

Question 12 – February 2019 – Selected Answer 1

A) Child support obligations have ended for Olivia and Scott. Obligations will end in May 2018 for Beth.

In Texas, the spouse who retains the possessory managing conservatorship over children from a prior marriage is entitled to various things in support of this relationship. The spouse is entitled to choose how the children are educated, where the children live, has approval rights over invasive surgery, and is also entitled to receive child support payments from the other spouse.

Child support will be paid for a child until her 18th birthday or until she graduates from high school, whichever is later. A child support order will operate on the first \$8,550 of the payor's income, and a statutory presumption applies based on the number of children that the order is covering. For one child the amount is 20% of monthly income, 25% for two children, and so on up to a presumption of 40% for 5 or more children. At no point can child support exceed 50% of the payor's income. Wage withholding is mandatory in a child support order. The payments can be increased based on the proven needs of the children, usually if the payor has income in excess of \$8,550 per month or if the children have special needs.

In the case of the divorce between Mother and Father, their divorce decree parallels the statutory rules in Texas that child support must be paid until the child is 18 or until they graduate from high school, whichever is later. The obligation to pay child support for Olivia ended in August 2016 when she turned 18 because she had previously graduated from high school. Father will continue to pay child support for Beth until she graduates high school in May 2019, even though she has already turned 18.

Scott is a special case, as he became disabled when he was under 18. In case of a disabled child that will require care after the age of 18, the child support order can be amended to allow child support indefinitely, even after the child reaches adulthood. As long as the disability occurs before the child turns 18, as it did in Scott's case, Mother can petition the court for a changed award due to a change in circumstances. If the disability occurs after the child turns 18, child support is no longer available. However, we have no evidence that Mother has petitioned for a change in the child support order. Scott obtained his GED (high school diploma equivalent) in April 2018, so Father's payments would have stopped for him then.

B) Child support payments are not discharged at death. Father's estate remains liable for any past due payments and the remaining payments for Beth.

Child support obligations have a preferential status under Texas law. These obligations may not be discharged in bankruptcy, nor do they end with the death of the payor. Additionally, the only property that is exempt from a child support obligation is a payor's homestead. The obligation can even access his personal property in order to get payment. Other remedies include wage withholding from the payor's employment, holding the payor in contempt of court (subjecting him to jail time or fines), and suspending the payor's licenses (for driving, hunting, etc.).

The parties provided for this possibility in the divorce decree, and Father should have taken out a life insurance policy that would cover these payments. Father's estate will be liable for the remaining payments that are owed for Beth for December 2018 through when she graduates from high school in May 2019. Father's estate will also be liable for any past due payments that had not been made prior to his death.

If Mother had sought an updated child support order to cover care for their disabled son Scott, Father's estate would continue to owe those child support payments for the length of that child support order, which has the potential to be for the rest of Scott's life, depending on his disability. However, we have no evidence that an amended order was sought, so payments for Scott ended when he graduated from high school in April 2018.

Question 12 – February 2019 – Selected Answer 2

A) The Father is obligated to pay child support for Olivia on the date she turns 18, when the court requires Father to continue to support Scott due to his disability, and at latest when Beth graduates high school

A father is required to pay child support in accordance with a child support order under the Texas Family Code. Here, the Father is ordered to pay the Mother Child support pursuant to an order unless certain events occurred. Child support is measured by a percentage of the obligor's monthly net resources, with net resources capped at \$8,550 per month. Net resources include active income, passive income, and any other source of income. The percentage of the obligor's net resources that is used depends on the number of children he is obligated towards. If the obligor pays support for 1 child, then 20% of his net resources are used. If he has 2 children then 25% of his net resources are used. If he has 3 children then 30% of his net resources are used. The percentage of his net resources used are capped at 40%. Applying these facts, Father may have 30% of his net resources used to pay child support obligations. The court may take into consideration children from other marriages when calculating the Father's child support obligations. The following rules are applied to Olivia, Scott, and Beth:

Olivia- Child support may be terminated in relation to Olivia when she turns the age of majority. The facts indicate that Olivia turned 18 in August, 2016. Father's obligation to pay child support for Olivia terminates on this date for which his obligations are reduced from \$1,350 to \$1125.

Scott- A court may require a parent to continue to pay child support even after the child has reached the age of majority if the child has a disability and the other parent is taking care of the disabled child. The facts show that Scott was involved in a debilitating accident that left him disabled. A court may take this into consideration in order to extend child support payments with respect to Scott.

Beth- A court may order child support until the child reaches the age of majority (18) or until the child has graduated from high school, whichever is later. Here, the facts show that Beth has reached the age of majority in January 2019 but has not yet graduated high school until May 2019. The court may maintain that the Father pay child support until Beth graduates high school

in May 2019. At this time, Father may have his child support obligations reduced to \$900 per month if he was still alive.

B) Child Support Payments by Father are accelerated on his death and his estate would pay for remaining obligations

Child support does not terminate upon an obligor's death. Instead, child support payments are accelerated and the full amount is discounted to present value and paid from the obligor's estate. When the Father died in December 2018, his remaining obligations for child support will likely be applied to pay for support of Scott and Beth. His obligations toward Olivia had already terminated in 2015. Pursuant to the child support order, the Father's life insurance policy may be applied to the accelerated child support payments as well as anything in his estate in order to satisfy any deficiency.

The estate may still be liable for arrearages, which are support payments that are past due. Child support obligations may be maintained as liens against the estate of the obligor. A child support order may be modified if 3 years after elapsed and there is a material and substantial change in conditions and can be modified to the extent of either 20% or \$100. Child support modifications are left to the discretion of the judge and a jury cannot be ordered to decide the amount of child support.