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Discuss whether the following rulings by the trial court would be proper:

(1) Granting Tom's request for retroactive reduction of unpaid child support back to the date he was fired?

An order granting Tom's request for retroactive reduction of child support would be improper. A party who has a child support obligation is required to satisfy the obligation. If unable to make child support payments the proper request is a modification of child support by Tom upon a showing that he is unable to make his child support payments, assuming the proper child support guidelines were followed in the initial order establishing child support.

In addition, the court can conclude here that Tom is voluntarily unemployed because it was his failure to show up for work that resulted in his termination from his job. In the alternate, the court can conclude that Tom is underemployed by working for his brother if it is substantially less profitable than his prior job.

The payments he is receiving as cash payments from his brother are income and his failure to pay his child support obligation from such funds does not give Tom the right to ask for a modification of the child support order.

(2) Granting Jill's request for a judgment for attorney's fees and ordering the amount be withheld from Tom's wages as additional child support?

Jill's request for unpaid child support and attorneys fees should be granted. A child support obligor who fails to make payments of child support for more than a year can have a money judgment ordered against them for unpaid child support, and attorney's fees and costs, including 6% interest. Jill brought suit to get a judgment on unpaid child support and is entitled to an order granting her a money judgment enforceable against Tom in addition to the costs of bringing suit, attorneys fees, plus 6% interest.

Jill can also request the court withhold Tom's income for the unpaid amount. A child support order can be enforced against the obligor by withholding income if the obligor is more than 6 months delinquent on child support payments and there has been no attempted agreements between the parties to satisfy the outstanding obligation. Jill's request that unpaid child support be withheld can include the child support payment still outstanding plus 20% additional withholding to satisfy arrearages or whatever amount would satisfy the outstanding balance in two years, whichever is less.

(3) Denying Jill's request for a finding that Tom is in contempt of court?

The court was improper in denying Jill's request to find Tom in contempt. Contempt is a punishment used to enforce child support obligations when obligor's are a year overdue in child support obligations. Contempt is punishable by six months in county jail and/or a \$500 fine. Tom is delinquent in child support for over a year, therefore a contempt order would have been proper.

(4) Allowing Tom seven years to pay the child support arrears?

Child support arrears should be satisfied within two years of obtaining a money judgment against the obligor. Therefore the court was improper in granting Tom seven years to pay the child support arrears.

A child support obligation terminates upon the child reaching majority, entering the armed forces, or removing the incapacity of minority. Child support can be enforced against an obligor in a number of ways. Here Jill has applied for a money judgment and to withhold income against Tom to enforce the child support and collect arrearages. Arrearages can be included in an income withholding order as said above, if the arrearages increase does not exceed a 20%

increase in the income withhold or any amount increase that will satisfy the arrearages in 2 years whichever is less.

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1. Granting Tom's request for a retroactive reduction on unpaid child support back to the date he was fired is **not proper** and the court should not grant it.

At issue is whether a court may award an obligor a retroactive reduction in past due child support payments back to the date that the individual was terminated. Under general principles of Texas family law, a court is not entitled to retroactively reduce the amount of unpaid child support back to the date Tom the obligor was terminated from his or her employment. This is for two reasons. First, as is the case here, the child support obligations to be paid by a spouse are usually controlled by both a prior divorce decree and by guidelines created by statute that are presumptively in the best interests of the child they are meant to support. Thus, by unilaterally granting a retroactive reduction in the amount of child support owed, a court would be reducing an amount owed presumptively for the child's best interests because the obligor unilaterally requests it. This is not proper.

The second reason the retroactive reduction in the amount of child support owed is not proper is that past due child support automatically is reduced to judgment on the basis of the existing child support order. As a result, for the past twelve months that Tom has not paid child support, that 12,000 amount has already been 'reduced to judgment' and it would be improper for a court to overturn it on a unilateral motion by a party.

Absent some kind of agreement between the parties or, more likely, a suit for modification of the order where Tom asks for a lowered amount, reducing an amount **already** owed is not proper.

2. Granting Jill's request for attorney fees and ordering the amount be withheld from Tom's wages as additional child support.

The issue is whether the movant in a suit to enforce a child support lawsuit is entitled to attorney's fees and to having the additional arrearage amount withheld from Tom's paycheck.

Texas law generally does allow a party who is forced to seek enforcement of a preexisting child support obligation additional abilities to seek attorneys fees. Additionally, Texas law permits a court to order up to an additional 20% (assuming that the overall withholding is not more than 50% of disposable income) or an amount that would eliminate the arrearages in two years or less, whichever is less, from the obligor's paycheck to cover the arrearages. Of course, the fact that Tom works for his brother and pays cash may add a problematic wrinkle to the issue, but does not necessitate a different conclusion.

As a result, it would not be improper for the court to grant Jill's request for reasonable attorney fees for having to seek judicial enforcement of a preexisting child support obligation, nor would it be improper for the court to mandatorily withhold an additional amount on top of the prior judgment of 1000 per month to eliminate the arrearages in a shorter period of time.

3. Denying Jill's request for a finding that Tom is in contempt of court would also not be improper (although a contempt order would be proper as well).

The issue is whether a court may hold a party in contempt for violating a child support order and, if it can do so, whether it **must**.

Under the Texas Family Code, a court does have the power to enforce a preexisting child

support order by holding the obligor in contempt of court and can even impose a sentence of up to 6 months of confinement. However, it is not the only way to enforce a child support order and is not a requirement. This is for two reasons. First, in a contempt proceeding, the inability to pay the current amount of child support owed is a defense to the action. Therefore, if the judge credits that Tom's salary really will only cover food, car, insurance, and gas, it may credit Tom's defense of an inability to pay and may decide not to hold Tom in contempt of Court. It may decide that another route, such as suspension of a license or the additional withholding noted above, may be a better way to encourage Tom to pay the obligations for the child support that he owes.

4. The Family Code gives judges discretion when deciding how to handle enforcement of a child support arrangement, and therefore allowing seven years to repay the child support arrears, while unusual, is not *per se* improper.

The issue is whether the Family Code mandates a timeline by which any child support arrears may be due. In general, as noted above, the law attempts to have arrearages erased in as short of a time as possible. This is why Texas law allows for up to 20% additional withholding from an obligor's paycheck (or an amount that would pay off arrearages in **two years or less**). Therefore, while Texas law does favor early payment of arrearages (since these, by definition are past due obligation amounts are amounts that are presumptively in the child's best interest and for his or her support), no hard rule is imposed on a payment plan. Assuming that the Court finds that the plan itself is feasible and that no earlier plan would be feasible (or would be discarded), it would not be technically an abuse of discretion for a court to approve this type of a plan, even though it would be unusually long for these types of orders.