

4)

1.

No. Based on the facts, the trial court did not err in appointed the Father as sole managing conservator. Father had standing to seek a modification of the custody order based on the fact that the circumstances of the parties affected by the original order have substantially and materially changed since the rendition of the order, and more than one year has passed (if within one year, Father would be required to show that the child is in immediate danger of his physical harm and/or emotional development). In seeking modification of a child custody order, the statutory test for the court to apply is "best interest of the child." In ascertaining what is in the best interest of the child, the court will determine such factors as: abuse towards the child, the child's physical health and emotional developments, acts or omissions by either party, allegations of child abuse or neglect, excuses and justifications for acts or omissions, their current home environment, and other factors relevant to the child's relationship with their parents. Here, the court seemed to give more credibility to and believe the Father and his witnesses that keeping sole managing conservatorship in the mother was not in the best interest of the child. There was ample evidence to show that the Mother placed the child in dangerous, abusive relationships, and that the Child was genuinely scared for altercations with his mother. The fact that the child was 11 years old and wanted to run away from home because of his mother's behavior will likely be considered to be justification from removing the child from the home. In Family Law, there is a presumption that appointing the parents joint managing conservators is in the best interest of the child. However, this presumption can be overcome by showing the best interest of the child and if such other factors are shown, such as the parent's ability to provide a stable environment, the ability of the parents to reach shared decisions, the distance between the conservators, etc. Here, arguably, the Father overcame that presumption by illustrating the Mother's repeated threats of child abuse and contentious behavior with those in the Child's immediate environment. Evidence that the police were called several times for child abuse also will likely weigh heavy with the court. This is a proper consideration that the court can consider when choosing to award custody of the child to a parent. Based on the evidence, it is likely that the Father being appointed Sole Managing Conservator would be found to be in the best interest of the child. The mother can still have possession of the child, and it does not cut off her ability to still be the Child's parent.

2.

(a). The trial court erred in ordering the Mother to pay \$750 a month in child support. The Family Code sets out guidelines for the payment of child support, which are presumed to be in the best interest of the child. When one child is involved, the guidelines say that the child support obligation should be 20% of the parent's monthly net resources. In this case, that would be \$500, which is 20% of Mother's monthly net resources of \$2500. The guidelines apply to the first \$7500 of the parent's monthly net resources, so the starting guideline amount cannot exceed \$1500. Although this is just a guideline, a court should not deviate from the guidelines unless the proven needs of the child warrant a higher amount (or the resources of the parents warrant a lower amount.) Here, the presumption is that \$500 (20% of Mother's monthly net resources) would be in the best interest of the child. The facts do not indicate that the Father proved that the needs of the child exceeded \$500 a month to justify a \$250 increase. The fault or culpability of the Mother should not be considered, as the child support obligation is not a penalty, but only an amount necessary to provide for the proven needs of the child. The easiest way to increase this amount is showing special needs of the child (disabilities, extra-curricular activities, private education, etc.) However, the facts here do not indicate that any of the special needs were proven, let alone mentioned in the trial court's finding of the amount of the child support obligation.

(b). The trial court erred in signing the child support order without issuing findings of fact. Whenever there is a deviation from the child support order, the judge has the duty to issue findings of facts justifying the deviation from the guidelines. This would be where the judge would explain the proven needs of the child and the reasons that a higher child support amount is justified. The guidelines in the Family Code are to be followed unless there is a clear justification for deviation. Here, the facts do not indicate any of the justifications. It is of no matter that the Mother did not request the findings of fact. Whenever there is a deviation from the child support guidelines, the judge has an obligation to make such findings.

END OF EXAM

4)

(1) The trial court did not err in awarding sole managing conservatorship to the Father because it is in the best interest of the child.

Under the Texas Family Code, a motion to modify a conservatorship arrangement may be made upon a showing of (1) changed circumstances, and (2) best interest of the child. Factors that the court will consider when determining whether the modification is in the child's best interest include: (1) whether a parent has used physical force on the child or the child's other parent; (2) the desires of the child; (3) whether contact with a parent harms the child's physical or emotional well-being; and (4) the financial resources of the parents to provide for the child; and (5) whether the parents make an effort to be amicable toward one another for the sake of the child's well being.

Here, it is unclear exactly what the "changed circumstances" would be to justify a modification. Assuming that the Father sought modification because the physical abuse allegations are the changed circumstances, the court will proceed to evaluate whether modification is in the child's best interest. It is also important to note that a conviction for family violence shifts the presumption and it is presumed not to be in the child's best interest to have the offending parent appointed as sole managing conservator. In this case, although Child has accused Mother of abuse, Mother does not appear to have been convicted of family violence, so the presumption will not automatically shift. Nonetheless, the allegations of family violence against the child indicate that it is not in his best interest to be with Mother. Father appears to have produced reliable and credible evidence coming from Child himself that Mother has been physically abusive with the Child. Other factors, such as the Child's love of his Mother and the stability that Mother provides in a "nice" home, should also be considered by the court. The child's desires are important, but not determinative, of the outcome. Also, Mother denies the allegations and states that Father is not on good terms with her, constantly threatening her with legal action, a factor that would weigh against the father obtaining sole management conservatorship. Ultimately, however, the child's physical and emotional well-being must be considered, and given the credible evidence of physical abuse, it was not error to award sole management conservatorship to Father because that is in accord with the child's best interest.

(2) The trial court erred in ordering Mother to pay \$750 per month in child support because it exceeds the statutory guidelines, and the court erred in signing the order without findings of fact because the court must indicate its fact findings on the order when it exceeds the statutory guidelines.

Under the Texas Family Code, the guidelines for child support are twenty percent of the obligor's net monthly resources for one child. If the court exceeds those guidelines, it must indicate why in its order, such as the special needs of the child justifying exceeding the guidelines. In this case, Mother's net monthly resources are \$2500, which would make twenty percent of that \$500. Thus, the court must indicate why it is exceeding the guidelines in its order, as it ordered Mother to pay \$750. Mother did not need to request these findings; they are mandated by the Family Code. The facts do not indicate any special needs of the Child that would justify exceeding the order. Therefore, the trial court erred in its award of child support and in failing to indicate findings of fact and conclusions of law in the order that exceeded the statutory guidelines.

END OF EXAM

4)

1) No, the trial court did not err in awarding sole conservatorship of Child to Father because it was in the Child's best interest and because Mother was abusing Child

The issue is what must be proven in order for a parent to obtain a modification of sole managing conservatorship. In Texas there must be a showing of a substantial change in circumstances in order to merit a modification of sole managing conservatorship. The change of conservatorship must be in the child's best interest and if the child is twelve years old the child's preference may be taken into consideration. Both parents are allowed to present evidence regarding any change of circumstances or lack there-of and why it may or may not be in the best interest of the child for a modification of sole managing conservatorship. It is always in the best interest of the child to remove the child from a home where abuse or violence exists. The parent must show by clear and convincing evidence that removal from the sole managing conservatorship's home is in the child's best interest.

In this situation, father has presented multiple sources of evidence which support his claim that child is suffering from abuse in the mother's home. First, the psychotherapist had seven therapy sessions with Child. In each of the session, child continually stated that he was being abused and wanted to escape from his home. This is a significant number of sessions, sufficient to prove that child was not exaggerating or lying. Second, the local police had several reports of alleged abuse. Third, the principal testified that mother's contacts with the school were often contentious, which is evidence that mother may have a violent or difficult temperment. Each of these forms of testimony and evidence served to create a rebuttable presumption that mother was abusing child and that it would be in child's best interests to remove child from mother.

After meeting his burden of proof, mother was required to rebut the evidence of abuse and show cause why child should not be removed from her sole managing conservatorship. She did not meet this burden. She did not present any evidence, outside of her own testimony, to prove that she was not abusing child or to prove that child was lying or fabricating. Instead, she claimed that Father was always trying to cause problems for her and threatening her with legal action. Her only evidence was her own testimony discussing activities and the child's pets, home life, etc. This was insufficient to rebut the evidence that father brought against her.

Because Mother did not meet her burden, the court was correct in awarding sole conservatorship of child to father because of the abuse and because the award was in the child's best interest. Additionally, child is nearly 12 years old in the situation and has clearly indicated he does not want to live with his mother and wants to escape the abuse, despite his love for her and protection of her.

2a) Yes, the trial court did err in ordering Mother to pay child support in the sum of \$750

The issue is whether a court is allowed to exceed the statutorily acceptable amount for child support. In Texas the statute requires that the nonmanaging conservator must pay child support for one child in the amount equal to 20% of his/her monthly net resources. Additional children increase the required percentage by five percent each child, and the net amount of income considered for child support calculation purposes is \$7,500/month. This statutorily acceptable amount can be increased or decreased at the court's discretion based on findings of fact. An increase or decrease can be based on a variety of factors such as child's special physical/education needs, or the parent's specific financial hardship circumstances.

In this case, the trial court found that mother's monthly net resources were \$2,500. The court awarded child support payments to the father in the amount of \$750 per month. This amount equals thirty percent of mother's monthly net resources, exceeding the statutorily acceptable amount by ten percent, or \$250. Mother has been required to pay the same amount as would be required by a parent with three children. This increase may have been acceptable if the child's needs were found to be greater than the acceptable amount would provide for, however, no facts in the question support this assumption. Therefore, the court erred by ordering Mother to pay child support in the amount of \$750/month.

2b) Yes, the trial court did err in signing the child support order without issuing findings of fact.

As discussed above, if the trial court deviates from the statutorily acceptable guidelines for child support, it must do so only upon a sufficient findings of fact, which must be produced by the court in support of its finding. The court is required to issue this with or without the oral or

written request of the obligated party.

In this situation, since the court issued a child support obligation in an amount exceeding the statutorily accepted amount by ten percent, it was required also to issue a findings of fact to support the increase. The findings of fact would have included the reasons why the amount was significantly increased. Despite the fact that Mother did not request this finding of fact either orally or in writing, the court was still required to provide this and as such, it was an error to not issue the findings of fact.

END OF EXAM