INTERESTING CASES: January 8, 2020
Sallee S. Smyth

1. ***Mansfield v. Mansfield,* 2019 Tex. App. LEXIS 10049 (Tex. App. -- San Antonio November 20, 2019) (mem. op.) (04-18-00551-CV)**

Note: This Opinion replaces a prior opinion issued on October 9, 2019 which was included in the Interesting Case Summaries dated November 3, 2019. The summary and result are the same however it is re-published here with the new citation information.

In 2010 H received a structured settlement annuity after a job-related accident. The annuity paid him $6900+ per month until the latter of his death or 360 months. In 2016 H married W and they had one child in 2017. W filed for divorce shortly after the child's birth and they settled all matters with the exception of child support and medical support. At trial the court considered H's structured settlement income as part of his resources for establishing child support. H appealed, citing a Waco decision that delineated between income from annuity versus return of principal from annuity when considering what should be included within the definition of resources for child support. (In re AAG, 303 SW3 739) The San Antonio COA declined to follow the Waco decision, determining instead that the plain meaning of TFC 154.062 defined resources to include "annuities" without distinguishing between different types of annuity contracts. The COA notes that if the Legislature had intended to include some annuities but not others it would have specified such, but because it did not the trial court was correct to include H's $6,900/mo in its child support calculation. Affirmed.

2. ***In the Interest of A.R.W.,* 2019 Tex. App. LEXIS 10280 (Tex. App. – Dallas November 26, 2019) (mem. op.) (Cause No. 05-18-00201-CV)**

Note: This Opinion replaces a prior opinion issued on August 20, 2019 which was included in the Interesting Case Summaries dated September 4, 2019. The summary and result are the same however it is re-published here with the new citation information.

M and F divorced in 2013 and neither part was ordered to pay c/s for the benefit of their daughter. In 2015 a modification order named the parties JMC, gave F primary rights, awarded M an expanded possession order and obligated F to pay M c/s of $1360 per month. The trial court determined the amount by calculating each parent's c/s obligation under guidelines and then ordered F to pay the difference to M. The court's stated reasons for ordering F to pay c/s to M was to ensure that there were adequate resources in each home to support the child. In 2016 F filed a MTM and M filed a counter motion seeking primary custody. F filed an amended motion and sought orders for c/s in strict compliance with the guidelines, requesting that M pay him c/s and alleging that M was underemployed. After a 1 day trial the court left conservatorship orders in place and reduced F's c/s obligation to M, ordering him to pay $700 per month. The court issued findings that a material and substantial change had occurred. The court calculated the reduced amount of support by determining F's obligation ($1710) and subtracting M's obligation ($910) and then reduced it by another $100 to account for F providing health insurance. F appealed. In essence, F argued that there was no basis for ordering him to pay c/s to M when he was the primary custodian. The COA observed that the trial court has authority to order either or both parents to pay child support in accordance with their duty to support their children and that one JMC could be ordered to pay c/s to another. F argued that M must be considered the child support "obligor" because he had primary rights to the child. The COA examined the c/s guidelines and determined that nothing in the Family Code establishes which parent must be treated as an "obligor" for child support purposes. F argued that M should be considered the presumptive obligator because the function of c/s is to help the custodial parent to maintain an adequate standard of living for the child. The COA stated that because M had possession of the child at least 7 days per month and 30 days in the summer, she too could be considered a "custodial parent" to some degree. Ultimately the COA determined that the child support guidelines are relevant in modification proceedings and that the court's orders for F to pay c/s to M to provide adequate resources for the child at both residence was harmonious with the goal that c/s should assist the custodial parent to maintain an adequate standard of living for the child. Affirmed. **COMMENT:** I am fairly confident that this case is going to produce a significant number of requests for c/s by non-primary parents in situations where the primary parent is the higher wage earner between the two. In light of this decision, it would seem important to discover and develop facts about how the non-primary parent actually spends their existing

resources on the child and how they spend their allotted time with the child so as to demonstrate whether c/s to the non-primary will really alter the standard of living for the child in that residence or whether it is only being sought to enhance the non-primary parents lifestyle. Interesting times!

3. *R.R.*, 2019 Tex. LEXIS 1212 (Tex. Supreme Court – December 13, 2019) (18-0273)

In 2014 the parties secured a SAPCR order establishing possession and support orders. In 2015, F filed a motion to modify and the matter was tried to the court. After trial the court issued a one page "memorandum" which contained bullet points of his ruling, modifying some terms of possession and support as well as removing other terms from the prior order. At the end of the "memorandum" the court included a "Mother Hubbard" clause stating that all relief requested but not expressly granted was denied. Two days later M and F signed a Rule 11 agreement covering their possession agreement for the upcoming Christmas holidays. The Rule 11 stated that it was made in anticipation of a final order being drafted and signed. After the holidays, F moved for entry of a final order and both parties submitted proposed orders which incorporated the trial court's rulings in specific detail and with both included all statutorily required information and warnings. The trial court signed a 51 page final order. Both parties sought FFCL and M timely filed a notice of appeal. Neither party questioned the appellate court's jurisdiction however the COA, sua sponte, determined that the "memorandum" decision of the trial court was a "final order" and met all the requisites of a formal judgment. In light of this finding the COA dismissed M's appeal, determining that her deadlines were triggered by the date of the "memorandum" and thus, her notice of appeal filed timely after the date of the 51 page order was three months too late. M filed a PFR in the Supreme Court which was granted. The Sup. Court determines that the trial court's "memorandum" was NOT a final judgment. In reaching this conclusion, the Sup. Court recognizes that final orders in SAPCR suits under the Family Code are required to include certain statutory language and other information, none of which were contained in the trial court's "memorandum." Further, although the "memorandum" included a "Mother Hubbard" clause, the Supreme Court notes that such a clause is not conclusive of finality if the orders finality is not clear and unequivocal. In this circumstance, the Sup. Court advises that reviewing courts must examine the record to determine whether the trial court intended its order to be final and whether all parties and all issues were truly resolved and disposed of. In this case, the "bullet point" nature of the "memorandum" belied finality because issues regarding possession and support were not resolved (i.e. "possession evenly split and Christmas and Thanksgiving holiday to following the Texas Family Code" but then the "memorandum" fails to include any possession schedule; child support ruling stated "offset based on F and M monthly gross income" but then fails to calculate net resources and fails to state a new amount of support). Further the "memorandum" did not include any of the required statutory language and warnings, which suggests ambiguity. The Sup. Court was dismissive of the 7 point list of factors considered by the COA in determining finality because the Sup. Court recognized that these 7 attributes were equally applicable to interim and final orders. The Sup. Court notes that the record demonstrates that neither party considered the "memorandum" a final order and more significantly, the trial court did not intend such as the trial court later signed a 51 page order which contained all the specifics necessary to make its orders both clear and final. The Sup. Court holds that an order which lacks unmistakable language of finality is ambiguous in a suit under the Family Code when it does not comport with statutes governing final orders and is otherwise inconclusive as to its intent. Because the record in this case establishes that the "memorandum" was not a final order, mother's appeal from the latter 51 page order was timely. The matters is remanded to the COA for consideration of M"s appeal on its merits.

4. *Broussard v. Arnel,* 2019 Tex. App. LEXIS 11251 (Tex. App. – Houston [1st] Dist. December 31, 2019 (Cause No. 01-181-00787-CV)

M and F divorced in 2010 and were named JMC's of their two children with M having primary. In 2016 F filed a motion to modify seeking primary conservatorship of his then 14 year old son. When the case went to trial in October 2017, M reported to her attorney that the child had run away. However, while on a brief recess in trial (over a weekend and a few extra days) M served as a witness to the marriage of her now 15 year old son to a 26 year old woman in Missouri (MO) When trial reconvened, M filed a plea to the jurisdiction and motion to dismiss the SAPCR claiming that the trial court no longer had jurisdiction over the suit because she claimed the child was emancipated by his MO marriage and that the TX court must acknowledge his marriage under principles of comity and full faith and credit. At the time of the child's marriage,

MO authorized the marriage of a child at age 15 with parental consent. The MO Legislature has since raised the age to 16. F challenged the motion arguing that the marriage was void under TX law (which M conceded) and that MO law should not be applied. F argued that the son was not eligible to marry because his disabilities of minority had not been removed. F further argued that TX was not required to give comity or full faith and credit to the MO marriage because it violated TX public policy. The trial court denied M's plea to the jurisdiction finding the marriage to be void. M sought mandamus relief but that was denied without Opinion. Trial resumed and the court named F as SMC of his son. M filed a MNT and attached a copy of a judgment she obtained in MO declaring the son's marriage valid under MO law. The trial court denied M's motion and M appealed, challenging only the trial court's denial of her plea to the jurisdiction. M argued that the court erred in refusing to determine that the child was emancipated by virtue of marriage. The COA determined that under TFC 1.104, the child's marriage would only emancipate him if it was legal under TX law, section 1.104 stating that *a person, regardless of age, who has been married in accordance with the laws of this state has the capacity and power of an adult …"* A person may not marry in TX if they are under the age of 18 unless their disabilities of minority have been removed and a child may not seek such an order until they are at least 17. Here the child was only 15. There was no evidence that before his marriage the child had obtained an order removing his disabilities in TX or anywhere else. M next argued that TFC 1.104 does not apply because MO law should control, as this is the place of celebration of the marriage. The COA found however that the validity of the child's marriage under MO law was only secondary to the question of whether it served to emancipate the child in TX. This is true because the COA acknowledged that TX was not required to extend credit to MO law when that law was against TX public policy. M further argued that the TX court was required to acknowledge the declaratory judgment she obtained in MO, determining the child's marriage to be valid, arguing that the marriage was presumptively valid. The COA found that a valid marriage cannot spring from a declaratory judgment. Further, the declaratory judgment did not remove the child's disabilities. It merely stated that the marriage was valid under MO law, which did not, for the other reasons decided, have the effect of emancipating the child. The COA further determined that M offered no authority as to why full faith and credit compelled a TX court to recognize and enforce an out-of-state marriage. Judgment affirmed. **COMMENT:** I represented the father in response to the plea to the jurisdiction and on appeal in this case. While one would think after 32 years in family law nothing could shock you, a parent's decision to marry off their 15 year-old son as a "litigation strategy" in a custody case qualifies as a shocker in my book. Sadly, M has managed to hide the child out of state since the October 2017 trial began and although he was once located in Louisiana, the COA refused to dismiss M's appeal on the basis of unclean hands. Although the judgment has now been affirmed, the son will turn 18 this month, making it impossible for F to secure custody. Hopefully one day the son will come to understand which parent truly had his best interest at heart.