

## Question 8 – July 2019 – Selected Answer 1

(A)

The divorce petition should be filed in Randall County. At issue is where is the proper venue for a divorce petition when the respondent has lived in Randall County since 2015 and the petitioner has lived in Castro County since February 2019.

Generally, a divorce petition can be filed in Texas if a party has resided in Texas for 6 months and in the county in which suit has been filed for the previous 90 days. There are exceptions to this rule for active duty military. Here, Henry has resided in Randall County since at least 2015. This satisfies the 6 month, 90 day requirement. Therefore, suit for divorce may be properly brought in Randall County.

Whitney on the other hand has only resided in Castro County for a short time and it appears to be on a temporary basis. It is not clear if she also has a place of residence in Randall County. Therefore, Randall County appears to be the appropriate location for this divorce.

In addition to the divorce petition, a suit affecting the child parent child relationship (SAPCR) must be filed. Any divorce that involves marital children must be accompanied by a SAPCR.

(B)

The court cannot properly name Henry and Whitney as joint managing conservators (JMC) of Cindy. At issue is whether a court may properly name parents as JMC when one of the parents has been committed family violence against the other parent in the preceding two years.

Generally, appointment of the parents as JMC is presumed to be in the best interest of the child. However, in the case of family violence, that presumption is overcome. Under the Texas Family Code, a court is prohibited from granting JMC to a parent who has been convicted of family violence in the previous two years. Furthermore, the court may consider family violence outside of that time frame and determine that the appointment of JMC is not in the best interest of the child.

Additionally, the court may only grant the person convicted of the family violence access to the child if the court determines that access is in the child's best interest and they can craft an order that looks out for the safety of the child and the other parent.

Here, Henry was convicted of family violence for conduct on December 1, 2018, within the two year window. Furthermore, Henry has been subjected to protective orders and he has violated those order. Because of the proximity of this family violence and Henry's flagrant violation of the protective order, the court cannot properly name Henry JMC and may properly find that Henry's access to the child would not be in the child's best interest at this time

(C)

At issue is what factors are appropriate for the Court to consider in awarding child support.

Under the Texas Family Code (TFC), child support following the TFC guidelines is presumed to be in the best interest of the child. For a single child family, the guidelines provide that 20% of the obligor parent's net resources of up to \$8,550/month is in the child's best interest.

However, the court may deviate from these guidelines. The court may consider the needs of the child, the relative possession and access of each parent to the child, and the financial situation of each parent. If, after considering these things, the court decides to deviate from the child support guidelines, the court must make specific fact findings as to (1) why it is deviating and (2) the actual percentage of child support being ordered from the obligor's net resources.

Here, the guideline support provides that Henry should pay \$1200/month (20% of \$6,000). However, the court may consider that Whitney only earns \$1,000/month and that living expenses and child care costs exceed her earnings. The court may also consider that Henry will likely have very little access to the child and that Whitney will be providing most of the care to the child. Finally, the court will consider that Henry is earning substantially more than Whitney and is more able to provide financial resources. Therefore, the court can likely find that child support in excess of the guidelines would be appropriate and in the best interest of the child.

### **Question 8 – July 2019 – Selected Answer 2**

A)

The divorce petition should be filed in either the Husband or Wife's county of residence. It is required that any individual seeking divorce, that intends to file suit in a Texas county, must have lived in Texas for at least 6 months prior to the suit, and must have resided in the county where suit is brought for at least 90 days before filing.

The divorce court should also require that the H and W file a Suit Affecting the Parent Child Relationship. Whitney currently lives in Castro County, Texas with Cindy. It is unclear when the divorce suit was filed, but if Whitney had been living in Castro for 3 months, or 90 days preceding the suit, venue would be proper in Castro county. If not, the suit may be filed in Randall County, Texas, where Henry still presumably resides, because he has been living there well over 90 days.

B)

A court may not properly name Henry and Whitney joint managing conservators (JMC). There is a presumption that naming parent's JMCs is in the best interest of the child. However, such presumption can be rebutted by evidence that it would not be in the child's best interest to make both parent's JMC. Moreover, a court shall not make two parents JMCs when there is a history or pattern of family violence against a spouse or child in the family. Here, Henry has repeatedly attacked Whitney while in the presence of Cindy. Moreover, Whitney has filed a protective order already, which Henry has also violated. She reported the attack, got a protective order, and still Henry threatened to harm Whitney thereafter. There is clear and convincing evidence that a history and pattern of family violence has been occurring throughout the parent's relationship. Moreover, Henry has presented no evidence to rebut the claims that he has acted in a violent manner towards Whitney. In sum, this evidence supports a finding that appoint the parent's as JMCs of Cindy would not be in the best interests of the child and would be invalid.

Aside from the family violence, the factors that a court considers in appointing JMCs or not is whether the parents can encourage the parent-child relationship of the other, the financial conditions of the parties, the stability of each home, the ability of the parents to make joint decisions, etc. Here, none of these factors weigh in favor of appointing the parent's as JMCs. Not considering the family violence and violation of the protective order by Henry, based on these factors, a court would not find it in the best interests of Cindy to appoint Henry and Whitney as JMCs.

C)

The factors that a court should consider in awarding child support are as follows: the financial condition of each party and their ability to pay, specifically the ability of the obligated party to pay the support, the amount of access the parent obligated to pay the support has to the child, any special needs of the child, and in some cases, whether a parent is seeking to avoid the payment of child support by remaining under-employed or intentionally unemployed. The Texas Family Code sets forth Statutory Guidelines in regard to the amount of child support that a supporting parent

should pay. These Guidelines are presumed to be in the best interests of the child. For 1 child, the statutory guidelines amount to 20% of the parent's net resources, up to \$8,550.

Here, the court should consider the financial abilities of both parties. Henry makes \$6,000 take-home pay and does not retain custody of Cindy. Whitney takes home \$1,000/month, pays \$750 in rent and \$500 in childcare costs. At this point, Whitney cannot afford to support Cindy and herself with her current take-home pay. The court will consider this in determining any child support obligation on the part of Henry. Further, the court will likely consider any special needs that Cindy has and whether her proven needs are properly met. However, a court may not award any child support obligation against another party beyond the proven needs of the child. Lastly, the court may consider whether Henry will have any access to Cindy in the future. Due to the family violence, there is a possibility that Henry could be denied access or only have very supervised visits with Cindy in the future. Further, if the court shows that any grounds exist for involuntary termination of Henry's parental rights, it may not require Henry to pay any child support. In sum, the court should follow the statutory guidelines and may only deviate from such guidelines if it states its findings and reasons for doing so and it is based on the foregoing factors. The main consideration should always be what is in the child's best interest.