

Question 2 – February 2015 – Selected Answer 1

1. The sexual assault may constitute a valid ground to terminate Willie's parental rights to Joe.

The issue is whether the sexual assault constitutes a valid ground to terminate Willie's parental rights to Joe.

Texas Courts determine termination by "the best interests" of the child and clear and convincing evidence of one of the enumerated provisions for termination. The Court looks to the totality of the circumstances. One of the provisions included sexual assault causing the pregnancy of the child. Further, there is a sexual assault of a family member within the past two years. A Court may look to the party with the burden of proof (movant alleging sexual assault) of clear and convincing evidence when the parties got back together after the alleged sexual assault. However, Courts do not want to indirectly motivate abusive relationships where a party may not want to bring a suit because she believes being back with the abusive spouse did nothing. Courts will also look to convictions and police reports for proof.

Here, there is no police report and Irene got back together with Willie. She may show evidence of their separation for two months and other reasons for why they got back together. She would not be able to bring sexual assault within two years because Joe is now three and the enumerated provision requires an assault within the past two years. However, she may show other evidence she has for the sexual assault causing the birth of Joe. She may give evidence as to why she did not bring a police report. A Court may look to the fact that she got back together with Joe as to whether or not the assault occurred. It may be hard for Irene to meet the standard of proof because she has no report and got back together with him. Although, the Court will look at her testimony and other factors in determining whether termination would be in Joe's best interests. The Court would not want to indirectly motivate abusive relationships by using her getting back together with him as the basis for not determining termination.

The sexual assault may be a valid ground for Irene to use to terminate Willie's parental rights.

2. Irene might prevail in her petition on other grounds such as abandonment, not finding the other parent without court ordered parental rights, leaving the child with a third party for six months with intent to not return, not supporting the child within a year, and the less likely physical abuse within the past two years and substance abuse.

The issue is whether Irene has other grounds to prevail in her petition to terminate Willie's parental rights to Joe.

A Court may terminate parental rights by clear and convincing evidence of it being against the child's "best interests" and conduct falling within one of the enumerated provisions. The enumerated provisions include abandonment of the child, not being able to find the presumed father, leaving the child with a third party for six months with intent to not return, substance abuse, physical assault within the past two years since the filing, and not supporting the child for a year.

Here, there is evidence of abandonment. Willie left a note with his son at his mother's house to "take good care of Joe." He did not return and it's been a year since. For the statutory provision over leaving the child with a third party for six months with the intent not to return, he had left the child with his mom as soon as he left Irene's. He could have assumed the mother would continue to take care of him. It has been a year since he left, so he hasn't supported the child. The facts do not show reason for Irene or anyone to know where he is. There is an alleged fact that he drank and sexually assaulted Irene, but if she was alleging his alcoholism, that was beyond two years ago. There is no court order giving him parental rights too as to not finding him. Further, she could argue abuse within two years with the "heated argument" but it is unlikely that it would meet the burden of proof. He hasn't been there to financially support Joe within a year either.

There are various other grounds that Irene may prevail in her petition to terminate Willie's parental rights to Joe.

Question 2 – February 2015 – Selected Answer 2

1. Willie's sexual assault of Irene is probably not a valid ground on which to terminate the parent child relationship between Willie and Joe, although it may constitute family violence that endangers Joe. At issue is

what grounds must be proven before a parent's rights can be terminated.

The Texas Family Code enumerates several acts that, when coupled with termination being in the child's best interest, will act to terminate the parental rights of a parent. Among these acts are the use of controlled substances, abandoning the child, failing to support the child for one year or more, being sent to prison for 2 years or more, or endangering the child. There is a strong presumption in favor of not terminating parental rights, and courts will only terminate parental rights as a last resort. Sexual assault by an unknown individual that leads to pregnancy in the sexual assault victim may qualify as grounds for parental termination of the assailant's rights due to the violent and nonconsensual nature of conception. It is against public policy to permit a male to sexually assault a female, impregnate her, then claim parental rights to that child. However, the sexual assault Irene complains of, while no less despicable than a random attack, is of a slightly different nature than the sexual assault described above and in the Family Code. Sexual assault specifically of one parent on the other parent is not listed amongst the Family Code's enumerated list of reasons to terminate a parent-child relationship when the parents elect to reconcile and raise the child together after the sexual assault. Here, Willie and Irene cohabited and raised Joe for 3 years before Irene brought her suit to terminate Joe's rights, so she may be estopped from alleging sexual assault leading to conception as her ground for termination. However, the assault could qualify as family violence and a family violence finding may be sufficient to find that Joe is endangered and that Willie's parental rights should therefore be terminated.

Family violence is defined as any violence in a relationship between parties who are married, engaged, or in a dating relationship. It also encompasses violence toward the significant other of an ex-spouse or ex-partner. Here, Willie's sexual assault of Irene, someone with whom he had formerly shared a dating relationship may constitute family violence toward Irene. It may be problematic, however, that the couple had ceased having a dating relationship for "sometime" before Willie's assault. Additionally, Irene never reported the assault to the police, so there is no record of the assault having taken place beyond Irene's word. If Willie's sexual assault was deemed family violence and such family violence was established to such an extent that it was an endangering environment for Joe, Irene may have success terminating Willie's parental rights on this ground, despite sexual assault not being specifically enumerated in the statute.

If Irene is successful in proving a statutory basis for termination, she also must still establish that termination is in Joe's best interest. A court will probably decline to find that termination is in Joe's best interest simply because his conception occurred as a result of a sexual assault, especially in light of the fact that Irene and Joe reconciled shortly after Joe was conceived and lived together again for over 3 years. In Texas, to establish that termination is in the best interest of the child, courts look at a variety of factors known as the Holley factors. Courts consider the age of the child, the physical needs of the child, the emotional or psychological needs of the child, the abilities of each parent, the consequences of termination, the support of each parent, the existence of family violence, if any, and the stability of the home in which the child lives. Applying these factors to Willie and Joe, a court could determine that it is in Joe's best interest to terminate Willie's parental rights. Joe is young, only 3 years old, and is incapable of caring for himself. Therefore, he needs a parent to provide constant care for him and provide for his necessities. Willie has failed to do this over the past year due to his abandonment of Joe. As a result of this abandonment, Willie has shown no interest in or ability to care for Joe's physical, emotional, or psychological needs. Additionally, there is no evidence has offered any support-financially or otherwise-to Joe or Irene. Lastly, should the court find family violence as discussed above, this factor will weigh in favor of having Joe's rights terminated. While not dispositive, it will be relevant.

In conclusion, while the Texas Family Code does permit the assertion of sexual assault as a grounds to terminate the parent-child relationship, the facts of Willie and Irene's relationship and alleged assault are slightly different than those situations that are provided for in the Family Code and therefore Irene may have trouble succeeding on alleging this statutory ground for termination.

2. Irene may allege several other grounds that are likely to be more successful than an allegation of sexual assault to terminate Willie's parental rights with respect to Joe. Among these grounds are Willie's abandonment of Joe and Willie's failure to support Joe for one year or more. At issue is what grounds must be proven to terminate a parent's rights.

In Texas, the Texas Family Code provides a list of enumerated grounds that must be found before termination or parental rights can be found. In addition to the requirement that a statutory ground be proven, the petitioning parent must demonstrate that the termination is in the child's best interest. As discussed above, the grounds set forth in the Family Code for termination include abandonment of the child, failure to support the child for one year or more, conviction and sentence to prison for two years or

more, the use of controlled substances, or acts/omissions that severely endanger the child. The two grounds most likely to be successful for Irene are that Willie has abandoned Joe and that he has failed to support Joe for at least one year. Willie took Joe on the night of his third birthday and left him with his mother. The next morning Willie was gone and has not been heard from since. His absence from Joe's life for a year constitutes abandonment of the child. Additionally, there is no evidence that Willie has attempted to provide any support for Joe in the year that he has been gone. Willie has not attempted to contact Irene or Joe and has not attempted to financially support Joe in anyway. Irene should have no trouble establishing that Willie has either abandoned Joe or that Willie has failed to support Joe for at least one year, meeting her statutory burden under the Family Code.

In addition to having to prove a statutory reason for termination, Irene must also show that termination is in the child's best interest. Courts consider a number of factors when determining what is in the child's best interest, including the age of the child, physical health of the child, mental and emotional wellbeing of the child, the stability of the home where the child lives, the abilities of the parent seeking to have another's rights terminated, and the existence, if any, of family violence. Each of these factors weighs in favor of Willie's rights being terminated. Joe, as a young child, needs constant support and assistance to foster physical and emotional development. Willie has provided nothing to support Joe in these ways. Additionally, Willie has made no attempts to support Joe, to provide him with a stable home, necessities, or guidance. Lastly, evidence that Willie indeed sexually assaulted Irene and evidence of any other family violence will work against Willie maintaining parental rights as such a finding may indicate that Joe is in danger when he is with Willie.

Irene should have more success alleging termination on the grounds of abandonment or failure to support for one year, combined with showing termination is in Joe's best interest, to terminate Willie's parental rights with respect to Joe.