



LEGISLATIVE UPDATE

Family Law

BY GARY L. NICKELSON AND NORMA A. BAZAN



This article will provide a summary of the significant legislation that passed during the 82nd Texas Legislature affecting family law, including amendments made to the Family Code.

House Bill 901 (effective Sept. 1, 2011): Spousal Maintenance

H.B. 901 amends the provisions relating to the duration and the amount of spousal maintenance. Section 8.051 is amended to now read that the court may order maintenance for either spouse only if “the spouse seeking maintenance will lack suffi-

cient property, including the spouse’s separate property, on dissolution of the marriage to provide for the spouse’s minimum reasonable needs and: (1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, as defined by Section 71.04, committed during the marriage against the other spouse or the other spouse’s child and the offense occurred either within two years before the date the petition was filed or while suit is pending, or (2) the spouse seeking maintenance is either unable to earn sufficient income;



has been married to the spouse for 10 years or longer and lacks ability to earn sufficient income; or is the custodian of a child that requires substantial care that prevents the spouse from earning sufficient income.”

The bill also amends some of the factors relating to determining maintenance in Section 8.052. The factors are set out as follows and any changes are underlined: (1) each spouse’s ability to provide for that spouse’s minimum reasonable needs independently, considering that spouse’s financial resources on dissolution of the marriage; (2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and; the availability and feasibility of that education or training; (3) the duration of the marriage; (4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance; (5) the effect on each spouse’s ability to provide for that spouse’s minimum reasonable needs while providing periodic child support payments or maintenance, if applicable; (6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common; (7) the contribution by one spouse to the education, training, or increased earning power of the other spouse; (8) the property brought to the marriage by either spouse; (9) the contribution of a spouse as homemaker; (10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and (11) any history or pattern of family violence, as defined by Section 71.004.

Section 8.053(a) is amended to provide that it is a “rebuttable presumption” that maintenance is not warranted unless the spouse seeking maintenance has exercised diligence in (1) “earning sufficient income to provide for the spouse’s minimum reasonable needs” or (2) “developing the necessary skills to provide for the spouse’s minimum reasonable needs.”

However, the major modifications to the bill include an amendment to Section 8.054 of the Family Code relating to the duration of maintenance — which now depends on whether a marriage lasted at least 10, 20, or 30 years — and amendment to Section 8.055 relating to an increase in the limit of spousal maintenance, which increased from \$2,500 to \$5,000 [and includes clarifying “gross” income].

Additionally, Section 8.056 of the Family Code is amended to provide that the court shall order the termination of the maintenance obligation if the court finds that the obligee cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis.

Also, Section 8.057(c) is amended to provide that the court may modify a maintenance obligation on a proper showing of a material and substantial change including circumstances reflected in the factors specified in Section 8.052.

Section 8.059(a), (b), and (d) of the Family Code are amended to provide that the court may enforce maintenance by contempt if the maintenance was agreed to by the parties and provides the court may not enforce by contempt any provision of an agreed order for maintenance for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter. Finally, a new Section 8.0591 has been added to the Family Code to require an obligee to return excess payments and allow an obligor to file to recover excess payments.

House Bill 908 (effective Sept. 1, 2011): Reconstituted Estates

H.B. 908 amends Chapter 7 of the Family Code to add Section 7.009, Fraud on the Community; Division and Disposition of Reconstituted Estate. The bill defines “reconstituted estate” to mean “the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred. The bill further provides that if the trier of fact determines a spouse has committed actual or constructive fraud on the community, the court shall (1) calculate the value by which the community estate was depleted and (2) divide the value of the reconstituted estate between the parties in a just and right manner.”

To accomplish a just and right division, the court may award a wronged spouse: (1) an appropriate share of the remaining community estate after the actual or constructive fraud; (2) a money judgment; or (3) award both a money judgment and an appropriate share of the community estate.

This bill is directed at the Texas Supreme Court case, *Schlueter v. Schlueter*, 975 S.W.3d 854 (Tex. 1998), which limits the ability of an innocent spouse to be made “whole” when the community estate was dissipated by fraudulent acts of the other spouse.

House Bill 841 (effective immediately): Department of Family and Protective Services

This bill simply makes statutory changes from the Department of Protective and Regulatory Services to the “Department of Family and Protective Services.”

House Bill 905 (effective Sept. 1, 2011): Hearsay Statements of a Child Victim

H.B. 905 amends Chapter 84 of the Family Code relating to hearsay statements of a child victim of family violence by adding Section 84.006:

In a hearing on an application for a protective order, a statement made by a child 12 years of age or younger that describes alleged family violence against the child is admissible as evidence in the same manner that a child’s statement regarding alleged abuse against the child is admissible under Section 104.006 in a suit affecting the parent-child relationship.



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Senate Bill 789 (effective Sept. 1, 2011): Duration of a Protective Order

Section 85.001 of the Family Code is amended by adding Subsection (d) to read “If the court renders a protective order for a period of more than two years, the court must include in the order a finding described by Section 85.025(a-1).” The bill also provides that the court may render a protective order that exceeds two years if the person who is subject to a protective order caused serious bodily injury or was the subject of two or more protective orders.

H.B. 789 proposes to amend Section 85.025(b) to place the burden on a person seeking to shorten the duration of a protective order to show there is no need for continuing the protective order and “evidence of the subject’s compliance with a protective order does not by itself support a finding by the court that there is no continuing need for a protective order.”

Senate Bill 819 (effective Sept. 1, 2011): Family Violence and Protective Orders

Chapter 81 of the Family Code is amended by adding Section 81.010 to provide that “a court of this state with jurisdiction of proceedings arising under this title may enforce a protective order rendered by another court in the same manner that the court that rendered the order could enforce the order, regardless of whether the order is transferred under Subchapter D, Chapter 85.” S.B. 819 also provides that the new section includes the authority to enforce a protective order through contempt.

Additionally, Section 82.009 of the Family Code is amended to provide that a statement signed under oath by a child is valid if the statement otherwise complies with this chapter.

Finally, Section 83.006 is amended to provide that the court may recess a hearing on a temporary ex parte order to contact the respondent by telephone and provide the respondent the opportunity to be present when the court resumes the hearing.

Section 85.26 is amended to provide for punishment of a violation of the order to be “as much as \$4,000.00 or by confinement in jail for as long as one year, or both. An act that results in family violence may be prosecuted as a separate misdemeanor or felony offense. If the act is prosecuted as a separate felony offense, it is punishable by confinement in prison for at least two years.”

House Bill 1404 (effective Sept. 1, 2011): Military Deployment of a Parent

This is a clean-up bill relating to certain temporary orders in suits affecting the parent-child relationship (SAPCRs) during a parent’s military deployment. The bill provides that if a conservator is ordered to military deployment, mobilization, or temporary military duty requiring moving, then either conservator may file for an order “without the necessity of showing a material and substantial change of circumstances other than the military deployment.”

Section 153.703(b) is amended to provide that the court may not require a non-parent to pay child support.

House Bill 906 (effective Sept. 1, 2011): Suits Affecting the Parent-Child Relationship

This bill relates to appointments made in and the appeal of certain SAPCRs. Essentially, a parent determined to be indigent is presumed to remain indigent for the duration of a suit and any subsequent appeal unless the court determines that the parent is no longer indigent due to a material and substantial change in that parent’s financial circumstances.

Section 107.016 of the Family Code is amended to provide that either a parent, the attorney ad litem for the parent, or the attorney representing the governmental entity may file a motion requesting the court to make such a determination. The bill also provides that an attorney ad litem continues to serve in that capacity until the earliest of: (a) the date the SAPCR is dismissed; (b) the date all appeals are exhausted or waived; or (c) the date the attorney is relieved of the attorney’s duties or replaced by another attorney.

Senate Bill 785 (effective immediately): Mistaken Paternity

This bill relates to the termination of the parent-child relationship and the duty to pay child support in circumstances involving mistaken paternity. Subsection (a), Section 154.006 of the Family Code is amended to include that a child support order terminates on “an order terminating the parent-child relationship between the obligor and the child based on the results of genetic testing that exclude the obligor as the child’s genetic father.”

Additionally, the bill amends Section 161.005 of the Family Code. Essentially, a final order does not affect an obligor’s obligation for support of a child incurred before that date [final order date] or to pay interest that accrues after that date on the basis of child support arrearages existing after that date. A termination suit may be brought by a man who signed an acknowledgement of paternity without first obtaining genetic testing. Additionally, an adjudicated father in a prior proceeding under Title 5 of the Family Code where genetic testing did not occur may also bring a suit for termination.

A termination suit must be verified and allege facts that: (1) he is not the child’s genetic father; and (2) signed the acknowledgment of paternity or failed to contest parentage because of the mistaken belief that he was the child’s genetic father based on misrepresentations that led him to that conclusion.

There are specific time frames that should be read if you end up with a mistaken paternity case. Generally, under new Subsection (e), a petition must be filed not later than the first anniversary of the date on which the petitioner becomes aware he is not the child’s genetic father. Also, new Subsection (e-1) provides that Subsection (e) applies beginning Sept. 1, 2012. Before that, a petition may be filed regardless of the date on which the petitioner became aware that he was not the child’s genetic father *and* this subsection expires Sept. 1, 2013.



**Senate Bill 820 (effective Sept. 1, 2011):
Access to a Child Under Three Years of Age**

This bill relates to a court order for the possession of or access to a child under three years of age. Section 153.254 of the Family Code is amended to read that in rendering a possession or access order, the court shall consider evidence of all relevant factors, including 13 factors as set out in the code (including, among other factors, the caregiving provided to the child before and during the current suit, the effect on the child that may result from separation from either party, and the physical, medical, behavioral, and developmental needs of the child).

The bill also provides that the court shall make findings in support of the possession or access order if a party so requests within 10 days after the date of the hearing.

Other Legislation

There are other bills that have passed affecting family law. Depending on your practice, you may wish to review these bills to determine if they will affect your cases — the most notable bills being H.B. 1674 relating to the procedures for establishment, modification, and enforcement of child support obligations; H.B. 3833 relating to the adoption of a Uniform

Collaborative Law Act in regard to family law matters; S.B. 279 (for pet lovers) relating to the inclusion of pets and other companion animals in protective orders; S.B. 502 related to making it an offense (felony of the third degree) if a person alters, destroys, conceals, fabricates, or falsifies genetic evidence in a proceeding to adjudicate parents; S.B. 1026 relating to the powers and duties of an attorney ad litem appointed for a parent or an alleged father in certain suit affecting the parent-child relationship; and S.B. 1751 relating to calculation of the net resources of a person ordered to pay child support.

GARY L. NICKELSON,

of the Law Office of Gary L. Nickelson in Fort Worth, focuses his practice on family law, divorce, child support, and child custody and visitation.

NORMA A. BAZAN

is an attorney with the Law Office of Gary L. Nickelson in Fort Worth. Her practice focuses on family law, divorce, child support, and child custody and visitation.



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