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The court, as the fact finder, has discretion to determine credibility of witnesses. A court of appeals gives the trial court broad discretion because the court of appeals is unable to see witnesses before it and is unable to assess credibility of each witness. In this case, both Tim and Joan testified and the court was able to view the demeanor of each party while testifying and assess each person's credibility.

Based on Tim's testimony that he was laid off in lieu of evidence that supports the fact that he resigned from his position in April of 2008, the court did not abuse its discretion in finding that Tim was intentionally underemployed and ordering him to pay child support based on his former earnings as a mortgage associate. The fact that Tim has been employed as a mortgage associate and had been paid more than minimum wage per hour indicates that he has higher skills and that he has the capability and the skills to find a job. His contradicted testimony regarding how he left his previous employment is strong evidence against his credibility regarding his employment and his testimony regarding other matters. The fact that his employer states in documentation that was submitted into evidence that Tim resigned from his employment in April of 2008 strongly supports evidence that he is intentionally underemployed. His employer has no reason to submit something to the court that is not true as he is not a party to the action before the court. The fact that the evidence shows that Tim resigned in April of 2008 immediately after the parties separated indicates that he may have resigned because he wanted to avoid making any payments to Joan for child support. He presented evidence that he has no income at all and that he spends his time performing concerts throughout the year for charity but has expenses of as much as \$2,000 per month for a car payment and other expenses. If he had no income at all and had been trying to find employment, he would not have such high expenses per month and would not spend his time singing for charity which only occasionally gave him modest payments. Additionally, he provided no documentation to support any claims regarding his income, his loss of employment, or his job search efforts. Given the facts presented to the court, the court did not abuse its discretion in finding that Tim intentionally was underemployed and ordering him to pay child support based on his former earnings.

The fact that Joan was able to produce some corroborating evidence such as the police report helps her case even if the report is vague regarding the reason for the arrest. Tim's testimony before the court that he was laid off is directly contradicted by records produced by his employer and hurt his credibility regarding other matters as well, including his testimony regarding physical abuse toward Joan. Joan's testimony is very detailed with respect to when the physical violence occurred and her description of the physical violence may have persuaded the court that she was telling the truth. Additionally, the court had the benefit of hearing from Tim's mother who is not an impartial witness due to her relationship to Tim and assess the mother's credibility. Additionally, the fact that the mother never saw physical abuse is not dispositive of whether Tim physically abused Joan as he could have well abused Joan during the other times while the mother did not live with them or was not at home. The mother also stated that she witnessed "verbal altercations" between them and that she intervened which indicates that they were probably escalating or were more than a small argument. The court, in order to make a family violence finding, has to establish by clear and convincing evidence that Tim committed family violence. Based on the fact that the court was a fact finder and judge of the credibility of witnesses and evidence, the court did not abuse its discretion in making a finding of family violence. Although it is presumptively in the child's best interest to appoint both parents as joint conservators of the child, the court may not do so when the court has made a finding of family violence. If a court makes a finding of family violence, the court must appoint the other parent or someone else a sole managing conservator and has to order that the parent who committed the family violence have limited supervised visits with the child. As such, after

making a proper finding of family violence against Tim, the court did not abuse its discretion in appointing Joan sole managing conservator.

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The court in family law cases is required to make decisions in the best interest of the child under an abuse of discretion standard. The court only abuses its discretion if it makes unreasonable and baseless decisions of fact and decisions of law not based on any legal authority or precedent. The abuse of discretion standard gives the court wide latitude in deciding who and how much child support, as well as conservatorship issues. In the case, the court did not abuse its discretion in determining that Tim was intentionally underemployed or in appointing Joan sole managing conservator because the decisions are based on facts given in the case as well as legal precedent.

1. Child Support- usually the party ordered to pay child support does so based on a percent of his or her net income. Income is broadly included to define all types of income from many sources. The Family Code requires that a party pay 20% for the first child and then increased by 5% per child up to 50% of the income with a cap at 50% or \$75,000. Tim has reported no income at all, and significant expenses. The court has properly determine that a party is intentionally underemployed and order them to pay child support at the salary that they were previously making based on a series of facts and circumstances including (1) earning potential, (2) attempts to locate a job, (3) educational history, (4) experience and expertise, (5) job market in the party's industry, (6) length of time unemployed, (7) how the party left the job (fired or quit), etc. Here, there is a sufficient factual base to determine that Tim is underemployed because he quit right after the party separated and has not worked in the past 2 years. He was a mortgage associate that made \$20/hour. Although the mortgage industry has been hurt and the number of jobs available has likely diminished, Texas was not impacted by the financial crisis like other states and he should not have difficulty finding work in the industry somewhere in Texas. Additionally, the job gave him experience in the finance industry and working with people so he had the skills necessary to find another job requiring similar skills. Tim testified that he has worked odd jobs but no permanent employment. His testimony is bias because he is a party to the suit and the court is the trier of fact and therefore judges the credibility of the witnesses. It is reasonable for it to believe his testimony not completely credible or at least incomplete on his attempts. He hasn't introduced documents to support his testimony of job search efforts. This is also required for unemployment, so if he had that income he should have been able to at least produce some documentation. He also can't show that he was laid off instead of "resigning" as described by his previous employer. Although Joan cannot produce testimony in the contrary that his is actually underemployed (other than that provided by his former employer), Tim has the burden to show that he is not underemployed and he has not met that burden. The court also properly based the amount on this previous earning at \$20 because it is not a lot of money and will not be unduly burdensome to pay that amount or find a job that pays a similar amount. Because the court ruling is based on an abuse of discretion standard, an appellate court cannot substitute its judgment on the facts for that of the lower court and is unlikely to overturn the ruling.

2. Family Violence- Again the court makes decisions in family law cases on conservatorship under an abuse of discretion standard as described above and must act in the best interest of the child. Policy creates a presumption in favor of both parties have equal rights and possession with regard to their children, but the court can modify the conservatorship based on the facts and circumstances of the case. Conservatorship determines the rights and duties of the parties with regard to the child re: health care decisions, income of the children, and allows one party (the sole managing conservator) to determine the geographic residency of the child. In determining conservatorship, the court must consider what is in the best interest of the child and can consider facts including (1) whether the parties can work together to support the children and their relationship with the other party, (2) what the children want (if the child is over 12), (3) geographic distances, (4) the relationship of the parties to each other (5) the age of the child. If the parties are able to work together to make decisions for the child, it makes sense that both parents should be joint conservators. However, where the relationship of the parties is so warped that they cannot work together to make decisions regarding

things like the child's health care, the court is right to award one party priority in decision-making rights. Further, if the child's wellbeing is in jeopardy by allowing the parties joint conservatorship, the court is right to award sole managing.

In this case, the court did not abuse its discretion in giving the mother SMC. There is significant evidence that Tim physically abuse the mother. The abuse happened while the mother was pregnant and when the child was very young, indicating that the child may be in jeopardy because the father has little regard for the child's life. The court can consider that Joan is an interested party as she is the mother of the child. Also, Tim was the one who filed for divorce and although there was a police report for one of the incidents it was very vague. Further, Tim's mother testified that she never saw Tim physically abuse Joan, but it is clear that they got in "verbal altercations" such that she had to intervene. Abuse is something that is very hard to prove, so the court must rely on its interpretation of the credibility of the parties in light of the best interest of the child.

The court did not abuse its discretion because there was sufficient facts to support a finding of family violence. Further, all of the parties that testified were interested, even Tim's mother who likely wants to help her son get what he wants. However, the child is very young (under 5 years) and therefore it is not an abuse of discretion for the court to consider the evidence and want to protect the children by awarding SMC. The parties can eventually modify conservatorship and child support when the situation changes. An appellate court will be unable to substitute its judgment regarding the testimony of the parties and therefore is unlikely to overrule the district court. The ruling will stand or appeal.

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1. The trial court did not abuse its discretion in finding that tim was intentionally unemployed and ordering Tim to pay child support based upon his former earnings as a mortgage associate.

Here, the issue is whether the court abused its discretion regarding the finding that Tim was intentionally unemployed and ordering Tim to pay child support based upon his former earnings as a mortgage associate. Under the Texas family code, a parent has a duty to support their children. A parent not appointed as a managing conservator must pay child support. The Texas family code gives child support guidelines and imposes 20% child support on the first \$7,500 of the person's net income. Net income means earnings, rents, royalties, and any other income derived from any source. If a party is intentionally unemployed, the court can impose child support based on his potential earning capacity.

In this case, Tim was making money as a mortgage associate before his divorce. His boss testified that Tim resigned from his position, Tim was not fired. Tim testified that he has been searching for work but that he has only found odd jobs and has been unsuccessful in obtaining employment. The court has the discretion to find, from a totality of the circumstances and facts presented, that the party is intentionally unemployed. From the facts presented, it looks like Tim is unemployed intentionally so that he would not have to pay child support, especially because Tim lied about being laid off, according to the reports from Tim's former employer. Tim's mother helps him out which is very convenient for his claim of not being able to find employment. In fact, Tim could go back to work at the same job that he had before and be making \$20 per hour since he had not been fired and has assumably been a successful mortgage associate. Because it was within the court's discretion to find that Tim is intentionally unemployed based on all of the facts presented, it was not an abuse of discretion to impose child support based on what Tim's earning potential is. The court knows that Tim had been making \$20 per hour before and could easily go back to the job of mortgage associate making \$20 per hour so it was not an abuse of discretion to use his job as a mortgage associate to gauge Tim's earning potential and impose child support based on \$20 per hour as a mortgage associate.

Therefore, the court did not abuse its discretion by finding that Tim was intentionally unemployed by purposely not finding permanent work and having quit his job and, because of that finding, did not abuse its discretion in using Tim's mortgage associate position to determine Tim's earning potential even though he is unemployed currently.

2. The trial court did not abuse its discretion in making a family violence finding against Tim and awarding Joan sole managing conservator.

Here, the issue is whether the court abused its discretion in finding that Tim had engaged in family violence against Joan and, because of it, in appointing Joan as sole managing conservator. Under the Texas family code, there is a presumption that the appointment of both parents as joint managing conservators is in the best interests of the child. However, this presumption can be rebutted by a finding of family violence by one of the parents against the other parent, against the child, or against other family members within the two years preceding the conservatorship hearing. The court has discretion to make a finding of family violence against one party by taking all of the facts and circumstances into consideration to determine whether one party committed family violence. There must be a clear abuse of discretion in order to overturn the finding of a judge in their discretion.

In this case, the judge likely could have found that Tim committed family violence based on Joan's testimony. Joan testified to three acts of family violence by Tim against her, some after the child was born and some before. Joan also produced a copy of the police report that corroborated her testimony

about Tim striking Joan in the jaw with his fist after Joan would not let him hold the child. Even though Tim's mother testified that she had lived with the couple for a year and never saw Tim physically abuse Joan, she had witnessed several verbal altercations. Because of Tim's mother's presumed bias in favor of her son and her testifying to what would help him most, the judge could give little weight to her testimony that she had never seen family violence. Tim testified that he had never been physically abusive to Joan but he also has reason to lie about the violence so that he could get joint managing rights. The judge could find that Tim's testimony was unreliable because he had lied also about being fired from his job when he had actually resigned. Joan presented evidence of violence through her testimony and did produce a police report to corroborate it, which, even though vague about the events and the reason for the arrest, still corroborates that the police were called one time to respond to an incident involving family violence. Therefore, the judge, taking all of the facts into account and weighing everyone's testimony, could have found that Tim had committed acts of family violence against Joan and there are no facts that show there was a clear abuse of discretion on the judge's part in making the finding. The judge could have found Joan's testimony the most credible and found that what she said was true.

Therefore, the court did not abuse its discretion in finding that Tim had committed acts of family violence against Joan and in appointing Joan as sole managing conservator because of it since it does not look like there was a clear abuse of discretion by the judge in making that finding based on the fact.

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