

## Question 2 – February 2014 – Selected Answer 1

1. Yes, the court did err in awarding \$10,000 per month in child support payments. The issue is whether a court can award a specific amount of child support (here, 50% of the obligor's income) without making any findings regarding such payments. Under the family code, the child support guidelines are presumed to be in the best interests of the child. For three children, that amount is 30% of the obligor's net monthly income. For this particular case, that would total \$6000 per month. However, the court is allowed to deviate from the guidelines if the needs of the children are proved to be more than what the guidelines provide. For a court to do so, it must make the following findings: the net resources of both parents, state why the guideline amount is unjust, state the percentage that they are going to apply to the obligor's income, and give specific reasons for doing so. Here, we are told that the court made no specific findings in stating its reasoning for awarding the \$10,000 or 50% of Judy's income.

Thus, the court erred in its findings. The court may have reasons for deviating from the guidelines as we are told that all of the children attend private school and that one of the children has a heart defect that requires daily medication and frequent physician visits. However, since the court does not make any specific findings noting these reasons, the court erred.

2. Frank has several remedies available to him for the delinquent child support payments. They are as follows: mandatory withholding (garnishment) of wages, money judgment against Judy, contempt, lien on non-exempt property, and license revocation a mandatory withholding can automatically attach unless good cause is shown for not needing to do so. At first, Judy was paying the child support, thus there was likely no reason to garnish her wages. However, when she stopped paying Frank has the right to notify her employer. The maximum that can be garnished is 50%. This can be done by sending the copy of the child support order to Judy's employer instructing them to make payments directly to the governmental entity controlling the payments to the obligee. A money judgment can attach as soon as the payments are late and will contain a 6% interest. Here, we are told that Judy and Frank entered into an agreed payment schedule, but that Judy has failed to adhere to it. Thus, Frank can have a judgment filed against Judy and obtain interest on the late payments. Contempt is also available to Frank. This will cause Judy to pay a fine and potentially place her in jail for up to six months. However, this is not a great remedy because while the obligor is in jail they certainly cannot make money to make the child support payments. While threatening to place someone in jail might make payments more forthcoming, this option is not one that is preferred.

Frank can also obtain a lien on all the non-exempt personal property of Judy. Being that she is a successful lawyer, this might allow Frank to attach to quite a few items and recover the late payments in an timely fashion.

The option that might do the most damage to Judy is to revoke her state issued licenses. This includes driver's license as well as her state bar license. Being that she is a highly successful lawyer threatening to take away her ability to practice law in the state might make her willing to pay the child support. This remedy is available when obligors are 3 months in arrears. Here, the facts indicate that Judy is four months behind.

There are many remedies available to Frank, but the most useful are likely the mandatory withholding and the revocation of Judy's bar license.

## Question 2 – February 2014 – Selected Answer 2

1. The Court erred in ordering Judy to pay \$10,000 per month in child support. At issue are the statutory guidelines concerning child support awards and proper bases for deviating from those guidelines. Child support is determined according to the best interests of the child. The statutory guidelines set forth in the Texas Family Code are presumed to be in the best interests of the child. Where there are three children, the guidelines provide for monthly payments of 30% of the obligor's monthly net resources. Payments are capped at \$8,550 per month. The court may deviate from these guidelines, but in doing so it must issue findings of fact supporting the deviation. Special needs of a child are the strongest grounds for such a divergence, although mere "lifestyle" considerations are an improper basis. The obligor's access to the child and ability to pay may also be considered in deciding whether a deviation is warranted. Here, Judy's "net disposable income" is \$20,000 per month. There are three children of the marriage. Assuming this equates with the statute's provision for a determination based on "net resources," the guidelines would provide for a monthly support obligation of \$6,000 -- substantially more than the \$10,000 the Court awarded. Additionally, the \$10,000 award surpasses the Family Code's cap of \$8,550 per month. Finally, the Court issued no specific findings stating its reasoning for deviating from the guidelines. All three of these reasons support a finding that the trial court erred. It should be noted that there are possible grounds for a deviation: all three children are in private school, which is likely a legitimate basis for deviating and is not simply a "lifestyle" factor. More saliently, the youngest child has a heart defect requiring daily medication and frequent doctor visits. Finally, Frank is sole managing conservator, meaning he may be bearing more of the costs of raising the children, depending on Judy's access rights. These considerations could be proper bases for deviating from the guidelines. However, as noted above, the Court needed to issue specific findings articulating its reasons for the departure from the guidelines and, in any event, should not have exceeded the statutory cap of \$8,550.

2. There is one ordinary means for collecting child support obligations as they accrue and four intrastate (within Texas) mechanisms for collecting arrearages. The issue concerns the methods by which child support obligations can be enforced. The usual means of enforcing child support obligations is the monthly withholding of the obligor's take-home pay, up to 50% of that amount. Where the party is in arrears, four different mechanisms are available:

1. Suspension of professional licenses on 60 days' notice if the obligor is more than 3 months behind;
2. Attachment of child support liens on non-homestead, non-exempt personal property of the obligor (including the obligor's sole- and joint-management community property if s/he is remarried);
3. Levying the obligor's bank and freezing his/her assets, which the bank will then be required to furnish unless the obligor successfully disputes the action; and
4. Contempt of court, enforceable by up to 6 months imprisonment and/or up to a \$500 fine, or up to 10 years community supervision. Here, Judy's take-home pay in the amount the Court orders (following the necessary revision explained in response to question 1) may be withheld, provided it is less than 50% (which it should be if her current income holds). Additionally, regarding her arrearages, all of the above options are available. Judy is a lawyer, meaning she practices under a professional license subject to suspension. She is also 4 months behind. Upon 60 days' notice and concomitant due process, her professional license may thus be suspended (although this may impair the end goal of securing support payments by depriving her of income). Second, child support liens may be attached on her property and on sole- and joint-management community property if she is remarried, although the facts do not indicate that she is. Third, her bank could be levied and her assets frozen. Finally, she could be jailed for up to 6 months and/or fined (but again, these sanctions may be counterproductive to the goal of timely payment). She could also be placed on community supervision. Finally, note that Judy could not escape her obligations by moving. If the obligor moves out of state, the award may be registered under the UCCJEA and enforced in the new state as if it had been issued by court there. Arrearages may be reduced to final judgment and enforced by full faith and credit.

## Question 2 – February 2014 – Selected Answer 3

1. The Court did err in ordering Judy to pay \$10,000 per month in child support. The issue is whether the court may make an award beyond the guidelines of the Texas Family Code. Under the Texas

Family Code, the Guidelines for child support are presumed in the best interest of the child. The guidelines start at 20% for one child, 25% for two children and 30% for three children and so on. Here Judy's net disposable income is \$20,000 per month. Under the guidelines with three children the max amount she could be required to pay is \$6,000. The Court awarded \$10,000 which is well above the \$6,000 guidelines. However, a court is not limited to the guidelines as suggested by the name, they are a guide. Under the Texas Family Code, upon a showing that the guidelines are not in the best interest of the child and therefore not adequate the court may award up to \$8,550. Anything awarded beyond \$8,550 must be for good reason to support the child's lifestyle and reasonable needs. If an award is made outside of the guidelines, the court must make a findings of fact which includes (1) the amount awarded, (2) how it differs from the guidelines and (3) reasons for the difference. Here, the children attend private school and one of the children has a medical condition that requires additional costs. The court could definitely consider these factors. However, the court must make that finding of fact for an award outside the \$6,000 guidelines and it did not do that here. Here, the Court merely ordered Judy to pay an amount with no explanation. While the Court may award outside the guidelines, the court must make a finding of fact and demonstrate that the award is in the best interest of the child and necessary to meet the reasonable needs of the children.

2. Frank has numerous options under the Texas law to collect Judy's delinquent child support payments. The issue is how Frank may collect delinquent child support. Under the Texas Family Code, a parent who fails to pay child support is delinquent after payment is three months late. Upon delinquency the other parent may (1) notify employer and have withheld from check, (2) obtain a judgment against the delinquent parent in the court with continuing exclusive jurisdiction, (3) file a lien with 6% interest, (4) petition for suspension of licenses issued by the state and a delinquent parent cannot enter into contracts with the state after 30 days of delinquency, and (5) seek to have the delinquent parent jailed for contempt. All of these options appear available to Frank. Frank may notify Judy's law firm and send the Order of child support to activate an automatic withdrawal from her pay. Frank may also file in the court with exclusive continuing jurisdiction (the Court that made the order) for a judgment. The original child support order is a lien and non-payment triggers an automatic interest of 6% which Frank may collect from perfecting by filing. Frank may also notify the attorney general and the attorney general can suspend any of Judy's state issued licenses, permits, etc. This might apply to Judy's bar license depending on whether the Texas government is considered to regulate it. Lastly, Frank may seek to have Judy jailed under contempt by notifying the Court of her non-payment and failure to comply with a court order. Therefore, Frank has many options in seeking to enforce Judy's delinquent child support payments.