TCMP — Texas Catholic Marriage Project

# Understanding the Attorney Review of Cusack and Insupportability

Companion Article | Confidential Review Draft v1.0
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## I. Why This Review Matters

The Texas Catholic Marriage Project's attorney-review memorandum examines a specific question: when does testimony establish insupportability under Texas Family Code § 6.001, and when is a request for divorce being mistaken for proof of the legal ground? This companion article introduces that inquiry and explains the memorandum's practical purpose.

Its starting proposition is precise: *Cusack* did not establish an automatic, irrebuttable entitlement to divorce through statutory recitation. The statement concerns what that decision actually held. It does not mean that later courts have rejected brief testimony or that a respondent can defeat divorce simply by opposing it.

In *Cusack*, the husband described circumstances within the marriage, his wife and other witnesses disputed his account, and a jury resolved credibility. The appellate court reviewed the evidence as a whole. Its language making divorce mandatory depended on establishment of the statutory conditions. The opinion did not decide that repeating the statute necessarily ends every factual inquiry. [1]

That distinction matters because a legal consequence following proof cannot itself establish that proof exists. The memorandum begins there, then examines the later authorities that make the present law more difficult than *Cusack* alone suggests.

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## II. What the Later Cases Add

The review follows several decisions that accept abbreviated testimony. Their procedural settings are essential to understanding their reach.

*Richards* accepted testimony addressing the statutory elements without a description of specific underlying events. The respondent offered no controverting evidence. Although the court recognized error in denying a jury request, it held the error harmless on the final record. The opinion also rejected the notion that insupportability presented no factual questions. [2]

*Beach* involved a request for a temporary injunction compelling reconciliation. The court described the wife's brief testimony as establishing a prima facie case and rejected a legal duty to reconcile. That setting differs from appellate review of a final divorce decree. [3]

*Wellington* upheld a divorce despite the husband's opposing view about reconciliation. The court considered the wife's short answers, evidence concerning counseling, and the trial judge's assessment of the parties. The case prevents TCMP from describing every abbreviated-proof decision as uncontested. [4]

*Nicklas* went further procedurally. It denied mandamus after partial summary judgment supported by a declaration tracking the elements. The husband believed reconciliation possible but acknowledged the wife's contrary belief. The court found his belief did not create a genuine dispute about hers and accepted the proof as establishing entitlement as a matter of law on that record. [5]

These decisions require a candid response. Correcting an overreading of *Cusack* does not dispose of later authority. The attorney review therefore identifies what each court accepted, the contest actually presented, and the legal effect given to the evidence. It distinguishes a proposed challenge to a decision's reasoning from a description of settled law.

## III. Why Evidence Still Matters

*Alvarez* reversed a divorce where evidence of marriage and separation did not establish the statutory elements. *Janish* likewise reversed on deficient proof, including an answer that failed to establish insupportability. Neither decision rejected all brief testimony; both illustrate that a divorce request does not eliminate the obligation to supply supporting evidence. [6–7]

## IV. Sufficient Evidence and Irrebuttable Testimony

The memorandum's central distinction is between evidence found sufficient in a particular proceeding and an asserted rule making a meaningful factual contest legally ineffective.

Sufficient evidence supports the required determination under the applicable standard. Conclusive proof can establish a proposition as a matter of law on a particular record. An irrebuttable rule goes further: contrary evidence cannot affect the result. Losing a case, even at summary judgment, does not by itself demonstrate that such a rule was applied.

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TCMP's proposed inquiry asks whether the court has examined each required statutory condition and the evidence supporting it. A petitioner's present refusal to reconcile may be highly significant. The separate analytical question is how that refusal establishes the statute's other connected conditions, including destruction of legitimate marital ends because of discord or personality conflict. The memorandum presents this as an argument to evaluate against adverse authority, rather than an already adopted judicial test.

## V. What a Meaningful Contest Requires

A respondent needs more than a competing declaration of hope. Counsel must identify the particular condition disputed, the admissible evidence bearing on it, and why that evidence matters under the governing interpretation.

For example, a dated communication proposing reconciliation might contradict testimony that no such discussion occurred. Its significance would depend on context, timing, and later events. It would not automatically establish a reasonable expectation of reconciliation at trial. The distinction is between testing a material assertion and demanding that another person adopt a different belief.

The review also addresses discovery, evidentiary objections, excluded evidence, jury issues, summary judgment, and appellate harm. Those procedures determine whether an argument becomes reviewable. A strong legal theory unsupported by a preserved factual record may accomplish little in court.

The practical objective is an identifiable statutory standard and a fair opportunity to contest its application. TCMP should state openly when it seeks a limitation of existing reasoning, a development in the law, or legislative reform.

## VI. How the Memorandum Should Be Used

The attorney review provides a focused research foundation for assessing a particular case. It separates pleading from proof, compares the principal decisions, identifies adverse authority, and develops TCMP's proposed response. Counsel can use it to determine which arguments fit the actual evidence, procedural posture, and governing appellate district.

Its limits are equally specific. It is not an exhaustive audit of all previously identified decisions, a certification of complete subsequent treatment, or a determination that a particular decree is invalid. It also does not establish unconstitutional vagueness or a universal right to heightened scrutiny. Those questions require their own doctrinal and factual analysis.

For TCMP's child-centered work, the inquiry supplies a necessary foundation: establish accurately what the divorce ground proves before examining the distinct evidence and legal standards supporting particular parental orders.

The retained proposition remains useful because it states *Cusack*'s limits without denying the later decisions. The next question for counsel is concrete: what material issue did the court decide, on what evidence, under what legal standard, and with what opportunity for the respondent to contest it?

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## Authorities and Companion Memorandum

[1] *Cusack* v. *Cusack*, 491 S.W.2d 714, 717, 719–20 (Tex. Civ. App.—Corpus Christi 1973, writ dism'd).

[2] In re Marriage of *Richards*, 991 S.W.2d 32, 35–38 (Tex. App.—Amarillo 1999, pet. dism'd).

[3] In re Marriage of *Beach*, 97 S.W.3d 706, 707–08 (Tex. App.—Dallas 2003, no pet.).

[4] In re Marriage of *Wellington*, No. 10-07-00181-CV, 2008 WL 3971763 (Tex. App.—Waco Aug. 27, 2008, no pet.) (mem. op.).

[5] In re *Nicklas*, No. 12-23-00201-CV (Tex. App.—Tyler Sept. 20, 2023, orig. proceeding) (mem. op.).

[6] *Alvarez* v. *Alvarez*, No. 04-13-00787-CV, 2015 WL 1938700 (Tex. App.—San Antonio Apr. 29, 2015, no pet.) (mem. op.).

[7] *Janish* v. *Janish*, No. 03-23-00275-CV (Tex. App.—Austin Feb. 14, 2025) (mem. op.). Subsequent history not verified.

Companion source: TCMP, *Cusack* and Later Texas Decisions on Proof of Insupportability, Attorney Review Draft v1.0, October 14, 2026, 14 pages. This article introduces that memorandum; it does not replace its analysis or qualifications. Confidentiality does not itself establish attorney–client privilege.

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