers the following issues (footnotes omitted in all summaries unless otherwise stated. All names in suits involving minors are aliases unless otherwise noted):

Parent Child Relationship (Child Support Modification, Change in Circumstances, Net Income, Preservation)*: R.H. and H.H.*, No. 02-24-00195-CV–"A.S. (Wife) and G.H. (Husband) divorced in 2017. This appeal arises from Wife's petition to modify the parent–child relationship in which she sought to modify, among other things, the amount of child support paid by Husband. The trial court granted the modification, and Husband now appeals. Husband argues in his sole issue that the trial court abused its discretion by granting the modification because Wife failed to show a material and substantial change of circumstances. Because Wife's modification petition relied on a provision [Tex. Fam. Code Ann. Sec. 156.401(a)(2)] that does not require a change in circumstances, we will affirm....Husband filed a reply brief stating that Subsection (a-1) [which requires a material and substantial change in circumstances] does apply because the divorce decree's child support award had deviated from the guidelines with the parties' agreement....As Wife points out, not only did Husband not raise this argument in his opening brief, he also did not invoke Subsection (a-1) in the trial court, either by citing it directly or by otherwise making the trial court aware of his complaint, and he did not assert that Subsection (a)(2) did not apply. Thus [given Tex. R. App. P. 33.1], he has not preserved this argument," nor his argument that "the trial court abused its discretion in setting the modified child support amount because the amount is not supported by sufficient evidence of his net income."

Parental Rights Termination (Sufficient Evidence, Endangering-Conduct Finding, Best-interest Finding, Conservatorship Finding)*: J.D., J.D., E.R., M.R., and G.R.*, No. 02-24-00404-CV–"This is an ultra-accelerated appeal... in which Appellant L.R. (Mother) appeals the termination of her parental rights to three of her children—E.R. (Eric),... M.R. (Matthew), and G.R. a/k/a G.B. (Gwen)—following a two-day bench trial.... Mother also appeals the findings in the order stating that Mother should not be appointed as possessory conservator of two of her children—J.D. (Jennifer) and J.D. (Jane)—for whom the Department did not terminate Mother's parental rights.... The trial court found by clear and convincing evidence that Mother had (1) knowingly placed or

knowingly allowed Eric, Matthew, and Gwen to remain in conditions or surroundings that had endangered their physical or emotional well-being; (2) engaged in conduct or knowingly placed Eric, Matthew, and Gwen with persons who had engaged in conduct that had endangered their physical or emotional well-being; and (3) failed to comply with her court-ordered service plan. See Tex. Fam. Code Ann. § 161.001(b)(1)(D), (E), (O). The trial court also found that termination of the parent–child relationship between Mother and Eric, Matthew, and Gwen was in their best interest.... See id. § 161.001(b)(2). The trial court further found that appointing Mother as Jennifer's and Jane's possessory conservator would not be in their best interest and that unsupervised possession or access by Mother would endanger their physical or emotional welfare. In four issues, Mother challenges whether sufficient evidence supports the endangerment and best-interest findings and whether the trial court abused its discretion by not appointing her as possessory conservator of Jennifer and Jane. Because sufficient evidence supports the endangering-conduct finding, the best-interest finding, and the conservatorship finding, we affirm."

Pre-Suit Deposition (Burden of Pleading/Proof)*: In re Paloma Creek Homeowners Association*, No. 02-24-00523-CV–"Relator Paloma Creek Homeowners Association (Paloma Creek) seeks mandamus relief from the trial court's grant of a petition for a presuit deposition under Texas Rule of Civil Procedure 202. See Tex. R. Civ. P. 202.1 (permitting a person to petition a court for authorization to take a deposition to perpetuate or obtain testimony for use in an anticipated suit or to investigate a potential legal claim or suit). Because the trial court abused its discretion and because Paloma Creek lacks an adequate remedy by appeal, we conditionally grant mandamus relief....Homeowners had the burden to plead and prove that "the likely benefit of allowing [them] to take the requested deposition to investigate a potential claim outweigh[ed] the burden or expense of the procedure," Tex. R. Civ. P. 202.4(a)(2). Paloma Creek contends that Homeowners have failed to plead or prove their need for presuit discovery. We agree. Homeowners' Rule 202 petition fails to explain the basis for their potential claims against Paloma Creek, and it does not explain why there is a need for presuit deposition....The Homeowners' petition contains no factual allegations concerning Rule 202's requirements at all. See Tex. R. Civ. P. 202.4(a)(2);....The petition fails to offer any argument to support "good cause" for presuit discovery—only a general statement that "the likely benefit . . . outweighs the burden or expense of [the] procedure." This is not enough....It is an abuse of discretion for a trial court to find that the likely benefit of a Rule 202 deposition outweighs the burden of the deposition when the party seeking the deposition fails to provide any evidence on which the court could have based such a finding.... The trial court did just this and in doing so abused its discretion."

All for now. Y'all stay safe and well. Have a great weekend!

Yours,

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