

ESSAY QUESTION NO. 3

Answer this question in booklet #3

Frank and Mona were divorced in Texas in 2000. They were awarded shared legal custody of their children, Donna and Sebastian, with Mona being named their primary physical custodian. Frank was ordered to pay \$500 per month in child support. The couple has had no problem communicating concerning their children and making joint decisions about them. Everyone continued to reside in Texas.

Donna, a teenager, asked to live with Frank in 2003. Her wish was granted, with Mona's approval. No formal modification was done in the Texas court.

In July, 2004, Frank and Donna relocated to Alaska. At the same time, Mona and Sebastian moved to Minnesota. Neither Mona nor Sebastian have ever visited Alaska.

Frank wants to modify the Texas decree so he is named Donna's sole legal and physical custodian. He also wants to modify his child support obligation and increase his visitation with Sebastian.

1. Can an Alaska court modify the Texas decree as it pertains to Donna's legal and physical custody? If the Alaska court can modify custody, is it likely to do so? Discuss.
2. Can an Alaska court modify Frank's visitation with Sebastian? Discuss.
3. Discuss whether the Texas child support order could be modified by Alaska.
4. Frank has now married Willa, who wants to adopt Donna. Assuming the Indian Child Welfare Act (ICWA) does not apply, explain whose consent is needed for the adoption and why.

GRADER'S GUIDE

*** QUESTION NO. 3 ***

SUBJECT: FAMILY LAW

I. A. JURISDICTION (30 pts.)

For Alaska to modify the Texas custody order, Alaska must have child custody jurisdiction under Alaska's enactment of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (AS 25.30.300 - .910).

Since Texas issued the divorce decree, Texas has exclusive, continuing jurisdiction under the UCCJEA until certain conditions are met.

Alaska can modify a custody determination if the prerequisites of AS 25.30.320 are met.

Sec. 25.30.320. Jurisdiction to modify determination. Except as otherwise provided in AS 25.30.330, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state had jurisdiction to make an initial determination under AS 25.30.300(a)(1), (2), or (3) and

- (1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under provisions substantially similar to AS 25.30.310 or that a court of this state would be a more convenient forum under provisions substantially similar to AS 25.30.360; or
- (2) a court of this state or a court of the other state determines that neither the child, nor a parent, nor a person acting as a parent presently resides in the other state.

No one lives in Texas anymore, so AS 25.30.320(2) has been met.

AS 25.30.300(a)(1),(2) and (3) state:

Sec. 25.30.300. Initial child custody jurisdiction. (a) Except as otherwise provided in AS 25.30.330, a court of this state has jurisdiction to make an initial child custody determination only if

- (1) this state is the home state of the child on the date of the commencement of the proceeding;
- (2) this state was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

- (3) a court of another state does not have jurisdiction under provisions substantially similar to (1) or (2) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under provisions substantially similar to AS 25.30.360 or 25.30.370, and
 - (A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
 - (B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

"Home state" is statutorily defined as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months, including any temporary absences of the child or parent or person acting as a parent, immediately before the commencement of a child custody proceeding, except that, in the case of a child who is less than six months of age, the terms means the state in which the child lived from birth with any of the persons mentioned, including any temporary absences." AS 25.30.909(7).

Donna has been living in Alaska since July, 2004, more than six months ago. Alaska has become Donna's home state so it has jurisdiction to modify custody.

B. MODIFICATION STANDARD (25 pts.)

Child custody/visitation orders are modifiable at any time during a child's minority. Britt v. Britt, 567 P.2d 308 (Alaska 1977).

In order to modify a custody order, a two-prong test must be satisfied. The first step is that the modification must rest upon a substantial and material change of circumstances. See Cooper v. State, 638 P.2d 174 (Alaska 1981).

Joint legal custody means the parents share responsibility in the making of decisions affecting the child's welfare. Bell v. Bell, 794 P.2d 97, 99 (Alaska 1990). The Alaska Supreme Court has held that joint legal custody is only appropriate where the parents can communicate and cooperate with each other in their child's best interest. Farrell v. Farrell, 819 P.2d 896 (Alaska 1991).

From the facts, it appears that Frank and Mona have had no difficulties in exercising shared legal custody of Donna. Mona's agreement to Donna living with her father is the prime example of their ability to share legal custody. Although the distance between Frank and Mona (Alaska and Minnesota) is a significant change in circumstances, there are no facts suggesting that the distance has affected their joint decision-making concerning their children.

Since there is no material change of circumstances as it pertains to legal custody, the Alaska court is not likely to modify legal custody.

Donna's moving in with Frank and the parents residing in two states separated by approximately 2,500 miles is a material, substantial change of circumstances of the physical custodial arrangement. The first prong of the modification test has been satisfied.

The second prong is that the custodial change is in the best interests of the child. Horton v. Horton, 519 P.2d 1131 (Alaska 1974). In order to decide whether the change is in Donna's best interests, the court must apply the factors listed in AS 25.24.150(c). These factors are:

- (1) the physical, emotional, mental, religious, and social needs of the child;
- (2) the capability and desire of each parent to meet these needs;
- (3) the child's preference if the child is of sufficient age and capacity to form a preference;
- (4) the love and affection existing between the child and each parent;
- (5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent;
- (7) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (8) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (9) other factors that the court considers pertinent.

An analysis of the factors by an examinee would include that Frank is meeting Donna's physical, emotional, mental, religious, and social needs since he has been her primary caretaker for the past two years.

Frank obviously has the capacity and desire to meet these needs as shown by his assumption of those duties in 2003. Mona obviously believes he can meet Donna's needs since she voluntarily agreed to Donna's physical placement with Frank.

The third factor is Donna's preference. Donna expressed her preference in 2003 and her parents honored it. There is nothing in the fact situation to suggest her preference has changed.

Love and affection existing between the child and each parent is the fourth consideration. The facts are devoid of any information to suggest that there is a lack of love and affection on anybody's part.

Donna has lived with Frank for the past two years. Frank can satisfy the fifth requisite - the length of time Donna has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

Given their excellent past communication and joint agreements about their children, there is evidence that both Frank and Mona allow an open, loving, and frequent relationship between the other parent and Donna.

There is nothing in the facts to suggest that either factor 7 or 8 are applicable.

Under factor 9 (other factors that the court considers pertinent) an examinee might discuss the court's preference to keep children together. Since Frank and Mona decided it was best to raise their children in separate households two years ago, the court would give little or no weight to that factor given these circumstances.

An Alaska court would not likely modify legal custody but would modify physical custody by awarding Donna's primary physical custody to Frank.

II. VISITATION WITH SEBASTIAN (10 pts.)

As discussed above, Alaska can modify the Texas custody decree only under AS 25.30.320. While no one lives in Texas anymore, Sebastian resides in Minnesota, not Alaska. Therefore, Alaska is not Sebastian's "home state" as defined in AS 25.30.909(7). Alaska does not have jurisdiction to modify the Texas order as it pertains to visitation with Sebastian.

III. CHILD SUPPORT MODIFICATION (15 pts.)

Texas issued the child support order in 2000. Alaska adopted the Uniform Interstate Family Support Act in 1995. (AS 25.25.101 - 903)

To commence a modification, the Texas support order must be registered in Alaska. AS 25.25.609.

After registration is completed, Alaska can modify a child support order of another state, after notice and an opportunity for a hearing, if it finds that:

(1) the following requirements are met:

(a) the child, the individual obligee, and the obligor do not reside in the

- issuing state;
- (b) a petitioner who is not a resident of this state seeks modification; and
- (c) the respondent is subject to the personal jurisdiction of the tribunal of this state;

or

- (2) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal and all of the parties who are individuals have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order; however, if the issuing state is a foreign jurisdiction that has not enacted a law or procedure substantially similar to this chapter, the written consent of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

AS 25.25.611.

Factor A is met because no one lives in Texas. Factor B is not met. Frank is the person seeking modification but he is an Alaskan resident.

Mona is not subject to the personal jurisdiction of Alaska which is Factor C.

Frank can modify in Alaska only if both he and Mona file written consents with Texas to allow Alaska to modify the support order and assume continuing, exclusive jurisdiction.

The superior examinee will recognize that Frank's only other option is to petition in Minnesota where he is the non-resident petitioner and Mona is subject to personal jurisdiction.

IV. CONSENTS (20 pts.)

Willa must obtain the written consent of Frank, Mona and Donna.

A. FRANK (5 pts.)

AS 25.23.040(a)(2) provides that the father's written consent is required: "if the father was married to the mother at the time the minor was conceived or at any time after conception, the minor is the father's child by adoption, or the father has otherwise legitimated the minor under the laws of the state."

Since Frank was married to Mona and a Texas divorce decree recognized the parent-child relationship, Frank's written consent is required.

B. MONA (10 pts.)

AS 25.23.040(a)(1) requires the written consent of the minor's mother.

AS 25.23.040(a) provides that parental consents are not required unless they are not provided for AS 25.23.050.

AS 25.23.050 states: (a) Consent to adoption is not required of

- (1) for purposes of this section, a parent who has abandoned a child for a period of at least six months;
- (2) a parent of a child in the custody of another, if the parent for a period of at least one year has failed to significantly without justifiable cause, including but not limited to indigency,
 - (A) to communicate meaningfully with the child, or
 - (B) to provide for the care and support of the child as required by law or judicial decree,
- (4) a parent who has relinquished the right to consent under AS 25.23.180;
- (5) a parent whose parental rights have been terminated by order of the court under AS 25.23.280(c)(3) or AS 47.10.080(c)(3);
- (6) a parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent.

There is nothing in the fact situation to indicate that Mona's conduct has invoked any of the above conditions necessary to dispense with her consent.

C. DONNA (5 pts.)

A minor who is 10 years old or older must consent unless a court finds it is in the child's best interests to dispense with the child's consent. AS 25.23.040(5).

Although Donna's exact age is not given in the facts, she is described as a teenager, an examinee needs to recognize that her written consent is required.

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Alaska Bar Examination

**FEB
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1) Can Alaska modify Texas decree in regards to Donna

In order to determine whether Alaska courts will modify custody orders issued in other states, Alaska will first look to where the parties are currently located. Alaska will then look at reason for change in order and whether it is necessary and proper. Finally, Alaska will look to see whether there has been a change in circumstance under Rule 60, whether Alaska is the most convenient forum.

Normally, Alaska will ~~not~~ not modify another state's decree regarding legal & physical custody. However, if the parent and child are both residing in Alaska and the other parent has consented, Alaska may modify. In this case, Alaska will look for a change in circumstances to determine whether

it should modify, ~~is~~ A parent moving is a per se modification. In this case both ~~the~~ father & Mother moved, therefore Alaska ~~is~~ could modify, since there is per se change in circumstances. To decide legal & physical custody Alaska will look to the best interest of the child. In this case both father and mother moved, since this is a change in circumstances Alaska would most likely modify since the daughter is located in Alaska and that this is the daughter's preference. Furthermore, under the circumstances, it is conceivable due to both parties moving that Alaska is the most convenient forum.

Q2 Modification of Visitation

The next question is whether Alaska will

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Modify a visitation order of a third party state. Alaska will look to see first where the child is located, second where the parent is located and third that a valid decree has been made. Do

In this case Alaska ~~would~~ ^{can} not modify the visitation order. The Texas order is valid, furthermore neither Mona nor Sebastian are located in Alaska, therefore Alaska can ~~not~~ not modify a ~~valid~~ ^{valid} outstate visitation order, when none of the parties ~~is~~ are located in Alaska and the person requesting the modification moved out of state.

Q3) ~~would Texas child support be modified by Alaska~~

~~Alaska is ~~not~~ will not normally modify child support issued by a third party.~~

Q3) Modification of Child Support

Alaska will not normally modify a ^{valid} child support order made in another state, unless a change in circumstances has occurred and Alaska is the most convenient state to change the order.

In this case Alaska could possibly change the order due to a change in circumstances. If in this case Alaska were to award legal and physical custody to Frank then they could possibly modify child custody, since it is based off of Maria having custody of Donna. Frank would also have to argue that this is the most convenient court to have the order

made. It is unlikely Alaska will modify child custody made in another state, unless there has been a per se change in circumstances and Alaska is the most convenient forum.

Q4 Adoption - Consent who & why

Consent is necessary ~~at~~ for adoption where the parent was involved in the child's life, unless the parent has attended child for more than a year. Consent is also necessary from the child if the child is of ~~substantial~~ substantial age, ~~and~~ ~~also~~ if there is another

In this case the Mother, Mona would have to consent to adoption, since her legal rights would be severed. In this case an

6/6

argument could be made that Mona has abandoned Donna for more than a year, however this is not sufficient evidence from this problem on whether this is accurate. Since Mona's rights are being affected, her consent would be necessary.

Secondly Donna's consent would be necessary, due to Donna's age, & the fact that she most likely has not been abandoned, her consent would be necessary to effectuate an adoption. Since an adoption would potentially affect the ~~rights of~~ ~~her~~ relationship with her mother, her consent would be necessary. ~~Anyone can normally be adopted~~ Furthermore due to her being a teenager her consent would be necessary.

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Alaska Bar Examination

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Question 1

D) This is a Family law question regarding physical custody modification of an out of state decree. Before Alaska Courts can make rulings regarding custody, Alaska must have jurisdiction over the child in question. To establish jurisdiction the child must have resided in the state for at least six months. From the question we don't know how long Frank and Donna have been in Alaska. No other jurisdiction ~~is~~ wants to or is willing to rule on the case. We do not know from the question whether the Texas

Court wants to retain jurisdiction.

Or, Alaska could be the court of original jurisdiction which it is not in this case.

Since neither party resides in Texas at this point it is possible that Alaska could have jurisdiction over the issue.

Whether Alaska modifies the child custody order would require a hearing and a consideration of the marital factors. We have very little information from the question to address those factors. We don't know if there has been domestic violence,

child abuse or neglect, substance abuse that's affected the children, the emotional or spiritual or financial or physical needs of the children, we do know that both parents care about the children. They both seem to ~~encourage~~ encourage a good relationship with the other. That the siblings were split at Donna's request and that she wants to live with her father. That Donna is old enough that her wishes should be considered. Frank and Donna seem to have a stable relationship established.

In light of the information we do have and assuming Alaska has jurisdiction, the Alaska court would probably modify the Texas order to reflect the current child placement. The standard for modifying custody is not as rigid or high as for changing ~~custody~~ custody, or establishing it. While arguably this is a change in custody, that change occurred a year ago at the agreement of the parties.

$\frac{5}{11}$ 2-1

Question 2

This is a Family law question again addressing jurisdiction of the Alaska court in custody matters. Unlike question 1 where Alaska had some jurisdiction over the child, Alaska has no ties to Sebastian. Alaska courts could step in here but only if the parties agree and neither Texas nor Minnesota wants to assert jurisdiction. Frank will be hard pressed to find jurisdiction in Alaska.

$\frac{6}{11} 3-1$ Question 3

Whether the Texas child support order could be modified by Alaska courts is a question of Family and Family property law. We do not know from the question Texas's basis for the award. There may have been other property settlement issues involved. We do know that the award was based on support for 2 children and now one of the 2 lives full time with Frank. Generally more support is awarded for more children and support is awarded per child. We do not know if that is

$\frac{7}{11}$ 3-2

the situation here but can probably assume so.

Of course this is a civil matter and sometimes the parties can agree on the appropriate jurisdiction. Yet that may be Minnesota because Frank will be arguing that he should only pay support for one child. That child being Sebastian (S) And S has no ties to Alaska. Unless Frank argues that he should pay no support because each parent has care and custody of one child thus fairly dividing the financial obligations. Again the question does not give

sufficient information to analyze

this issue.

If Alaska were to have jurisdiction over this issue and modify the order

both parents' incomes would come

into play. Both parents would be

required to pay support to the other

based on the percentage of their

income (this # was different in

the different study materials 18-20%).

Up to the caged amount. (Again

different in different ~~materials~~ materials)

If there was a difference in the

amounts to pay the parties could

each pay each other or the one

$\frac{9}{11}$ 3-4

with more to pay could pay the other the difference between the two amounts. Taking into consideration we don't know their incomes or any disparities in their standards of living.

Question 4

Adoption issues are Family Law questions. In Alaska adoption is regulated by statute. Biological, adoptive parents or guardians must consent to adoption under statute.

Obviously, Frank must consent and since he is married now to Willa we can assume he does.

Mona must also consent to the adoption. She must consent in writing or at the adoption hearing. She has grounds to contest the adoption as there is no evidence of abandonment or neglect to overcome on her part.

Also, Donna may have a say based on her age. If she is not yet 18 and an adult under the law, the marital factors are looked at in adoption proceedings, her wishes being part of those factors.

While children produced during the marriage are assumed to be from the marital partners, if Frank is not Donna's father, her bio dad would have grounds to contest the adoption and his consent would be required.

He'd have to first prove paternity and then have good cause for abandonment.

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Part 1.

1. Modification of Donna's legal and physical custody

Personal Jurisdiction (Assuming date of modification request is present date)

In order to consider a modification of child custody, a court must have personal jurisdiction over the child. According to the uniform rule, a court may have personal jurisdiction if the child has resided in Alaska for the last six months or if another jurisdiction agrees that the child custody matter is best resolved in Alaska because the Alaska court has the most contacts and capacity to oversee the custody arrangement. It appears from the facts that a court might conclude that it has personal jurisdiction over Donna such that it could resolve the child custody arrangement. They have lived in Alaska for six months. On the other hand, if Frank were to bring the motion, a court would communicate with the Texas court to determine if the Texas court would waive any jurisdiction in the matter. The court would have personal jurisdiction over Frank as well through his substantial contacts with Alaska as a resident.

As a practical matter, the court would communicate with any court asserting jurisdiction over Donna, including Minnesota, if Mona were to bring a claim there.

If Mona contested such a motion and waived personal jurisdiction, the Alaskan court would gain personal jurisdiction over her as well. It is possible with more facts that the court would also find also that Mona had sufficient personal contacts with Alaska to assert personal jurisdiction but those facts are not present here. If it could, the court would assert personal jurisdiction over

Mona using Alaska's long-arm statute. The presence of the child may be enough to assert jurisdiction.

A court will evaluate a motion to modify custody based on a determination of whether there are changed circumstances warranting modification, as a threshold matter. Then a court will evaluate whether the modification is in the best interests of the child. The court will hold a hearing on the question of modification if the movant makes a prima facie case to suggest changed circumstances.

A court would likely find changed circumstances on a few bases. First, as a matter of law, if a child is moved out-of-state from Alaska, this showing is sufficient to warrant a hearing on changed circumstances. It is likely that a court would apply the same to the reverse facts where the child has moved from out of state to Alaska. In addition here the family had its own agreement that Donna would move in with Frank without a court reviewing that decision. So as a practical matter a court would likely hold the hearing regarding modification.

On the other hand, Mona could assert that there are no changed circumstances. As the legal parent she may determine where the child lives and granted Donna the permission to live with her father. She probably would not succeed in stopping the hearing from proceeding.

At the hearing, a court considering the best interests of the child looks at the following considerations: whether the custodial parent promotes or hinders a good relationship between the child and parent, any evidence of abuse of any family member, any evidence of drug abuse or alcohol addiction, the child's stated preference (if of sufficient age and maturity), ability of the parents to provide for the child's needs, relationship between the parent and the child, effect on

the child that would result from any disruption in custody arrangements, significance of the need to keep the children together and any other significant factors.

There is a public policy consideration that a court would consider before any modification was ordered. The court recognizes that children benefit from secure, stable environments and that changing them can cause children difficulty including distress within the family and may not long-term benefit the stability or growth of these relationships.

There is no evidence of either a problematic relationship, family disfunction, or abuse to suggest why a court would not grant Frank custody. Everyone is getting along and communicating, agreeing to new arrangements. The facts would need to be developed further to determine whether custody should be modified. As an initial matter, it appears that Donna is old enough and has made her preference clear. Keeping the children together would also be a factor considered by the court. Frank already has shared legal custody. A court might consider modifying physical custody if facts were developed.

Nothing in the facts suggest that a court would find that Mona should lose legal custody. There is no evidence of abuse. The facts would need to be developed considerably more to support such a finding.

2. Modification of Visitation

An Alaskan court would not have personal jurisdiction over Sebastian such that it could modify on these facts. There are no contacts noted. A motion to modify visitation would follow the same standards of "changed circumstances" and "best interests of the child" that are articulated

supra. There might a time, if there were problems with Mona, an emergency reason or sufficient contacts between Sebastian and Alaska over time when a court could exercise jurisdiction.

3. Child Support Order

On these facts, Frank could move to alter his child support arrangements for Donna because the court could assert personal jurisdiction over Donna under the uniform rule. It is not clear on these facts, that an Alaskan court could modify the child support order for Sebastian. If circumstances changed

Frank would seek to modify the order based on changed circumstances amounting to more than a 15% change in circumstances. A court would note that Frank is supplying the bulk of Donna's needs and that the \$500 he is paying reflects combined support for both Donna and Sebastian. It is worth noting however that the Alaskan court would apply Rule 90.3 to change any support calculation it did and would probably not use the Texas scheme. The court would apply Alaskan law unless Mona could assert that a different state's calculation formula was required.

The court could modify child support without changing custody or visitation rights.

4. Adoption

A natural parent has a right to consent to an adoption if the parent has not abandoned the child for 6 months following an award of custody or has not stopped all meaningful contacts over the

past year (in keeping with the parent's financial capacity and means and the age of the child sufficient to reciprocate). Here the facts suggest that communication has taken place over the past year. Here Mona has legal custody and the facts do not suggest she is unable to consent or has waived consent. Mona would have to consent. If Frank did try to force the adoption, a court would have to prove Mona unfit and show that her legal custody was clearly detrimental to the child. That is a high burden for Frank and he is unlikely to meet it.

In addition, Donna by virtue of her age would need to consent. She is over ten.

A court would ensure Willa agreed to the adoption as well, of course.

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1. The court will award the modification because it's in Donna's best interest. The issue is whether the court can modify the Texas physical custody agreement as it pertains to Donna.

In Alaska, the court needs child custody jurisdiction in order to modify the decree then it will do so to satisfy a material change in circumstance if it is in the best interests of the child.

~~Jurisdiction over Donna~~

The fact that the parents live in different states now, represents a material change in circumstances such that the court will consider modification. The court has ^{child custody} jurisdiction if the ~~parties~~ ~~parent~~ child ^{lived} in Alaska continuously.

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for 6 months. Then the court will only modify the ~~award~~^{custody} arrangement if it is in the best interest of the child. To determine this the court will look at the following factors 1) the needs of the child including physical, moral, emotional needs 2) the parent's ability to meet these needs 3) the child's preference if it is of sufficient age 4) love and affection between parent and child 5) the other parent's interest in fostering that relationship 6) amount of time the child has been in a stable environment and desirability of staying there 7) domestic violence or other child abuse 8) parents substance abuse and the effect on the child 9) other factors.

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In this case, the court has child custody jurisdiction because Donna has lived with Frank in Alaska continuously since July, 2004. Additionally, the fact that ^{both} ~~the~~ parts of the family ^{have} ~~has~~ moved to different states represents a material change in circumstances. ~~The~~ If this is in Donna's best interest, the court will modify. First, there is no indication that Donna's needs are or are not being met, that her mother approved her living with her father indicates ~~that~~ that he is able to meet them. Donna has indicated a preference to live with her father that the will consider to be persuasive. ~~It~~ There is no indication that Frank lacks love and affection for Donna, also both parents seem to be able to communicate well ~~and~~ also the children's needs this will appeal to the court.

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Donna has lived with her father for the past 6 months and the environment is probably stable (no indication it's not) it would be good to keep her there.

There is no ~~an~~ indication of any domestic abuse or drug abuse by either parent.

Weighing all the factors, they lean in favor of allowing Donna to stay with Frank. The court will ^{probably} award Frank the modification since it seems to be in Donna's best interest.

2. The court lacks jurisdiction to modify visitation order.

The issue is whether the court will modify Frank's visitation with Sebastian. The court may modify if the court has jurisdiction and if the court finds a material change in circumstance.

and the modification is in the best interest of the child.

In order to have child custody jurisdiction, the court must find that the child has lived in Alaska with the parent for the prior 6 months continuously, ~~that~~ no other jurisdiction will claim the child or other jurisdictions defer to Alaska, or the child is abandoned or some other emergency exists. If jurisdiction exists then the court will only modify the visitation if ~~the~~ it is in the best interests of the child and the court considers

- 1) the needs including moral, emotional, educational etc of child
- 2) ability of parent to meet needs
- 3) preference of child
- 4) love and affection between parent and child
- 5) other parent's

... court is satisfied that it is in the best interest of the child's been in

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stable environment and desire to keep him there 7) domestic violence ~~to~~ 8) substance abuse by parent 9) other factors.

In this case, the court does not have child ^{custody and visitation} ~~support~~ jurisdiction over the parties so it will not modify the visitation order.

3. The court could modify the order because it has personal jurisdiction over Frank.

The issue is whether the Texas child support order may be modified by Alaska.

The court has authority ^{to modify} ~~to~~ child support ^{orders} where it can assert personal jurisdiction over the parent. Then the court

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will consider the circumstances to determine the modification is necessary.

In this case, the Alaska courts do have personal jurisdiction over Frank because Frank is present and domiciled in Alaska. Therefore, the court could modify the order.

4. Donna, Mona & Frank must consent to the adoption.

The issue is who must consent in order for Frank's new wife, Willa, to adopt Donna.

Adoption in Alaska requires notice to all parties, even parties without custody, and consent of the mother, the father and the child if over 10 years old.

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In this case, if Willa has agreed to adopt Donna then Willa must get consent from Mona, Frank and Donna.

Mona currently has legal custody over Donna,

~~Donna is a teenager, and Frank admits that he is Donna's father, therefore, all need to consent.~~

therefore, her consent is required to relinquish legal custody and grant custody to Willa.

Donna is over ten years old so her consent is required to be the legal child of a woman other than her biological mother. ~~and~~ Frank's consent is required because he is the father of the child. He has not disputed this, instead he admits it so his consent is required.

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Alaska Bar Examination

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Be Sure to Write in the Proper Book

① The first issue is whether the Alaska Courts have jurisdiction. Jurisdiction is determined using the "Uniform Child Custody Jurisdiction and Enforcement Act" (or "UCCJEA").

The first question is whether Alaska is Donna's "Home State". Home state is defined as where the child has lived for the last 6 months. Here since Donna has been in Alaska for ~~the~~ the last 6 months, thus ~~the~~ Alaska would have jurisdiction. And therefore could modify the Texas decree!

Next, modification of child custody can occur when there's a material change in circumstances and if it's in the Best Interests of the child,

According to the facts, Frank and Donna relocated to Alaska together. Here ~~there~~ there is a change of circumstances. Next, the modification has to be in the Best Interest of the Child. The court looks at the statutory factors when determining the Best Interest of the Child. Those factors include: whether one parent blocks access (of the child) to the other parent; if abuse has occurred (mental or physical); where there's drug or ~~the~~ alcohol abuse; Preference of the child; ability of the parent to meet needs of the child (and so forth), and the final analysis, the court would be likely to modify ~~custody~~ custody to Frank.

② An Alaskan court can only modify visitation if it has jurisdiction over the child. According to the UCCJEA, Alaska would not have jurisdiction of the child (unless another state declined or deferred to Alaska). ~~Alaska is not~~ Alaska is not the child's home state and the other tests aren't met as well,

③ The child support order ~~is~~ as it pertains to ~~the~~ ^{the kids} ~~to~~ can't be modified. Alaska uses the Uniform Interstate Family Support Act (UIFSA). ^{Personal} Jurisdiction has to be obtained on MOWA or otherwise, the

Court can't modify child support. According to the facts, Mona has never visited Alaska. There doesn't appear to be any of the other requirements in which to gain Personal Jurisdiction. Thus, the child support order can't be modified by Alaska Courts.

④ Consent is needed by Mona, Frank, and Donna (unless the Court decides it's not in the best interest of Donna ^{require Donna} to ^{Consent} consent. However, if Mona has abandoned the child (for 6 months) or failed to communicate meaningfully or provide support then her consent is not required.