

1. No, the trial court did not err in ordering John to pay spousal maintenance. In Texas, the trial court has wide discretion and considers many factors in dividing the community estate and if a spouse qualifies for maintenance, if it should be granted. John and Susan were married for over 10 yrs, so Susan qualified for spousal maintenance to provide for her reasonable minimum needs if she is proven to be unable to provide for her minimum reasonable needs herself and she is caring for a child that is disabled or she is disabled or she just can't meet reasonable minimum needs. In awarding maintenance, the court can consider marital misconduct – both had affairs. Spouses minimum needs, here the court listed minimum expenses as \$1,700 but awarded less than that. The court is to consider both spouse's employment history and ability, skills, education, esp. Susan's since she wants the maintenance. Court will take into account that John has been sole provider for the family and Susan only has high school education and lacks job skills and training. The court will consider that she recently looked for employment and her effort to do so, although she wasn't able to do much. Susan didn't bring any separate property into the marriage and she performed household duties. If the court determined that her lower back pain/depression/frustration is a disability that will also be considered, although it might not qualify as such. Susan was awarded quite a large amount of the community estate, but that might be because John has a lot of separate property and he has the ability to maintain earning capacity. The maximum amount that can be awarded for maintenance is the lesser of 20% of income or \$2,500, whichever is lesser, so \$1,000 is within that amount. If John wants to complain about award, it will be abuse of discretion. Susan probably qualified for maintenance.
2. Spousal maintenance, generally, cannot be awarded for an indefinite period. In Texas, maintenance is awarded for up to three yrs unless spouse proves a disability or is caring for a child with a disability. Maintenance is supposed to provide assistance so that spouse can get the education/skills to provide for his/her own minimum reasonable needs. However, when a spouse is disabled, maintenance can be awarded for a longer time, depending on need. The trial court erred in awarding maintenance for an indefinite period, unless the court found Susan to be disabled. Susan claims the job she sought was too physically demanding, the disc in her lower back was deteriorating, and she was depressed. The deteriorating disc might qualify for a disability, but the depression probably won't, more facts are needed to determine the severity of her back. If there is a disability, the court can determine the length of the maintenance b/c the disability might be removed. However, if no disability proved, the Court did err in its award of maintenance for an indefinite period.

END OF EXAM

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1. The trial court did not err in ordering John to pay any spousal maintenance to Susan. The standard on appeal for determining whether the trial court erred is abuse of discretion. Thus, the trial court is given broad latitude in making a determination as to whether spousal maintenance is appropriate. Each case is determined by the facts of that particular case. The decision will be overturned only if the court abused its discretion in making the award because the award is so contrary to the evidence that it is irrational.

In order for spousal maintenance to be awarded, first the marriage must have lasted for at least 10 years. If there has been family violence within the last 2 years, then this requirement is waived. However, the facts do not indicate any such violence. In this case, John and Susan were married from 1977 until 2007, and that time period clearly exceeds the 10 year requirement. In addition to the duration of the marriage, there must be another independent ground for the maintenance such as lack of employment skills, a debilitating physical or mental condition, or marital infidelity. If these two conditions are met, then the court may award spousal maintenance that meets the receiving spouse's minimum needs.

Minimum needs are determined by taking into account factors such as minimum expenses, separate property, property awarded as a result of the "just and right" settlement upon divorce, employment skills, the inability to work due to a physical or mental condition, the paying spouse's income and property, the lifestyle the spouse enjoyed during marriage, and the gain a spouse would have stood to benefit if the marriage had continued. In this case, the facts indicate that Susan's minimum expenses are \$1,700 per month. This seems like a reasonable amount. The facts also indicate that she has no separate property. As a result of the division upon divorce, Susan was awarded \$10,000, a vehicle costing \$5,000, a house worth \$90,000, and all her personal effects (clothing, jewelry, etc.). The combination of her separate and community property indicates that Susan would only be able to meet her minimum monthly expenses for about the next 8 months provided that she would be unable to work.

Susan's employment skills in this case seem to be minimal in that she only has a high school education and had not worked outside the home for 20 years before the separation. After the

separation, she attempted to work at a job paying only \$6.50 an hour, but she claims she was unable to continue due to a deteriorating disc in her back and depression. John disputes this claiming that she can cook, perform household chores, and drive. Her mother bolsters her claim somewhat by claiming that Susan suffered stress and frustration when having to perform her work quickly or under pressure. Under the facts, it seems that Susan possibly could work another job that is less stressful and at a desk (thus not requiring her to move around and hurt her back). However, the other facts about her education, lack of employment for 20 years, physical condition, and depression indicate that working and finding a job would be very difficult for her. Thus, without more facts, it seems that her employment skills and abilities do not bar an award of spousal maintenance.

There are no indications as to John's income or the lifestyle Susan enjoyed during the marriage other than her not needing to work during the marriage. In this case, both spouses admitted to several episodes of infidelity, and thus this can also not be used a factor in awarding spousal maintenance.

In conclusion, the trial court clearly did not abuse its discretion in awarding spousal maintenance based upon the facts provided. However, the amount awarded could be disputed based upon John's ability to pay and Susan's true ability to work.

2. The trial court did not err in awarding spousal maintenance for an indefinite period as it did not simply give Susan spousal support until her death. The court maintained the power to change or terminate the spousal maintenance upon "further order of the court." In this case, abuse of discretion will again be the standard upon appellate review. Spousal maintenance may not be awarded for longer than 36 months unless the spouse receiving the maintenance either 1) has a debilitating physical or mental condition that was in existence before the dissolution of the marriage and that precludes him or her from meeting her minimum needs by working or earning money, or 2) has possession of a child with a physical or mental condition that requires extra expense. If one of these 2 conditions is met, then spousal maintenance can be extended beyond the 36 month period as long as the spouse is unable to provide for her minimum needs.

In this case, there is no mention of children, so there is no need to discuss the applicability of the

second factor. With regard to the first factor, although there is a dispute, it seems that Susan has both a debilitating physical condition (her deteriorating disc) and a debilitating mental condition (depression). More facts are needed in order to determine the extent to which they preclude her from working at all. As discussed above, she may be able to perform a low stress job where she is not required to do any physical activity. However, if these conditions do satisfy the first factor, then Susan would be entitled to continued spousal maintenance for as long as she continues to have the physical and mental condition that significantly impair her earning capacity.

In conclusion, Susan's inability to earn and thus meet her minimum monthly needs due to a debilitating mental or physical condition do seem to be satisfied. Thus, the award of indefinite spousal maintenance until the court orders otherwise is proper. However, spousal maintenance must terminate should her conditions improve and her ability to meet her needs be met.

END OF EXAM

Question 1 Selected Answer #3 February 2010

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1. No, the trial court did not err in ordering John to pay any spousal maintenance. In order for a spouse to receive spousal maintenance upon divorce, three requirements must be met. First, the couple must have been married for ten years. Second, the spouse must not have sufficient property/financial resources to support her minimum needs. Third, the spouse must lack the ability to support herself either because she is caring for a disabled child and cannot work outside the home, she herself is disabled and cannot work outside the home, or she lacks the skills necessary to obtain employment. If this test is met, the spouse can be awarded spousal maintenance for a period not to exceed three years, unless other conditions apply (see below).

Here, the couple was married for ten years - they married in 1977 and did not divorce until 2008, so they were clearly married for 10 years. The first prong is satisfied. Second, it appears that Susan lacks the financial resources to support her minimum needs. Her monthly minimum expenses were 1700. Although she does not have any separate property, the allocation of community property assets upon divorce will be considered to determine if she has the sufficient financial resources. Here, she was awarded 75% of the community estate - a savings account worth 10,000, a car worth 5,000, and a house worth 90,000. She would deplete her savings account pretty quickly considering her minimum monthly expenses were \$1700. Finally, it appears that she is unable to support herself because of her disability and she also lacks the skills necessary to obtain employment. Her depression will not be a sufficient disability to satisfy this prong, but Susan also has a deteriorating disc in her lower back. She testified that she sought employment and obtained a job but only worked a week because she was physically unable to do the work. The facts that Susan suffered stress and frustration when she had to perform her work too quickly or under pressure will not be enough to show a disability. Also, the fact that she can cook, perform household chores, and drive does not necessarily mean she doesn't have a disability that makes it so she cannot work outside the home. If the judge believed her testimony, which it appears he/she did because he awarded the support, it will not be overturned unless there is a clear abuse of discretion. The fact finder is in the best position to assess the credibility of witnesses. Furthermore, she can claim that she lacks the skills necessary to obtain employment and therefore has another reason for being awarded the maintenance. She was a high school graduate, but never obtained a secondary degree. She has not worked outside the

home for over twenty years. Thus, she does not have the skills necessary to obtain employment. In order to receive support under this theory, she must show that she reasonably sought employment while the divorce proceedings were pending, which it appears she did since she obtained a job at \$6.50 per hour.

As a side note, the fact that both Susan and John admitted to several episodes of marital infidelity during the marriage shouldn't have been used by the court to determine whether to award spousal maintenance but it could have been a fact when it decided how to divide the community estate according to the just and right division principle.

Thus, the court did not err when it awarded Susan spousal maintenance.

2. No, the court did not err in ordering John to pay spousal support for an indefinite period. Generally, the court can only order one spouse to pay the other spouse maintenance for a period necessary for the spouse to obtain the necessary skills to gain employment, or to actually gain employment, and not to exceed 36 months. However, if the spouse receiving the support suffers from a physical disability that developed during marriage, then the spouse may be ordered to pay her for an indefinite period, as long as the disability remains. Since Susan suffered from the deteriorating disc in her lower back that made it so she could not work outside the home, and because she experienced this disability during marriage, the court was permitted to order John to pay spousal maintenance for an indefinite period.

END OF EXAM