

Juvenile Proceedings/ Child Custody Training

July 29, 2020

Presented by:

**Hon. Kathleen M. McCarthy
Presiding Judge- Family Division
Wayne County Circuit Court**

Why are we here?

1. In *Sanders*, 495 Mich. 394, 852 N.W.2d 524 (2014), the Court clarified that the fact that one parent's rights have been terminated does not automatically terminate the rights of the other parent's. The unfitness of one parent DOES NOT exclude placement and custody with the other parent.
2. "[A] trial court that is part of a circuit court's family division under MCL 600.1011 presiding over a juvenile case has jurisdiction to address related actions under the CCA [Child Custody Act] consistent with MCL 600.1021 and MCL 600.1023, as well as local court rules. We further hold that when exercising its jurisdiction, a trial court must abide by the relevant procedural and substantive requirements of the CCA." *In re A.P.*, 283 Mich. App. 574, 578, 770 N.W.2d 403, 406 (2009)
3. As a result, AFTER the Juvenile Court has disposed of their quasi criminal juvenile matter, the Juvenile Court must resolve any pending matters involving custody; parenting time; and support for a full custody resolution including a final Custody Order.
4. If an appropriate new complaint or Motion to Change Custody is filed, the Juvenile Court bench must resolve the entire case and enter a Final Custody Order.

When will an Attorney get appointed?

1. To ensure that the Affidavit of Parentage has been properly filed with the State
2. File a Complaint to establish Paternity
3. File a Custody Complaint/Motion to Change Custody when child is/going to be placed with Dad.

Possible Scenarios

1. No legal father exists, genetic testing proves man is biological father, parties sign AOP, Custody **IS NOT** being changed from Mom. Need the attorney to ensure that the AOP has been filed with the State.
2. Legal father exists due to an AOP, but no prior custody Order exists. Attorney must file Complaint for Custody if it is likely Dad will get Custody or Mom's rights are terminated.
3. Current custody Order with Mom as custodial parent exists, custody may be changed to Dad. Attorney must file Motion to Modify Custody.

Therefore, you need to know how to proceed legally to present the best case to the Juvenile Judge to secure a new or modified Order.

Possible Scenarios

4. When legal father insists he is not bio father and a Revocation of Paternity Act Complaint/Motion has to be filed in DOMESTIC
 - Grant funds WILL NOT be used for this scenario

Types of Custody

- Physical Custody- with whom the child primarily resides
- Legal Custody- important decisions regarding the child (i.e., education, medical, and religion)
- Statute: MCL 722.26a does not breakdown custody definitions – but by practice we always have for clarity in Judgments.

Custody and Parenting Time Determinations

When resolving child custody and parenting time disputes, the court must protect the best interests of the child.

Modification of existing order

- Movant must show proper cause or a change in circumstances warrant a modification of an existing custody order.
- The burden of proof for the movant depends on with whom the child has an established custodial environment.

Proper Cause

- Movant must show the existence of an appropriate grounds for legal action relevant to at least one of the 12 best interest factors.
- The grounds must be of such magnitude as to have a **significant effect** on the child's well-being.
- *Vodvarka v Grasmeyer*, 259 Mich App 847 (2003)

Change of Circumstances

- The movant must show that since the entry of the last custody order conditions surrounding the custody of the child have materially changed.
- Conditions must be those which have or could have a significant effect on the child's well-being.
- *Vodvarka, supra, 259 Mich App 847 (2003)*
- *In re A.P., 283 Mich App 574 (2009)- Juvenile Court proceeding was proper cause*
- *If threshold has not been met, Motion MUST be dismissed without going through the custody factors.*

Established Custodial Environment

- Determining if the established custodial environment (“ECE”) lies with both parents, one parent, or neither parent is important because the **burden of proof** that the court applies to custody determinations depends on who has the ECE.

Established Custodial Environment

- “The custodial environment is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to the permanency of the relationship shall also be considered.”
 - Custody orders, in and of themselves, do not establish a custodial environment.
- The established custodial environment may be with **one parent, both parents, or neither parent.**

ECE and Burden of Proof

- If the child **has** an ECE with custodial parent:
 - The petitioning party must show by **clear and convincing evidence** that the change of custody is in the child's best interest.
- If the child **does not have** an ECE:
 - The petitioning party must show by a **preponderance of the evidence** that the change of custody is in the child's best interest.

Clear and Convincing Evidence

- Clear and Convincing:
 - The evidence produces in the mind of the trier of fact **a firm belief or conviction as to the truth of the allegations sought to be established.**
 - The evidence is so clear, direct, substantial, and convincing as to enable the finder of fact to come to a clear conviction, without hesitancy, of the truth of precise facts in issue.

Preponderance of the Evidence

- Preponderance of the Evidence:
 - The evidence presented must persuade the finder of fact that it is **more likely than not** that the disputed fact is true.

** Knowing your burden of proof to apply to the Child Custody Factors is essential to prevailing on your Motion.

Analyzing the Established Custodial Environment From Child's Eyes

naturally looks to the custodian- seeks out a particular parent.

in that environment- means the entire surroundings of the child, including family unit, dwelling, geographic setting, and neighborhood.

guidance- providing direction, assistance, supervision, oversight, appropriate modeling, etc.

Analyzing the Established Custodial Environment

discipline- ability to appropriately sanction a child's misbehavior.

- Authoritative parenting – characterized by responsiveness to child's needs, explanations and negotiation of discipline and decisions, and appropriate monitoring. Best outcome.
- Authoritarian parenting- characterized by dogmatic, non-negotiated decisions, and punitive.
- Permissive parenting- warm parent-child relationship, but low parental monitoring/control.¹⁷

Analyzing the Established Custodial Environment

the necessities of life- includes food, clothing, housing, security, medical care, education, etc.

parental comfort- includes love, affection, consoling, reassurance, etc.

Analyzing the Established Custodial Environment

age of the child- the younger the child, the shorter the period of time to establish a custodial environment.

physical environment- this includes the entire surroundings of the child, including family unit, dwelling, geographic setting, neighborhood, accessible services, etc.

Analyzing the Established Custodial Environment

Inclination of the custodian and the child as to the permanency of the relationship-likelihood of security, stability, and durability in the relationship.

- All of this information is to be analyzed through the lens of the child; not the parent.
- Existing Custody Orders themselves DO NOT create ECE.

MCL 722.23

- “Best interests of the child” defined.

As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

MCL 722.24

- **Child custody disputes; powers of court; appointment of lawyer-guardian ad litem.**

(1) In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act.

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(3) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(4) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem appointed under this section shall not be paid a fee unless the court first receives and approves the fee.

MCL 722.25

- **Child custody dispute; controlling interests, presumption; award of custody to parent convicted of criminal sexual conduct or acts of nonconsensual sexual penetration; prohibition; support or maintenance obligation; defense; "offending parent" defined.**

(1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) An offending parent is not entitled to custody of a child described in subsection (2) without the consent of that child's other parent or guardian.

(4) Notwithstanding other provisions of this act, subsection (2) does not relieve an offending parent of any support or maintenance obligation to the child. The other parent or the guardian of the child may decline support or maintenance from the offending parent.

(5) A parent may assert an affirmative defense of the provisions of subsection (2) in a proceeding brought by the offending parent regarding a child described in subsection (2).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

(7) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (2) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of 23 nonconsensual sexual penetration as described in subsection (2).

MCL 722.26a

- **Joint custody.**

(1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

(3) If the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

(4) During the time a child resides with a parent, that parent shall decide all routine matters concerning the child.

(5) If there is a dispute regarding residency, the court shall state the basis for a residency award on the record or in writing.

(6) Joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.

(7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

(a) That the child shall reside alternately for specific periods with each of the parents.

(b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

MCL 722.27a (see attached flowchart)

- **Parenting time.**

(1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

(2) If the parents of a child agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record by clear and convincing evidence that the parenting time terms are not in the best interests of the child.

(3) A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.

(4) Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not grant parenting time to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) A parent may assert an affirmative defense of the provisions of subsection (4) in a proceeding brought by the offending parent regarding a child described in subsection (4).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not grant parenting time with that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the parenting time.

MCL 722.27a cont.

- **Parenting time. Cont.**

(7) The court may consider the following factors when determining the frequency, duration, and type of parenting time to be granted:

- (a) The existence of any special circumstances or needs of the child.
- (b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- (c) The reasonable likelihood of abuse or neglect of the child during parenting time.
- (d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.
- (e) The inconvenience to, and burdensome impact or effect on, the child of traveling for purposes of parenting time.
- (f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.
- (g) Whether a parent has frequently failed to exercise reasonable parenting time.
- (h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.
- (i) Any other relevant factors.

(8) Parenting time shall be granted in specific terms if requested by either party at any time.

(9) A parenting time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including 1 or more of the following:

- (a) Division of the responsibility to transport the child.
- (b) Division of the cost of transporting the child.
- (c) Restrictions on the presence of third persons during parenting time.
- (d) Requirements that the child be ready for parenting time at a specific time.
- (e) Requirements that the parent arrive for parenting time and return the child from parenting time at specific times.
- (f) Requirements that parenting time occur in the presence of a third person or agency.
- (g) Requirements that a party post a bond to assure compliance with a parenting time order.
- (h) Requirements of reasonable notice when parenting time will not occur.
- (i) Any other reasonable condition determined to be appropriate in the particular case.

(10) Except as provided in this subsection, a parenting time order shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction. This subsection does not apply if both parents provide the court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.

Best Interest Factors

- The court must consider each factor and make specific findings on the record regarding each factor.
- Codified at MCL 722.23
- Keep in mind the movant's burden of proof based on with whom the child has an ECE and apply to these factors.

Factor (a): Love and Affection

The love, affection, and other emotional ties existing between the parties involved and the child.

- This factor focuses on the **current** bond between the child and the parents.
- Factor favors parents who are emotionally closer with their children.
- Factor disfavors parents who do not keep appropriate boundaries with their children.

Factor (a): Love and Affection

- Court should assess:
 - Current bond/emotional ties between each parent and child.
 - Amount of affection shown.
 - Quantity and quality of time spent with each parent.
 - Who does the child seek out when distressed or happy?
 - Who does the child confide in most of the time?
 - Appropriate boundaries.

Factor(a) Case #1

- Factor (a) favored the father when the court found that mother “terrorized the children,” by spanking them with a belt.

Chakkour v Chakkour, unpublished opinion of the Court of Appeals, entered December 20, 2012 (Docket Nos. 309854, 310006).

Factor (b): Capacity to Give Love

The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

- Factor (a) focuses on a parent’s current bond with the child, while factor (b) requires the judge to forecast which parent will have a stronger bond with the child in the future.
- Factor (b) also evaluates a parent’s ability to provide the child with academic and religious education.

Factor (b): Capacity to Give Love

Capacity- Ability to provide

Disposition- Willingness or history to provide love; affection; guidance

Key Question- Will one parent be able to provide these needs without the other parent's presence?

A parent might have willingness to provide; but not the capacity to provide or vice versa.

Factor(b) Case #1

- Factor (b) favored the mother because she displayed a greater capacity than the father to give love. The mother was the parent who signed the minor child up for activities, arranged play-dates, set boundaries on the child's behavior, was the child's disciplinarian, and was consistently present in the child's life.

Boots v Vogel-Boots, unpublished opinion of the Court of Appeals, entered February 4, 2013 (Docket No. 309205).

Factor (c): Child's Physical Needs

The capacity and disposition of the parties involved to provide the child with food, clothing, and medical care or other remedial care recognized under the laws of this state in place of medical care, and other material needs.

- Factor analyzes a parent's ability and capacity to materially provide for his or her child.
- Focus is on adequacy. An unemployed parent with no income will not necessarily be disfavored compared to an employed parent with significant financial resources able to pay child support.

Factor (c): Child's Physical Needs

- A parent's employment, wages, and financial literacy are relevant determinations under this factor.
- A parent may also be favored if they are providing the child with better medical care.

Factor (c): Child's Physical Needs

- Looking at past and future behavior
- Capacity- Ability to provide
- Disposition- Willingness to provide
- Court should assess:
 - Does each parent have financial means to provide for the child? In addition, is the financial situation stable?
 - Who has played the caretaker role in the past, and who is capable of doing it in the future?

Factor (c): Child's Physical Needs

- Court should assess: (continued)
 - Ability and willingness to provide food and clothing, and other basic caretaking duties.
 - Ability and willingness to provide medical care for the child.
 - In addition, does the child have any special medical needs?
 - If the child is on medication, does each parent support its usage and administer it as ordered?

Factor (c): Child's Physical Needs

- A parent's employment, wages, and financial literacy are relevant determinations under this factor.
- Stable housing; beds with mattresses; working utilities; stove; refrigerator

Factor (c): Child's Physical Needs

- Methods used to assess parents' ability and willingness:
 - History given by parents about past caretaking tasks and ability/willingness to continue in the future.
 - Interview with child about daily routine.
 - Collateral documents, medical records, therapy record, photos of parent's home

Factor(d): Stable Environment

The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

- Focuses on maintaining the child's physical setting.
- Does the parent provide a safe and stable environment for the child to grow up?
- Is the parent nomadic?

Factor(d): Stable Environment

Factors to assess:

- Who can provide continuity?
- Any moves planned?
- Any danger within the home environment?
 - Relevant Dangers: Drugs? Alcohol? Domestic Violence?
- Degree to which child has thrived or failed to thrive in that environment

Factor(d) Case #1

- Factor (d) favored the father when the mother coached the children to make allegations of sexual abuse against the father. The mother's conduct rendered the children's home environment with the mother, who had primary physical custody, unsatisfactory because the children's mental well-being was being jeopardized.

Sandel v Shining Water Eagle, unpublished opinion of the Court of Appeals, entered July 17, 2012 (Docket No. 306994).

Factor (e): Family Permanence

The permanence, as a family unit, of the existing or proposed custodial home or homes.

- Focuses on the children's prospects for a stable family environment, in the future.
- Factor favors a parent with a more stable living situation.
- Favors a parent who lives near extended family, of which the child has developed close relationships or provides regular day care; support.

Factor (f): Moral Fitness

Factor (f). The moral fitness of the parties involved.

- One of the most contentious and improperly analyzed factors.
- Factor focuses on a parent's moral fitness as a parent.
- **Must be some nexus between the parent's conduct and his or her parenting ability.** (i.e., Domestic violence witnessed by child; drugs/alcohol use- does the behavior affect the child? If so, how?
 - Marijuana use/drug use- that doesn't render a parent incapacitated or unstable

Factor (g):

Parent's Mental and Physical Health

- The mental and physical health of the parties involved.
- Parent's disability must affect his or her ability to parent.
- Parent may be favored if he or she is in better mental or physical health than the other parent.
- I.e.,- depression; narcotics; marijuana- sleeping a lot; child wanders off
- Suicide attempts- witnessed or known by the child
- Domestic violence victim- placing child in harm's way

Factor(g) Case #1

- Factor (g) favored neither party, despite father's alcohol consumption while taking antidepressants. There was no evidence that the father's alcohol consumption and depression affected his ability to parent.

Sinicropi v Mazurek, 273 Mich App 149; 729 NW2d 256 (2006).

Factor (h):

Child's "Permanent" Record

The home, school, and community record of the child.

- Factor focuses on a child's academic performance while in a parent's care.
- Factor will disfavor a parent who is unorganized regarding a child's affairs or when a child does more poorly in school in his or her care.
- I.e., not getting homework done; tardy; missing school; extra curricular activities

Factor(i): Child's Preference

The reasonable preference of the child, if the court considers the child to be of sufficient age to express a preference.

- Factor directs courts to take into account a child's preference.
- Children as young as six are generally old enough to express a preference.
- Court is not required to disclose the child's preference, as the disclosure can affect a parent's feelings towards the child.

Factor(j): Cooperative Parents

The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents (assuming a relationship with each parent is good for the child). (“Friendly Parent Doctrine”)

- Favors a parent when the other parent displays animosity towards him or her.
- Favors neither parent when both parents contribute to increased hostility.
- Look for active alienation
- Ensure alienation isn't caused by Domestic Violence; child abuse/neglect in which case it may be legitimate.
- Disharmony/dislike may be considered in awarding sole legal and/or sole physical.

Factor(k): Domestic Violence

Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

- Factor (k) disfavors a parent who has engaged in domestic violence or who brings the child around domestic violence.
- Factor (k) weighs in neither parent's favor if there is no evidence of domestic violence or both parents engaged in domestic violence.
- Be aware; Domestic violence effects all of the Child Custody Factors
- Be aware; look for lethality factors
- Look at: Personal Protection Orders, Police Reports/Medical Records/Photos

Lethality Factors

- Increase of physical violence
- Other party owns a gun
- Prior living situation
- Unemployment
- Use of a weapon or threat of use
- Threaten to kill
- Avoided being arrested for DV
- Child not the other party
- Forced sexual conduct
- Choke/Strangulation/cut off breathing
- Use of illegal drugs
- Alcohol or drinking problem
- Control of daily activities
- Violent/constantly jealous
- Physical abuse while woman was pregnant by the man
- Threats to harm children
- Belief of capability of killing you
- Follow/spying, leave threatening notes or messages, destroy your property, or call you when you don't want other party not to
- Have you ever threatened or tried to commit suicide

Factor(I): Catchall

Any other factor considered by the court to be relevant to a particular child custody dispute.

- Factor provides tremendous discretion for courts to consider topics that may not fit neatly into the prior 11 factors.
- Courts have considered a parent's honesty or a parent's inability to resolve issues stemming for the marriage.

What You Need To File:

Scenario 1: Only AOP needed

- Must file AOP with State and pay the filing fee

Scenario 2: Legal father exists due to AOP on file with State but no prior Custody Order

Custody Complaint (DC Case Code)

- Paternity is already established by Birth Certificate or Affidavit of Parentage on file with the State.
- MUST file if NO current Order in place.

Scenario 3: Current Custody Order with Mom as CP Motion

- Paternity is already established by Birth Certificate or Affidavit of Parentage on file with the State.
- MUST file if PRIOR custody Order exists.

Complaint for Custody (DC)

**Paternity MUST be established by Birth Certificate or Affidavit of Parentage. It must be filed with the State to be a legal document.

1. Fill out all documents in the Complaint for Custody packet and a formal appearance.
 - It can be found in attachments or online at <http://www.3rdcc.org/forms/friend-of-the-court>.
2. File electronically. Instructions can be found at <http://www.3rdcc.org/divisions/family-domestic/emergency-and-non-emergency-filings>
3. Serve opposing party
 - Once service has been completed and filed with the Court, the Courtroom can process the referral to Juvenile. The Case CANNOT be referred over to Juvenile until the Proof of Service appears in Odyssey.

Motion to Change Custody (DM, DP, DC, or DS)

Custody Order MUST exist and you need to attach it to your Motion.

- In order to obtain the prior Court Order:
 - FOC (DC, DS, or DP): Request for Access to FOC Records Form: Can be found under FOC Documents on the Court's website
<https://www.3rdcc.org/Documents/FamilyDomestic/FOC/InProPerMotions/FD-FOC%204022%20Request%20for%20Access%20to%20FOC%20Records%5E%5E%5E.pdf>
 - CAYMC (DM); Contact the clerk's office for a copy.
<https://www.waynecounty.com/elected/clerk/records.aspx>

1. Fill out all documents in the Motion to Change Custody packet and a formal appearance.
 - It can be found in attachments or online at <http://www.3rdcc.org/forms/friend-of-the-court>.
2. File electronically. Instructions can be found at <http://www.3rdcc.org/divisions/family-domestic/emergency-and-non-emergency-filings>

Orders

- Order for Custody, Parenting Time, and Child Support (see attached)
 - Used when a litigant has filed a Motion to Modify Custody (in your attachments)
- Judgment for Custody, Parenting Time, and Child Support (see attached)
 - Used when a litigant filed a Complaint for Custody (in your attachments)

Questions on Custody?

PATERNITY ISSUES

Paternity Case (DP Case)

*Paternity MUST NOT already be established by Birth Certificate or an Affidavit of Parentage on file with the State.

1. Fill out all documents in the Complaint for Paternity.
 - It can be found in attachments or online at <http://www.3rdcc.org/forms/friend-of-the-court>.
 - If Genetic Testing is done in Juvenile Court, attach it to the Complaint.
2. File electronically. Instructions can be found at <http://www.3rdcc.org/divisions/family-domestic/emergency-and-non-emergency-filings>
3. Serve opposing party
 - Once service has been completed and filed with the Court, the Courtroom can process the referral to Juvenile. The Case CANNOT be referred over to Juvenile until the Proof of Service appears in Odyssey.
4. Court will enter an Order of Filiation, reserving all issues of custody, support, and parenting time, and then refer the case over to Juvenile Court.

Establishment of Paternity

If the parties are not married, the parties must either:

- File a Complaint for Paternity (see attached) to obtain an Order of Filiation; OR
- Sign Affidavit of Parentage (see attached) and file with state.

Parties must submit the Affidavit of Parentage or Order of Filiation and an Application to Correct a Birth Certificate (see attached) to add the father to the birth certificate.

Affidavit of Parentage

- The Affidavit of Parentage MUST be signed in front of a notary by BOTH parents.
- The parties' submit it along with the Application to Correct a Birth Certificate (see attached). Instructions and fees are attached to the application.

Establishing Paternity

- If the genetic testing is done in Juvenile Court, the results of GT testing should be entered on Odyssey under the Juvenile case and attached to any pleadings.
- File a Complaint for Paternity (see attached) (if an AOP is not executed after results are received);
OR
- If the wrong father is on the Birth Certificate or AOP, legal father has been established. Biodad must file his own Complaint/Motion to Revoke Paternity. Court appointments WILL NOT be used for this purpose.

Revocation of Paternity Act

*NOTE: Court appointments WILL NOT be used for this purpose.

- MCL 722.1431-722.1445
- Motion to Revoke AOP must be filed within 3 years of the child's birth, 1 year after Order of Filiation entered, or a later date if extension of filing is granted by the Court due to: fraud; duress; mistake of fact; newly discovered evidence; or misrepresentation or misconduct.
- Paternity test results showing wrong bio-dad taken recently is newly discovered evidence.
- Complaints/Motions under this statute MUST be filed in the Domestic Division NOT Juvenile.

Questions on Paternity?

CHILD SUPPORT

Child Support

- Child Support is calculated using the Michigan Child Support Formula. It takes into account:
 - Each parties' income
 - Child care expenses
 - Medical insurance expenses
 - Number of overnights the minor child has with each Parent
- The formula does NOT consider a person's living expenses or debts.

Child Support Formula

- Child support calculation may be referred to the Wayne County Friend of the Court for a child support investigation by including referral in Final Order and sending it to ModRev@3rdcc.org, cc David.McPhail@3rdcc.org, and put “Juvenile Referral” in the subject line.
- However, the child support calculator is available for public use at:
<https://micase.state.mi.us/calculatorapp/public/welcome/load.html>
 - The link is available on the Court’s website under “External Links”
 - Lawyers should be running guidelines themselves and entering a Uniform Child Support Order (included in attachments)
 - If needed, you may also include language that Dad’s obligation is abated in #13 on the Uniform Child Support Order.

Questions After Presentations

- Click on link in your e-mail to open the Questions.

GOOD LUCK!