MICHIGAN FAMILY LAW JOURNAL

A Publication of the State Bar of Michigan Family Law Section • Don Wheaton, Chairperson

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Volume 56 Number 5, May 2026

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State Bar of Michigan
Family Law Section

Mission

The mission of the Family Law Section of the State Bar of Michigan is to provide support, education, information and analysis for our members regarding family law related issues and to improve and advance both family law and the family court system. To accomplish this mission, the Section engages in legislative and court rule review and comment, filing amicus briefs on important family law cases, improving the relations between its members and the public, increasing public awareness of family law issues, promoting professionalism among members and encouraging continuing family law legal education. The Section hosts meetings, seminars, public service programs, and publishes the *Family Law Journal*. Membership in the Section is open to all members of the State Bar of Michigan. The Section encourages diversity and active participation of our membership.

List of Upcoming Council Meetings

June 14, 2026,
Sunday at 9am
Kalamazoo, Radisson Hotel

September 19, 2026,
Saturday
Annual Dinner,
Detroit, Cambria Hotel

September 20, 2026,
Sunday
Annual Meeting, then Council Meeting
Detroit, Cambria Hotel

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The *Michigan Family Law Journal* Endeavors to Establish and Maintain Excellence in Our Service to the Family Law Bench and Bar and Those Persons They Serve.

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(E-mail Discussion Group)

The Family Law Section sponsors a "listserv," which is "geek-speak" for an e-mail discussion group. To be eligible to join, you must be a member of the Family Law Section or be a Michigan judge. If you are eligible and wish to participate (it is a wonderful opportunity to share ideas and solve problems, not to mention communicating with many fine colleagues), you may initiate your subscription to the Familylaw listserv by visiting https://ls.mifamilylawattorney.org/postorius/lists/fls.ls.mifamilylawattorney.org/ and follow the instructions. If you have questions, contact fls-owner@ls.mifamilylawattorney.org.

To All Prospective Family Law Journal Authors:

On behalf of the Family Law Council, we are encouraging our membership and readers to consider submitting an article to the *Family Law Journal*.

Article Contact Person: The primary contact person at the State Bar for *Journal* articles is Dephanie Quah (517) 346-6373 and dquah@michbar.org. Article submissions should be e-mailed to Dephanie in Word format. Please carbon copy Jason Blevins (jeblevins@gmail.com), Katelyn Andrews (kandrews@miottawa.org) and write "Article for the Family Law Journal" in the subject line when you submit your article.

Article Due Date is One Month in Advance: Please submit your articles to Dephanie Quah at her email address above no later than the 15th day of the month preceding the next publication. In other words, if you wish to have your article considered for publication in February, please have your article to us by January 15th. There are ten (10) published *Family Law Journal* issues each year. June/July and August/September are combined issues.

Formatting and Links: Consistent with the *State Bar Journal's* practice, our formatting resource guide is *The Chicago Manual of Style* (see www.chicagomanualofstyle.org). Please use endnotes for citations. Feel free to include links in your endnotes, which will permit the reader to click and then be directed to the original source or reference. Authors may also reference the Michigan Appellate Opinion Manual. See https://www.courts.michigan.gov/publications/michigan-appellate-opinion-manual/.

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Please Notify: If you are a first time author and wish to submit an article for possible publication, please advise Jason Blevins and Katelyn Andrews. Please include a detailed description of your topic.

Editorial Board Discretion: The Editorial Board reserves the right to accept, reject, and edit all submitted articles and Letters to the Editor. We shall endeavor to communicate any necessary substantive changes to the author in advance of publication.

Jason Blevins and Katelyn Andrews
Journal Committee Chair

FROM THE CHAIRPERSON

Managing Expectations Early: The Most Effective Tool for Resolution

Don Wheaton, Family Law Section Chairperson 2025-2026

We all know that in family law, conflict rarely begins in the courtroom. It most often begins with fear, uncertainty, anger, or misinformation that exists long before either side files a complaint. Our rules of professional conduct require us to, and as practitioners we have been trained to, advocate zealously for our clients. Yet one of the most important services we provide is not litigation strategy — it is expectation management.

You "win" or "lose" your client's case in the initial consultation. Clients arrive carrying emotional narratives, advice from friends, 'expertise' gleaned from their Google searches and from social media, and plenty of assumptions about what the legal system can or should accomplish. How we frame the process during the very first meeting has a direct impact on whether the client's case progresses toward productive resolution or becomes entrenched contention.

Some attorneys hesitate to temper expectations early because they fear appearing pessimistic or unsupportive. Some even 'promise the moon,' setting a client up for severe disappointment. Setting expectations is not discouraging clients because, in reality, candid guidance builds both your and the Courts' credibility. Clients generally respond well to honesty when you deliver it with empathy and confidence. And no client I have ever worked with wanted smoke blown up their nether regions; they may not like what they are hearing, necessarily, but ultimately they appreciate your candor.

Why? A client who understands the probable range of outcomes is better equipped to make rational decisions later. Conversely, clients who are promised unrealistic victories often experience every compromise as a loss and every setback as evidence that the system has failed them. (Hence, the perception that a presumption of 50/50 would 'cure everything'; but I digress….)

Expectation management does not mean discouraging advocacy. It means helping clients distinguish between legal rights and emotional desires; achievable outcomes and aspirational goals; 'vindication' and resolution; and what the court can order and what it cannot repair. If you explain these distinctions early you often prevent future escalation, you encourage better co-parenting, and you serve the family you are working with much more effectively.

Recognize that the initial consultation is far more than a fact-gathering session – and that is one of the paramount reasons why an experienced attorney should handle the initial consultation with the client. The initial consultation often is the client's first meaningful exposure to the realities of family court, and it sets the tone for your attorney-client relationship.

You must recognize that clients frequently ask unspoken questions during that meeting, like, "Will someone finally validate my experience?"/"Will I be heard??"; "Can I win?"; "Will my spouse be punished?"; "Can I protect my children?"; and "Will this ever end?" How we answer these questions — directly or indirectly — shapes the client's expectations moving forward.

Experienced practitioners know that clients who leave the consultation believing litigation will provide emotional vindication are often the same clients who later resist settlement, overreact to routine disputes, or become frustrated with ordinary procedural delays. In contrast, clients who understand from the outset that family court is designed primarily to allocate responsibilities, divide assets, and protect children are more likely to approach negotiations pragmatically.

One of the most effective tools for reducing future contention is to explain the distinction between a client's position and the likely legal outcome. For example, a client's position may be, "I want sole custody because my spouse was unfaithful." We all know that if the State of Michigan enforced the criminal statute on adultery, the jails would be bursting (even more) at the seams. Accordingly, it's our responsibility to flat-out tell the client that their partner's infidelity won't be much, if any, of a focus and that the law instead centers on the child's best interests, including parenting capacity and stability.

A client may insist, "I should keep the house because I sacrificed my career," or "the house is only in my name and I'm the only one who worked outside the home and paid the bills so the house should be mine." It's our job to disabuse that client about their insistence and explain how a judge will apply Michigan law to reach an 'equitable' result – knowing that what is 'equitable' to one party is not necessarily 'equitable' to the other. Helping clients understand these distinctions at the outset reduces the emotional shock that often accompanies temporary orders other case developments.

Clients do not need false certainty. They need informed perspective. And there is a significant cost to overpromising because few other things damage attorney-client relationships more quickly. Statements like, "You'll definitely get custody,"

or "Your spouse will never get that," or "This should be over quickly" may reassure a client temporarily, but they create long-term problems. As anyone who's been practicing family law for more than a short time knows, family law is inherently unpredictable because our judges exercise broad discretion and often facts evolve over time.

Overpromising creates several dangers, including clients who become resistant to reasonable settlement proposals; clients viewing opposing counsel as unreasonable simply for disputing expectations; routine litigation developments become "betrayals"; and attorney credibility erodes when outcomes differ from predictions. In many contentious matters, escalation occurs not because the legal issues are unusually complex, but because one or both parties entered the process with unrealistic expectations that their attorneys reinforced.

We as family law practitioners know that we have to strike a difficult balance: validating emotion without amplifying conflict. Clients need to feel heard. They do not, however, benefit when counsel mirrors their outrage or frames every disagreement as moral warfare. We can and must acknowledge our clients' emotional realities, but we must also redirect their attention toward practical objectives like protecting children; preserving financial stability; minimizing litigation expense; maintaining future co-parenting functionality; and achieving durable resolutions.

I have said before, and say again, that Words Matter. How you reframe your client's outrage or distress really does make a big difference. Compare, "We're going to make sure the judge sees what kind of person your spouse is!" with, "Our focus will be to present facts that support your parenting goals and the children's long-term stability." The latter encourages strategic thinking rather than emotional escalation.

A lot of client frustration arises from misunderstanding the pace and structure of litigation in the family court system. Remember, clients are used to watching "Law and Order," "Matlock," and any other number of TV shows that do not accurately portray the reality of preparing and presenting a case in the family courts. Clients often assume that hearings happen quickly – and serially (as opposed to a half day here, a full day a month or so later, etc.), judges resolve factual disputes immediately, discovery uncovers "the truth," and trials provide emotional closure. I know, I know -- stop snickering. That's why educating your clients about the legal process is so important. First, it reduces their anxiety. And explaining procedural realities during intake usually dramatically reduces later dissatisfaction. You must explain in a way your clients can understand the likely timeline, the role of mediation, the financial cost of prolonged litigation, the limits of judicial intervention, the unpredictability of hearings, and the emotional toll of sustained conflict. When clients know what to expect procedurally, they are less likely to interpret delays or compromises as failures.

Attorneys who frame representation around solutions rather than combat often facilitate better outcomes for both clients and counsel. This does not mean capitulating.

FAMILY LAW SECTION MID-SUMMER CONFERENCE

July 23-26, 2026 • Mission Point Resort, Mackinac Island

2026 SPEAKERS AND TOPICS

TIPS FOR ATTORNEYS USING REUNIFICATION THERAPY

Presented by: Lauren Blake, LMFT

UPDATE ON CHANGES TO MCR 3.207 REGARDING EX PARTE ORDERS IN DOMESTIC CASES

Presented by: Liisa Speaker/Jordan Ahlers

HOT TOPICS IN TECHNOLOGY AND INTERNET

Presented by: Steve Heisler

RECOGNIZING AND HANDLING CASES WITH INTIMATE PARTNER VIOLENCE

Presented by: Stephanie Saad

CURRENT ISSUES IN BUSINESS VALUATIONS

Presented by: Kaylee Simerson of Adamy Valuation, Jason LeRoy of Doeren Mayhew, and Brian Bakker of Stout

NAVIGATING MINOR GUARDIANSHIPS

Presented by: Hon. Matthew DeLang

OUR FAMILY WIZARD

Presented by: Guiseppe Fricano

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Courtsey photo: Mission Point Resort, Mackinac Island

Strong advocacy remains essential. But resolution-oriented representation recognizes that family law differs fundamentally from many other litigation contexts because parties often remain connected long after the case concludes (nearly always, when children are involved – whether the children are what society considers minors or adults).

No matter what clients see or hear at the national, state, or local level politically, or how they interact as a keyboard warrior on social media, we must remind and emphasize that compromise is essential in family cases. Compromise is not an evil thing nor is it a 'dirty word.' It is the only way to reach resolutions both parties can live with (even if they aren't 100% satisfied) and that are not imposed on them.

Your initial consultation provides you with the opportunity to establish principles that can guide the entire case, like proportionality, credibility, strategic communication, realistic risk assessment, and long-term family stability. Clients who internalize these concepts early are often more receptive to compromise and they will be more willing to negotiate resolutions later.

Managing expectations is not merely good client service; it benefits the profession as a whole. When we foster clients' unrealistic expectations, cases become unnecessarily contentious. Discovery disputes multiply. Settlement opportunities diminish. Co-parenting relationships deteriorate. Judicial resources become strained.

Conversely, when counsel provides measured, realistic guidance from the beginning, clients are better equipped to engage constructively with the process.

As family law practitioners, we cannot eliminate the emotional difficulty inherent in these cases. We can, however, reduce unnecessary escalation by helping clients understand both the possibilities and limitations of the legal system from the very first meeting.

No matter how good of a communicator you are or how well you advocate for your client, some clients will never fully understand the process or the range of realistic outcomes -- no matter how many times or ways you try to explain those to them. Nevertheless, ultimately, one of the most effective ways to advocate for clients is to prepare them honestly. Clients who understand the process are more likely to trust it, and clients who trust the process are more likely to resolve disputes thoughtfully rather than litigate reflexively. And as family lawyers, that ought to be all of our goal.

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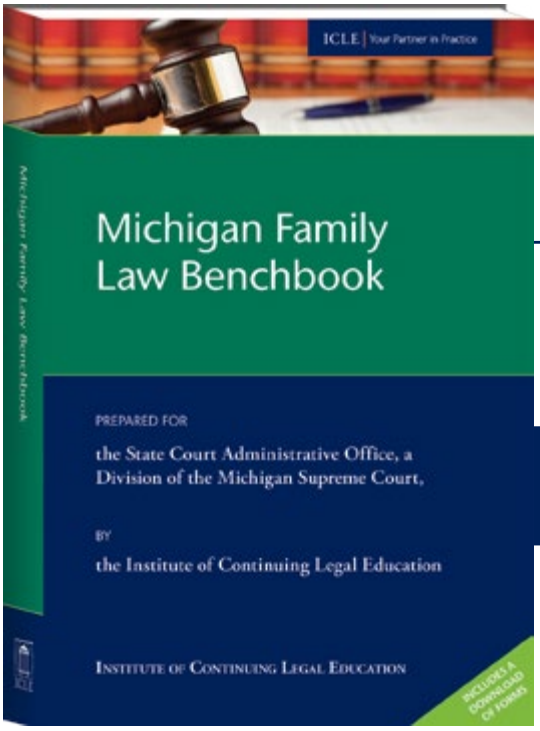

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The Perfect Setting for Michigan Family Law Attorneys: 2026 Family Law Section Summer Seminar on Mackinac Island

From July 23–26, 2026, Michigan family law attorneys will once again have the opportunity to combine professional development with one of the state's most memorable summer destinations: Mission Point Resort on beautiful Mackinac Island.

Nestled on 18 acres along the Lake Huron shoreline, Mission Point Resort offers a unique conference experience where meaningful networking happens naturally — over morning coffee on the Great Lawn, during lakeside walks between sessions, or while enjoying an evening carriage ride through the island's historic streets. The relaxed pace and car-free atmosphere of Mackinac Island create the ideal environment for reconnecting with colleagues, strengthening referral relationships, and building new professional connections that last long after the seminar concludes.

Mission Point Resort itself is a destination worth experiencing. Attorneys and guests can enjoy spacious waterfront accommodations, six restaurants and eateries, lakeside Adirondack chairs, a full-service spa, bike rentals, pickleball courts, an outdoor pool, and expansive meeting spaces designed for both collaboration and relaxation. Located on the island's peaceful "sunrise side," the resort offers easy access to downtown while still providing a quiet retreat from the bustle of Main Street.

Beyond the seminar, Mackinac Island offers countless opportunities to unwind and explore. Attendees can bike the island's scenic perimeter, tour historic Fort Mackinac, visit the iconic Arch Rock, enjoy waterfront dining, or simply stroll through town with a cup of coffee and world-famous Mackinac fudge. Whether traveling solo, with colleagues, or bringing family members along for the weekend, the island offers activities and experiences for everyone.

Seminar Highlights

Jordan Ahlers-Smith and former Section Chair Liisa Speaker, both from Speaker Law Firm, will present on the impact of the new court rule regarding ex-parte orders. Port Huron family law attorney Steven Heisler, from the Heisler

Law Group, will provide the latest hot topics on information technology and the internet. Stephanie Saad from the Michigan Poverty Law Program returns to provide additional insights on how to work with domestic violence issues in family law cases. As always, business and financial experts Kaylee Simerson, from Adamy Valuation, Jason LeRoy, from Doeren Mayhew, and Brian Bakker, from Stout, will bring us up to date on the latest developments in business valuations, taxation issues, economic trends and their applications in family law cases. Judge Matthew Delange of the Kent County Probate Court will guide us through the handling of minor guardianships in connection with family law. Therapist Lauren Blake, from Blake Family Consulting, will explain the concept of family reunification therapy. Real estate professional Amy Osterbeck, from KW Domain, will share her insights on real estate issues in family law. And the seminar would not be complete without hearing from Our Family Wizard's Giuseppe Fricano on the latest and greatest developments with the OFW communication platform.

Seminar Itinerary

The seminar commences on Thursday evening, July 26 with our Welcome Room Reception where registrants, presenters and their families gather to get acquainted and enjoy appetizers and refreshments.

The actual seminar commences early the next morning, Friday July 27, with a complimentary (for registrants only) breakfast buffet followed by some of the aforementioned presentations from 9:00 am to 12:00 pm. The afternoon is yours to explore Mackinac Island or enjoy the resort. At 5:30 pm or so is the Networking Reception which, as of press time, may include some karaoke.

Saturday July 28 begins with the complimentary buffet followed by the balance of the presentations, raffle and door prize giveaways, etc., and then you are free for the rest of the afternoon. Saturday evening includes a sunset cruise out to the Mackinac Bridge, or a scavenger hunt. Or even (perhaps) a tour of haunted Mackinac Island.

Join Us!

For Michigan family law practitioners, the Summer Seminar has long been more than an educational experience -- it is a tradition. The 2026 gathering at Mission Point Resort promises another exceptional opportunity to learn, connect, and recharge in one of the Midwest's most distinctive settings.

STATE BAR OF MICHIGAN

FAMILY LAW SECTION

2026 FAMILY LAW SECTION SUMMER CONFERENCE Scholarship Application

A. I am applying for the following scholarship:

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☐ SUMMER CONFERENCE FEE AND PARTIAL HOTEL REIMBURSEMENT

☐ PARTIAL HOTEL REIMBURSEMENT ONLY (Reserved for those who are presenting at the Summer Conference)

B. Have you been approved for a scholarship in previous years? ☐ Yes ☐ No

a. If yes, please list which years you have been approved for a scholarship:

C. PROFILE:

Name: _____ Attorney No.P-_____

Employer name:_____ Volunteer position? ☐ Yes ☐ No

Title/Position: _____ ☐ Law Firm ☐ Non-Profit

☐ Government Agency ☐ Law School/Student ☐ Other _____

Mailing address:_____City_____

State:_____ Zip _____ Phone:_____ Fax: _____ Email: _____

D. BACKGROUND INFORMATION:

Are you a current Family Law Section member? ☐ Yes ☐ No

Have you attended the Family Law Summer Conference before? ☐ Yes ☐ No

Are you new to the state of Michigan, and if so, did you practice family law in another state/country?

☐ Yes ☐ No

Do you currently practice in an underserved area or with a substantial number of clients who are indigent or otherwise find it difficult to secure representation?

☐ Yes ☐ No

Are you currently a law student/new lawyer who is or intends to focus on family law?

☐ Yes ☐ No

Are you a first-generation lawyer?

☐ Yes ☐ No

E. NARRATIVE:

1. Please describe in a short paragraph why you need a scholarship:

2. Please describe in a short paragraph what your current legal practice is like, and how attending this conference will enhance your professional development and practice:

Signature of Applicant_____ Date: _____

THE APPLICATION MUST BE
RECEIVED BY MONDAY, June 15th, 2026

Incomplete or late applications will not be eligible for consideration.

Mail: Cara Willing at 209 W. Seventh St. Flint, MI 48502

OR email as an attachment to: attorneywilling@gmail.com

The scholarship-approved applicant may only be approved for the scholarship no more than two times.

Only current section members can apply for the Summer Scholarship.

Non-profit Applicants: The scholarship-approved applicant may only be approved for two registrations and one lodging every five years.

The committee will look at things such as:

- Current family law practitioner
- Current law student who has a significant interest in family law
- Financial hardship
- Involvement with the State Bar of Michigan Family Law Section, local bar associations, and/or legal organization groups

Hotel reimbursement will be up to $250 per night, for two nights. After the conference, the scholarship-approved applicant will need to submit their hotel invoice for reimbursement, together with a completed Section Expense Reimbursement Form, if a Section member.

THE CASE OF THE ISSUE

HMM, Minor, by Next Friend CM v JS
COA No. 367586
For Publication Nov 18, 2024

By Henry S. Gornbein

The Issue

This case deals with a motion to terminate a PPO.

Facts

In April 2023, Petitioner, 17 years old at the time, petitioned for an ex parte PPO against respondent, asserting that she had a reasonable apprehension of sexual assault because respondent had sexually assaulted her in 2012 and other times after this. Petitioner explained that a criminal investigation was pending.

The circuit court entered an ex parte PPO. It was to remain effective until April 20, 2024.

Respondent moved to terminate the PPO, denying that he had ever inappropriately touched petitioner. The circuit court held a Zoom hearing on respondent's motion. The circuit court stated that petitioner needed to be in the courtroom to testify. She responded that she was worried about seeing respondent. The court directed that respondent would be off-camera and petitioner's camera would be turned off. The circuit court stated that it was going to do everything to protect the young petitioner. Petitioner's mother was also in the room with petitioner.

When respondent's counsel asked petitioner to explain what happened to her, petitioner stated that she did not want to talk about that right now. The circuit court asked petitioner, "Was there a sexual assault?" Petitioner responded, "Yeah."

Respondent's counsel asked petitioner when the sexual assault occurred. Petitioner stated that she could not remember but that it happened a few times when she was approximately 7 years old. Eventually petitioner identified the assailant as her uncle, the respondent.

The circuit court did not permit cross examination. Respondent's attorney argued that respondent had not even heard the allegation as to what he supposedly did. The court overruled the objected and noted, three times, that the burden of proof had shifted to respondent. The court denied the motion to terminate the PPO.

The Court of Appeals

The heart of the appeal is due process. Respondent Appellant took issue with three aspects of the ruling: (1) petitioner's off-camera testimony; (2) the curtailment of cross examination; and (3) the shifting of the burden of proof.

1. The off-camera testimony of petitioner
   The circuit court, by allowing off camera testimony, limited its own ability to judge petitioner's demeanor. The circuit court indicated that its intent was to protect the 17-year-old petitioner. But respondent was also off camera, so it is unclear how petitioner being off-camera protected her.
2. Cross-Examination
   The circuit court denied respondent the opportunity

to hear and respond to the evidence. It did not allow him to cross-examine her brief and vague testimony. In so doing, the circuit court deprived respondent of significant due-process interests.

3. Burden of Proof
   The circuit court impermissibly shifted the burden of proof to respondent. In these proceedings, the petitioner bears the burden of proof in seeking to obtain an ex parte PPO. On a motion to terminate or modify the ex parte PPO, the burden of proof remains with the petitioner to justify the continuance of a PPO.

In sum, the circuit court abused its discretion by prohibiting respondent's counsel to conduct cross examination, by permitting petitioner to testify off camera, and by shifting the burden of proof from petitioner to respondent.

A request to remand the case to a different judge was denied.

Ruling

The circuit court's order denying respondent's motion to terminate the PPO was vacated and remanded for further proceedings.

Comments

This case is important because, among other things it reveals the drawbacks of Zoom hearings, where many of the important visible nuances of in-person hearings may be lost.

About the Author

Henry Gornbein *is a former chairperson of the Family Law Section of the State Bar of Michigan and a former President of the Michigan Chapter of the American Academy of Matrimonial Lawyers. He is also a former chair of the AAML national long range planning committee. He is the author of the chapter on Spousal Support in Michigan Family Law published by ICLE. He is the creator and host of the cable television show Practical Law as well as the creator and host of the video series, Gracefully Greying and the creator of the website:* www.gracefullygreying.com.

Henry is the author of the book, Divorce Demystified, Everything You Need to Know Before You File For Divorce. He is the coauthor with Jack Haynes PhD of the book: Child Custody A Complete Guide For Parents. Both books are available on Amazon and Momentum Books.

FAMILY LAW SECTION MID-SUMMER CONFERENCE
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Divorce Meets Death and Disability: The Intersection Between Domestic Relations and Probate/Estate Planning

By David L.J.M. Skidmore

In my probate litigation practice, I have observed that probate and estate planning law often intersects with family law. For example, a divorce needs to be filed on behalf of an elderly incapacitated woman; a party's death during a divorce proceeding raises the question whether the decedent could properly disinherit his spouse under his estate plan; or a decedent failed to change his beneficiary designation under an insurance policy, contrary to the terms of the judgment of divorce, so that the ex-spouse remains named on the policy at the insured's death. This article will consider the legal principles that govern recurring domestic relations situations involving death and disability.

Disability and Filing for Divorce

It may be in the best interests of an incapacitated individual to seek a divorce, but such incapacity may bar the person from taking legal action. In that case, a court-appointed guardian or conservator may petition for divorce on behalf of the incapacitated ward.

A guardian is a fiduciary appointed by the Probate Court[1] who makes medical and/or residency decisions for an "incapacitated individual," meaning "an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions."[2] "The court may appoint a guardian if the court finds by clear and convincing evidence that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record."[3]

A conservator is a fiduciary appointed by the Probate Court[4] who makes financial and property management decisions for a "protected individual." meaning an individual for whom a conservator has been appointed.[5] "The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following: (a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money."[6]

Michigan Court Rule 2.201(E) provides that a conservator may initiate or defend a civil action on behalf of an incompetent ward. "If a minor or incompetent person has a conservator, actions may be brought and must be defended by the conservator

on behalf of the minor or incompetent person."[7] "If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action."[8] In Subchapter 3.200 governing domestic relations actions, MCR 3.202(A) provides that "except as provided in subrule (B) [governing emancipated minors], minors and incompetent persons may sue and be sued as provided in MCR 2.201."

However, Michigan case law has long held that either a guardian or conservator may initiate a divorce or separate maintenance action on behalf of the ward. In *Smith v Smith*, the Michigan Court of Appeals held that "a mentally incompetent spouse can sue for divorce by and through her guardian."[9] In *Weiss v Weiss*, the appellate court held that "a mentally incompetent spouse can sue for divorce by his guardian or next friend."[10] In *Houghton v Keller*, the appellate court held that "a guardian can bring an action for divorce on behalf of an incompetent spouse."[11] In *In re Burnett Estate*, the appellate court held that either "a guardian or conservator" may "bring an action for divorce on behalf of a mentally incompetent spouse."[12] In *Fishman-Piku v Piku*, the appellate court held that "it is clear that a conservator may file a separate maintenance action on behalf of an incompetent person."[13]

Despite the foregoing case law, a conservator (if available) would be preferred over a guardian to bring a divorce action on behalf of an incompetent person, for two reasons. First, MCR 2.201(E)(1)(a) mentions conservators but not guardians. Second, the property settlement process inherent in divorce falls naturally within the conservator's role to manage the ward's finances and property.

Death During Divorce Proceeding

No Divorce After Death of One Spouse

Fundamentally, the death of one spouse during a divorce proceeding divests the court of jurisdiction to render a judgment of divorce. "[A] court is without jurisdiction to render a judgment of divorce, and thereafter distribute jointly held property, after the death of one of the parties. There must be living parties, or there can be no relationship to be divorced."[14]

Enforceability of Final Property Settlement Agreement After Death of Spouse During Divorce Action

A final property settlement agreement reached by the parties to a divorce action is unenforceable if one spouse dies before entry of the final judgment of divorce. "[T]he divorce and property settlement do not become effective until the judgment is signed and cannot be made effective *nunc pro tunc* after one of the parties dies."[15]

In *Tiedman v Tiedman*, the wife filed for divorce. At a hearing, the parties agreed to the terms of their final property settlement agreement on the record. The trial court agreed to enter the judgment of divorce upon presentation. Days later, the husband died before the court had entered the judgment of divorce. The trial court entered the judgment of divorce over the objection of the surviving wife, finding that its bench ruling at the hearing constituted a divorce judgment and that entry of the physical order was merely "ministerial" in nature.[16]

The Michigan Court of Appeals affirmed, but the Michigan Supreme Court granted *certiorari* and reversed. The trial court's bench ruling had not been a judgment of divorce, because "[t]he rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions."[17] Once the husband died, there was no marriage to be terminated, and so the trial court was without jurisdiction to render a judgment of divorce. "[I]t was beyond the court's power after [husband]'s death to enter a judgment of divorce or to order a property settlement or to have ordered payment of alimony."[18]

In a subsequent case, the Michigan Court of Appeals offered further rationale why a final property settlement agreement cannot be enforced where one party dies before entry of the judgment of divorce. A judgment of divorce always incorporates the property settlement agreement. Hence, when parties to a divorce action reach a property settlement agreement, its validity is implicitly conditioned on entry of a final judgment of divorce. "[I]t could be argued that the written [property] settlement agreement is a separate contract in its own right. However, the trial court found, and we agree, that because the settlement agreement was to be incorporated into a judgment of divorce, the agreement has no effect, since decedent died before the judgment of divorce could be entered. The entry of the judgment of divorce essentially served as a condition precedent to the enforcement of the settlement agreement. Because entry of a judgment of divorce became impossible following decedent's death, the settlement agreement could not be incorporated therein or given effect as intended."[19]

Enforceability of Final Property Settlement Agreement After Death of Spouse During Separate Maintenance Action

Conversely, a final property settlement agreement reached by the parties to a separate maintenance action is enforceable if one spouse dies before entry of the judgment of separate maintenance. The seminal case for this principle is *Kresnak v Kresnak*.[20]

In *Kresnak*, the husband filed for divorce. On the day of trial, "the parties reached a settlement agreement whereby the complaint for divorce would be amended to one for separate maintenance."[21] "The agreement further provided that the parties' assets and liabilities would be distributed in a certain manner."[22] "A hearing was held and the terms of the agreement were read into the record."[23] "Both parties acknowledged the terms of the agreement and expressed their willingness to enter into it."[24] "There is no dispute that the agreed-upon distribution of property was intended to be a final property

settlement."[25] "Following the hearing, the circuit court approved the settlement agreement..."[26]

"Before the entry of a written judgment," the husband died.[27] The wife then argued that the agreement was unenforceable because the court lacked jurisdiction to enter a judgment for separate maintenance after the husband's death.[28] The circuit court disagreed and entered judgment for separate maintenance, giving effect to the parties' final property settlement agreement.[29] On wife's appeal, the Michigan Court of Appeals affirmed the circuit court's judgment, holding that "the death of a party does not divest the court of jurisdiction to enter a [separate maintenance] judgment implementing a property settlement agreement[.]"[30]

Ability of One Spouse To Disinherit Other Spouse During Divorce Action

When a party dies during a divorce or separate maintenance action, the question may arise as to whether the decedent had the ability to disinherit the surviving spouse under his or her estate planning instruments. The answer depends on whether the disinheritance was made under the decedent's will or trust.

At death, the decedent's will governs disposition of the assets of the decedent's probate estate. The probate estate consists of all assets titled in decedent's sole name at death, which must go through the probate process in order to pass to the appropriate successor. The probate estate does not include assets that automatically pass by operation of law to the successor at the decedent's death (such as assets subject to a pay-on-death beneficiary designation, or assets titled in joint ownership with right of survivorship).

During a divorce proceeding, one spouse (the testator) may revise his or her will in order to exclude the other spouse as a beneficiary of the probate estate, in the event that the testator spouse dies before the divorce process is finalized. However, Michigan statute provides that the surviving spouse of a decedent may elect to either (a) abide by the terms of the will, or (b) elect against the will and take the surviving spouse's elective share.[31] The amount of the elective share is "1/2 of the sum or share that would have passed to the spouse had the testator died intestate [i.e., without a will], reduced by ½ of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death."[32] "The elective right given to the surviving spouse may be exercised only against the probate estate. If there is no probate estate, there is nothing against which the elective right can apply."[33] Hence, if the testator spouse is still married at death, the terms of the will cannot divest the surviving spouse of the right to elect against

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the will and take the elective share of decedent's probate estate. This rule applies whether or not there is a divorce action pending at the decedent's death.

In contrast, a spouse has the power to exclude the other spouse as a beneficiary of his or her trust, provided that there was no improper purpose for creating the trust and there is no fraud involved.

In *Soltis v First of America Bank-Muskegon*,[34] Richard and Dora were married. It was a second marriage for both of them. Richard had three children from his prior marriage, and Dora had one son from her previous marriage. In 1977, Dora created a revocable trust. In 1985, Dora amended her trust. In 1987, Dora again amended her trust by excluding Richard as a beneficiary. After Dora passed away, Richard petitioned the probate court for a finding "that the assets in the trust should be included within decedent's estate for purposes of the spousal election statute."[35] The probate court upheld the validity of the trust, and Richard appealed.

The Michigan Court of Appeals affirmed the lower court's ruling. First, "[a]n inter vivos transfer or gift [such as the creation of an inter vivos revocable trust] is not testamentary and is therefore not subject to the spousal election."[36] This was true despite the settlor's reservation of "substantial control over the trust," including "the power to revoke the trust[.]"[37] Second, there was "no indication that decedent intended to defraud [her spouse] of his marital rights." The appellate court reviewed the decedent's purposes for creating the trust and found them all valid.[38] "Absent any showing of fraud upon [the spouse's] marital rights, we must conclude that decedent's assets in the inter vivos trust do not fall within the spousal election provision."[39] Third, the Legislature had recently amended the spousal election statute but had not adopted the "augmented estate concept of the Uniform Probate Code," which would have included in the decedent's estate "any transferred property in which the decedent retained the power to revoke the transfer or the right to...dispose of the property for the decedent's own benefit..."[40] "[T]he Legislature could have provided for an augmented estate in the spousal election statute, but it chose not to do so and we must follow the dictates of our Legislature through its statutes."[41]

In *Soltis*, there was no divorce action pending at Dora's death. Recently, in *In re Lyden Trust*, the Michigan Court of Appeals affirmed the validity of decedent's disinheritance of his wife under his trust, where the couple was involved in a divorce action as of decedent's death.[42] Therefore, absent fraud or improper purpose, a decedent may disinherit his or her spouse under a trust, whether or not a divorce action is pending at death.

One important caveat should be noted: a decedent who created a trust may have funded the trust (i.e., retitled assets in the name of the trustee of the trust) during lifetime. Alternately, the decedent may have failed to retitle assets in the name of the trust, instead relying on a pour-over will to convey assets from the probate estate to the trust after death. However, any assets in the decedent's probate estate at death – even those designated ultimately to pass to the decedent's trust – are subject to the surviving spouse's elective share. Hence, the decedent's failure to fund the trust during lifetime can defeat the intent to disinherit the spouse.

Effect of Pending Divorce Case on Spousal Inheritance Under Intestacy

At intestacy (dying without a will), the decedent's surviving spouse is an heir of decedent. Under certain circumstances, however, the decedent's lawful spouse will not be considered to be a spouse for purposes of intestate succession. Under MCL 700.2801(2)(e)(i), "a surviving spouse does not include … [a]n individual who … for 1 year or more before the death of the deceased person [w]as willfully absent from the decedent spouse."

In cases of alleged spousal abandonment, the fact that the decedent and the surviving spouse were parties to a divorce proceeding during the year prior to decedent's death is relevant to the "willfully absent" analysis. According to the Michigan Supreme Court, "filing for divorce creates a rebuttable presumption that one is not willfully absent."[43] "However, it is possible, under rare circumstances, that a challenging party could show that the spouse who filed for divorce nevertheless did not behave in a manner consistent with a recognition of the continued existence of the legal marriage for a year prior to the spouse's death. [T]rial courts must consider the totality of the circumstances in making this determination and that the challenging party bears the burden to rebut the presumption that direct or indirect communications during a divorce proceeding defeat a finding that a spouse was willfully absent."[44]

As a practical matter, it would appear to be extremely difficult to rebut this presumption. As a result, in most or all cases, the existence of a pending divorce action at decedent's death will prevent any effort to disqualify the surviving spouse from inheriting on the grounds of willful absence.

Effect of Judgment of Divorce Upon Estate-Planning Instruments

Upon entry of the judgment of divorce, an ex-spouse may have estate-planning instruments in place which make gifts to the other ex-spouse, or that nominate the other ex-spouse to serve in fiduciary roles. Those gifts and nominations may be revoked by operation of law under the Estates and Protected Individuals Code.[45]

Entry of a judgment of divorce will revoke certain provisions in a divorced individual's "governing instrument" which was executed before the divorce.[46] The term "governing instrument" signifies "a deed; will; trust; funeral representative designation; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or

dispositive, appointive, or nominative instrument of any similar type."[47] These revocation rules do not apply to the extent that they conflict with "the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment…"[48] Specifically, entry of a judgment of divorce revokes:

A revocable disposition or appointment of property made by a divorced individual to his or her former spouse, or a relative of the former spouse, in a governing instrument;[49]

A revocable provision in a governing instrument conferring a general or non-general power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse;[50] and or

A revocable nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, funeral representative, trustee, conservator, agent, or guardian.[51]

For purposes of these rules, a "relative of the divorced individual's former spouse" means "an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity."[52]

Where such a revocation is effected, "[e]ach provision of a governing instrument is given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, for a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.[53] If the divorced couple is later remarried, or the divorce is nullified, then "each provision revoked … is revived…"[54]

Entry of a judgment of divorce further "[s]evers the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common."[55] Such a severance "does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied on, in the ordinary course of transactions involving that type of property, as evidence of ownership."[56]

The divorce of a marriage also "[b]ars the former spouse from exercising a power under" MCL 700.3206(1) (governing funeral representative designations).[57]

Finally, entry of a judgment of divorce revokes the ex-spouse's authority under a patient advocate designation. "If a patient advocate designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the patient advocate designation is suspended during the pendency of an action for separate maintenance, annulment, or divorce and is revoked upon the entry of a judgment of separate maintenance, annulment, or divorce, unless the patient has named a successor individual to serve as a patient advocate."[58]

Enforcing Ex-Spouse's Waiver of Rights Under Judgment of Divorce

At the death of a divorced individual, it may be discovered that the surviving ex-spouse remains designated as the beneficiary of an insurance policy, notwithstanding the survivor's express prior waiver of all rights in such insurance policy under the judgment of divorce. The proceeds of the insurance policy may be required to be paid to the designated beneficiary, either under the Employee Retirement Income Security Act (ERISA)[59] or under the terms of the policy. Nonetheless, the designated beneficiary is not entitled to retain the proceeds, given the prior waiver under the judgment of divorce.

In *Sweebe v Sweebe*,[60] the Michigan Supreme Court took up this recurring fact pattern. There, under the judgment of divorce, each spouse waived all rights in insurance policies owned by the other spouse. At the death of the ex-husband, he owned an employer-provided life insurance policy, and he had not changed the designated beneficiary after entry of the divorce judgment, so the ex-wife remained designated as beneficiary. Consistent with ERISA, the plan administrator paid the insurance proceeds to the ex-wife as the designated beneficiary. The personal representative of the ex-husband's estate then filed suit to enforce the insurance waiver. The circuit court ruled that ERISA preempted the waiver, holding for the ex-wife as the designated beneficiary. The Michigan Court of Appeals reversed, holding that the waiver was enforceable and directing the ex-wife to pay the insurance proceeds to the ex-husband's estate.

The Michigan Supreme Court agreed to hear the case. The supreme court initially evaluated whether the ex-wife had waived her rights in the proceeds of the retirement accounts, under the following standard: "Waiver is a mixed question of law and fact. The definition of a waiver is a question of law, but whether the facts of a particular case constitute a waiver is a question of fact."[61] The court agreed that the ex-wife had waived her rights.

The supreme court next considered whether the ex-wife's waiver barred payment of the proceeds to the ex-wife, concluding that the answer was negative. "In general, ERISA's preemption provision states that ERISA supersedes all state laws that relate to an employee benefit plan. Therefore, under ERISA preemption, Michigan law cannot affect ERISA's determination of the proper beneficiary. ERISA provides that a plan administrator must distribute the proceeds of an insurance policy to the named beneficiary. [Michigan courts] cannot undermine [a person's] status as the [designated] beneficiary."[62]

In other words, the Michigan law of waiver could not affect determination of the beneficiary, because ERISA alone governed that matter and preempted conflicting state law.

However, the supreme court went on to conclude that ERISA did not preempt enforcement of the waiver after distribution of the proceeds to the designated beneficiary. ERISA's preemption provision does not preclude "a named beneficiary from waiving the proceeds from a life insurance policy" under a judgment of divorce.[63] "[A] valid waiver is not preempted by ERISA and should be enforced..."[64] "[W]hile a plan administrator must pay benefits to the named beneficiary as required by ERISA, this does not mean that the named beneficiary cannot waive her interest in retaining those proceeds."[65] "Once the proceeds are distributed, the consensual terms of a prior contractual agreement may prevent the named beneficiary from retaining those proceeds."[66] "[A]fter the plan administrator distributed the proceeds as required by ERISA, a claim could then be filed against the named beneficiary alleging that she waived her right to retain the proceeds."[67]

Therefore, the Michigan Supreme Court affirmed the Court of Appeals ruling. "We conclude that the benefits were properly paid to [ex-wife] under ERISA, but [ex-wife] has no legal right to retain the proceeds under the waiver provision in the judgment of divorce. [Ex-wife] must pay an amount equal to the insurance proceeds to the decedent's estate, which will then distribute the proceeds according to the decedent's will or the laws of intestacy."[68]

Conclusion

In my practice, these hybrid divorce-probate issues (which I find somewhat fascinating) arise with increasing frequency, either before the Circuit Court or the Probate Court. Practitioners should be aware of these areas where family law intersects with probate and estate planning law.

If you have a contested probate issue, please contact David Skidmore at 616-752-2491 or dskidmore@wnj.com or contact another member of Warner's Probate Litigation Practice Group.

About the Author

David L.J.M. Skidmore *is a partner in Warner Norcross + Judd LLP with a statewide probate litigation and mediation practice. He is a Fellow in the American College of Trust and Estate Counsel and a former chair of the SBM Probate and Estate Planning Counsel, and he delivers the annual case law update at the ICLE Probate Institute.*

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Endnotes

1 The Probate Court has exclusive subject matter jurisdiction over guardianship proceedings. MCL 700.1302(c).

2 MCL 700.1105(a).

3 MCL 700.5306(1).

4 The Probate Court has exclusive subject matter jurisdiction over conservatorship proceedings. MCL 700.1302(c).

5 MCL 700.1106(y).

6 MCL 700.5401(3).

7 MCR 2.201(E)(1)(a).

8 MCR 2.201(E)(1)(b).

9 125 Mich App 164, 166; 335 NW2d 657 (1983) (decided under since-rescinded General Court Rules).

10 No 230830, 2002 WL 1011754 (Mich Ct App May 17 2002 Mich Ct App) (unpublished) (decided under current Michigan Court Rules).

11 256 Mich App 336, 338; 662 NW2d 854 (2003).

12 300 Mich App 489, 495; 834 NW2d 93 (2013).

13 No 328023, 2017 WL 1128166 (Mar 23 2017 Mich Ct App) (unpublished).

14 *Tkachik v Mandeville*, 282 Mich App 364, 373; 764 NW2d 318 (2009), citing *Tokar v Albery,* 258 Mich App 350, 355; 671 NW2d 139 (2003).

15 *Tiedman v Tiedman*, 400 Mich 571, 573; 255 NW2d 632 (1977) (reversing trial court's holding that property settlement agreement was enforceable, notwithstanding death of husband before entry of judgment of divorce). *Accord In re Estate of Hayes*, No 315586, 2014 WL 3747611, *1 (Mich Ct App Jul 29 2014) (unpublished) (affirming trial court's holding that property settlement agreement was unenforceable, given death of husband before entry of judgment of divorce) ("[T]he death of a spouse before divorce necessarily terminates divorce proceedings.").

16 400 Mich at 573-574.

17 400 Mich at 576.

18 400 Mich at 577.

19 *Estate of Rader,* No 335980, 2018 WL 842652 at *3 (Feb 13 2018 Mich Ct App) (unpublished).

20 190 Mich App 643; 476 NW2d 660 (1991) (holding that court may enter judgment of separate maintenance after death of one of the parties).

21 190 Mich App at 644-645.

22 *Id* at 645.

23 *Id*.

24 *Id*.

25 *Id*.

26 *Id*.

27 *Id*.

28 *Id* at 646.

29 *Id*.

30 *Id* at 649, 651.

31 MCL 700.2201, 2202(2).

32 MCL 700.2202(2)(b).

33 John H. Martin & Mark K. Harder, *Estates and Protected Individuals Code with Reporters' Commentary* MCL 700.2202 (ICLE April 2024).

34 203 Mich App 435; 513 NW2d 148 (1994).

35 203 Mich App at 438.

36 *Id* at 439.

37 *Id*.

38 *Id*.

39 *Id* at 441.

40 *Id* at 440-441.

41 *Id* at 441.

42 ___ Mich App ___; ___ NW3d ___; 2024 WL 1469932, *5 (Mich Ct App Apr 4 2024) ("We decline to adopt a claim of fraud on marital assets or to rely upon out-of-state caselaw to inform public policy in Michigan. Indeed, such an action is unrequired given that Michigan public policy disfavors a spouse from defrauding the other spouse."), citing *Soltis*, supra, 203 Mich App 435.

43 *In re Est of Von Greiff*, 509 Mich 292, 311; 984 NW2d 34 (2022).

44 *Id*.

45 MCL 700.1101 *et seq*.

46 MCL 700.2806(d), 700.2807(1).

47 MCL 700.1104(m).

48 MCL 700.2807(1).

49 MCL 700.2807(1)(a)(i).

50 MCL 700.2807(1)(a)(ii).

51 MCL 700.2807(1)(a)(iii).

52 MCL 700.2806(e).

53 MCL 700.2807(3).

54 MCL 700.2807(4).

55 MCL 700.2807(1)(b).

56 MCL 700.2807(2).

57 MCL 700.2807(1)(c).

58 MCL 700.5510(1)(g).

59 29 USC 1001 et seq

60 474 Mich 151; 712 NW2d 708 (2006).

61 *Sweebe*, supra, 474 Mich at 173.

62 *Id* at 154-155 (internal citations omitted).

63 *Id* at 152.

64 *Id* at 156.

65 *Id*.

66 *Id*.

67 *Id* at 159.

68 *Id*.

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Professor Lex

By Harvey I. Hauer and Mark A. Snover
Hauer & Snover

Dear Professor Lex,

I am currently involved in a post-judgment child support matter. The opposing party has filed a motion to enforce my client's child support obligation. My client believes his child support obligation should terminate because the parties' child has turned 18 years old and is attending a blended high school and vocational school curriculum. The high school component/classes are only a few hours a week, and a majority of the curriculum is focused on learning a trade through a vocational school. The opposing party has taken the position that since the child is attending some high school classes with the vocational schooling that the child is in high school full-time, and my client should be required to continue to pay his child support obligation. Are you aware of any authority with regard to this issue?

Dear Practitioner,

You should review the case of *Rowley v Garvin*, 221 Mich App 699, 562 NW2d 262 (1997) as it will provide you with guidance on this issue. Therein, the mother sought to continue child support although the child dropped out of high school and was attending adult education classes in order to obtain her high school diploma.

The mother took the position that since the child was taking the adult education classes on a full-time basis, as defined by the school district, the father's child support obligation should continue even though the child turned 18 years old.

The parties had an evidentiary hearing, and during the hearing:

> *…John Freiberger, the adult education coordinator for the Albion Public Schools, testified that the state requires the school district to provide courses and graduation requirements for adult education that are similar to the K–12 program that the district offers. According to Freiberger, the local school board and adult education department has, in the past, established the number [] of courses a student may take in the adult education program. If an adult education student takes four courses, the district considers that student to be "full-time." Therefore, Freiberger testified that because Laura was earning credit for a total of four courses (three classes and additional credit for her employment), Laura was considered a full-time student. On cross-examination, however, Freiberger admitted that no written policy existed regarding the "full-time" status of adult education students.*
>
> *The deposition of Kenneth Walsh, supervisor of Adult and Community Education for the State Department of Education, was also admitted into evidence at the hearing. Walsh testified that a full-time student, as determined by the State School Aid Act, M.C.L. § 388.1601 et seq.; M.S.A. § 15.1919(901) et seq., is one who takes 900 hours of instruction over the course of a 180–day school year. See M.C.L. § 388.1606(4)(t); M.S.A. § 15.1919(906)(4)(t).2 Walsh opined that Laura's current [] schedule of 12 class hours a week over the course of approximately 36 weeks (representing September 1 to June 1), would total only 432 hours. Therefore, Laura should be considered a part-time student. Walsh further testified that the State School Aid Act's definition of a full-time student is used primarily for the purpose of providing financial assistance to local school districts. He admitted that a local school board could depart from this definition when categorizing students for its own purposes, but that when reporting the number of full-time students it claimed for assistance purposes, the school [] board was required to use the State School Aid Act's definition of "full-time."*
>
> At the conclusion of the hearing, the trial court found that Laura was a full-time student because "as a legal matter the local definition prevails over the state principles." Id. at 702-704.

The father appealed the trial court's ruling, and the Court of Appeals held that:

> … we believe that the State School Aid Act, M.C.L. *§ 388.1601 et seq.; M.S.A. § 15.1919(901) et seq., stands in pari materia with the postmajority support statute given that both statutes provide financial [] support, albeit to different entities, for the benefit of*

full-time students. This Court has repeatedly recognized that statutes relating to the same subject matter or that share common purposes are in pari materia and shall be read together as one law, regardless of whether they refer to one another and were enacted [] at different times. BPS Clinical Laboratories v. Blue Cross & Blue Shield of Michigan (On Remand), 217 Mich.App. 687, 703, 552 N.W.2d 919 (1996); Schuster, supra at 352, 547 N.W.2d 332. Subsection 6(4)(t) of the State School Aid Act, M.C.L. § 388.1606(4)(t); M.S.A. § 15.1919(906)(4)(t), states that students who take nine hundred hours of instruction over the course of a school year are considered "full-time" equivalent pupils. Under this definition, the State School Aid Act provides state funding to local school districts based upon the number of "full-time" pupils at each school. The school districts apply this aid to pay the education costs of the "full-time" students. Similarly, the postmajority support statute provides financial support for a "full-time" student who is living with a divorced parent in order to continue that child's education irrespective of the divorce. Where, as here, two statutory provisions have a common purpose, we will read the terms of the statutes harmoniously and attempt to consistently carry out the intent of the statutes. Witt v. Seabrook, 210 Mich.App. 299, 302, 533 N.W.2d 22 (1995). Thus, in determining whether defendant's parents, with whom Laura was living while she attended adult education classes, or defendant (if Laura moved back home before she turned nineteen years and six months old) are entitled to receive postmajority support for Laura, the trial court should have used the definition for determining a "full-time" student as set forth in subsection 6(4)(t) of the State School Aid Act.

Applying this definition to the case at bar, we find that Laura was not a "full-time" student under the postmajority support statute, M.C.L. § 552.16a; M.S.A. § 25.96(1), when she was attending adult education classes because she was taking fewer than nine hundred []class hours a school year. Id. at 708-710.

As you can see from a reading of *Rowley*, the trial court in your case should utilize MCL 388.1601 *et seq.* in deciding if the child is attending high school on a full-time basis and not utilize a local school district's definition.

Answer respectfully submitted by Harvey I. Hauer and Mark A. Snover.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

Please send questions for Professor Lex to msnover@hauersnover.com. Include "Professor Lex" in the e-mails subject line.

About the Authors

***Harvey I. Hauer**, Hauer & Snover, PC, is a Fellow of the American Academy of Matrimonial Lawyers and the former president of the Michigan Chapter. He has also served as chairperson of the State Bar of Michigan Family Law Section, the Michigan Supreme Court Domestic Relations Court Rule Committee and the Oakland County Bar Association Family Law Committee. He has been named by his peers to Best Lawyers in America, Super Lawyers and Leading Lawyers. He has also chaired and has spoken at numerous Family Law seminars and authored many Family Law publications.*

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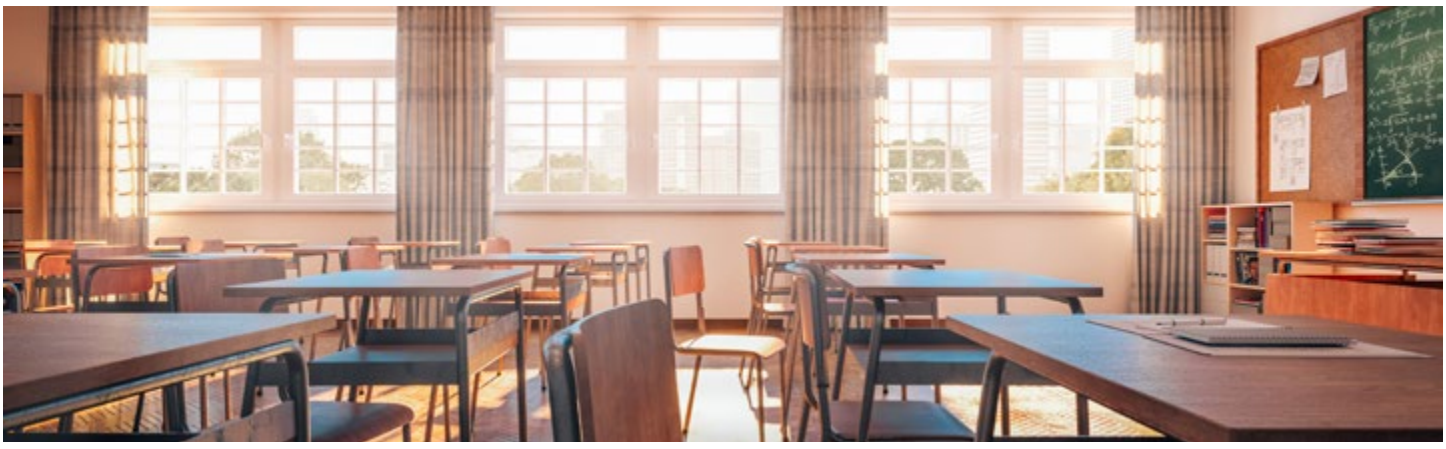

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Case Summaries

By Ryan M. O'Neil

Custody

Horazdovsky v Horazdovsky
Unpublished opinion per curiam of the Court of Appeals
Issued March 5, 2026 (Docket No. 376242)
Midland County

After the parties divorced in 2021, defendant was awarded physical custody of the parties' three children and plaintiff received parenting time. The children frequently refused parenting time with plaintiff and were experiencing academic and attendance problems, including one child who regularly missed school. The trial court later found that defendant had repeatedly interfered with plaintiff's parenting time and ordered 126 overnight makeup visits. During that period, the children's school attendance and grades improved, and their relationship with plaintiff strengthened. In 2024, plaintiff moved for primary physical custody. Following an evidentiary hearing and in camera interviews with the children, the trial court granted plaintiff primary physical custody and awarded defendant parenting time. Defendant appealed the decision.

Business-Records Exception

On appeal, defendant argued that the trial court erred in allowing school attendance records without first hearing testimony from a record's custodian.

The "business-records exception" to the hearsay rule found in MRE 803(6) allows for the admission of a record compiled and kept in the course of regularly conducted business activity when authenticated by the custodian of the record. MRE 803(6) provides that evidence not excluded by the rule against hearsay includes A record of an act, transaction, occurrence, event, condition, opinion, or diagnoses if:

(A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with a rule prescribed by the Supreme Court or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

The Court of Appeals found that, although the trial court erred by admitting the records without first having them authenticated by a custodian, the error was harmless because the purpose of admitting the records was to show that the children did not attend school regularly during Plaintiff's parenting time—not to identify specific dates. The parties had already agreed that the children did not regularly attend school while under Defendant's care.

Lay Testimony

Defendant also argued that the trial court erred by allowing Plaintiff to testify as a lay witness about the minor children playing video games at Defendant's home past 9:00PM because the Plaintiff observed someone using the children's "game tags" during those times.

Under MRE 602, a lay witness may testify only regarding a matter of which the witness has personal knowledge. MRE 701, however, permits a lay witness to provide opinion testimony if it is "rationally based on the witness's perception" and is "helpful to clearly understanding the witness's testimony or to determining a fact in issue." See *Airgas Specialty Products v Michigan Occupation Safety and Health Administration*, 338 Mich App 482, 516; 980 NW2d 530 (2021) (referring to the prior version of MRE 701).

The Court of Appeals found that Plaintiff's testimony—that video game tags appearing online after 9:00 p.m. required specialized knowledge—should have been inadmissible under MRE 701. Nonetheless, the Court of Appeals concluded that the error was harmless because the trial court gave this testimony minimal weight.

Past Events

Defendant further argued that the trial court erred by precluding her from testifying about prior incidents of abuse that predated entry of the divorce judgment.

The Court emphasized: "with regard to proper cause, the trial court is not barred from considering evidence that predates the entry of the last custody order. See *Vodvarka*, 259 Mich App at 514-515."

However, the Court of Appeals found that the trial court erred by not allowing Defendant to present this testimony. However, the error was deemed harmless because the trial court offered Defendant the opportunity to make a record regarding the excluded evidence, and Defendant chose not to do so.

Best Interest Findings

Defendant also challenged the trial court's best-interest findings. Specifically, Mother challenged the findings under Factor (C), which considers "the capacity and disposition of the parties involved to provide the child with food, clothing, medical care, or other remedial care." The trial court found that the minor children were allergic to cats and that Mother's possession of ten (10) cats was detrimental to their health.

The problem, however, was that there was no evidence that the children were allergic to cats—none. Defendant testified that she had been told by a doctor that the children were not allergic to cats, and Plaintiff did not produce any evidence rebutting this testimony.

Defendant also argued that the trial court failed to consider Plaintiff's acts of domestic violence pursuant to MCL 722.23(k). The Court of Appeals agreed that the trial court erred in failing to consider evidence of prior abuse. However, the trial court did consider Defendant's continued contact with a boyfriend who also "exhibited violence in her home."

Although the trial court erred, the Court of Appeals concluded that the overall best-interest findings still supported modification of the previous custody order.

Affirmed.

Grasmeyer v Grasmeyer II
Unpublished opinion per curiam of the Court of Appeals
Issued March 13, 2026 (Docket No. 375438; 376413)
Ottawa County

Does the name of this case sound familiar? Trying to put your finger on it? That is because the defendant in this case is the son of Ronald Grasmeyer – the defendant in *Vodvarka v Grasmeyer*, 259 Mich. App. 499, 675 N.W.2d 847 (2003).

This case arises from a prolonged and contentious divorce between the parties. Plaintiff first filed for divorce in Muskegon County in March 2022, but the case was dismissed in March 2023 after the statutory one-year period expired without resolution. After the dismissal, Plaintiff moved from the marital home in Muskegon to Hudsonville and filed a new divorce action in Ottawa County in March 2023.

The parties had four minor children (RG, TG, KG, and LG) and also cared for Defendant's adult child, JG. In December 2021, Defendant suffered a severe case of COVID-19 requiring hospitalization. During that time, Plaintiff discovered that Defendant had engaged in multiple extramarital affairs, which prompted her to seek divorce. Defendant later admitted to relationships with several women, including family friends.

By the time of the Ottawa County proceedings, Plaintiff's relationship with the two oldest children (RG and TG) had deteriorated significantly. Both children frequently ran away from Plaintiff's home and resisted parenting time, and the divorce conflict negatively affected all four children. RG was charged in juvenile court after choking plaintiff during an argument.TG displayed ongoing defiant and confrontational behavior. KG had Smith-Magenis Syndrome and mild cognitive impairment and faced juvenile charges for property destruction. LG made suicidal and homicidal statements and also began running away during parenting time.

After a lengthy bench trial, the court entered a judgment of divorce awarding joint legal custody. The court split physical custody: RG and TG with Defendant, and KG and LG with Plaintiff. The court also awarded Plaintiff attorney fees, leading to the present appeal.

On appeal, Defendant argued that the trial court erred in awarding Plaintiff custody of KG and LG. The trial court had found that both parties had engaged in conduct to undermine the other parent's relationship with the minor children including exposing the children to on-going legal disputes, but that Plaintiff did more to curb such actions.

Defendant conceded that he made two inappropriate statements regarding Plaintiff in the presence of the minor

children. Specifically, in March 2023, Defendant stated in the presence of TG that Plaintiff had engaged in infidelity and had infected Defendant with a sexually transmitted disease (STD). Additionally, in February 2024, Defendant informed a clinician, in the presence of LG, that Plaintiff did not have custody of LG's older brothers due to Plaintiff's alleged domestic abuse.

The Court of Appeals rejected Defendant's argument that the trial court overly emphasized these instances as the trial court issued a 62-page opinion which identified *numerous* instances of misconduct.

The record establishes that, in addition to attributing Plaintiff's lack of custody of LG's brother to alleged abuse, Defendant also informed LG's clinician that LG had absconded from Plaintiff's home on seven occasions. Moreover, Plaintiff testified that the children repeated statements to her that mirrored statements previously made by Defendant, including allegations of infidelity, transmission of an STD, and attempted homicide. Additional evidence demonstrated that Defendant blamed Plaintiff, in the presence of the children, for delays in the divorce proceedings and for the parties' failure to reach a settlement.

The record further reflects that, despite the degrading, profane, and violent statements and conduct exhibited by RG and TG toward Plaintiff, Defendant took minimal or no action to intervene or correct such behavior. Defendant permitted TG to follow Plaintiff throughout the home during an appraisal, during which TG physically impeded Plaintiff, yelled at her, and suggested that she should harm herself, without significant intervention by Defendant. Defendant testified that he believed RG was acting in self-defense when he choked Plaintiff after she entered RG's room to recover her belongings

Further evidence demonstrated that Defendant did not encourage RG or TG to participate in Plaintiff's court-ordered parenting time. Defendant refused to assist Plaintiff in arranging transportation for RG and TG following a court order and made little or no effort to facilitate reunification counseling for RG, TG, and Plaintiff.

Moreover, contrary to Defendant's contention that the trial court erred by considering this conduct under multiple best-interest factors, the law recognizes that certain best-interest factors may overlap, and a single fact or circumstance may properly be considered under more than one factor. *Fletcher v Fletcher*, 229 Mich App 19, 24-25; 581 NW2d 11 (1998).

The Court of Appeals affirmed the trial court's finding that Defendant's continual disparagement of Plaintiff in the presence of the minor children was the primary cause of the deteriorating relationship between the parties' oldest children and Plaintiff. The Court affirmed the trial court's custody order.

Dean v Hunter, Jr
Unpublished opinion per curiam of the Court of Appeals
Issued March 18, 2026 (Docket No. 376734)
Macomb County

This case arose from a paternity action filed by Dean and the Macomb County prosecutor against Craig Hunter, Jr., alleging that he was the father of the minor child, BD. Although Hunter stipulated to DNA testing, he was ultimately defaulted, and the trial court entered a judgment of filiation establishing him as BD's legal father. The court awarded Dean sole legal and physical custody and later permitted her to relocate the child's domicile from Michigan to Georgia in November 2023. Hunter was granted limited parenting time consisting of one weekend per month and two consecutive weeks during the summer.

Difficulties soon developed when Dean began denying Hunter his court-ordered parenting time. The Friend of the Court initiated contempt proceedings after alleging that Dean refused parenting time on multiple occasions in 2024. In response, Dean sought to suspend Hunter's parenting time on an emergency basis, alleging abusive behavior and requesting that any contact be supervised. The Friend of the Court recommended denial of her motion, and although the trial court considered her objections in part, it ultimately left the existing parenting-time arrangement in place and referred related issues for further investigation.

The dispute escalated in early 2025. At a February hearing, the trial court found Dean in contempt for violating parenting-time orders and granted Hunter make-up parenting time, including provisions allowing police assistance to enforce compliance if necessary. Despite these directives, Dean continued to resist compliance and filed multiple motions seeking reconsideration, a change of jurisdiction to Georgia, and other relief, all of which were denied. The court warned that continued interference with parenting time could result in a change of custody.

Dean later renewed her allegations of abuse, claiming that the child had been physically and sexually harmed while in Hunter's care. However, these allegations were not substantiated by medical providers, law enforcement, or Child Protective Services. Meanwhile, Hunter sought a change of custody, asserting that Dean continued to refuse to produce the child for parenting time. In April 2025, the Friend of the Court recommended a temporary change of custody to Hunter based on Dean's willful violation of court orders. When neither party appeared for the scheduled de novo hearing, the trial court adopted that recommendation, transferring interim custody to Hunter.

Dean's noncompliance continued. She failed to appear at subsequent evidentiary hearings and did not transfer custody of the child until June 2025, despite an earlier court order requiring her to do so. She continued to assert abuse allegations, but the trial court found no credible evidence supporting those claims. Reports from law enforcement and Child Protective Services consistently indicated that the child was safe and well cared for in Hunter's home, and medical evaluations revealed no signs of abuse.

Following further proceedings, the Friend of the Court recommended that Hunter be awarded sole legal and physical custody, that Dean's parenting time be suspended pending a psychological evaluation, and that she be ordered to pay child support. The trial court ultimately adopted these recommendations and denied Dean's motions to modify custody, set aside prior proceedings, or change jurisdiction. Dean appealed, but both the Michigan Court of Appeals and the Michigan Supreme Court denied interim relief.

On appeal, Dean first argued that the trial court lacked subject matter jurisdiction to render an order.

Under MCL 722.1202(1), a court that makes an initial child-custody determination "has exclusive, continuing jurisdiction over the child-custody determination" until either of the conditions set forth in MCL 722.1202(1)(a) and (b) is met. The first condition occurs when a Michigan court "determines that neither the child, nor the child and 1 parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the

child's care, protection, training, and personal relationships." MCL 722.1202(1)(a). "[T]he significant connection that permits exercise of exclusive, continuing jurisdiction under MCL 722.1202(1)(a) exists where one parent resides in the state, maintains a meaningful relationship with the child, and, in maintaining the relationship, exercises parenting time in the state." *White*, 280 Mich App at 394. The other condition occurs when a court of any state "determines that neither the child, nor a parent of the child, nor a person

acting as the child's parent presently resides in this state." MCL 722.1202(1)(b).

Dean did not allege either condition that would result in Michigan losing exclusive, continuing jurisdiction, other than her lack of consent to Michigan's jurisdiction and her assertion that Georgia had become BD's home state. The Court of Appeals did not find merit in either argument.

Dean also appealed the July 2, 2025 order.

At the June 30, 2025 hearing on Dean's motion to modify custody and parenting time, the court asked Dean why she failed to appear at the June 3, 2025 evidentiary hearing. The court and Dean engaged in the following discussion:

THE COURT: So why didn't you show up for the evidentiary hearing on June 3rd?

MS. DEAN: So the evidentiary hearing, um previously all through, I've been filing motions claiming my financial restraints and my hardship. But I'm being forced to appear to all hearings in person.

THE COURT: Because of your conduct on Zoom when you appear on Zoom.

MS. DEAN: I don't feel that my conduct was—

THE COURT: Well, I did, and I made a record of it. So I indicated you had to come in person. And the June 3rd hearing was held in person and you weren't here.

The trial court did allow Dean to present evidence and testimony at the June 30 evidentiary hearing. While the trial court did not explicitly make findings that Dean failed to show a change in circumstance and/or proper cause, the Court of Appeals found that such a conclusion could be reached by reviewing the trial court's statements.

The trial court inquired whether Dean intended to file objections to the Friend of the Court recommendation following the June 3 hearing, to which Dean responded that she had already done so. The trial court then asked whether Dean wished to proceed with the de novo hearing that same day to avoid returning for an in-person hearing. Dean agreed, and the court directed her to file the transcript from the June 3 hearing. In light of these circumstances, the Court of Appeals concluded that the trial court did not err in denying Dean's request to modify custody.

A concurring opinion was authored, noting that although errors were likely committed by the trial court, the absence of transcripts from the April 7, 2025, proceedings left concurrence as the only viable option.

Two things occurred that we do not know but are critical to the analysis in this case: first, did the FOC referee make any findings at that hearing regarding young BD's established custodial environment; and second, what were the FOC referee's findings regarding the twelve best-interest standards and the standard of review it applied? Unfortunately, no one ordered the transcript of

the April 7, 2025, hearing, and plaintiff did not appeal that order, which became final when the parties failed to appear at the May 5, 2025, hearing on her objections to it.

Change of Domicile

Yongo v Okochi
Unpublished opinion per curiam of the Court of Appeals
Issued March 11, 2026 (Docket No. 375198)
Ottawa County

Plaintiff and Defendant were married in 2020 and divorced in 2024. The divorce judgment awarded Plaintiff primary physical custody of their two minor children, joint legal custody to both parties, and parenting time to Defendant. Plaintiff previously appealed the divorce judgment, alleging evidentiary errors, due-process violations, and judicial bias, but the Michigan Court of Appeals affirmed the judgment.

In February 2025, Plaintiff filed a motion seeking to change the children's domicile from Michigan to Houston, Texas, citing a job opportunity and improved support network. During the initial hearing, Defendant requested an adjournment after receiving new information suggesting concerns about Plaintiff's mental-health treatment in Texas, the children's absence from autism treatment, and a pending CPS investigation. The trial court granted the adjournment to allow additional evidence and witnesses.

Before the resumed hearing, Plaintiff moved to exclude testimony from two witnesses concerning her past alcohol use, mental-health history, and rehabilitation stay. The trial court denied the motion without prejudice, indicating that evidentiary objections could be raised during testimony.

At the continued hearing, a CPS investigator testified that the investigation involved allegations against Defendant and that both parents were considered fit, with no substantiated claims. Plaintiff also presented testimony confirming that she had received a job offer in Houston with a $110,000 salary and relocation package. Plaintiff argued the move would improve her financial stability and proposed a parenting-time schedule giving Defendant extended summer parenting time and regular virtual contact with the children.

After considering the evidence, the trial court denied the motion to change domicile, concluding that the statutory factors under MCL 722.31(4) did not support relocation. The court

also denied Plaintiff's motions for reconsideration, and Plaintiff subsequently appealed the denial of the domicile change.

On appeal, Plaintiff challenged various findings by the trial court. Plaintiff first challenged the trial court's finding that the relocation would not improve the quality of life for the minor children.

Under MCL 722.31(4)(a), the trial court found that the proposed change in domicile would improve Plaintiff's quality of life but that it would not improve the children's quality of life. Specifically, it would not offset the children's loss of high-quality services and programs or their frequent and regular contact with Defendant. The trial court also found that the increase in Plaintiff's income did not outweigh the children's frequent and regular contact with Defendant. The court opined that Defendant and his support system were necessary to provide oversight and protection for the children should Plaintiff experience further mental-health or substance-abuse crises. These findings were not against the great weight of the evidence. See *Rains*, 301 Mich App at 324.

Plaintiff argued that her increase in income would be able to provide the children with services and programs they needed but could not afford, however, she failed to identify any services or programs that the children presently required that they did not have. Plaintiff also argued that the proposed school in Houston would be better for the children, however, Plaintiff did not offer any evidence as to *how* the school would benefit the children or what services were available at the new school to address the children's needs.

Plaintiff also argued that the trial court erred by conducting its own "extrajudicial" fact finding. At the initial hearing on Plaintiff's motion to change the child's domicile under MCL 722.31, the trial court scheduled two mornings for the evidentiary hearing and discussed time limits with the parties. The court indicated that, given the limited time, each party likely could not call more than three witnesses in addition to themselves. The court required the parties to submit witness lists identifying each witness by name and the subject matter of their testimony, and to identify any expert witnesses with

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Plaintiff later filed a witness list including four lay witnesses (including herself) and one expert witness and moved to exclude two witnesses from the court's limit. The court issued subpoenas for two of plaintiff's in-state witnesses but declined to subpoena an out-of-state witness.

The court also refused to allow Plaintiff's proposed expert witness, Donna King, Ph.D., J.D., who was offered to testify about coercive control and abuse. Applying MRE 702, the court concluded that the plaintiff had not shown the expert possessed specialized knowledge of Michigan custody and best-interest factors and determined that the expert's testimony would not assist the court, which noted its own extensive experience in Michigan family law. Accordingly, the court denied the request to subpoena or allow the expert to testify.

MRE 611 provides, in part, the following:

> (a) Control by the Court; Purposes. The court must exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
>
> (1) Make those procedures effective for determining the truth;
>
> (2) Avoid wasting time; and
>
> (3) Protect witnesses from harassment or undue embarrassment.

The Court of Appeals found that this type of conduct does not create an appearance of impropriety and does not violate any judicial canons.

The Court of Appeals affirmed the trial court's ruling.

Spousal Support

Mitchell v Mitchell
Unpublished opinion per curiam of the Court of Appeals
Issued March 9, 2026 (Docket No. 371069; 371147)
Marquette County

The parties divorced in 2012 after a 23-year marriage. Their judgment of divorce incorporated a separation agreement requiring Defendant to pay $3,000 per month in modifiable spousal support for ten years, terminating upon Plaintiff's remarriage or death. During the support period, Defendant accumulated significant arrearages and was held in contempt but later made lump-sum payments that satisfied the arrearage, including a large payment in January 2023.

After the ten-year support term expired, Plaintiff filed post-judgment petitions seeking interim spousal support, modification of spousal support, attorney fees, and other equitable relief, arguing that Defendant had historically failed to comply with support obligations and that she lacked funds to continue litigation.

Although Defendant did not file written responses, he appeared and contested the claims at hearings. Plaintiff then moved for partial summary disposition under MCR 2.116(C)(8), (C)(9), and (C)(10), arguing she was entitled to relief because Defendant had not filed written defenses.

The trial court denied the motion, explaining that post-judgment domestic relations proceedings are not typical civil actions, and that Defendant's appearance and participation were sufficient to contest the petitions. The court ultimately denied Plaintiff's requests for spousal-support modification, attorney fees, and other relief, and later denied her motion for reconsideration. Plaintiff appealed.

Plaintiff argued that the trial court erred by failing to grant her additional spousal support beyond what was ordered in the judgment. The Court of Appeals found that Plaintiff failed to prove any change in circumstance which arose since the entry of the judgment which would justify an award of continued spousal support.

The Court of Appeals affirmed the trial court's spousal support ruling.

Property Distribution

Taylor v Taylor
Unpublished opinion per curiam of the Court of Appeals
Issued March 10, 2026 (Docket No. 374435)
Grand Traverse County

This divorce case centers on a disputed property in Traverse City, Michigan. The key issue is whether the $100,000 contributed by the Husband's parents to purchase the Coyote Crossing home was a loan or an ownership investment.

The Wife believed it was a loan, based on her Husband's repeated assurances that his parents were acting "as the bank." The Husband and his parents maintained they were co-owners, with the parents holding a two-third interest and the Husband one-third.

After a five-day trial, the court sided largely with Husband, finding the parents owned a one-half interest that was not subject to division. The Wife received $100,000 from the Husband's share of the property, which had appreciated from ~$149,800 to ~$400,000 during the marriage.

Wife appealed and argued that the trial court erred in finding that Husband's parents had an ownership interest in the property. The Court of Appeals found that the issue in this case rested largely on credibility determinations, with the trial court finding Husband's parents truthful and not finding evidence that they were involved in a plot to conceal or hide assets from Wife.

"This Court gives substantial deference to such credibility determinations because the trial court is in the best position to observe witnesses and assess their demeanor. *Cassidy v Cassidy*, 318 Mich App 463, 476-477; 899 NW2d 65 (2017); *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014)."

The Court also affirmed the trial court's ruling that the facts of this case were distinguished from *Donohue v Donohue*,

134 Mich App 696; 352 NW2d 705 (1984), because there was no evidence of fraud or an attempt to conceal assets.

Husband also filed a cross-appeal challenging the trial court's ruling that his parents owned 50% of the property.

Nothing in the deed expressed an intent to create three equal one-third interests or to allocate ownership based on contribution, as Husband suggests. Under Michigan law, Husband's parents took one undivided share as tenants by the entirety, while Husband took a separate undivided share. *Licavoli*, 292 Mich App at 454. Although the parties' financial contributions and subjective understandings were relevant to the classification of marital versus nonmarital property, they do not override the plain language of the deed in determining record-title interests.

The Court of Appeals affirmed the trial court's ruling.

Freij v Freij
Unpublished opinion per curiam of the Court of Appeals
Issued March 17, 2026 (Docket No. 371706)
Oakland County

The parties married in 2012 and had two children. Early in the marriage, both worked full-time at the same accounting firm, but after the children were born, Plaintiff became a stay-at-home parent while managing the household finances. Meanwhile, Defendant advanced professionally and became an equity partner at PricewaterhouseCoopers in 2018, a role requiring extensive travel.

The relationship deteriorated during the COVID-19 pandemic. In 2021, Plaintiff returned to full-time work at Defendant's encouragement, but tensions worsened. Defendant then moved marital funds into accounts under his sole control, denied Plaintiff access, and assumed control over finances. Plaintiff opened her own bank account and used her comparatively modest income to cover child-related and other expenses. . The parties remained in the same home but separate bedrooms.

In June 2022, Defendant lost his job but received substantial severance and equity payments. He remained unemployed and continued controlling marital funds without granting Plaintiff access.

Plaintiff filed for divorce in January 2023, seeking equitable distribution, spousal support, and attorney fees. The court issued mutual restraining orders to preserve the financial status quo. Defendant continued using marital funds for personal expenses, refused Plaintiff access, and failed to comply with discovery, resulting in significant motion practice.

A bench trial took place in April 2024. Key disputes included:

- Whether certain assets (Apple stock, a Charles Schwab account, and funds used for the home down payment) were marital or separate property

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- Allegations that Defendant was voluntarily unemployed and dissipated marital assets

In July 2024, the trial court entered a judgment of divorce:

- The marital home (valued at $2 million) was to be bought out by Defendant or sold
- Disputed financial assets were deemed marital and divided
- Some retirement accounts were split; others treated as premarital
- Plaintiff received her Chase account
- Joint funds were used to pay legal fees, debts, and expenses
- Defendant was ordered to pay $40,000 toward Plaintiff's attorney fees
- Instead of spousal support, Plaintiff received additional Apple stock

Defendant appealed, and his motions to stay the judgment were denied.

On appeal, Defendant argued that the trial court erred by awarding Plaintiff a portion of Defendant's pre-marital value from his Pricewaterhouse account.

Pursuant to MCL 552.18(1), a trial court must include vested retirement benefits in the marital estate, making them subject to division." *Baker v Baker*, 268 Mich App 578, 582; 710 NW2d 555 (2005). But generally, parties are only required to divide the marital (as opposed to premarital) portion of retirement assets. *Hodge*, 303 Mich App at 562. Retirement assets accrued before marriage may nonetheless be divided if "such treatment is 'just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.' " *Booth v Booth*, 194 Mich App 284, 291; 486 NW2d 116 (1992), quoting MCL 552.23(1).

The Court of Appeals agreed with Defendant and rule that the trial court did err by not identifying the pre-marital portion prior to making its award. The Court further agreed with Defendant that the trial court erred by awarding Plaintiff the entirety of her Chase bank account as a separate asset which contained marital funds. "Although the trial court found defendant's DFCU accounts, which were created in 2021, were marital assets, the trial court awarded plaintiff her Chase Bank account, free from any claim of defendant. The trial court could have determined it was just and equitable to award plaintiff her Chase Bank account even though it was marital property, but the trial court did not state as much."

The Court did reject Defendant's argument that the downpayment for the marital home and the purchase of the Apple stock were his separate property.

The order regarding the Pricewaterhouse stock and Chase bank account were vacated and the matter was remanded back to the trial court as to those issues only.

Guidelines for Requesting Appearance of the Family Law Section of the State Bar of Michigan as Amicus Curiae

1. Requests from litigants should be directed to the Amicus Committee. https://connect.michbar.org/familylaw/n-committees/key-committees/amicus. Please contact Jordan Ahlers-Smith and Emily Miller, the co-chairs of the committee, at: jahlers@speakerlaw.com and emiller@mplp.org.
2. The amicus request must clearly indicate whether leave to appeal has been requested and/or granted. If leave has been requested but not yet granted, the requesting attorney must indicate whether an amicus is requested to support granting leave or on the substantive issues.
3. Amicus requests must be in writing and include the following:
    a. A short and concise memorandum setting out the legal issue(s) addressed by the appeal;
    b. Previously submitted briefs (from both parties) and opinions in the case, together with the order granting leave to appeal, if appropriate, and a list of the filing deadlines, including the deadlines for the amicus curiae brief;
    c. A brief statement explaining why the Family Law Council should grant the request. This statement should specifically reference the Case Selection Criteria; and the impact of the case on the domestic relations bar as a whole;
    d. For amicus requests prior to the Court granting leave, a statement setting out "exceptional circumstances" to justify Family Law Council involvement.

Case Selection Criteria for Requests for Appearance of the Family Law Section of the State Bar of Michigan as Amicus Curiae

In considering on a request for appearance as Amicus Curiae, the Amicus Committee of the Family Law Section shall consider the following criteria:

1. Whether the legal issue involved is of substantial interest to the domestic relations bar. We generally do not participate in appeals from the trial court to the court of appeals seeking correction of error, either factually or in choosing or applying settled law.
2. Whether the legal issue involves a conflict in case law, or a case of first impression, or a novel or previously unresolved question, or whether there is a need for clarification of a legal issue, the disposition of which is likely to have broad range effects beyond the particular case.
3. Whether the legal issue involved affects fundamental rights of individuals or involves a constitutional question.
4. Whether the case presents an opportunity to ameliorate or reverse prior judicial decisions or legislative enactments which adversely impact domestic relations law.
5. Whether the issue or case impacts the practice of family law from the view of practitioners.
6. Whether the briefs of the parties before the court, or briefs of other amicus curiae, adequately address the legal issues presented.
7. Whether the facts presented are strong enough, and the record sufficiently developed, to support the position to be asserted, if the facts are relevant to the amicus request.
8. Whether the position to be asserted is appropriate in view of the recent pronouncements of the appellate courts and consistent with the Family Law Council's principles and philosophy.
9. Whether there exists sufficient time to request amicus status and properly prepare a brief
10. Whether sufficient resources are available, given the Council'samicus caseload, to grant the request.
11. Whether the Court has requested the submission of briefs.
12. Whether the case should be referred to another Section of theState Bar.

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