

Question 3 – February 2016 – Selected Answer 1

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1.

Yes, Jack had standing to adopt Tim. Under Texas law, a step-parent can petition to adopt a child when one parent's rights have been terminated and either the parent whose rights have not been terminated consents, and the step-parent is married to the non-terminated parent and had care and custody of the child for six months, or the step-parent (or ex-step-parent) has had care, custody and control of the child within the last year preceeding filing for adoption.

Here, Tim's biological father had his parental rights terminated. And, because Tim was granted joint managing conservatorship of Tim upon his divorce from Debbie, he has had continuing and regular care, possession, and access to Tim within the past year preceding the petition for adoption. Therefore, Jack has standing to seek adoption.

2.

No, the trial court did not err in granting the adoption over Debbie's objection. As stated above, under Texas law there are two instances in which a step-parent or ex-step-parent can seek adoption, and only one of those instances requires consent of the parent whose rights have not been terminated. That does not apply in the facts presented here.

Further, under Texas law, the grounds on which a court will award adoption are based on the best interest of the child. The court will consider a variety of factors under concerning the ability of the petitioning parent to provide for the physical and emotional needs of the child. Here, Debbie's objection to adoption based on Jack's employment in the military is not a valid ground to deny adoption. In fact, by awarding Jack joint managing conservatorship, the court has already deemed that his involvement in Tim's life is in the best interest of the child.

3.

No, the trial court did not err in granting the adoption without hearing live testimony from Tim. Under Texas law, a child who is 12 or older may express his desires about which parent he would like to have possessory access on divorce, and whether or not he would like to be adopted by a particular person. The requirement is simply that the child's expression be in writing or made in open court. Here, Tim's letter to Jack can be used as evidence of his expression of desire and consent to be adopted by Jack.

4.

No, the trial court did not err in granting the adoption even though Jack did not appear at the hearing. Public policy prohibits the impediment of exercising legal rights to members of the military who are serving our country overseas. As long as the other requirements for adoption have been met, as they appear to have been here, and there is a representative present to assert his rights (here, through his wife Shelly, who joined the action), the fact that Jack was not present for this hearing will not invalidate the court's ruling.

1. Jack likely did have standing to adopt Tim. The issue is whether a former step-parent may adopt a child. First, a general rule of adoption is that there can only be one set of parents. Here, Tim's father's rights had been terminated previously, so Jack could adopt Tim without violating that rule. However, Shelly cannot also adopt Tim while if Debbie's parental rights have not been terminated, which it seems they were not here. Still, Jack likely does have standing to adopt. The rule in Texas for a former step-parent to adopt a child is that the former step parent has standing to adopt a child if he has had actual care and control of the child for one year. As joint managing conservators, it is not exactly clear which parent had more time with Tim. However, as JMCs both parents would have had some periods of actual possession and care of the child. The rule does not say that it must be exclusive possession and care of the child. Therefore, because Jack has been one of Tim's joint managing conservators, he should have standing to adopt Tim.

2. The trial court did not err in granting the adoption of Tim over Debbie's objection. The primary consideration in adoption cases is the best interest of the child. Adopting Tim would not necessarily change Debbie's standing as a joint managing conservator. The fact that Jack is a member of the armed forces does not disqualify him as a father, either. Jack should not be penalized for being deployed in the military. While I am not aware of any ruling or law directly on point, in Texas there are rules regarding child custody and adoption that essentially prevent a parent from being penalized for being in the military. Therefore, given Texas's other rules about this it would seem incongruous and unfair that Jack's military service should negatively affect his right to be Tim's father.

3. The trial court did not err in granting the adoption without hearing live testimony from Tim that he consented to the adoption. The issue is whether Tim must testify live to be adopted. When a child is 12 years or older, they have input into whether someone may adopt them. There is not a requirement that they testify live to give that opinion or consent though. In a SAPCR situation where parent's wish to change the custody of a child and a 12 year old is choosing who to live with, the child generally needs to give that choice in person, but this is not a child custody situation, and therefore Tim need not give the consent in person. His written letter of consent should suffice to show that he consents to the adoption. Therefore, the court did not err.

4. The trial court did not err in granting the adoption even though Jack did not appear at the hearing. The issue is whether the parent requesting adoption must be present at the adoption hearing. Generally, the parent should be present at the adoption, however Shelly was joined in the petition which Jack filed and her appearance to represent Jack's interests is sufficient given that he was deployed in military service. Texas does not hold being deployed for military service against parents and therefore the court did not err in granting the adoption.