

STANDARDS OF REVIEW IN FAMILY LAW APPEALS

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Karen S. Guerra and Chief Justice Linda Thomas, *Findings of Fact, Conclusions of Law, and Other Common Problems on Appeal*, 26th Annual Advanced Family Law Course, Chapter 29, August 21-24, 2000.

Justice Ann Crawford McClure, *Evidence Can Be "Appealing" [Getting It In and Keeping It Out]*, 26th Annual Advanced Family Law Course, Chapter 59, August 21-24, 2000.

W. Wendell Hall, *Standards of Review in Texas*, 29 St. Mary's Law Journal 351 (1998).

STANDARDS OF REVIEW IN FAMILY LAW APPEALS

BY A. MICHELLE MAY

I. INTRODUCTION

Appeals in family law cases can be daunting, especially to the litigator who does not regularly practice appellate law. In any appeal, but especially in the family law context, the standard of review is the road map for success on appeal, whether you are seeking reversal or affirmance.

if there is a jury trial, there will be certain issues which the jury decides and certain issues which will remain within the providence of the judge. In such a scenario, there may be multiple standards of review to be evaluated, depending on the alleged error. Therefore, each issue presented in an appeal should contain an analysis of the standard of review.

A. Purposes of the standard of review

The purpose of the standard of review at the appellate level is similar to the burden of proof at the trial court level. It provides the height of the hurdle to be jumped before the appellate court starts listening.

The standard of review also emphasizes the relationship between the trial court and the appellate court. It defines the parameters of the appellate court's authority in reviewing the trial court's actions and determining reversible error.

Evaluating the standard of review in a family law case can be confusing. Where the trial judge renders a decision, the standard of review is generally abuse of discretion. However,

B. Standard of review versus scope of review

The standard of review must be distinguished from the scope of review. As stated, the standard of review is the measuring stick to define whether error occurred. The scope of review defines the portion of the appellate record to be examined in determining whether error was committed. Understanding both the standard and scope of review will assist in shaping the factual and legal arguments to be most effective.

II. ABUSE OF DISCRETION

The general standard of review in a family law case when reviewing a bench trial decided on the merits is abuse of discretion. This standard applies to most substantive decisions made by a

trial judge on issues like property division, conservatorship, possession and access, or child support. See Norris v. Norris, 56 S.W.3d 333, 337 (Tex. App. – El Paso 2001, no pet.). Maintenance decisions are also reviewed under the abuse of discretion standard. See Lopez v. Lopez, 55 S.W.3d 194, 198 (Tex. App. – Corpus Christi 2001, no pet.).

In order to find an abuse of discretion, the appellate court must find that the trial court's decision was arbitrary and unreasonable. Traditionally, this analysis only requires some evidence of a substantive and probative character to support the trial court's decision. Legal and factual sufficiency of the evidence are separate grounds for reversal.

Most of the courts of appeals agree that sufficiency of the evidence is not a separate ground for error, but is a part of the analysis of abuse of discretion when reviewing a trial court's decision on the merits. Crawford v. Hope, 898 S.W.2d 937, 940-41 (Tex. App. – Amarillo 1995, writ denied); In re C.R.O., ___ S.W.3d ___, ___, 2002 WL 31049839, *3 (Tex App. – Amarillo 2002, no pet h.).

However, the Justice Ann McClure of the El Paso Court of Appeals applies a hybrid analysis to the abuse of

discretion standard, which includes analysis of the grounds of sufficiency of the evidence. "In applying the abuse of discretion standard, an appellate court must engage in a two-pronged inquiry:

- (1) whether the trial court had sufficient evidence upon which to exercise its discretion; and,
- (2) whether the trial court erred in applying its discretion."

Lindsey v. Lindsey, 965 S.W.2d 589, 592 (Tex. App. – El Paso 1998, no pet.); C.R.O., 2002 WL 31049839 at *3. Commentators perceive a difference between the general rule that sufficiency of the evidence is a part of the abuse of discretion standard of review and Justice McClure's methodical approach. See James W. Paulsen, *Family Law: Parent and Child*, 52 SMU Law Rev. 1197, 1223-24 (1999). Justice McClure's analysis has been accepted by the Houston 14th and Austin courts of appeals. Evans v. Evans, 14 S.W.3d 343 (Tex. App. – Houston [14th Dist.] 2000, no pet.); Schlafly v. Schlafly, 333 S.W.3d 863 (Tex. App. – Houston [14th Dist.] 2000, pet denied); Echols v. Olivarez, 2002 WL 1991328 (Tex. App. – Austin 2002, no pet.) (not designated for publication).

The Corpus Christi Court of Appeals has specifically declined to apply this

method of analysis. *Zorilla v. Wahid*, 83 S.W.3d 247, 252 fn. 1 (Tex. App. – Corpus Christi 2002, no pet.).

It seems well-settled that the sufficiency of the evidence analysis is a part of the abuse of discretion standard, but it remains a point of dispute as to how this analysis is applied.

The fact that a trial court decides a matter differently than an appellate court does not demonstrate an abuse of discretion. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). The trial court is in the best position to observe the demeanor and personalities of the witnesses that cannot be evaluated from a cold reading of the record. *In Re C.R.O.*, 2002 WL 31049839 at *3. As long as some evidence of a substantive and probative character exists to support the trial court's order, no abuse of discretion has occurred. *Id.*

Justice Priscilla Owen has opined that factual sufficiency does not exist under an abuse of discretion standard:

Under an abuse of discretion standard, courts of appeals do not have the option of remanding a case if the trial court's decision was supported by some evidence but was against the great weight and

preponderance of the evidence. An appellate court may not attempt to reconcile disputed factual matters under an abuse of discretion standard. Under that standard, a reviewing court must defer to the trial court's resolution of factual issues, and may not set aside the trial court's finding unless the record makes it clear that the trial court could reach only one decision.

In Re Doe 2, 19 S.W.3d 278, 289 (Tex. 2000) (Owen, J., concurring) (citations omitted). Thus, following Justice Owen's logic, only legal sufficiency is considered in reviewing the evidence for an abuse of discretion. But, rightly or wrongly, courts of appeals continue to conduct the factual sufficiency analysis. See e.g. *Pickens v. Pickens*, 62 S.W.3d 212, 216 (Tex. App. – Dallas 2001, pet. denied).

III. SUFFICIENCY OF THE EVIDENCE

A jury's decision on the merits of a family law case is reviewed on a straight sufficiency of the evidence challenge. In applying the sufficiency of the evidence challenge to the abuse of discretion standard, the sufficiency analysis is the same. In that situation, a judge's findings of fact are given the same weight as a jury's decision.

Lindsey, 965 S.W.2d at 591.

Legal sufficiency issues assert a complete lack of evidence on an issue. Raw Hide Oil & Gas, Inc. v. Maxus Exploration Co., 766 S.W.2d 264, 275 (Tex. App. – Amarillo 1988, writ denied). The remedy for legally insufficient evidence is to render judgment. Buzbee v. Buzbee, 870 S.W.2d 335, 340 (Tex. App. – Waco 1994, no writ).

Factual sufficiency complains that evidence is so slight, or countervailing evidence is so strong, that the finding is clearly wrong and manifestly unjust; or, that the finding is against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The remedy for factually insufficient evidence is to remand the case to the trial court for a new trial. Prather v. Brandt, 981 S.W.2d 801, 807 (Tex. App. – Houston [1st Dist.] 1998, pet. denied).

A. Legal Insufficiency

Legal insufficiency complaints on appeal are either designated as “no evidence” points or “matter of law” points, depending on whether the appellant had the burden of proof at trial. Raw Hide, 766 S.W.2d at 275.

1. No evidence

Where the appellant is challenging an adverse finding on a matter where he did not have the burden of proof, he or she must demonstrate that there is no evidence to support the adverse finding. Croucher v. Croucher, 660 S.W.2d 55, 58 (Tex. 1983). No evidence issues will be sustained only when the record discloses (1) a complete absence of evidence on a vital fact; (2) the court is barred by a rule of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or, (4) the evidence established conclusively the opposite of the vital fact. Juliette Fowler Homes, Inc. v. Welch Assoc., Inc., 793 S.W.2d 660, 666 n. 9 (Tex. 1990); Cridern v. Naaman, 83 S.W.3d 241, 244 (Tex. App. – Corpus Christi 2001, pet. pending).

The scope of review for a no evidence issue requires the appellate court to consider only the evidence and inferences that tend to support the finding, ignoring all evidence and inferences to the contrary. Leitch v. Hornsby, 935 S.W.2d 114, 118 (Tex. 1996).

2. Matter of law

When attacking the legal sufficiency of an adverse finding of an issue upon which the appellant had the burden of

proof at trial, the appellant must demonstrate that the evidence conclusively established his issue as a matter of law. Sterner v. Marathon Oil Co., 767 S.W.2d 686, 690 (Tex. 1989).

The scope of review in a matter of law issue first examines the record to determine that there is no evidence to support the trial court's adverse finding; then, the entire record is examined regarding evidence to support the contrary position. In Re Doe 2, 19 S.W.3d at 288 (J. Owen concurring); Curtis v. Curtis, 11 S.W.3d 466, 472 (Tex. App. – Tyler 2000, no pet.).

B. Factual sufficiency

Factual sufficiency concedes that there is conflicting evidence on an issue. The appellate court should only sustain a factual sufficiency complaint when it is necessary to prevent a manifestly unjust result.

The courts of appeals are the final arbiter of factual sufficiency; the Supreme Court has no jurisdiction to consider the questions of fact, and it may not consider any issue challenging the factual sufficiency. Dyson v. Olin, 692 S.W.2d 456 (Tex. 1985). However, the Supreme Court does have jurisdiction to determine whether the court of appeals used the correct standard of review in reaching its

conclusion on an insufficient evidence point. Hannon v. Sohio Pipeline Co., 623 S.W.2d 314, 315 (Tex. 1987).

1. Insufficient evidence

Where the party without the burden of proof is complaining of the trial court's findings, the issue is insufficient evidence. Raw Hide, 766 S.W.2d at 275-76. Under this review, the appellant will succeed only if the evidence supporting the finding is so slight, or the evidence against it is so strong, that the finding is clearly wrong and manifestly unjust. Id.; Cain, 709 S.W.2d at 176.

2. Great weight and preponderance of the evidence

When the party having the burden of proof complains of an unfavorable finding, the issue should allege that the finding is against the great weight and preponderance of the evidence. Croucher, 660 S.W.2d at 58. The finding should be sustained if there is some probative evidence to support it and provided it is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Lindsey, 965 S.W.2d at 591.

In reviewing a great weight and

preponderance challenge, the scope of review requires the court of appeals to examine all of the evidence, both that which tends to prove the existence of a vital fact and evidence which tends to disprove its existence. Id.

IV. DE NOVO

Legal conclusions of a trial court are always reviewable, and the appellate court is not obligated to give any particular deference to those conclusions. National Union Fire Ins. Co. v. CBI Industries, 907 S.W.2d 517, 520 (Tex. 1995) (per curiam). Questions of law are reviewed by the appellate court under a de novo standard of review. Pegasus Energy Group, Inc. v. Cheyenne Petroleum Co., 3 S.W.3d 112, 121 (Tex. App. – Corpus Christi 1999, pet denied); Marsh v. Marsh, 949 S.W.2d 734, 739 (Tex. App. – Houston [14th Dist.] 1997, no writ). As the final arbiter of the law, the appellate court has the power and duty to evaluate independently the legal determinations of the trial court. Pegasus, 3 S.W.3d at 121.

Where an issue contains a mixed question of law and fact, the legal conclusions are reviewed de novo, while the factual determinations are held to the abuse of discretion standard. Ex parte Meyers, 68 S.W.3d 229, 232 (Tex.

App. – Texarkana 2002, no pet.).

A de novo standard of review indicates that the appellate court will not reverse the trial court's decision unless it is erroneous as a matter of law. In re B.R.G., 48 S.W.3d 812, 817 (Tex. App. – El Paso 2001, no pet.).

Examples of situations where a de novo standard applies include:

- Question of ambiguity in a contract. Pegasus, 3 S.W.3d at 121.
- Subject matter jurisdiction. City of Dallas v. Reata Const. Corp., 83 S.W.3d 392 (Tex. App. – Dallas 2002, no pet.).
- Statutory construction. Havlen v. McDougall, 22 S.W.3d 343, 345 (Tex. 2000).
- Reviewing a trial court's conclusions of law after a nonjury trial. Zeiba v. Martin, 928 S.W.2d 782, 786 fn. 3 (Tex. App. – Houston [14th Dist.] 1996, no writ); In re K.R.P., 80 S.W.3d 669, 674 (Tex. App. – Houston [1st Dist.] 2002, pet. pending).

V. REVERSIBLE ERROR

Even where error occurred in the trial court, the appellate court will not reverse the trial court's judgment if the error was harmless. Tex. R. App. P. 44.1. The appellant must show that the error complained of probably caused the rendition of an improper judgment or prevented the appellant from properly preserving error in order to obtain reversal. *Id.* The appellate court must determine whether it is more likely than not that the error led to an improper judgment. *Gee v. Liberty Mut. Fire Ins. Co.*, 765 S.W.2d 394, 396 (Tex. 1989).

This applies to all types of error, regardless of the standard of review. Tex. R. App. P. 44.1.

An appellant may be able to claim cumulative error if the cumulative effect of errors amounts to such a denial of the appellant's rights as was reasonably calculated to cause and probably did cause rendition of an improper judgment. *Bott v. Bott*, 962 S.W.2d 626, 631 (Tex. App. – Houston [14th Dist.] 1997, no pet.). The scope of review for cumulative error is to review all errors in the case with the record as a whole. *Id.* To prevail upon a claim of cumulative error, the appellant must show that, but for the cumulative errors, the fact-finder would have rendered a decision in appellant's favor. *Id.*

VI. SPECIAL FAMILY LAW ISSUES

Although family law is similar in many ways to other civil cases, there are aspects of family law which make it unique. Some of these unique areas have special considerations on appeal.

A. Temporary Orders and Injunctions

Family law temporary orders, temporary restraining orders, and temporary injunctions are not subject to interlocutory appeal. Tex. Fam. Code §§ 6.507 and 105.001(e). The appropriate remedy is mandamus. *Dancy v. Daggett*, 815 S.W.2d 548 (Tex. 1991); *In re Lemons*, 47 S.W.3d 202, 203-204 (Tex. App. – Beaumont 2001, orig. proceeding).

A mandamus is an extraordinary remedy available only in the most limited of circumstances. *Canadian Helicopters, Ltd. v. Wittig*, 876 S.W.2d 304, 305 (Tex. 1994). Mandamus will lie only to correct a clear abuse of discretion. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)(orig. proceeding). Further, the relator must show that there is no other adequate remedy at law. *Id.* A clear abuse of discretion warranting correction by mandamus occurs when a court issues a decision which is without basis or guiding principles of law. See *Johnson*

v. Fourth Court of Appeals, 700 S.W.2d 916, 917 (Tex. 1985, orig. proceeding). Put another way, a trial court abuses its discretion if its decision is so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. *Walker*, 827 S.W.2d at 839. Great deference is given to a trial court's determination of factual matters. *Id.* However, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion. *Id.* at 840.

At first glance, there appears to be a conflict between the Civil Practice and Remedies Code provisions regarding interlocutory appeal of an order granting temporary injunction and the Family Code provisions prohibiting interlocutory appeals in such instances. However, the interpretation has been that the specific statute in the Family Code trumps the general provisions of the Civil Practice and Remedies Code, which makes interlocutory appeal unavailable. *Cook v. Cook*, 886 S.W.2d 838 (Tex. App. – Waco 1994, orig. proceeding). Further, even where the injunctive relief granted varies from the standardized orders allowed in the Family Code, it appears that the Family Code will prohibit interlocutory appeals. See *Moreno v. Ruiz*, 1997 WL 214831 (Tex. App. – San Antonio 1997, no pet.) (not designated for publication).

The Corpus Christi Court of Appeals recently found that the trial court clearly abused its discretion in awarding temporary spousal support and temporary attorneys fees, and granted the writ of mandamus. *Herschberg v. Herschberg*, 994 S.W.2d 273 (Tex. App. – Corpus Christi 1999, orig. proceeding). In that case, the trial court ordered temporary support to be paid to the wife in the sum of \$8,000 per month and \$27,000 per month in interim attorneys fees. *Id.* at 275. The court found that the trial court abused its discretion because the awards were excessive, and, therefore, granted the writ of mandamus. *Id.* at 279.

B. Protective Orders

There is a split between the courts of appeals regarding whether a protective order is appealable through direct appeal or only mandamus.

In 1997, the Waco Court of Appeals held that, because a trial court retains the power and jurisdiction to modify the protective order, it is not a final, appealable order. *Normand v. Fox*, 940 S.W.2d 401403 (Tex. App. – Waco 1997, no pet). Many courts since then have adopted the position stated in *Normand*. However, the Waco court recently reversed its position. In December 2001, the Waco court held that a protective order gives injunctive

relief, and, if it disposes of all issues and parties, it is a final appealable order. Kelt v. Kelt, 67 S.W.3d 364, 366 (Tex. App. – Waco 2001, no pet.). The Waco court relied on similar opinions of the San Antonio, Corpus Christi, and Fort Worth courts of appeals in reaching their decisions. See James v. Hubbard, 985 S.W.2d 516 (Tex. App. – San Antonio 1998, no pet.); Striedel v. Striedel, 15 S.W.3d 163 (Tex. App. – Corpus Christi 2000, no pet.); Winsett v. Edgar, 22 S.W.3d 510 (Tex. App. – Fort Worth 2000, pet. denied).

The Dallas Court of Appeals also reversed their position as previously stated in unpublished opinions, and concluded that a protective order is appealable as a final judgment. Cooke v. Cooke, 65 S.W.3d 785, 787 (Tex. App. – Dallas 2001, no pet.). However, the Dallas court specifically clarified that their holding was not based on the premise that the protective order is similar to an injunction. Id.

On the other hand, several courts of appeals rely on the distinction of whether the protective order is granted during the pendency of a divorce, or whether the protective order is an independent cause of action. The El Paso court concluded that a protective order granted during the pendency of a divorce is not a final judgment and is, therefore, an unappealable interlocutory

order. Ruiz v. Ruiz, 946 S.W.2d 123, 124 (Tex. App. – El Paso 1997, no pet.). The Austin court agreed with the El Paso court and denounced the James, Kelt, and Cooke reasoning. Bilyeu v. Bilyeu, ___ S.W.3d ___, 2002 WL 1729548, *3 (Tex. App. – Austin 2002, no pet.). The Austin court adopted the reasoning of the Ruiz opinion and concluded that “any protective order rendered during the pendency of a divorce is not a final judgment for purposes of appellate jurisdiction.” Id. Further, mandamus is the proper appellate procedure to review complaints about a protective order issued during a divorce. Id.

Undoubtedly, the issue appears ripe for the Texas Supreme Court to decide, since there is such a direct conflict between the courts of appeals.

C. The clear and convincing burden of proof

Issues that require proof by clear and convincing evidence have a higher standard of review.

Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. Tex. Fam. Code §101.007. The following issues require proof by

clear and convincing evidence at the trial court level:

- Termination of parental rights. Tex. Fam. Code §161.001.
- Proof of or denial of parentage. *In Re Marriage of M.C.*, 65 S.W.3d 188 (Tex. App. – Amarillo 2001, no pet.).¹
- Rebutting the community property presumption. Tex. Fam. Code §3.003(b).
- Reimbursement claims involving an allegation of separate property. Tex. Fam. Code §3.003(b). See also *Nurse v. Nurse*, 2002 WL 1289898 (Tex. App. – Corpus Christi 2002, no pet.) (not designated for publication).

In a jury trial, where the issue before the trial court is subject to the clear and convincing evidence standard, the sufficiency of the evidence standard applies. The legal sufficiency standard is the same as it applies to other types of cases. However, when addressing

¹ Note, however, that Chapter 160 of the Family Code was rewritten effective June 1, 2001. The previous version provided that the burden of proof in a paternity/parentage case was clear and convincing. See Tex. Fam. Code 160.106 (repealed). The new version, contained at §160.636, does not reference the burden of proof at trial. A close reading of the statute does not appear to change the burden. Relating to the termination burden, it makes sense for the burden of proof to remain clear and convincing.

factual sufficiency, the Texas Supreme Court set forth a new standard, recognizing the elevated burden of proof at trial.

When the burden of proof at trial is by clear and convincing evidence, the standard for review on appeal is whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the allegations sought to be established. *In re C.H.*, ___ S.W.3d ___, 45 Tex. Sup. Ct. J. 1000, 1005, 2001 WL 1903109 (Tex. 2002). The Court reasoned that this provides a standard that focuses on whether a reasonable jury could form a firm conviction or belief yet retains the deference an appellate court must have for the factfinder's role. *C.H.*, 2001 WL at *9; see also *In re B.S.W.*, ___ S.W.3d ___, 2002 WL 31062602, *2 (Tex. App. – Texarkana 2002, no pet.).

It appears unclear, at least to this writer, as to the appropriate standard of review where the burden of proof in a nonjury trial is clear and convincing evidence. The standard set out in *C.H.* specifies that it applies to the factual sufficiency of a jury decision. If the trial is to the judge, it would seem that the abuse of discretion standard of review would apply, and the sufficiency review would be heightened, as *C.H.* suggested, as a part of the abuse of discretion review. However, some

opinions ignore this distinction and apply the traditional factual sufficiency analysis. See *In re A.N.*, ___ S.W.3d ___, 2002 WL 31250731 (Tex. App. – Houston [14th Dist.] 2002, no pet. h.). The water becomes more muddy when adding to the question Justice Owen’s reasoned concurrence, which implies that there should be no factual sufficiency argument where the standard of review is abuse of discretion. *In Re Doe 2*, 19 S.W.3d 278, 289 (Tex. 2000) (Owen, J., dissenting) Upon reflection, the distinction may be esoteric, as the analysis in application should be the same.

D. Jurisdiction

The type of review of a trial court’s determination of a jurisdiction question depends on the trial court’s ruling.

If a trial court *grants* a challenge to the jurisdiction, then typically the case will be dismissed. Thus, the remedy is by direct appeal. *Goodenbour v. Goodenbour*, 64 S.W.3d 69, 75 (Tex. App. – Austin 2001, pet. denied). The standard of review is de novo as to the application of the law and sufficiency as to the factual questions. *Id.* The appellate court reviews the entire record in determining the appropriateness of the trial court’s ruling. *Id.*

If the trial court *denies* a challenge

to the jurisdiction, the remedy is by mandamus. *In re Calderon-Garza*, 81 S.W.3d 899, 902 (Tex. App. – El Paso 2002, orig. proceeding). However, due to the “unique and compelling circumstances” involved in questions regarding child custody jurisdiction, it is not necessary to show that the petitioner has no adequate remedy at law. *In re McCoy*, 52 S.W.3d 297, 301 (Tex. App. – Corpus Christi 2001, orig. proceeding).

E. Contempt

An order granting a motion for contempt is not appealable through regular appellate procedures. *McCoy v. McCoy*, 908 S.W.2d 42, 43 (Tex. App. – Houston [1st Dist.] 1995, no writ). The only review by an appellate court available to a contemnor is by a petition for writ of habeas corpus. *Smith v. Holder*, 756 S.W.2d 9, 10-11 (Tex. App. – El Paso 1988, no writ). The habeas jurisdiction is limited to situations where a person is restrained in his liberty, and may include probation if the terms of probation include some type of tangible restraint of liberty. *Ex Parte Urbanowicz*, 653 S.W.2d 355, 355-56 (Tex. App. – San Antonio 1983, orig. proceeding); *Ex Parte Hughey*, 932 S.W.2d 308, 310 (Tex. App. – Tyler 1996, orig. proceeding). The usual procedure is to bring the writ of habeas corpus in the court of appeals.

However, the Texas Supreme Court and the Court of Criminal Appeals have concurrent jurisdiction with the courts of appeals in habeas matters. As a practical matter, though, the Court of Criminal Appeals will defer habeas to a court of appeals or the Texas Supreme Court in conservatorship matters.

The only ground for relief in a habeas corpus appeal is that the judgment of contempt is void. Some of the most common reasons for declaring a judgment void include lack of jurisdiction, inadequate notice, impossibility of performance, opportunity to obtain counsel, or failure of the contempt order to comply with statutory or common-law requirements. If the order is erroneous rather than void, the court of appeals may reform the erroneous order instead of releasing the relator. *Ex Parte Balderas*, 804 S.W.2d 261, 263-64 (Tex. App. – Houston [1st Dist.] 1991, orig. proceeding).

F. Review of Grant or Denial of Habeas Corpus

The granting or denial of a petition for writ of habeas corpus in the trial court is not subject to appeal. *Gray v. Rankin*, 594 S.W.2d 409 (Tex. 1980). Even if it is clearly erroneous, mandamus is the appropriate remedy. *Zeissig v. Zeissig*, 600 S.W.2d 353, 357 (Tex. Civ. App. – Houston [1st Dist.]

1980, no writ). However, an order awarding attorney's fees and costs in a habeas proceeding may be subject to direct appeal. *Miericke v. Lemoine*, 786 S.W.2d 810, 811 (Tex. App. – Dallas 1990, no writ).

Since a mandamus proceeding is a request for equitable relief, the petitioner must show that it has no adequate remedy at law. *Broyles v. Ashworth*, 782 S.W.2d 31, 34 (Tex. App. – Fort Worth 1989, orig. proceeding). The reviewing court will only grant the mandamus petition if the trial court committed a clear abuse of discretion that was so arbitrary and unreasonable as to amount to a clear and prejudicial error of law. *M.R.J. v. Vick*, 753 S.W.2d at 528.

G. Motions to Transfer Venue

Transfer of a case to a county where the child has resided for more than six months is a mandatory ministerial duty. Tex. Fam. Code §155.201. Remedy by appeal is inadequate to protect the rights of parents and children. *Proffer v. Yates*, 734 S.W.2d 671, 673 (Tex. 1987). Thus, mandamus is the available remedy to compel mandatory transfer in suits affecting the parent-child relationship.

VII CONCLUSION

Standards of review are sometimes complex and convoluted. A thorough understanding of the applicable standard of review is essential to success on appeal. In many ways, family law cases are unlike other civil cases, whether it is at the trial court level or on appeal.