

EBP
SESSION THREE

Question one

The trial court did not err in awarding father sole managing conservatorship. (c)

A modification of conservatorship may be ordered if (1) it is in the best interests of the child AND (2) one of three conditions is met: (a) material and substantial change in circumstances of child or conservator; (b) a child 12 years or older expresses a preference; or (c) the conservator voluntarily surrenders possession. (R) The best interests of the child are determined using a variety of factors, including whether the child is fearful of living at home, the results of psychological evaluation, a history of assaultive conduct and/or an assessment of parenting skills. (R) The prompt placement of a child in a safe environment is always presumed to be in the child's best interest. (R)

Question one-BIOC

In this case, the best interests of Child demand placement with Father. (C)
Child told Psychotherapist that he was afraid to return home with Mother. (A)
Psychotherapist's report included allegations of physical abuse by Mother. (A)
The police reports introduced by Father indicate a history of threats by
Mother to injure Child, including threatening to hit Child with a skillet.. (A)
Evidence that the police were called multiple times should weigh heavily with
the Court. (A) Finally, Mother is exhibiting poor parenting skills with a
contentious relationship with the school. (A) Father has never been accused
of abusing Child and has a good relationship with the school. (A) While
Psychotherapist reports that Child loves Mother, the allegations of abuse are
more important and speak directly to the safety of the child. (A) Mother
contends that child is involved in the community and has pets and nice home.
(A) However, these facts, if true, do not overcome the fact that child is not in
a safe environment. (A) **Because placement in a safe environment is always
presumed to be in the best interest of the child and the modification is
justified by the evidence at hand, removal from Mother's home is
appropriate. (C)**

Question one –changed circumstances

Finally, the modification meets one of three required conditions in that the circumstances of the child (C) have materially and substantially changed (R). A court would not have awarded custody a parent if abuse had been proven (A). Because there is now corroborated evidence of abuse in the Psychotherapist's report and police reports (A), the child's situation has materially and substantially changed. (C)

Because the modification is in the best interest of the child and the child's situation has materially and substantially changed (A), the court did not err in modifying the possession order to grant sole managing conservatorship to Father. (A)

Question Two

2. (a) The court did err in ordering Mother to pay \$750 per month in child support. (C) The guideline rules require that an obligor pay 20% of net income for one child. (R) Mother's net income is \$2500, so 20% would be \$500. The court ordered Mother to pay \$750, which is 30% of her net income. Because the court diverted from the guidelines and ordered Mother to pay too much (A), the court erred (C).

Question two

2 (b) The court erred in signing the child support order without issuing findings of fact (C). When a court diverts from the guideline rules for child support, it is required to include findings of fact in the order. It must include the net income of both parents, the percentage ordered to be paid and the reason for the variance from the guideline rules (R). Because the court diverted from the guideline rules and ordered Mother to pay more than 20% of her net income, the court is required to include these findings of fact. The court did not include such findings (A) and therefore committed error in signing the order (C).

Done well

- Child support math 😊
- Clear rule statements
- Use of conclusions to begin

Needs work

- Balance facts – some are good, some are bad, need to address all.
- Child abuse is bad.

Working with rules

- Simple rules
 - If A, then B
 - Think strict liability
 - If you sell alcohol to a minor, you're guilty a crime. Doesn't matter if they presented fake ID or looked 40.
 - If answer filed within 20 days of service, answer is timely. If not filed within 20 days, not timely.
- Elemental Rules (most common)
 - Example: Battery
 - (1)intent, (2) touching, (3) touching must be harmful or offensive, and (4) must be done to another.
 - Make sure you know the rule for each element.
 - Elements often have sub-elements (i.e. what's harmful or offensive? Transferred intent?)
- Factor Rules
 - If A, B and C weighed together justify Z, then Z.
 - A, B and C are factors. Unlike elements, you need not satisfy each one, but weighed together they get you to Z.
 - Example: Material Breach in contract law. Consider (1) Extent to which injured party will be deprived of expectation, (2) Extent to which injured party can be adequately compensated (3) Extent to which party failing to perform will suffer forfeiture, (4) Likelihood party failing to perform will cure his failure, and (5) Extent to which behavior of party failing to perform comports with duty of good faith and fair dealing.

Working with rules, cont.

- Rules with Exceptions
 - If A, then B, unless Z.
 - Look for “unless,” “except,” “but,” and “but if.”
 - Example: Recovery of Property taken via fraud – a person who has been induced by fraudulent misrepresentations to transfer title may recover the property UNLESS the person in possession was a bona-fide purchaser of the property.
 - Partners may not bind partnership without actual authority UNLESS an innocent third-party Vendor has reason to believe the partnership is bound.
- Alternative Rules
 - If A or B, then Z.
 - Look for “either” and “or.”
 - Example: Punitive damages may be awarded if the defendant exhibits fraud or malice.
 - A partner may violate his duty of loyalty to a partnership if he directly competes with the partnership. Duty is also violated if partner uses partnership property to gain profit and does not share that profit with the partnership.

Today's Assignment

- When you make rule statements, tell me, in parentheses, what type of rule it is.