

Question 9 – July 2018 – Selected Answer 1

(A) Immediately upon Father's death, Mother and Grandparents still retain their rights as joint managing conservators (the right to educational information about the child, the duty to support the child in possession). However, the exclusive right to establish the residence can only be obtained upon modification of the Temporary Orders. Modification of Temporary Orders regarding conservatorship and the right to designate the primary residence of the child is appropriate when the child's present environment will significantly impair the child's physical health or emotional development, the child has expressed in the judge's chambers whom he wishes to be appointed the conservator with the right to establish the residence of the child and it is in the best interest of the child, or when the conservator with the right to designate the primary residence of the child and it is in the best interest of the child. Furthermore, a material and substantial change in circumstances is sufficient to warrant the change of a conservator order, and may warrant the modification of temporary orders.

Here, Mother or Grandparents could move to modify the Temporary Orders to provide either of them with the right to establish the residence of Child because the Father has died. The child's present environment will likely significantly impair the child's health or emotional development if he is not placed into a home with either his Mother or Grandparents, who are his closest family and current joint managing conservators. Furthermore, the father's death is a material and substantial change in circumstances could warrant the modification of the Temporary Orders.

(B) In the current suit affecting parent child relationship (SAPCR), One of the grandparents could seek sole managing conservatorship with the exclusive right to establish the primary residence of Child, leaving Mother as a possessory conservator with limited access to the child.

Grandparents, or other relatives within the third degree of consanguinity have standing to seek managing conservatorship, if both parents are dead, the parents consent, or the grandparents provide satisfactory proof that the child's current environment will significantly impair the physical health or emotional development of the child. There is a presumption that it is in the best interest of the child's parent be appointed sole managing conservator unless a ground for involuntary termination of the parental rights exist (such as use of a controlled substance that endangers the child, and the parent failed to complete a rehabilitation program), or the child's parent has relinquished actual possession and control of the child for more than a year (90 days of which occurred as the suit was filed), or the child's physical health or emotional development would be significantly impaired. However, only one of the grand parents could be appointed sole managing conservator, because joint managing conservators is only appoint if the appointees are the child's parents or the appointees were appointed joint managing conservators in another jurisdiction.

Here, One of the grandparents could seek sole managing conservatorship by arguing the parental presumption in favor of Mother should not apply because the child's physical health and emotional development could be harmed by Mother's drug use. Grandparents could also argue that a ground for involuntary termination of Mother's parental rights exists based on Mother's prior drug use. However, such ground will be likely unsuccessful because Mother has never used drugs in the presence of the child, thus not endangering the child, and Mother completed a

rehabilitation program. Grandparents could also argue that sole managing conservatorship would be in the best interest of the child.

(C) Grandparents are likely to overcome an objection by Mother to their standing to assert their SAPCR for sole managing conservatorship.

Grandparents, or other relatives within the third degree of consanguinity have standing to seek managing conservatorship, if both parents are dead, the parents consent, or the grandparents provide satisfactory proof that the child's current environment will significantly impair the physical health or emotional development of the child.

Grandparents can argue that because Mother and Father did not object to the intervention of Grandparents to be named non-parent conservators of Child, Mother implicitly consented to their standing. Grand parents could also attempt to satisfy standing by showing there is a genuine issue of material fact regarding whether the child's current environemnt (if in mother's possession), would significantly impair the physiscal health or emotional development of child. Grandparents could argue that there is a threat that the potential drug use of Mother could endanger Child.

Question 9 – July 2018 – Selected Answer 2

(A)

Immediately upon Father's death, Mother and Grandparents remain joint managing conservators, but do not retain many additional rights.

An order regarding conservatorship--particularly a temporary order--should be revised if the best interests of the child require it and there has been a material and substantial change.

Here, Father's death is a material and substantial change. Futhermore, the relevant orders are merely temporary orders. As a result, immediately upon Father's death, Mother and Grandparents will retain their status as joint managing conservators, but the court will need to promptly revise the temporary orders in light of Father's death, particularly because Father was the joint managaing conservator that had the exclusive right to establish the residence of the child. The designation of "joint managing conservators" does not carry with it many rights regarding actual control and possession of the child, so the court will need to enter new temporary orders.

(B)

Grandparents can seek to file a suit affecting the parent-child relationship--this may require filing a new suit, or severing the existing conservatorship proceeding from any previous divorce proceeding and moving foward with that proceeding. Grandparents could also seek to terminate Mother's parental rights.

Grandparents do have standing to bring a suit affecting the parent-child relationship under certain circumstances. Grandparents have standing if the parents are deceased or consent and

also if the grandparents can show the child's present conditions significantly impair the child's physical health and emotional development.

Here, Grandparents can either seek to file a new suit affecting the parent-child relationship, asserting that Father's death, leaving only the mother who has been fighting drug addiction as a living parent, make the child's living conditions prone to significantly impair the child's physical health and emotional development. Alternatively, since Grandparents have already intervened--without objection from Child's parents--in the conservatorship proceeding, their standing to bring such a suit may already be established. However, Grandparents will need to overcome the "parental presumption"--i.e., presumption that appointing a parent as conservator with the right to control the child's primary residence is in the best interests of the child.

Finally, Grandparents could seek to terminate Mother's parental rights. To terminate parental rights, the court must find by clear and convincing evidence that (1) termination is in the best interests of the child, and (2) one of the grounds for termination is satisfied. The grounds include drug addiction and a subsequent refusal to participate in rehabilitation efforts as well as endangering the child by using drug in the presence of the child.

Here, Grandparents will have a difficult time establishing one of the grounds for termination because Mother has participated in a drug rehabilitation program and she has never used drugs in the presence of the child. Nonetheless, filing such a termination suit is an option.

(C)

Grandparents are likely to overcome an objection by Mother to their standing.

As described above, Grandparents have standing if the parents are deceased or consent and also if the grandparents can show the child's present conditions significantly impair the child's physical health and emotional development.

Here, Mother's history of drug addiction gives Grandparents a viable claim that, without Grandparents' intervention, the child is at risk of significant impairment of Child's physical health and emotional development. Furthermore, Mother did already consent to Grandparents' intervention in the previous conservatorship proceeding, so Mother may have waived her ability to object to their intervention now.