

Take Home Assignment #2 (25 points)

Civil Law of Persons

Professor Monica Hof Wallace

Joe and Sally were married on November 1, 1995 and lived together until they separated on April 1, 2010. Two children were born during the marriage, Lila and Ben, who were ten and twelve at the time of the separation. Certain problems developed with the couple's relationship, which ultimately resulted in a trial separation and then a divorce. Joe and Sally obtained a stipulated judgment from the Civil District Court for the Parish of Orleans that awarded the parties joint custody of Ben and Lila and designated Sally as the domiciliary parent. Joe was granted custodial time with the children for a full week each month, along with certain holidays throughout the year. Joe was also ordered to pay \$1000 per month in child support and \$500 per month in final spousal support to Sally. The custodial arrangement worked out well because Joe and Sally lived on the same street in New Orleans.

In mid-2012, Hurricane Isaac struck New Orleans, resulting in flooding in the homes of both Joe and Sally. The day before the storm, Sally evacuated with Ben and Lila, and their family pets, to the home of her relatives in Shreveport, Louisiana. Joe also evacuated the day before the storm to a hotel room in Shreveport. However, a month after the hurricane, Joe moved back to New Orleans to live with friends and repair his house. At that same time, Sally moved to Honolulu, Hawaii with Ben, Lila, the family pets, and a new boyfriend.

Since Sally and the kids moved to Hawaii, Joe has seen the kids less frequently, but Skypes with them often. Over the past year, he has been made aware of significant changes in Sally's lifestyle and believes that these changes are having a negative impact on the children. Sally is in a relationship with Rudy, who convinced Sally to leave Louisiana and who now lives with Sally, Ben, and Lila in Hawaii. The children do not like Rudy, and Ben, who is now fifteen, discussed his concerns with Joe. Rudy consumes a great deal of alcohol and has a violent temper that becomes worse after he has been drinking. On a number of occasions, he has threatened to physically discipline the children.

Joe is also concerned about Sally's mental health. Recently, Sally told Joe that she was having trouble sleeping, that she felt depressed, and that she was taking pills to help her cope with the hurricane losses and the children's adolescence. One of the relatives that went to visit Sally in Hawaii also told Joe that she thought Sally might have been "on something" and that she was not her normal self.

Joe believes that these problems are affecting the children. Ben's grades have declined and he has quit playing all sports. Lila, who just started a new school, has become somewhat depressed and withdrawn and is resisting the new school.



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In light of the foregoing circumstances, Joe wants to force Sally to go through a mental evaluation to ensure that she is capable of caring for the children and for herself. Joe would also like to discuss the possibility of changing custody and modifying spousal support. Not only did Sally and the children relocate to Hawaii without consulting with him beforehand, but given the distance between Honolulu and New Orleans, Joe is unable to see the children regularly and he is now dissatisfied with Skype communication. He wants to be named sole custodian, or domiciliary parent, or force Sally to move back to New Orleans with the children.

In advising Joe, answer the following questions. **You must give full reasons for your answers in order to receive credit.**

1. What would Joe need to prove to modify his spousal support payments? **(4 points)**
2. How may Joe obtain a court order that would require Sally to undergo a mental evaluation? **(4 points)**
3. How may Joe obtain a temporary custody arrangement in light of Sally's condition, and how long may this temporary order last? **(5 points)**.
4. What must Joe prove to change the existing custody decree? Would there be any difference if there were no domiciliary parent designated in the custody arrangement? **(6 points)**
5. Explain to Joe the factors the court will consider in determining whether the custody arrangements should be modified. Factors of particular relevance should be identified and discussed. **(6 points)**



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