

Question 10 – February 2013 – Selected Answer 1

1. Yes, the court in Bexar County has personal jurisdiction over Jerry because at the time Mary was conceived, Jerry was living in San Antonio. The issue is whether the Bexar County court has personal jurisdiction over Jerry because he now lives in New York. In order to preside over a paternity suit involving the purported father, the court must have personal jurisdiction over the purported father. This can be accomplished in a variety of ways, one of which is if the child in question was born in Texas and at the time of conception or the birth, the father resided in Texas for a period of time. Under these facts, it appears that Mary was conceived and born in San Antonio a few months after Jerry finished his deployment at the military base there. Jerry admitted to having intercourse with Mary's mother while stationed in Texas. This sufficiently proves Jerry's connection with Texas with regard to the paternity suit and gives the court enough basis to assert personal jurisdiction over him. He purposefully availed himself to living in the state during his deployment when Mary was conceived and that is where Mary was born. Thus, the court has personal jurisdiction over Jerry.

2. Yes, Mary's grandparents have standing to bring a paternity suit because they meet all of the standing requirements of the Family Code. The issue is whether Mary's grandparents have standing to bring the paternity suit as Mary's guardians against Jerry. To have standing to bring suit, a grandparent or grandparents must show three things: 1) that at least one purported parent of the child is still alive, 2) that they are the biological parents of one of the child's parents (i.e., biological grandparents), and 3) that the other parent of the child is either dead, incarcerated, or unable to serve as the child's parent. Here, Mary's grandparents meet all three requirements: 1) Jerry, Mary's purported father, is still alive and living in New York, 2) they are the biological parents of Mary's mother, and 3) Mary's mother is dead because she was killed in a car accident last year.

Thus, Mary's grandparents have standing to bring a paternity suit against Jerry.

3. Yes, the court can order Jerry to submit to genetic testing. He could possibly be held in contempt of court and involuntarily presumed to be the father if he refuses. The issue is whether the court can order Jerry to submit to genetic testing over his refusal to submit and his disbelief in the reliability of genetic testing. In a paternity suit, paternity can be established in one of several ways. The father is presumed to be the father if either: the child was born during the marriage of the mother and father or within 300 days after the marriage ended and the father is named on the birth certificate, or if the father lived with the child for the first 2 years of the child's life and represented to others that he was the child. Paternity can also be established by genetic testing if the court so orders. Here, the court has the power to force Jerry to submit to genetic testing if none of the other methods for establishing paternity apply. Here, Jerry and Mary's mother were never married, and Jerry was not named on Mary's birth certificate. Jerry also never lived with Mary during the first 2 years of her life because he did not know she existed and obviously never held himself out to others that he was the father. Thus, the court is left to force Jerry to submit to genetic testing to establish paternity. If he refuses to undergo testing for whatever reason, the court can involuntarily adjudicate Jerry to be Mary's father and enter an order of such finding. He could also be sanctioned by the court for such refusal to comply.

4. Jerry could rebut any genetic testing evidence by presenting evidence of another male who could also be Mary's father. The issue is what Jerry can do if he wants to rebut any genetic testing evidence presented by Mary's grandparents in the paternity suit. In order to rebut any genetic testing evidence, the movant must show that the reliability of the results are insufficient to prove paternity. The results must be 99% positive on a scale of 100:1. Thus, if the results are any less than this measure, Jerry can

effectively rebut the genetic testing results. Jerry can also present evidence of another male with whom Mary's mother had intercourse with around the time of Mary's purported conception to rebut the genetic testing evidence. If Jerry were to find such individual, that individual could be compelled to submit to genetic testing, or establish paternity in one of the ways discussed above. If successful, this would relieve Jerry of any finding that he was Mary's father.

5. If paternity were established, Jerry would have a duty to support Mary because she has severe brain damage and is physically and mentally incapacitated. The issue is whether Mary's grandparents, as legal guardians, can compel Jerry to pay child support on Mary's behalf because of her disability, even though she has reached the age of majority. The family court is permitted to order a spouse to pay 4 years of retroactive child support from the time the suit was filed if the spouse has either had no knowledge of the child support obligation or knew about the obligation and intentionally avoided such obligation. It is presumed that 4 years of retroactive child support is in the child's best interest, absent other findings to the contrary. Where a parent or guardian has custody of a disabled child and is unable to work outside the home to earn gainful employment because of the severity of the child's disability, that parent or guardian can seek child support from the child's other parent. Under the statutory child support guidelines, for one child, an obligor parent must pay up to 20% of the first \$7500 of monthly net resources earned. The court must typically follow the statutory child support guidelines in determining the amount of child support owed, but may depart from such guidelines only if the order states specific findings of the reasons for departure and the percentage of net resources used, as well as the parent's monthly net resources. Once the child reaches majority, finishes high school, or marries, such obligation is discharged. However, if the child is disabled, the court may order the obligor parent to continue paying such support until the disability ceases to exist. Here, the court could order Jerry to pay 4 years of retroactive child support for Mary's benefit because he was not around when Mary was still under the age of majority. Even though Jerry did not know about Mary or even Mary's mother's pregnancy, the court can still find that it is in Mary's best interest to order that such support be paid. However, once Mary reached the age of majority, such obligation past the 4 years of retroactive support will be extinguished. On the facts, it appears that Mary has severe brain damage and is physically and mentally incapacitated. If such disability continues, the court has the discretion to order Jerry to pay support payments to Mary's grandparents for Mary's benefit to care for her because of her disability. As her legal guardians, they must do whatever is in her best interest as the ward.

Question 10 – February 2013 – Selected Answer 2

1. The Bexar County court has personal jurisdiction over Jerry. The issue is whether the court has personal jurisdiction over Jerry when he is residing in New York. Under the Family Code, a court has personal jurisdiction over an individual if constitutional requisites are satisfied. Here, the act giving rise to the cause of action occurred in San Antonio, Bexar County, Texas, as Jerry admits he had intercourse with Mary's mother while stationed in Texas. Therefore, there is specific jurisdiction over Jerry. Assuming Jerry was properly served (personally served with citation and notice of the suit by a certified process server or by certified or registered mail, return receipt requested), the Court will have personal jurisdiction over Jerry.

2. Mary's grandparents have standing to bring a paternity suit against Jerry. In order to have standing to bring a paternity suit, the person bringing the suit must be the child, parent's child, managing conservator, or guardian of the child. Here, Mary's grandparents were appointed as Mary's legal guardians upon Mary's mother's death. Therefore, Mary's grandparents have standing to bring this suit.

3. The issue is whether a Court can order someone to submit to genetic testing. Under the Family Code, upon institution of a paternity suit, an alleged father may be ordered to submit to genetic testing. Therefore, Jerry can be ordered to submit to the testing. Further, the Family Code provides that an alleged father refusing to submit to genetic testing can be held in contempt. An even more crucial consequence of refusing to submit to genetic testing is a default judgment rendering the alleged father to be deemed the father of the child the subject of the suit. Therefore, Jerry will face these consequences should he refuse to submit to the testing.

4. Under the Code, the only two ways in which Jerry may rebut any genetic testing evidence is 1) genetic testing that refutes the initial test results, and 2) a Written Denial of Paternity coupled with a Written Acknowledgement of Paternity by another man. These are the only options Jerry has available to rebut the genetic testing evidence presented by Mary's grandparents.

5. If paternity is established, Jerry can be ordered to pay child support, including retroactive child support. The issue is whether Jerry can be obligated to pay child support for Mary now that she is an adult. Under the family code child support guidelines, the general rule regarding support of one child is that 20% of an obligor's net income is appropriate support. Further, support shall generally last until the child turns 18 or graduates from high school, whichever is later. However, there is an exception to both of these general rules that when it can be shown that a child has special needs, more than 20% per child can be ordered and can extend to a longer period of time. Here, Mary was born with severe brain damage and is physically and mentally incapacitated. These facts support the special needs exception allowing for support to exceed 20% and exceed the duration of support. Further, with regard to retroactive child support, it is presumed that four years retroactive support is reasonable. This can be rebutted by a showing that the obligor tried to avoid the obligation. Here, there is no evidence that Jerry tried to avoid any such obligation, as he asserts that he was never told about the pregnancy or about Mary's birth. Therefore, it is likely that a court will award 4 years retroactive support.

Question 10 – February 2013 – Selected Answer 3

1. The Bexar County Court has personal jurisdiction over Jerry under the Texas long-arm statute. Under the long-arm statute, to have personal jurisdiction over a nonresident, (1) the nonresident must do some act or consummate some transaction in Texas, (2) the suit must arise out of the act or transaction, and (3) exercise of jurisdiction cannot offend traditional notions of fairplay and substantial justice. Here, Jerry did an act in Texas, the suit arises from this act, and exercise of jurisdiction does not offend traditional notions of fair play and substantial justice because public policy favors adjudicating paternity of children. Further, there is no statute of limitations on a paternity suit if the child has no presumed father. Since Mary has no presumed father, suit is proper. The Court thus has personal jurisdiction over Jerry.

2. Yes, Mary's grandparents have standing to bring a paternity suit. As the guardians of Mary's person and estate, they have the authority to bring suit and defend suit on Mary's behalf. For this reason, as Mary's guardians, they have standing to bring a paternity suit on Mary's behalf.

3. Yes, the court may order that Jerry submit to genetic testing. The Texas Family Code specifically provides for genetic testing in a paternity suit. The consequence of refusing to submit to genetic testing are (1) holding the refusing party in contempt or (2) an adjudication that the refusing party is the child's

father. Because of the high repercussions for refusing to submit to genetic testing, it is Jerry's best interests to allow the test to go forward.

4. Limited evidence can rebut a genetic finding of paternity. Under the Family Code, the only evidence that can rebut a genetic test is (1) another genetic test showing that the presumed father is not the biological father or that another man is the biological father or (2) a written denial of paternity from the presumed father and a written acknowledgment of paternity from someone else. Thus, Jerry would have to present either a contradictory genetic test, or a written acknowledgement of paternity from someone else.

5. Jerry would have a continued duty to provide support for Mary for as long as she remains disabled and may be obligated to pay retroactive support. Under the Family Code, when a child becomes severely disabled before reaching the age when the support obligation should end (18 or graduation from high school, whichever is later), the support obligation continues until the disability ends. Support as established by the guidelines in the Family Code is presumed to be in the child's best interests. In this instance, guidelines support would amount to 20% of Jerry's monthly net resources. A court can also deviate upward from the guidelines amount based on the proven needs of the child. Since Mary is disabled, she could have proven needs that elevate her support level above the guidelines amount. The court would have to make specific findings of fact in its support order if it did decide to deviate upward based on Mary's proven needs. Jerry could also be held liable for retroactive child support. Four years of retroactive support is presumed to be in the child's best interests. The four-year presumption can be rebutted and more than four years of retroactive support can be ordered if the man knew he was the father and purposely sought to avoid the support obligation. Here, Jerry did not know he was Mary's father and did not seek to avoid his obligation, so the four year presumption will not be rebutted. In sum, Jerry will be obligated to pay future support for as long as Mary remains disabled, based either on guidelines support or an upward deviation, and may be obligated to pay retroactive support for the last four years.