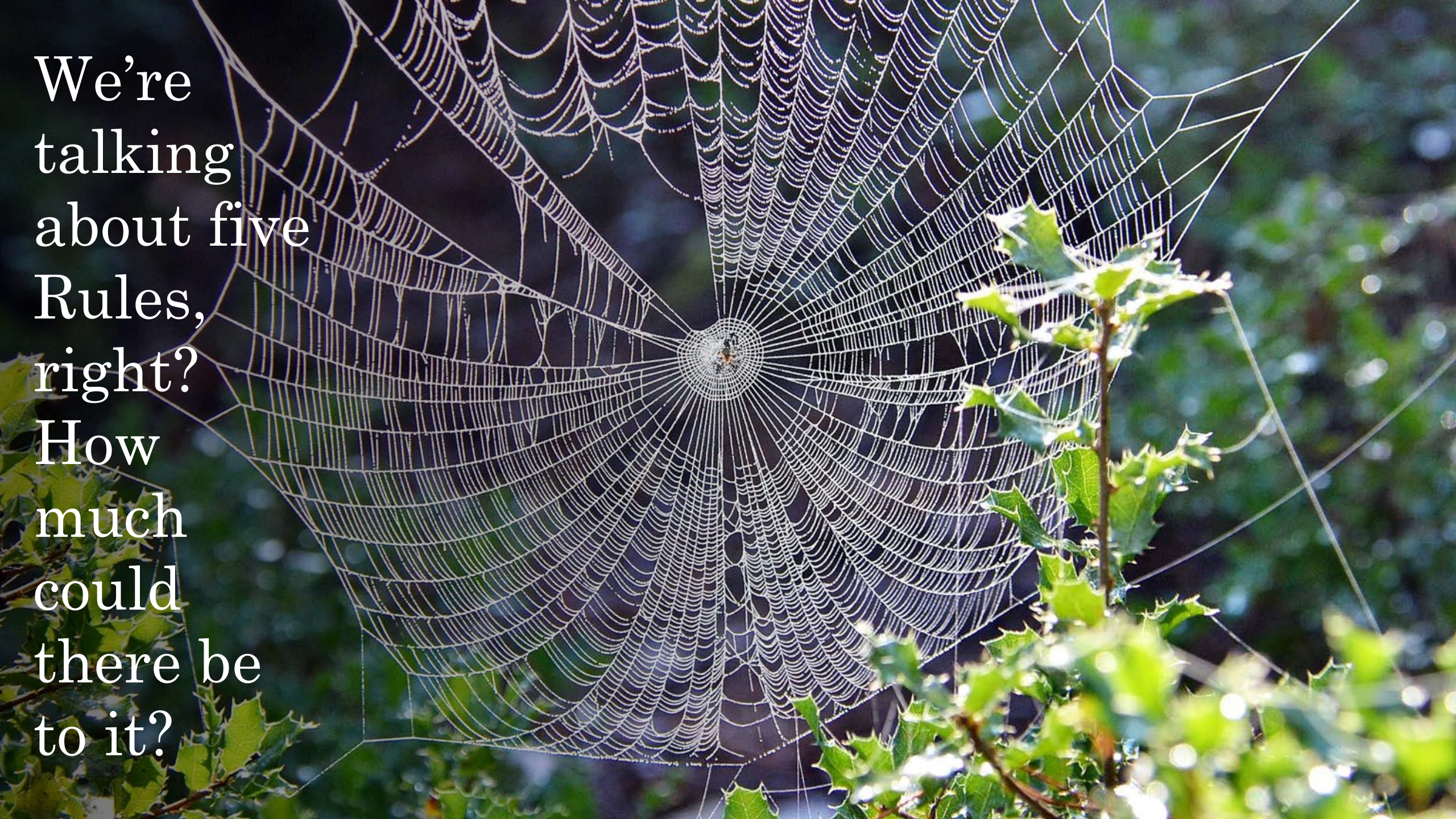




Findings of Fact and Conclusions of Law: The Advanced Playbook

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We're
talking
about five
Rules,
right?
How
much
could
there be
to it?

TABLE OF AUTHORITIES

Cases

<i>12636 Research Ltd. v. Indian Bros., Inc.</i> , No. 03-19-00078-CV, 2021 WL 417027 (Tex. App.—Austin Feb. 5, 2021, no pet.) (mem. op.).....	25, 26, 32, 48, 49, 50, 63
<i>Able v. Able</i> , 725 S.W.2d 778 (Tex. App.—Houston [14th Dist.] 1987, writ ref'd n.r.e).....	56
<i>Academy Corp. v. Interior Buildout & Turnkey Constr., Inc.</i> , 21 S.W.3d 732 (Tex. App.—Houston [14th Dist.] 2000, no pet.).....	36, 37
<i>AD Villarai, LLC v. Pak</i> , 519 S.W.3d 132 (Tex. 2017) (per curiam).....	4, 17, 18, 19, 20, 21, 22, 23, 24, 35, 37, 38, 39
<i>Advanced Pers. Care, LLC v. Churchill</i> , 437 S.W.3d 41 (Tex. App.—Houston [14th Dist.] 2014, no pet.).....	41
<i>Airpro Mobile Air, LLC v. Prosperity Bank</i> , No. 05-19-005798-CV, 2020 WL 2537196 (Tex. App.—Dallas May 19, 2020, pet. denied) (mem. op.).....	63
<i>Am. Flood Research, Inc. v. Jones</i> , 192 S.W.3d 581 (Tex. 2006)	30
<i>Am. Type Culture Collection, Inc. v. Coleman</i> , 83 S.W.3d 801 (Tex. 2002)	10
<i>Anderson Personal Care, LLC v. Churchill</i> , 437 S.W.3d 41 (Tex. App.—Houston [14th Dist.] 2014, no pet.).....	28
<i>Anderson v. City of Seven Points</i> , 806 S.W.2d 791 (Tex. 1991)	25, 26, 32, 65
<i>Awde v. Dabeit</i> , 938 S.W.2d 31 (Tex. 1997)	11
<i>BACM 2001-1 San Felipe Road L.P. v. Trafalgar Holdings I, Ltd.</i> , 218 S.W.3d 137 (Tex. App.—Houston [14th Dist.] 2007, pet. denied)	27
<i>Bank of Am., N.A. v. Groff</i> , No. 14-19-007026-CV, 2021 WL 98559 Tex. App.—Houston [14th Dist.] Jan. 12, 2021, no pet.) (mem. op.)	5, 16
<i>Barcus v. Scharbauer</i> , No. 05-19-01121-CV, 2021 WL 1422716 (Tex. App.—Dallas Apr. 15, 2021, no pet.) (mem. op.).....	63

<i>Barker v. Eckman</i> , 213 S.W.3d 306 (Tex. 2006)	39
<i>Beasley v. Soc’y of Info. Mgmt</i> , No. 05-19-00607-CV, 2020 WL 5087824 (Tex. App.—Dallas Aug. 28, 2020, pet. denied) (mem. op.)	39
<i>Beaumont Bank, N.A. v. Buller</i> , 806 S.W.2d 223 (Tex. 1991)	28
<i>Bender v. S. Pac. Transp. Co.</i> , 600 S.W.2d 257 (Tex. 1980)	56
<i>Bennett v. Cochran</i> , 96 S.W.3d 227 (Tex. 2002)	34
<i>Bishop v. Bishop</i> , 359 S.W.2d 869 (Tex. 1962)	33
<i>BMC Software Belgium, N.V. v. Marchand</i> , 83 S.W.3d 789 (Tex. 2002)	26, 27, 32, 33, 35, 36, 48, 56
<i>Boucher v. Thacker</i> , 609 S.W.3d 206 (Tex. App.—Texarkana 2020, no pet.)	43, 44, 65
<i>Boy Scouts of Am. v. Responsive Terminal Sys., Inc.</i> , 790 S.W.2d 738 (Tex. App.—Dallas 1990, writ denied)	50
<i>Bradshaw v. Bradshaw</i> , 555 S.W.3d 539 (Tex. 2018)	29
<i>Brewer v. Lennox Hearth Prods., LLC</i> , 601 S.W.3d 704 (Tex. 2020)	29, 30
<i>Brooks v. Hous. Auth. of El Paso</i> , 926 S.W.2d 316 (Tex. App.—El Paso 1996, no writ)	23
<i>Bruce v. Bruce</i> , No. 03-16-00581-CV, 2017 WL 2333298 (Tex. App.—Austin May 26, 2017, no pet.) (mem. op.)	14
<i>Burford v. Pounders</i> , 145 Tex. 460, 199 S.W.2d 141 (1947)	27
<i>Burnett v. Motyka</i> , 610 S.W.2d 735 (Tex. 1980)	27, 33
<i>Cain v. Bain</i> , 709 S.W.2d 175 (Tex. 1986)	30
<i>Capital Senior Mgmt. 1, Inc., v. Tex. Dep’t of Human Servs.</i> , 132 S.W.3d 71 (Tex. App.—Austin 2004, pet. denied)	57

<i>Castro v. Castro</i> , No. 14-11-01087-CV, 2013 WL 1928742 (Tex. App.—Houston [14th Dist.] May 9, 2013, no pet.) (mem. op.)	57
<i>Catalina v. Blasdel</i> , 881 S.W.2d 295 (Tex. 1994)	32, 65
<i>CCPA Enters., Inc. v. Bedford Hospitality Invs., LLC</i> , No. 02-17-00382-CV, 2019 WL 5608230 (Tex. App.—Fort Worth Oct. 31, 2019, no pet.) (mem. op.)	63
<i>Cherne Indus., Inc. v. Magallanes</i> , 763 S.W.2d 768 (Tex. 1989)	17, 20, 35, 36, 37
<i>Cherokee Water Co. v. Gregg Cnty. Appraisal Dist.</i> , 801 S.W.2d 872 (Tex. 1990)	16
<i>Chicago Title Ins. Co. v. Cochran Invests., Inc.</i> , 602 S.W.3d 895 (Tex. 2020)	4, 25
<i>Chrysler Corp. v. Blackmon</i> , 841 S.W.2d 844 (Tex. 1992)	7
<i>Cire v. Cummings</i> , 134 S.W.3d 835 (Tex. 2004)	30
<i>Clinton v. Gallup</i> , 621 S.W.3d 848 (Tex. App.—Houston [14th Dist.] 2021, no pet.)	40, 41
<i>CMS Partners, Ltd. v. Plumrose USA, Inc.</i> , 101 S.W.3d 730 (Tex. App.—Texarkana 2003, no pet.)	11
<i>Continental Alloys & Servs. (Del.) LLC v. YangZhou Chengde Steel Pipe Co., Ltd.</i> , 597 S.W.3d 884 (Tex. App.—Houston [14th Dist.] 2020, pet. filed, no BOM requested as of 10/26/2020 last activity)	12
<i>Cooper v. First Fin. Bank, N.A.</i> , No. 05-19-00569-CV, 2020 WL 6304994 (Tex. App.—Dallas Oct. 28, 2020, pet. denied) (mem. op.)	48
<i>Crawford v. XTO Energy, Inc.</i> , 509 S.W.3d 906 (Tex. 2017)	34
<i>Crown Life Ins. Co. v. Casteel</i> , 22 S.W.3d 378 (Tex. 2000)	43, 52, 53
<i>Denton v. Wiggins</i> , No. 07-19-00127-CV, 2020 WL 5666948 (Tex. App.—Amarillo Sept. 23, 2020, no pet.) (mem. op.)	11
<i>Des Champ v. Featherston</i> , 886 S.W.2d 536 (Tex. App.—Austin 1994, no writ) (per curiam)	65

<i>Dickerson v. DeBarbieris</i> , 964 S.W.2d 680 (Tex. App.—Houston [14th Dist.] 1998, no pet.)	57
<i>Estate Land Co. v. Wiese</i> , No. 14-13-00524-CV, 2015 WL 1061553 (Tex. App.—Houston [14th Dist.] Mar. 10, 2015, pet. denied) (mem. op.)	56
<i>Estate of Hutchins</i> , 391 S.W.3d 578 (Tex. App.—Dallas 2012, no pet.)	52
<i>Estate of Johnson</i> , — S.W.3d —, No. 20-0424, 2021 WL 2172532 (Tex. May 28, 2021)	32
<i>Estate of Paul v. Bush</i> , No. 07-21-00077-CV, 2021 WL 2521562 (Tex. App.—Amarillo June 18, 2021, no pet.) (per curiam) (mem. op.)	20, 21, 35, 36
<i>Estate of Setser</i> , No. 01-15-00855-CV, 2017 WL 444452 (Tex. App.—Houston [1st Dist.] Feb. 2, 2017, no pet.) (mem. op.)	65
<i>Estate of Wlecyk</i> , No. 01-19-00299-CV, 2021 WL 1537489 (Tex. App.—Houston [1st Dist.] April 20, 2021, no pet.) (mem. op.)	62, 64
<i>Fid. & Guar. Life Ins. Co. v. Pina</i> , 165 S.W.3d 416, 420 (Tex. App.—Corpus Christi 2005, no pet.)	23
<i>Finlan v. Peavy</i> , 205 S.W.3d 647 (Tex. App.—Waco 2006, no pet.)	15
<i>First Nat'l Bank v. Fojtik</i> , 775 S.W.2d 632 (Tex. 1989)	45
<i>Flanary v. Mills</i> , 150 S.W.3d 785 (Tex. App.—Austin 2004, pet. denied)	43
<i>Fleming v. Fleming</i> , No. 01-11-00635-CV, 2012 WL 6754994 (Tex. App.—Houston [1st Dist.] Dec. 28, 2012, no pet.) (mem. op.)	46
<i>Fortenberry v. Fortenberry</i> , 545 S.W.2d 40 (Tex. Civ. App.—Waco 1976, no writ)	24
<i>Fraser v. Goldberg</i> , 552 S.W.2d 592 (Tex. App.—Beaumont 1977, writ ref'd n.r.e.)	36, 37
<i>Frommer v. Frommer</i> , 981 S.W.2d 811 (Tex. App.—Houston [1st Dist.] 1998, pet. dismiss'd)	15
<i>F-Star Socorro, L.P. v. El Paso Cent. Appraisal Dist.</i> , 324 S.W.3d 172 (Tex. App.—El Paso 2010, no pet.)	6

<i>General Chem. Corp. v. De La Lastra</i> , 852 S.W.2d 916 (Tex. 1993)	45
<i>Gentry v. Squires Constr., Inc.</i> , 188 S.W.3d 396 (Tex. App.—Dallas 2006, no pet.)	49
<i>Goldberg v. Comm’n for Lawyer Discipline</i> , 265 S.W.3d 568 (Tex. App.—Houston [1st Dist.] 2008, pet. denied)	11
<i>Goode v. Shoukfeh</i> , 943 S.W.2d 441 (Tex. 1997)	30
<i>Graham Cent. Station, Inc. v. Peña</i> , 442 S.W.3d 261 263 (Tex. 2014)	36, 37
<i>Grantom v. Swisher</i> , No. 14-19-00705-CV, 2021 WL 1134784 (Tex. App.—Houston [14th Dist.] Mar. 25, 2021, pet. denied) (mem. op.)	46, 47, 57
<i>Greer v. Abraham</i> , 489 S.W.3d 440 (Tex. 2016)	60
<i>Grimes Cnty. Bail Bond Bd. v. Ellen</i> , 267 S.W.3d 310 (Tex. App.—Houston [14th Dist.] 2008, pet. denied)	16
<i>Grossnickle v. Grossnickle</i> , 935 S.W.2d 830 (Tex. App.—Texarkana 1996, writ denied)	42, 43, 56
<i>GTE Comm’ns Sys. Corp. v. Tanner</i> , 856 S.W.2d 725 Tex. 1993)	30
<i>Guardianship of Thrash</i> , No. 04-19-00555-CV, 2021 WL 1199056 (Tex. App.—San Antonio Mar. 31, 2021, pet. filed) (mem. op.)	30, 31
<i>Haddock v. Quinn</i> , 287 S.W.3d 158 (Tex. App.—Fort Worth 2009, pet. denied)	7
<i>Hailey v. Hailey</i> , 176 S.W.3d 374 (Tex. App.—Houston [1st Dist.] 2004, no pet.)	26
<i>Hamlett v. Comm’n for Lawyer Discipline</i> , No. 07-16-00256-CV, 2016 WL 6242821 (Tex. App.—Amarillo Oct. 24, 2016, no pet.) (per curiam)	21
<i>Hanschen, Trustee of David Hanschen Heritage Trust Two v. Hanschen</i> , No. 05-19-001134-CV, 2020 WL 2764629 (Tex. App.—Dallas May 28, 2020, no pet.) (mem. op.)	11
<i>Harris Cnty. v. Ramirez</i> , 581 S.W.3d 423 (Tex. App.—Houston [14th Dist.] 2019, no pet.)	37

<i>Harris Cnty. v. Smith</i> , 96 S.W.3d 230 (Tex. 2002)	43, 52, 53, 54
<i>Hartford Ins. Co. v. Jiminez</i> , 814 S.W.2d 551 (Tex. App.—Houston [1st Dist.] 1991, no writ)	56, 58
<i>Haut v. Green Cafe Mgmt., Inc.</i> , 376 S.W.3d 171 (Tex. App.—Houston [14th Dist.] 2012, no pet.)	5
<i>Hegar v. Am. Multi-Cinema, Inc.</i> , 605 S.W.3d 35 (Tex. 2020)	3, 25, 64
<i>Henderson v. Freedom Mortgage Corp.</i> , No. 05-19-01258-CV, 2021 WL 1186149 (Tex. App.—Dallas Mar. 30, 2021, no pet.) (mem. op.)	34
<i>Henties v. Schweppe</i> , No. 03-13-00593-CV, 2014 WL 2568490 (Tex. App.—Austin June 3, 2014, pet. denied) (mem. op.)	14
<i>Holt Atherton Indus., Inc. v. Heine</i> , 835 S.W.2d 80 (Tex. 1992)	27
<i>Home Comfortable Supplies, Inc. v. Cooper</i> , 544 S.W.3d 899 (Tex. App.—Houston [14th Dist.] 2018, no pet.)	48, 65
<i>Hooks v. Samson Lone Star, LP</i> , 457 S.W.3d 52 (Tex. 2015)	45
<i>Horizon Prop. Corp. v. Martinez</i> , 513 S.W.2d 264 (Tex. Civ. App.—El Paso 1974, writ ref'd n.r.e.)	24
<i>Howe v. Howe</i> , 551 S.W.3d 236 (Tex. App.—El Paso 2018, no pet.)	49
<i>Huie v. DeShazo</i> , 922 S.W.2d 920 (Tex. 1996) (orig. proceeding, [mand. granted])	64
<i>Hunter v. NCNB Tex. Nat'l Bank</i> , 857 S.W.2d 722 (Tex. App.—Houston [14th Dist.] 1993, writ denied)	43
<i>IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.</i> , 938 S.W.2d 440 (Tex. 1997)	6, 7, 8, 9, 11, 12
<i>In re A.A.F.</i> , 120 S.W.3d 517 (Tex. App.—Dallas 2003, no pet.)	42
<i>In re A.A.M.</i> , No. 14-05-00740-CV, 2007 WL 1558701 (Tex. App.—Houston [14th Dist.] May 31, 2007, no pet.) (mem. op.)	15
<i>In re A.B.P.</i> , 291 S.W.3d 91 (Tex. App.—Dallas 2009, no pet.)	28, 29

<i>In re A.C.S.</i> , 157 S.W.3d 9 (Tex. App.—Waco 2004, no pet.)	17
<i>In re A.E.J.</i> , No. 05-20-00340-CV, 2020 WL 5107293 (Tex. App.—Dallas Aug. 31, 2020, pet. denied) (mem. op.)	1
<i>In re A.L.E.</i> , 279 S.W.3d 424 (Tex. App.—Houston [14th Dist.] 2009, no pet.)	28
<i>In re A.V.</i> , 113 S.W.3d 355 (Tex. 2003)	54
<i>In re A.W.L.</i> , No. 05-16-00916-CV, 2018 WL 446421 (Tex. App.—Dallas Jan. 17, 2018, no pet.) (mem. op.)	42
<i>In re B.M.</i> , 228 S.W.3d 462 (Tex. App.—Dallas 2007, no pet.)	29
<i>In re B.U.</i> , No. 02-15-00051-CV, 2016 WL 4474337 (Tex. App.—Fort Worth Aug. 25, 2016, pet. denied) (mem. op.)	42
<i>In re Barber</i> , 982 S.W.2d 364 (Tex. 1998)	30
<i>In re C.A.B.</i> , 289 S.W.3d 874 (Tex. App.—Houston [14th Dist.] 2009, no pet.)	14
<i>In re C.Z.B.</i> , 151 S.W.3d 627 (Tex. App.—San Antonio 2004, no pet.)	29
<i>In re Curtice</i> , No. 14-18-00363-CV (Tex. App.—Houston [14th Dist.] May 24, 2018, orig. proceeding [mand. granted]) (per curiam) (mem. op.)	25
<i>In re E.A.C.</i> , 162 S.W.3d 438 (Tex. App.—Dallas 2005, no pet.)	16, 20
<i>In re G.M.</i> , No. 14-20-00044-CV, 2021 WL 1881048 (Tex. App.—Houston [14th Dist.] May 11, 2021, no pet.) (mem. op.)	5
<i>In re Interest of Minor Children</i> , No. 10-18-00149-CV, 2021 WL 510071 (Tex. App.—Waco Feb. 10, 2021, pet. denied) (mem. op.)	31
<i>In re J.B.</i> , No. 14-20-00766-CV, 2021 WL 1683942 (Tex. App.—Houston [14th Dist.] Apr. 29, 2021, no pet.) (mem. op.)	28
<i>In re J.D.H.</i> , No. 05-14-00504-CV, 2016 WL 3946822 (Tex. App.—Dallas July 18, 2016, no pet.) (mem. op.)	20, 21, 22, 23, 24

<i>In re J.F.-G.</i> , __ S.W.3d __, No. 20-0378, 2021 WL 2021138 (Tex. May 21, 2021).....	26
<i>In re J.J.G.</i> , 540 S.W.3d 44 (Tex. App.—Houston [1st Dist.] 2017, no pet.).....	28
<i>In re M.J.</i> , 227 S.W.3d 786 (Tex. App.—Dallas 2006, pet. denied).....	29
<i>In re M.L.</i> , No. 14-19-00037-CV, 2021 WL 281071 (Tex. App.—Houston [14th Dist.] Jan. 28, 2021, no pet.) (per curiam).....	28
<i>In re M.N.G.</i> , 113 S.W.3d 27 (Tex. App.—Fort Worth 2003, no pet.).....	27
<i>In re Marriage of A.W.E. v. D.M.F.N.</i> , No. 05-19-01303-CV, 2021 WL 822492 (Tex. App.—Dallas Mar. 4, 2021, no pet.) (mem. op.).....	28, 29
<i>In re Martin</i> , No. 06-09-00099-CV, 2009 WL 4281276 (Tex. App.—Texarkana Dec. 2, 2009, orig. proceeding [mand. denied]) (mem. op.)	25
<i>In re R.C.S.</i> , 167 S.W.3d 145 (Tex. App.—Dallas 2005, pet. denied).....	29
<i>In re R.J.P.</i> , 179 S.W.3d 181 (Tex. App.—Houston [14th Dist.] 2005, no pet.).....	57
<i>In re S.M.R.</i> , 434 S.W.3d 576 (Tex. 2014)	33
<i>In re T.G.</i> , 68 S.W.3d 171 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).....	10
<i>In re W.E.R.</i> , 669 S.W.2d 716 (Tex. 1984) (per curiam).....	16
<i>In the Estate of Miller</i> , 446 S.W.3d 445 (Tex. App.—Tyler 2014, no pet.).....	49, 65
<i>In the Matter of the Marriage of C.A.S. and D.P.S.</i> , 405 S.W.3d 373 (Tex. App.—Dallas 2013, no pet.).....	53, 54
<i>Isaac v. Burnside</i> , 616 S.W.3d 609 (Tex. App.—Houston [14th Dist.] 2020, pet. denied)	14
<i>James J. Flanagan Shipping Corp. v. Del Monte Fresh Produce N.A., Inc.</i> , 403 S.W.3d 360 (Tex. App.—Houston [1st Dist.] 2013, no pet.).....	14

<i>James v. Houston Hous. Auth.</i> , No. 14-13-00312-CV, 2014 WL 3555755 (Tex. App.—Houston [14th Dist.] July 17, 2014, no pet.) (mem. op.)	34
<i>Jefferson Cnty. Drainage Dist. No. 6 v. Lower Neches Valley Auth.</i> , 876 S.W.2d 940 (Tex. App.—Beaumont 1994, writ denied)	17
<i>Johnson v. Orchard at Westchase</i> , No. 14-20-00074-CV, 2021 WL 1972248 (Tex. App.—Houston [14th Dist.] May 18, 2021, no pet.) (mem. op.)	34
<i>Johnston v. McKinney Am., Inc.</i> , 9 S.W.3d 271 (Tex. App.—Houston [14th Dist.] 1999, pet. denied)	44
<i>Jones v. Smith</i> , 291 S.W.3d 549 (Tex. App.—Houston [14th Dist.] 2009, no pet.)	27, 28, 41
<i>Jurgens v. Martin</i> , — S.W.3d —, No. 11-18-00316-CV, 2021 WL 1033306 (Tex. App.— Eastland Mar. 18, 2021, no pet.)	16
<i>Kennon v. McGraw</i> , 281 S.W.3d 648 (Tex. App.—Eastland 2009, no pet.)	32
<i>Knight Renovations, LLC v. Thomas</i> , 525 S.W.3d 446 (Tex. App.—Tyler 2017, no pet.)	43, 44
<i>LaFrensen v. LaFrensen</i> , 106 S.W.3d 876 (Tex. App.—Dallas 2003, no pet.)	28
<i>Larry F. Smith, Inc. v. The Weber Co., Inc.</i> , 110 S.W.3d 611 (Tex. App.—Dallas 2003, pet. denied)	17, 21, 23, 36, 37, 38, 41
<i>Las Vegas Pecan & Cattle Co., Inc. v. Zavala Cnty.</i> , 682 S.W.2d 254 (Tex. 1984)	4
<i>Letco Grp., LLC v. Kossman Contracting Co.</i> , No. 14-18-00212-CV, 2019 WL 3432182 (Tex. App.—Houston [14th Dist.] July 30, 2019, no pet.) (mem. op.)	64
<i>Levine v. Maverick Cnty. Water Control & Improvement Dist. No. 1</i> , 884 S.W.2d 790 (Tex. App.—San Antonio 1994, writ denied)	45, 46
<i>Liberty Mut. Fire Ins. v. Laca</i> , 243 S.W.3d 791 (Tex. App.—El Paso 2007, no pet.)	23, 24, 36, 38
<i>Light v. Wilson</i> , 663 S.W.2d 813 (Tex. 1983)	27
<i>Long v. Long</i> , 234 S.W.3d 34 (Tex. App.—El Paso 2007, pet. denied)	63

<i>Luciano v. SprayfoamPolymers.com, LLC</i> , — S.W.3d —, No. 18-0350, 2021 WL 2603840 (Tex. June 25, 2021)	10
<i>Luna v. Pickel</i> , No. 02-19-00371-CV, 2020 WL 5949927 (Tex. App.—Fort Worth Oct. 8, 2020, no pet.) (mem. op.)	45, 46
<i>Lykes Bros. S.S. Co., Inc. v. Benben</i> , 601 S.W.2d 418 (Tex. App.—Houston [14th Dist.] 1980, writ ref'd n.r.e.)	23
<i>M & F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co., Inc.</i> , 512 S.W.3d 878 (Tex. 2017)	32
<i>Man Indus. (India), Ltd. v. Midcontinent Express Pipeline, LLC</i> , 407 S.W.3d 342 (Tex. App.—Houston [14th Dist.] 2013, pet. denied)	56
<i>Mandell v. Mandell</i> , 310 S.W.3d 531 (Tex. App.—Fort Worth 2010, pet. denied)	51
<i>Martinez v. City of Laredo</i> , No. 04-19-00694-CV, 2021 WL 1894905 (Tex. App.—San Antonio May 12, 2021, no pet.) (mem. op.)	11, 12
<i>Mayfield v. Peek</i> , 546 S.W.3d 253 (Tex. App.—El Paso 2017, no pet.)	65
<i>McGalliard v. Kuhlmann</i> , 722 S.W.3d 694 (Tex. 1986)	26, 64, 65
<i>McPherson v. Lopez</i> , No. 05-18-01504-CV, 2021 WL 1136760 (Tex. App.—Dallas Mar. 25, 2021, no pet.) (mem. op.)	61
<i>Merlo v. Lopez</i> , No. 01-19-00102-CV, 2021 WL 278060 (Tex. App.—Houston [1st Dist.] Jan. 28, 2021, no pet.) (mem. op.)	18, 35, 37
<i>Michiana Easy Livin' Country, Inc. v. Holten</i> , 168 S.W.3d 777 (Tex. 2005)	34
<i>Miranda v. Byles</i> , 390 S.W.3d 543 (Tex. App.—Houston [1st Dist.] 2012, pet. denied, on reh'g)	53, 54, 55
<i>Mitchell Energy Corp. v. Ashworth</i> , 943 S.W.2d 436 (Tex. 1997)	22
<i>Mogged v. Lindamood</i> , No. 02-18-00126-cv, 2020 WL 7074390 (Tex. App.—Fort Worth Dec. 3, 2020, pet. denied), on en banc reconsideration (mem. op.)	7, 59, 60

<i>Morgan Keegan & Co., Inc. v. Purdue Ave. Investors LP</i> , No. 05-15-00369-CV, 2016 WL 2941266 (Tex. App.—Dallas May 18, 2016, pet. denied) (mem. op.).....	48, 51, 52
<i>Moroch v. Collins</i> , 174 S.W.3d 849 (Tex. App.—Dallas 2005, pet. denied).....	28
<i>Morris v. Cozby</i> , No. 11-16-00169-CV, 2018 WL 2749804 (Tex. App.—Eastland June 7, 2018, no pet.) (mem. op.).....	12, 24
<i>Morton v. Nguyen</i> , 369 S.W.3d 659 (Tex. App.—Houston [14th Dist.] 2012), <i>rev'd in part</i> <i>on other grounds</i> , 412 S.W.3d 506 (Tex. 2013)	56
<i>Nath v. Tex. Children's Hosp.</i> , 446 S.W.3d 355 (Tex. 2014)	30
<i>Nautilus Ins. Co. v. Steinberg</i> , 316 S.W.3d 752 (Tex. App.—Dallas 2010, pet. denied).....	41
<i>Nguyen v. Nguyen</i> , 355 S.W.3d 82 (Tex. App.—Houston [1st Dist.] 2011, pet. denied).....	41
<i>Nissan N. Am., Inc. v. Tex. Dept of Motor Vehicles</i> , 592 S.W.3d 480 (Tex. App.—Texarkana 2019, no pet.)	65
<i>O'Caña v. Salinas</i> , No. 13-18-00563-CV, 2019 WL 1414021 (Tex. App.—Corpus Christi- Edinburg Mar. 29, 2019, pet. denied) (mem. op.).....	64
<i>Off. of Attorney Gen. of Tex. v. Burton</i> , 369 S.W.3d 173 (Tex. 2012).....	61
<i>Old American Cnty. Mut. Fire Ins. Co. v. Sanchez</i> , 149 S.W.3d 111 (Tex. 2004)	24
<i>Old Republic Ins. Co. v. Scott</i> , 846 S.W.2d 832 (Tex. 1993) (per curiam).....	10
<i>Orr v. Broussard</i> , 565 S.W.3d 415 (Tex. App.—Houston [14th Dist.] 2018, no pet.).....	46
<i>Ortega v. Cheshier</i> , No. 11-13-00002-CV, 2015 WL 581736 (Tex. App.—Eastland Jan. 29, 2015, no pet.)	44
<i>Ospina v. Garcia Florez</i> , No. 01-19-00465-CV, 2021 WL 2149334 (Tex. App.—Houston [1st Dist.] May 27, 2021, no pet.) (mem. op.).....	36, 37, 38, 39
<i>Pacific Emp'rs Ins. Co. v. Brown</i> , 86 S.W.3d 353 (Tex. App.—Texarkana 2002, no pet.)	58, 59

<i>Pakdimounivong v. City of Arlington</i> , 219 S.W.3d 401 (Tex. App.—Fort Worth 2006, pet. denied).....	44
<i>Payne v. Payne</i> , No. 06-20-00051-CV, 2021 WL 1216885 (Tex. App.—Texarkana Apr. 1, 2021, no pet.) (mem. op.).....	15, 16, 35
<i>Pettit v. Tabor</i> , No. 06-19-00002-CV, 2020 WL 216025 (Tex. App.—Texarkana Jan. 15, 2020, pet. denied) (mem. op.).....	65
<i>Pham v. Harris Cnty. Rentals, L.L.C.</i> , 455 S.W.3d 702 (Tex. App.—Houston [1st Dist.] 2014, no pet.).....	36, 38
<i>Phillips Dev. & Realty, LLC v. LJA Eng'g Inc.</i> , 499 S.W.3d 78 (Tex. App.—Houston [14th Dist.] 2016, pet. denied)	12, 64
<i>Point Lookout West, Inc. v. Whorton</i> , 742 S.W.2d 277 (Tex. 1987)	32
<i>Potcinske v. McDonald Prop. Inv., Ltd.</i> , 245 S.W.3d 526 (Tex. App.—Houston [1st Dist.] 2007, no pet.).....	27
<i>Primestar Constr., Inc. v. City of Dallas</i> , No. 05-17-01447-CV, 2019 WL 1033978 (Tex. App.—Dallas Mar. 5, 2019, pet. denied) (mem. op.).....	6, 11
<i>Pulley v. Milberger</i> , 198 S.W.3d 418 (Tex. App.—Dallas 2006, pet. denied).....	48
<i>R2 Restaurants, Inc. v. Mineola Cmty. Bank</i> , 561 S.W.3d 642 (Tex. App.—Tyler 2018, pet. denied).....	65
<i>Ray v. Farmers' State Bank of Hart</i> , 576 S.W.2d 607 (Tex. 1979)	1
<i>Reisler v. Reisler</i> , 439 S.W.3d 615 (Tex. App.—Dallas 2014, no pet.).....	38
<i>Reliance Nat'l Indem. Co. v. Advance'd Temporaries, Inc.</i> , 227 S.W.3d 46 (Tex. 2007)	25
<i>Retzlaff v. Tex. Dep't of Criminal Justice</i> , 94 S.W.3d 650 (Tex. App.—Houston [14th Dist.] 2002, pet. denied)	13
<i>Richards v. Tebbe</i> , No. 14-13-00413-CV, 2014 WL 2936425 (Tex. App.—Houston [14th Dist.] June 26, 2014, no pet.) (mem. op.).....	55
<i>Roberson v. Robinson</i> , 768 S.W.2d 280 (Tex. 1989) (per curiam).....	25, 32, 33

<i>Robles v. Robles</i> , 965 S.W.2d 605 (Tex. App.—Houston [1st Dist.] 1998, pet. denied)	17, 18
<i>S. Pac. Transp. Co. v. Stoot</i> , 530 S.W.2d 930 (Tex. 1975)	23
<i>Sagemont Plaza Shopping ex rel. O'Connor & Assocs., Inc. v. Harris Cnty. Appraisal Dist.</i> , 30 S.W.3d 425 (Tex. App.—Corpus Christi 2000, pet. denied)	15
<i>Salazar v. Ramos</i> , 361 S.W.3d 739 (Tex. App.—El Paso 2012, pet. denied)	8
<i>San Jacinto River Auth. v. Yollick</i> , 623 S.W.3d 454 (Tex. App.—Beaumont 2021, no pet.)	15
<i>Schmitz v. Denton Cnty. Cowboy Church</i> , 550 S.W.3d 342 (Tex. App.—Fort Worth 2018, pet. denied)	11
<i>Seaman v. Seaman</i> , 425 S.W.2d 339 (Tex. 1968)	33
<i>Sempera v. Petrofac Tyler, Inc.</i> , 253 S.W.3d 815 (Tex. App.—Tyler 2008, pet. denied)	27
<i>Shaw v. Cnty. of Dallas</i> , 251 S.W.3d 165 (Tex. App.—Dallas 2008, pet. denied)	63
<i>Sherer v. Sherer</i> , 393 S.W.3d 480 (Tex. App.—Texarkana 2013, pet. denied)	15
<i>Shields Ltd. P'ship v. Bradberry</i> , 526 S.W.3d 471 (Tex. 2017)	32, 33
<i>Silverio v. Silverio</i> , ___ S.W.3d ___, No. 08-20-00038-CV, 2021 WL 2134333 (Tex. App.—El Paso May 26, 2021, no pet.)	14
<i>Sixth RMA Partners, L.P. v. Sibley</i> , 111 S.W.3d 46 (Tex. 2003)	32, 33
<i>Smith v. City of Garland</i> , 523 S.W.3d 234 (Tex. App.—Dallas 2017, no pet.)	10
<i>Smith v. McDaniel</i> , No. 12-12-00165-CV, 2013 WL 5302492 (Tex. App.—Tyler Sept. 18, 2013, no pet.) (mem. op.)	63
<i>Southwest Craft Ctr. v. Heilner</i> , 670 S.W.2d 651 (Tex. App.—San Antonio 1984, writ ref'd n.r.e.)	52
<i>Southwestern Elec. Power Co. v. Lynch</i> , 595 S.W.3d 678 (Tex. 2020)	25

<i>Spir Star AG v. Kimich</i> , 310 S.W.3d 868 (Tex. 2010)	10
<i>Stanley Works v. Wichita Falls Indep. Sch. Dist.</i> , 366 S.W.3d 816 (Tex. App.—El Paso 2012, pet. denied)	46
<i>State v. Heal</i> , 917 S.W.2d 6 (Tex. 1996)	25, 27
<i>Stone Contractors, Inc. v. Striley</i> , No. 07-20-00266-CV, 2020 WL 7757376 (Tex. App.—Amarillo Dec. 29, 2020, no pet.) (per curiam)	20, 36
<i>Stuckey Diamonds, Inc. v. Harris Cnty. Appraisal Dist.</i> , 93 S.W.3d 212 (Tex. App.—Houston [14th Dist.] 2002, no pet.)	43
<i>Tagle v. Galvan</i> , 155 S.W.3d 510 (Tex. App.—San Antonio 2004, no pet.)	52, 54, 55
<i>Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC</i> , 437 S.W.3d 518 (Tex. 2014)	64
<i>Tenery v. Tenery</i> , 932 S.W.2d 29 (Tex. 1996) (per curiam)	17, 35, 36, 37
<i>Tex. & Pac. Ry. Co. v. Snider</i> , 321 S.W.2d 280 (Tex. 1959)	58
<i>Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Ass'n</i> , 375 S.W.3d 464 (Tex. App.—Austin 2012, pet. denied)	16
<i>Tex. Bd. of Chiropractic Exam'rs v. Tex. Med. Assoc.</i> , 616 S.W.3d 558 (Tex. 2021)	26
<i>Tex. Dep't of Pub. Safety v. Wilmoth</i> , 83 S.W.3d 929 (Tex. App.—Amarillo 2002, no pet.)	16
<i>Tex. Outfitters Ltd., LLC v. Nicholson</i> , 572 S.W.3d 647 (Tex. 2019)	1
<i>Tex. Student Hous. Auth. v. Brazos Cnty. Appraisal Dist. & Appraisal Review Bd. for Brazos Cnty. Appraisal Dist.</i> , 440 S.W.3d 779 (Tex. App.—Amarillo 2013, rev'd on other grounds, 460 S.W.3d 137, 145 (Tex. 2015)	51
<i>Texas Dep't of Parks & Wildlife v. Miranda</i> , 133 S.W.3d 217 (Tex. 2004)	12
<i>Town Ctr. Mall, L.P. v. Dyer</i> , No. 02-14-00268-CV, 2015 WL 5770583 (Tex. App.—Fort Worth Oct. 1, 2015, pet. denied) (mem. op.)	52

<i>TransAmerican Nat. Gas Corp. v. Powell</i> , 811 S.W.2d 913 (Tex. 1991) (orig. proceeding [mand. granted])	7
<i>Trelltex, Inc. v. Intecs, LLC</i> , 494 S.W.3d 781 (Tex. App.—Houston [14th Dist.] 2016, no pet.).....	27
<i>Vasquez v. Firebird SFE I, LLC</i> , No. 05-19-00057-CV, 2020 WL 2059913 (Tex. App.—Dallas Apr. 29, 2020, no pet.) (mem. op.).....	34
<i>Vickery v. Comm’n for Lawyer Discipline</i> , 5 S.W.3d 241 (Tex. App.—Houston [14th Dist.] pet. denied)1, 41, 42, 43, 44, 47, 48, 49, 50, 51, 56	
<i>W.C. Banks, Inc. v. Team, Inc.</i> , 783 S.W.2d 783 (Tex. App.—Houston [1st Dist.] 1990, no writ)	23
<i>Wagner v. Riske</i> , 142 Tex. 337, 178 S.W.2d 117 (1944)	18, 35
<i>Walker v. Anderson</i> , 232 S.W.3d 899 ((Tex. App.—Dallas 2007, no pet.).....	27
<i>Wallis v. Wallis</i> , No. 07-20-00247-CV, 2021 WL 2006647 (Tex. App.—Amarillo May 19, 2021, no pet.) (mem. op.).....	46
<i>Waltenburg v. Waltenburg</i> , 270 S.W.3d 308 (Tex. App.—Dallas 2008, no pet.).....	34
<i>Walterscheid v. Walterscheid</i> , 557 S.W.3d 245 (Tex. App.—Dallas 2018, no pet.).....	32
<i>Warriner v. Warriner</i> , 394 S.W.3d 240 (Tex. App.—El Paso 2012, no pet.).....	42
<i>White v. Zhou Pei</i> , 452 S.W.3d 527 (Tex. App.—Houston [14th Dist.] 2014, no pet.).....	31
<i>Willms v. Americas Tire Co., Inc.</i> , 190 S.W.3d 796 (Tex. App.—Dallas 2006, pet. denied).....	39
<i>Worford v. Stamper</i> , 801 S.W.2d 108 (Tex. 1990) (per curiam).....	10, 15, 29, 36
<i>Yazdani-Beiokey v. Sharifan</i> , 550 S.W.3d 808 (Tex. App.—Houston [14th Dist.] 2018, pet. denied)	56, 57
<i>Zac Smith & Co. v. Otis Elevator Co.</i> , 734 S.W.2d 662 (Tex. 1987)	33, 35

<i>Zaidi v. Shah</i> , 502 S.W.3d 434 (Tex. App.—Houston [14th Dist.] 2016, pet. denied)	51, 52, 53, 54
<i>Zamora v. Iglesia Union Cristiana</i> , No. 13-19-00558-CV, 2020 WL 948362 (Tex. App.—Corpus Christi— Edinburg Feb. 27, 2020, no pet.) (mem. op.)	8, 9
<i>Zieba v. Martin</i> , 928 S.W.2d 782 (Tex. App.—Houston [14th Dist.] 1996, no writ)	35, 56
Statutes	
TEX. CIV. PRAC. & REM. CODE § 27.007	59, 60
TEX. CIV. PRAC. & REM. CODE § 27.007(a)	59, 60
TEX. CIV. PRAC. & REM. CODE § 27.007(a)-(b)	60
TEX. CIV. PRAC. & REM. CODE § 27.007(b)	60
TEX. CIV. PRAC. & REM. CODE § 30.002	19, 24
TEX. CIV. PRAC. & REM. CODE § 30.002(a)	17, 19
TEX. CIV. PRAC. & REM. CODE § 30.002(b)	24
TEX. CIV. PRAC. & REM. CODE §§ 27.001-.011	59
TEX. FAM. CODE § 6.711	46
TEX. FAM. CODE § 6.711(a)-(c)	59
TEX. GOV'T CODE § 311.021(2)	24
TEX. GOV'T CODE § 74.041(5)	22
TEX. GOV'T CODE § 74.041(6), (3)	22
TEX. OCC. CODE §§ 201.001-201.606	26
Rules	
TEX. R. APP. P. 26.1(a)(4)	2, 6, 8, 9, 10
TEX. R. APP. P. 33.1(a)	61
TEX. R. APP. P. 33.1(d)	60, 61
TEX. R. APP. P. 38.1(i)	67
TEX. R. APP. P. 38.7	18

TEX. R. APP. P. 38.9.....	67
TEX. R. APP. P. 43.2(a)-(d).....	58
TEX. R. APP. P. 43.3.....	59
TEX. R. APP. P. 44.1(a)(2).....	17, 23, 36, 37, 52, 53, 54
TEX. R. APP. P. 44.4(a).....	21
TEX. R. CIV. P. 120a.....	12
TEX. R. CIV. P. 165a.....	13
TEX. R. CIV. P. 18.....	19, 21, 22, 23, 24
TEX. R. CIV. P. 274.....	50
TEX. R. CIV. P. 296.....	2, 3, 6, 9, 17, 24, 37, 46, 59
TEX. R. CIV. P. 296-299a.....	2, 16, 60
TEX. R. CIV. P. 297.....	3, 4, 13, 17, 24, 37, 58
TEX. R. CIV. P. 298.....	5, 13, 44, 45, 46, 47, 48, 49, 51, 58
TEX. R. CIV. P. 299.....	13, 27, 31, 40, 41, 45, 48, 49, 50, 56, 59, 61
TEX. R. CIV. P. 299a.....	13, 57
TEX. R. CIV. P. 306c.....	3

The *Five* “simple” Rules

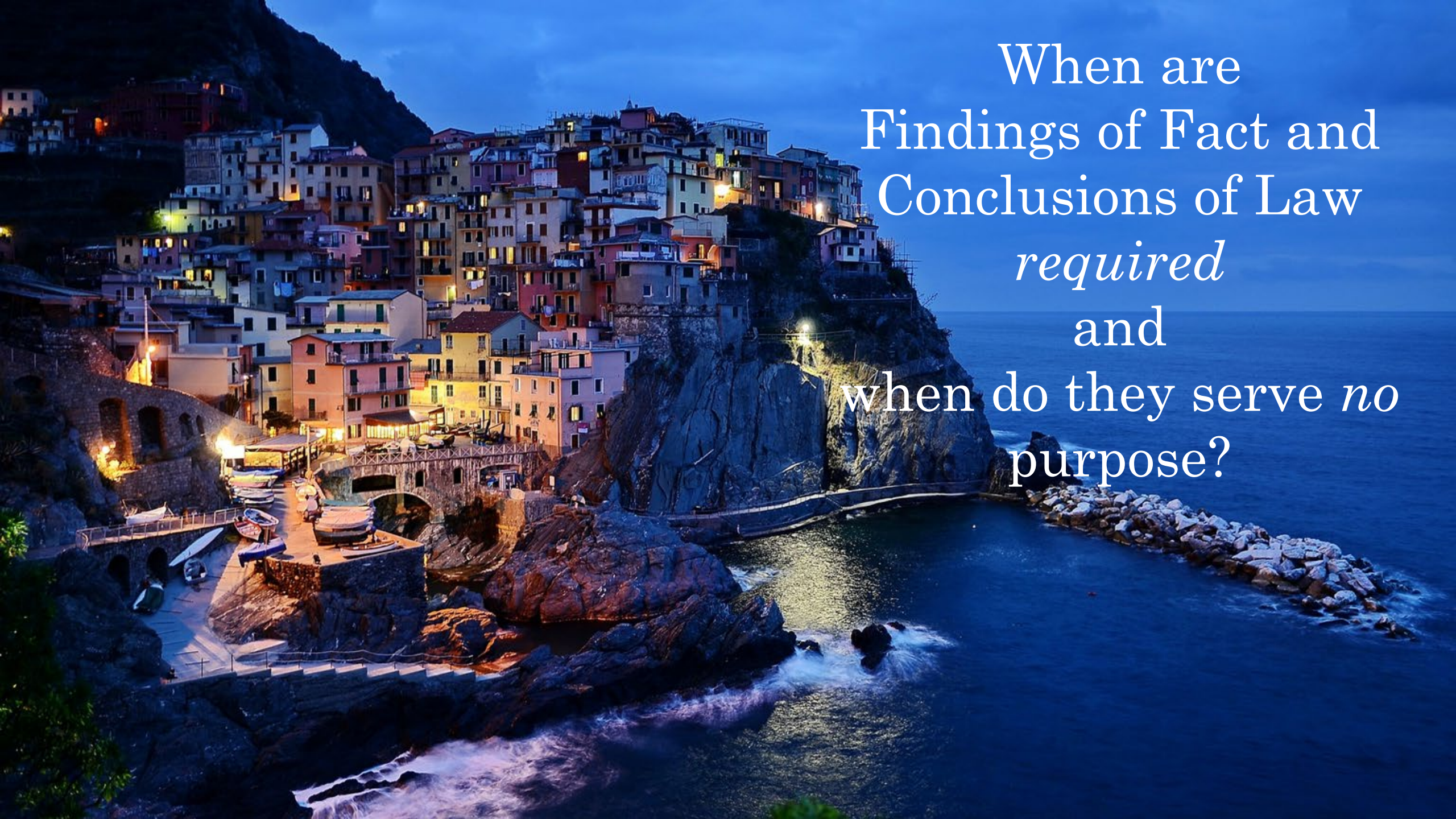
- 1) Tex. R. Civ. P. 296
- 2) Tex. R. Civ. P. 297
- 3) Tex. R. Civ. P. 298
- 4) Tex. R. Civ. P. 299
- 5) Tex. R. Civ. P. 299a

A scenic landscape featuring a river flowing through a rocky, mossy valley. The river is surrounded by large, dark rocks and patches of green moss and low-lying vegetation. In the background, there are rolling hills and mountains under a cloudy sky. The text "What is important?" is overlaid in the upper right corner.

What is important?

Five Reasons to Follow the Findings Rules

- 1) Narrow the Issues for appeal and provide the bases to attack the judgment.
- 2) Preserve wholly omitted grounds of recovery and defenses by filing specific Requests for Additional or Amended Findings of Fact and Conclusions of Law.
- 3) By timely filing a Request for Findings and Notice of Past Due Findings, the trial court has a mandatory duty to file Findings and Conclusions.
- 4) Properly requested Findings and Conclusions can extend the deadline to file your notice of appeal.
- 5) Preserve a more favorable standard of review.



When are
Findings of Fact and
Conclusions of Law
required
and
when do they serve *no*
purpose?

When Findings of Fact and Conclusions of Law are *required*

When Findings are required, your Request for Findings will extend the deadline to perfect appeal. To be vigilant, you should also file a Tex. R. Civ. P. 329b motion to extend deadlines.

- 1) Following a conventional trial on the merits to the bench
- 2) In any trial or hearing where the trial court resolved conflicting evidence

IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp., 938 S.W.2d 440, 441-43 (Tex. 1997); Tex. R. Civ. P. 296

Findings of Fact and Conclusions of Law serve *no* purpose

Findings serve no purpose when the trial court has resolved no disputed facts, such as:

- 1) Summary Judgment hearing because it is not a conventional trial
- 2) Judgment after a Directed Verdict
- 3) Default judgment awarding liquidated damages

IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp., 938 S.W.2d 440, 441-43 (Tex. 1997); Tex. R. Civ. P. 296.

When Findings serve no purpose, requesting them does not extend the deadline to file your notice of appeal.

Findings of Fact are *useful* but *not* required

If the appellate court agrees that Findings are useful, the Request for Findings will extend the deadline to perfect appeal.

- 1) default judgment on a claim for unliquidated damages
- 2) any judgment based in any part on an evidentiary hearing, for example, an award of attorney's fees, and sanctions under the abuse of discretion standard of review

IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp., 938 S.W.2d 440, 441-43 (Tex. 1997); Tex. R. Civ. P. 296

Mogged v. Lindamood, No. 02-18-00126-cv, 2020 WL 7074390, at *20 (Tex. App.—Fort Worth Dec. 3, 2020, pet. denied), *on en banc reconsideration* (mem. op.).

Findings are *useful* but not required *or* serve *no* purpose – Conflicting Authorities

There are conflicting authorities on when Findings are useful or serve no purpose. The former extends your deadline to file a notice of appeal, the latter does not:

If the trial court decided the **special appearance without resolving conflicting facts**, then Findings and Conclusions serve no purpose and the appellate court will not consider them. This means if you relied solely on your Request for Findings to extend your notice of appeal deadline, you missed the deadline.

Luciano v. SprayfoamPolymers.com, LLC, 625 S.W.3d 1, 2 (Tex. 2021).

Findings are *useful* but not required *or* serve *no* purpose – Conflicting Authorities

Conflicting Authorities

Findings and Conclusions served **no purpose** when the facts are not contested and the court decides the case based solely on the pleadings and arguments of counsel.

or

Findings are **useful but not required** when ruling is based in part on disputed evidence (affidavits), although trial court does not conduct an evidentiary hearing. This is an example of “any judgment based in any part on an evidentiary hearing.”

Findings are *useful* but not required *or* serve *no* purpose – Conflicting Authorities

Conflicting Authorities – **No Purpose** = does not extend the deadline to file notice of appeal

- 1) Special Appearance: *Hanschen, Trustee of David Hanschen Heritage Trust Two v. Hanschen*, No. 05-19-001134-CV, 2020 WL 2764629, at *4 (Tex. App.—**Dallas** May 28, 2020, no pet.) (mem. op.).
- 2) Jurisdictional Plea: *Primestar Constr., Inc. v. City of Dallas*, No. 05-17-01447-CV, 2019 WL 1033978, at *5-6 (Tex. App.—**Dallas** Mar. 5, 2019, pet. denied) (mem. op.).
- 3) Plea to the Jurisdiction: *Denton v. Wiggins*, No. 07-19-00127-CV, 2020 WL 5666948, at *4-5 (Tex. App.—**Amarillo** Sept. 23, 2020, no pet.) (mem. op.).

Findings are *useful* but not required *or* serve *no* purpose – Conflicting Authorities

Conflicting Authorities – **Useful but not Required** = extends your deadline to file a notice of appeal

Even if the trial court did not hold an evidentiary hearing on a special appearance, the court may have considered stipulations, affidavits, documents, and the results of discovery processes that the parties filed with the trial court. Thus, in the special appearance context, the absence of an evidentiary hearing does not necessarily mean that the trial court ruled without considering any evidence or ruled as a matter of law based on stipulations. The question is, did the trial court resolve conflicting evidence.

Special Appearance: *Continental Alloys & Servs. (Del.) LLC v. YangZhou Chengde Steel Pipe Co., Ltd*, 597 S.W.3d 884, 889 (Tex. App.—**Houston [14th Dist.]** 2020, pet. denied).

Strategy Tips

When in doubt as to whether the trial court's Findings and Conclusions are **useful but not required** or **serve no purpose**, file your notice of appeal within 30 days of when the trial court signed the final judgment.

TEX. R. APP. P. 26.1(a).

Strategy Tips

To extend your notice of appeal deadline to within 90 days of when the trial court signed its judgment, file a Rule 329b Motion for New Trial or Motion to Vacate, Modify, Correct, or Reform the Judgment (must seek a substantive change in the judgment).

TEX. R. CIV. P. 329b.

Deadlines – Only Yours Matter!



The first deadlines is within 20 days

- 1) The first deadline is due within 20 days after the trial court signs its judgment, called Request for Findings of Fact and Conclusions of Law.

Make note, Tex. R. Civ. P. 329b deadlines are within 30 days after the court signs its judgment. This deadline is within **20 days** of the judgment signing with no opportunity to extend it. Tex. R. Civ. P. 296.

The court's Findings of Fact and Conclusions of Law are due within 20 days after your timely filed Request for Findings

Rule 296

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled “**Request for Findings of Fact and Conclusions of Law**” and shall be **filed within twenty days after judgment is signed** with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with [Rule 21a](#).

The second deadline triggers from the date you filed your Request for Findings – 30 days

- 1) Your second deadline is due within 30 days after you filed your Request for Findings, called Notice of Past Due Findings of Fact and Conclusions of Law.
- 2) You can neither *prematurely* nor *late* file the Notice of Past Due Findings.

Make note, this deadline is triggered from the date that you filed your Request for Findings.

The court's Findings are due within 40 days from the date you filed your Request for Findings.

Tex. R. Civ. P. 297.

Rule 297

The court shall file its findings of fact and conclusions of law **within twenty days after a timely request is filed**. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit.

If the court fails to file timely findings of fact and conclusions of law, the party making the request **shall, within thirty days after filing the original request**, file with the clerk and serve on all other parties in accordance with [Rule 21a](#) a “**Notice of Past Due Findings of Fact and Conclusions of Law**” which shall be immediately called to the attention of the court by the clerk. Such notice shall state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, **the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed**.

The final deadline triggers from the date the trial court files its Findings – 10 days

- 1) Your last deadline is due within 10 days after the trial court *files* its Finding of Fact, called Request for Additional or Amended Findings of Fact and Conclusions of Law.

Make note, this deadline is triggered from the date that the trial court files its Findings. Tex. R. Civ. P. 298.

This is a hard deadline that you cannot extend.

Rule 298

After the court files original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court. Each request made pursuant to this rule shall be served on each party to the suit in accordance with [Rule 21a](#).

The court shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit. No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

Deadlines – the Trial Court has no Deadline

The trial court can file its Findings of Fact and Conclusions of Law even after it has lost plenary power and while the case is on appeal. See paper for caveats.

Ad Villarai, LLC v. Pak, 519 S.W.3d 132, 141 (Tex. 2017) (per curiam).

Consequences



Rule 299

When findings of fact are filed by the trial court they shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein.

The judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested shall be reviewable on appeal.

Findings Filed and Reporter's Record Filed

When the appellate court has the reporter's record, it reviews the trial court's Findings and Conclusions for legal and factual sufficiency of the evidence by the same standards it applies in reviewing evidence supporting a jury's answer.

Walterscheid v. Walterscheid, 557 S.W.3d 245, 257 (Tex. App.—Dallas 2018, no pet.); *12636 Research Ltd. v. Indian Bros., Inc.*, No. 03-19-00078-CV, 2021 WL 417027, at *5 (Tex. App.—Austin Feb. 5, 2021, no pet.) (mem. op.).

No Findings sought but Reporter's Record Filed

In the absence of Findings and Conclusions, the appellate court infers all fact findings necessary to support the judgment under any legal theory that was before the court and is supported by the evidence.

Point Lookout West, Inc. v. Whorton, 742 S.W.2d 277, 279 (Tex. 1987).

“If the reporter's record is filed on appeal, as it was here, implied findings may be challenged on factual- and legal- insufficiency grounds in the same manner ‘as jury findings or a trial court's [express] findings of fact’”

Shields Ltd. P'ship v. Bradberry, 526 S.W.3d 471, 480 nn.21, 22 (Tex. 2017).

No Findings sought but Reporter's Record Filed

On its face, this is not a favorable standard of review. But if you file the reporter's record, you can still challenge the implied findings.

“When the appellate record includes the reporter's and clerk's records, these implied findings are not conclusive, and may be challenged for legal and factual sufficiency in the appropriate appellate court.”

BMC Software Belgium, N.V. v. Marchand, 83 S.W.3d 789, 795 (Tex. 2002).

No Reporter's Record and No Findings Requested or Filed

When there are no Findings and Conclusions and no reporter's record, "the judgment of the trial court implies all necessary findings of fact to sustain the judgment the appellate court." "In other words, [the appellate court] must presume the missing reporter's record supports the decisions of the trial court."

Henderson v. Freedom Mortgage Corp., No. 05-19-01258-CV, 2021 WL 1186149, at *2 (Tex. App.—Dallas Mar. 30, 2021, no pet.) (mem. op.).

Findings requested, none filed

“The trial court has a mandatory duty to file findings of fact and conclusions of law when they are properly requested.”

Payne v. Payne, No. 06-20-00051-CV, 2021 WL 1216885, at *6-7 (Tex. App.—Texarkana Apr. 1, 2021, no pet.) (mem. op.); *Estate of Paul v. Bush*, No. 07-21-00077-CV, 2021 WL 2521562, at *1-2 (Tex. App.—Amarillo June 18, 2021, no pet.) (per curiam) (mem. op.) (same) (citing *Zieba v. Martin*, 928 S.W.2d 782, 786 (Tex. App.—Houston [14th Dist.] 1996, no writ) (same).

The preferred remedy for the failure to file Findings is to Abate the appeal to permit the trial court to file them

The “preferred remedy” for the trial court’s failure to file findings is for the appellate court to abate the appeal to allow the trial judge to file its findings. See paper for caveats.

Larry F. Smith, Inc. v. The Weber Co., Inc., 110 S.W.3d 611, 616 (Tex. App.—Dallas 2003, pet. denied).

Stone Contractors, Inc. v. Striley, No. 07-20-00266-CV, 2020 WL 7757376, at *1 (Tex. App.—Amarillo Dec. 29, 2020, no pet.) (per curiam) (when the trial court’s failure is harmful, the appropriate remedy is to abate the appeal and direct the trial court to file the missing findings).

You must show harm from the trial court's failure to file Findings

Although “harm to the complaining party is presumed unless the contrary appears on the face of the record,” a trial court’s “failure to make findings is not harmful error if ‘the record before the appellate court affirmatively shows that the complaining party suffered no injury.’ ”

Payne v. Payne, No. 06-20-00051-CV, 2021 WL 1216885, at *6-7 (Tex. App.—Texarkana Apr. 1, 2021, no pet.) (mem. op.).

Tex. R. App. P. 44.1(a)(2)

You must show how the lack of Findings and Conclusions was *not* harmless error; such as, it prevented your ability to properly present your appeal to the appellate court or prevented you from requesting additional or amended findings from the trial court. *See* TEX. R. APP. P. 44.1(a)(2).

Graham Cent. Station, Inc. v. Peña, 442 S.W.3d 261, 263 (Tex. 2014) (per curiam).

If harmless error, appellate court implies all findings necessary to support judgment

If the appellate court believes the lack of Findings and Conclusions was harmless, then it will imply the findings that support the judgment. You should challenge those implied findings on appeal.

Graham Cent. Station, Inc. v. Peña, 442 S.W.3d 261, 263 (Tex. 2014) (per curiam).

When is the failure to file Findings harmful error – the appellate court decides

A trial court's failure to file Findings and Conclusions harms an appellant if, under the circumstances of the case, the party is forced to guess the reason why the trial court ruled against it. See paper for caveats.

On the other hand, if there is only a single ground of recovery or a single defense in the case, the record demonstrates that the appellant has suffered no harm from the failure to file findings because the party is not forced to guess the reasons for the trial court's judgment.

Ospina v. Garcia Florez, No. 01-19-00465-CV, 2021 WL 2149334, at *7 (Tex. App.—Houston [1st Dist.] May 27, 2021, no pet.) (mem. op.).

Rule 299a

Findings of fact **shall not be recited in a judgment**. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to [Rules 297](#) and [298](#), the latter findings will control for appellate purposes. **Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.**

Strategy Tips

Consequences comes up in a variety of ways.

- 1) Sometimes no one requested Findings and Conclusions.
- 2) Other times, a party filed timely Request and Notice of Past Due Findings, but the court failed to file Findings and Conclusions.
- 3) And then there is the situation where the Findings omit elements of a claim or defense.

Strategy Tips

- 4) In all these situations, you can rely on the reporter's record to show the legally and factually sufficient evidence does [or does not] support an express or implied finding.
- 5) If the trial court files Findings and wholly omits a ground of recovery or defense, this is different. If you did not file a Request for Additional or Amended Findings on the missing elements, you cannot argue that ground or defense on appeal because the appellate court cannot presume findings on that which is wholly omitted.

Strategy Tips

The failure to provide a complete reporter's record results in the least favorable standard of review for your appeal.

This is a worse fate for the appeal's success than never having sought the Findings and Conclusions at all.

Request and pay for the court reporter to upload the entire reporter's record to the appellate court's portal.

One Recent Case



Clinton v. Gallup, 621 S.W.3d 848 (Tex. App.—Houston [14th Dist.] 2021, no pet.)

Plaintiff sued on common law fraud, breach of contract, and other claims to recover commissions that he said he was owed on electricity contracts.

The parties stipulated that a dismissed party paid Defendant \$13,861. Plaintiff alleged that this payment was the commissions he was owed on accounts that he secured for Defendant.

Defendant countered that Plaintiff had been paid a finder's fee and was not owed that money that the dismissed party paid to it.

The trial court found in Plaintiff's favor and awarded damages in the amount of \$13,861.

Clinton v. Gallup, 621 S.W.3d 848 (Tex. App.—Houston [14th Dist.] 2021, no pet.)

- 1) The trial court's sole finding related to the parties' stipulation and did not resolve a disputed fact on any element of a claim. In effect, the trial court omitted findings on all elements to every claim.
- 2) Therefore, the appellate court held it could not presume any findings under Rule 299. The trial court did not make any finding that would control the case under a correct legal interpretation.
- 3) The appellate court determined that the trial court committed an error of law. It reversed the judgment and remanded for further proceedings.

CALUS NO. 108936

CHARLES GALLER § 1 IN THE COUNTY COURT AT LAW
 VS. § 2 OF HARRIS COUNTY, TEXAS
 JEFFREY D. CLARKSON, ET AL. § 3 COUNTY COURT AT LAW NO. 2
 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT NO. 1
 The records of Marathon Energy can file with captioned of commission is after
 rendering of the Paid of the account in the total amount of \$21,847.00

FINDINGS OF FACT NO. 2
 The records of Marathon Energy on the paid payment of commission is Marathon
 Energy on the Plaintiff's accounts in the total amount of \$1,1802.00

FINDINGS OF FACT NO. 3
 The sum of \$11,061.00 for a reasonable and necessary attorney's fees incurred by
 Plaintiff caused to prosecute this case against Defendant.

CONCLUSIONS OF LAW NO. 1
 That Plaintiff is entitled to judgment against Defendant Marathon Energy in the
 amount of \$ 3,861.00.

CONCLUSIONS OF LAW NO. 2
 That Plaintiff is entitled to judgment against Defendant Marathon Energy in the
 amount of \$21,847.00.

CONCLUSIONS OF LAW NO. 3
 That Plaintiff is entitled to judgment against Defendant Marathon Energy and all
 jointly and severally, for attorney's fees incurred in this case in the amount of

\$5,000.00
 DEC 10 2011

Signed on: _____

John T. Woodridge
 John T. Woodridge
 2009 Plaintiff

Clinton Dissent

- 1) Dissent acknowledged that the finding is not as specific or definite as it could or should be but nonetheless it is a finding.
- 2) Plaintiff's only argument in support of his claim for damages was that Defendant received commissions on Plaintiff's accounts but failed to pay those commissions to Plaintiff.
- 3) Dissent would have reversed and remanded for the trial court to file additional findings. It would not have reversed because the existing findings were insufficient.
- 4) It would have abated the appeal with instructions to the presiding judge to sign additional findings rather than to hold that the trial court committed an error of law.

CASE NO. 1099256

CHARLES GALLUP,	§	IN THE COUNTY COURT
	§	
Plaintiff,	§	
	§	
V.	§	AT LAW NO. 2
	§	
ALDAR MARKETING TEXAS, INC.,	§	
HUDSON ENERGY SERVICES, LLC,	§	
AND JEFFREY D. CLINTON DBA	§	
MARATHON ENERGY MANAGEMENT,	§	
	§	
Defendants.	§	HARRIS COUNTY, TEXAS

**JEFFREY D. CLINTON D/B/A MARATHON ENERGY MANAGEMENT'S
REQUEST FOR ADDITIONAL OR AMENDED FINDINGS OF FACT
AND CONCLUSION OF LAW**

Comes now Defendant Jeffrey D. Clinton d/b/a Marathon Energy Management ("Marathon" or "Defendant") and makes this Request for Additional or Amended Findings of Fact and Conclusion of Law under Rule 299 of the Texas Rules of Civil Procedure for the reasons stated below.

After a Bench Trial on this matter the Court issued a Findings of Facts and Conclusion of Law on December 10, 2018. The Findings of Facts and Conclusion of Law that was issued was basically a restatement of the Judgment that was issued in the case and do not specifically address the facts of the case nor the elements of the Plaintiff's claims.

The Defendant is specifically requesting that the court issue additional Findings of Fact and Conclusions of Law that states the finding of facts upon which the Judgment was founded on and how those facts are applied to the elements of the Plaintiffs claims against Defendant Clinton and Marathon for fraud, quantum meruit, suit on a sworn account, breach of contract and for attorney fees.

Strategy Tips

Make sure your findings reflect the trial court's resolution of disputed facts on elements of your claims.

Tex. R. Civ. P. 299

Six Recommendations



Recommendations

- 1) It would help practitioners and the courts if the rules required parties to follow the Texas Pattern Jury Charge and submit a charge-like document, just like in a jury trial.
- 2) It would aid attorneys and the parties in their quest for justice if the first deadline was within 30 days, like most of the other deadlines, rather than within 20 days for the Request for Findings filing. Additionally, the availability of an extension of the deadline would serve this purpose.
- 3) It would help the parties and appellate courts if there were uniform rules on how to brief issues on appeal following a bench trial.

Recommendations

- 4) Findings and Conclusions should not control over the final judgment or decree in the event of a conflict.
- 5) Clarify the rules to make it clear when Findings and Conclusions are useful but not required or serve no purpose.
- 6) Amend the rules so that the appellate court is responsible for instructing the trial court to fulfill its mandatory duty to file properly requested Findings and Conclusions. Just as the appellate court takes charge of late court reporter's and clerk's records, it should do the same when the trial court fails to file mandatory Findings and Conclusions.



Thank you and Enjoy the Rest of the Conference!
Lucy Forbes