

## Question MEE 5 – July 2024 – Selected Answer 1

**1. No, the facts are not legally sufficient to authorize the trial court to consider whether to modify the existing legal custody order.** The issue is whether the circumstances constitute a substantial change giving rise to a modification of the custody order. In determining the custody of the child, the court has broad discretion. However, the court must do what is in the best interests of the child. The wishes of children above the age of 12 are generally given substantial weight.

Generally, in order for a court to modify a custody order, there must be a substantial change in circumstances from when the order was entered. Moreover, those circumstances usually must be unanticipated at the time of the order. Further, absent more, the cohabitation of a parent's partner is not by itself grounds to modify the custody order, particularly when the parent was seeing that person at the time of divorce. Finally, courts generally will not disturb a custody order within mere months of entering it.

Here, the circumstances are not sufficiently substantially changed to justify modifying the child custody order. When the court made the finding that Harvey was entitled to sole custody, it did so based on the findings of a child-custody evaluator. That evaluator found that the daughter blamed her mother for the divorce and wanted to live with her father. In addition, the divorce was precipitated by Harvey's affair with Patrice. As a result, at the time the custody order was entered, it was not unforeseeable that Patrice might move in with Harvey.

Moreover, there are not sufficient facts to indicate that the current status quo is that different from the time the order was entered. The daughter has stated that she is still angry that her parents got divorced. She also stated that she misses her mom and wouldn't mind seeing her more. However, she did not state that she wants to live with Wanda, and the fact that she is still angry indicates that she might still be angry with Wanda. Additionally, while the daughter hasn't offered a glowing endorsement of Patrice ("Patrice is fine"), she also has not offered evidence that Patrice's presence has had a detrimental effect on her. Moreover, her father has indicated that there has been no change in the daughter's behavior since Patrice moved in, and that the daughter and Patrice get along well. Finally, Wanda's petition came after only two months of the custody order.

In light of these circumstances, there has not been a substantial change in the circumstances sufficient to justify considering modifying the existing custody order. Therefore, the facts are not legally sufficient to authorize the trial court to consider modifying the child support order.

**2. No, the trial court should not modify the existing custody order to grant Harvey and Wanda joint custody of their daughter.** The issue is whether joint custody would be in the best interests of the daughter. In determining the custody of

the child, the court has broad discretion. However, the court must do what is in the best interests of the child. The wishes of children above the age of 12 are generally given substantial weight. However, when considering whether to award joint custody, the court must consider a number of factors, including (1) the impact of joint custody on the child, (2) the parents' feelings toward one another, (3) the parents' ability to share joint custody, and (4) the parents' willingness to share joint custody. A court should not grant joint custody where the parents are unwilling or unable to share custody without acrimony.

Here, the facts are not legally sufficient to support a finding that the trial court should modify the existing order to give Harvey and Wanda joint custody. First, Wanda and Harvey do not appear to like one another. Harvey and Wanda complained so bitterly about one another's parenting that the trial court found it necessary to appoint a neutral evaluator to determine who should get custody. Based on those facts, it does not appear that Harvey and Wanda want to share custody. Moreover, Harvey and Wanda are not *capable* of sharing custody. They both told the evaluator that they were unwilling to share custody. That fact alone indicates that they probably are not capable of sharing custody. In addition, it does not appear that sharing custody would be in the best interest of the daughter. If the parents do not get along, then causing them to come into contact frequently would likely only add fuel to the proverbial fire and cause more friction for them and their daughter.

Additionally, the daughter did not express a desire for joint custody. She mentioned that she wants to see her mom more, but she did not explicitly ask that her mom be granted joint custody. Given that the daughter is 13, that fact should carry substantial weight. Finally, the child custody order was only entered two months ago. It is not in the daughter's best interest for the court to continually modify custody between her parents. Doing so would likely leave her unsettled.

Therefore, based on these facts, the court should not modify the existing order to give Harvey and Wanda joint custody of their daughter.

### **Question MEE 5 – July 2024 – Selected Answer 2**

1. The facts are not legal sufficient to authorize the trial court to consider modifying the court order because there are not facts that indicate that circumstances substantial differ from when the court entered the previous order.

Court may modify a court order if circumstances substantial differ from when the court was entered. The court has great discretion in considering whether to grant a modification.

Here, Wanda only presents that Harvey is in a non-marital cohabitation with Patrice. The daughter while mad at both her parents did not say that she wanted to live with her mother only that she wanted to see her more. However, Wanda already has liberal visitation. Not only is daughter okay with Patrice, but also Harvey testified that daughter's behavior has not changed and that Patrice and his daughter get along.

Thus, the court is not legally sufficient to authorize the trial to consider modifying the existing custody order because there are not facts that indicate that circumstances substantially differ from when the court entered the previous order.

2. The trial court should not modify the existing custody order to grant Harvey and Wanda joint physical and legal custody of their daughter because neither requested joint custody and still remain bitter towards each other.

The Court should award joint physical and legal custody when the court is certain that parents would be able to work together. Where parents refuse to work together even for the benefit of their child, the Court should choose the parent based on number of factors in the best interest of the child with the court's discretion. However, with an order already in place, the court should leave the current order in place if neither parent agrees.

Here, in the previous order, the court ordered a neutral child-custody evaluator to investigate who ultimately recommended that Harvey have sole physical and legal custody. Neither parent is requesting joint custody and the parents are still bitter and acrimonious.

Thus, The trial court should not modify the existing custody order to grant Harvey and Wanda joint physical and legal custody of their daughter because neither requested joint custody and still remain bitter towards each other.

### **Question MEE 5 – July 2024 – Selected Answer 3**

**Modification of the custody order.** Whether the facts are legally sufficient to authorize the trial court to consider whether to modify the existing custody order depends on whether there has been a material change in the circumstances that substantially affects the child's well-being. The standard by which courts assess decisions related to child custody is always the best interest of the child. When courts make custody orders, they retain continuing and exclusive jurisdiction over the custody orders, which are modifiable upon a showing of a change in the circumstances that is material and substantial enough to affect the child's well-being.

such that a change is necessitated. Courts often consider the length of time that a child custody order has been in place and, absent special circumstances like harm, abuse, or neglect, often allow a child custody order to stay in place for six months to a year before attempting to make a change. This time is often provided in the interest of stability for the child in the home.

With the child's best interest as the guiding standard for child custody determinations, courts will also consider a number of factors: the parents' wishes, the child's wishes (depending on the age of the child--often not a factor for children under 8 but may be considered for children over 12-14), the child's relationships with not only the parents but also siblings and other third parties involved, the child's adjustment to their life, the mental and physical health of parties involved, and, finally who is the primary caregiver. When an analysis of the factors does not bring forth a clear decision, courts will often place custody with the primary caregiver. These factors are relevant for a parent's request to modify a custody order, as substantial or material changes affecting these areas may weigh toward a modification of the custody order.

Here, many of the factors do not reveal a substantial change. Both parents wish for the child's sole custody and show devotion to the child and responsibilities of parenting. Additionally, both parents show devotion to the child and show no indication of problems with mental health or physical health. The parents remain acrimonious, which is often considered as a reason not to award joint custody. The facts indicate that the child has good relationships with both of her parents even with typical feelings of frustration over her parents' divorce. The child indicated her wish to stay with her father, and as a 13-year-old child, the court can weigh this factor. Her wish has not changed so materially and substantially such that she wished to solely be with her mother; instead she just desires more time with her mother. While relationships with others may be considered by the court, the mother's contention that the presence of Patrice and the exposure to nonmarital cohabitation be grounds for the change of the custody order is not enough to show that the circumstances have changed so materially as to affect the child's well-being such that it is in her best interest to modify the order.

The child additionally has had little time to adjust to her new life and find stability in the sole custody of her father. In that time, the father states that there has been no change to her behavior. Additionally, for the last two months, her father has been her primary caregiver as the holder of sole custody. Thus, a balance of the factors indicates that modification is not appropriate under the circumstances. A court will likely find that it is in the best interest of the child to remain in the sole custody of her father.

**Joint custody.** If the facts do indicate that modification is merited, whether joint custody is appropriate often depends on whether the parents are able to find agreement in decisions necessary for the child. Courts often favor the award of joint custody if it is in the best interest of the child. However, joint custody may not be in the child's best interest if the parents cannot come to agreement. Joint legal custody requires decision-making over the child's schooling, religious rearing, medical decisions, and more. Because it would ask so much cooperation from parents, courts often consider whether parents would be able to make these decisions based on their willingness to work together. Joint physical custody also requires divorced parents to see one another regularly and interact. These interactions could cause friction between divorced parents who bitterly fight regularly.

Even though joint custody is favored when possible, courts often find that it is in the best interest of the child to avoid heavy acrimony and court-involvement that may be caused by joint custody of parents who are unwilling to come to agreements. Here, both parents cannot agree to jointly raise the child together. They both seek sole custody of the child. The relationship is "bitter and acrimonious," and they are "unwilling to share custody." Given this, the court will likely find it is not in the child's best interest for the parents to have joint physical and legal custody of the child.