

Case Name	Citation (Date Issued)	E-Journal Case Description
<i>Biondo v Biondo</i>	<p>— Mich App __; — NW2d __ (2011); Mich Ct App Case No. 294694 (issued 3/15/2011)</p>	<p>Deciding an issue of first impression as to whether federal law preempted the divorce judgment's social security formula, the court held that it did. The court also joined the majority of states that have considered the issue and held that the trial court may consider the parties' anticipated social security benefits as one factor, <i>inter alia</i>, to be considered when devising an equitable distribution of marital property. However, the court cautioned that in endeavoring to divide the marital estate, the trial court may not treat social security benefits as tantamount to a marital asset. Rather, the trial court may take into account, in a general sense, the extent to which social security benefits received by the parties affect the <i>Sparks</i> factors. The parties were married over 40 years and consented to the entry of a divorce judgment. During the marriage, the plaintiff-husband worked for a car manufacturer and the defendant-wife cared for their two children (now adults). A specific judgment provision entitled "Social Security Benefits" obligated the parties to "equalize their social security benefits." After the judgment was entered, the parties stipulated to the entry of a QDRO, which allocated to the wife 50% of the husband's accrued retirement benefits as of the date of the divorce. The parties agreed that they intended the consent judgment's property division to equally divide the marital estate. The wife later filed a motion seeking "compliance" with the judgment's social security benefits provision because allegedly the husband failed to timely and fully make the social security equalization payments. He contended that the judgment's social security formula violated federal law and any order enforcing it would be invalid. The trial court enforced the judgment's social security benefits provision. The court rejected his suggestion that the trial court did not have subject matter jurisdiction to enter the terms of the parties' consent divorce judgment. The fact that federal law preempted part of the judgment in no way deprived the trial court of jurisdiction. The SSA does not divest state courts of subject matter jurisdiction in divorce cases. Rather, the Supremacy Clause preempts state laws as to the division of marital property only to the extent that they are inconsistent with § 407(a). While the trial court erred in ordering the social security equalization, it did not exceed its subject matter jurisdiction in doing so. The court concluded the parties in drafting the consent judgment incorrectly deemed their social security benefits as marital property. This resulted in a mutual mistake and required remand to the trial court where it should consider the <i>Sparks</i> factors as guidance and social security benefits are relevant to several of them. Reversed and remanded for further proceedings.</p>

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<p><i>Cipriano v Cipriano</i></p>	<p>___ Mich App ___,          __NW2d __ (2010);          Mich Ct App Case Nos.          291377 &amp; 292806          (issued 8/10/2010)</p>	<p>The trial court did not err in confirming the arbitrator's award despite the defendant-husband's ex parte contact with the arbitrator. The plaintiff-wife did not show that the arbitrator exceeded his powers where, pursuant to the parties' agreement, he retained the discretion to receive information from defendant in order to expedite the proceedings and plaintiff failed to show any arbitrator misconduct prejudiced her rights or that the award was obtained by undue means. Further, the arbitrator's award eliminating spousal support retroactive to May 2007 and converting the \$5,500 payments to installment payments to satisfy the property award did not violate MCL 552.603(2). However, the trial court erred in modifying the arbitrator's award of the monthly payments without a timely complaint and without reference to MCR 3.602(K)(2). Thus, the court affirmed in part, reversed in part, and remanded. The arbitrator sent the parties an excerpt of his preliminary findings and awards in an effort to encourage them to reach a settlement. He later sent a letter to defense counsel, which he copied to the trial court and plaintiff's counsel, indicating that he received a recent financial report from defendant with the words, "Don't kill the goose," handwritten on the cover. The letter also indicated that defendant placed a three to five minute phone call to the arbitrator, essentially stating he could not borrow one-half million dollars as the excerpt provided. The arbitrator stated he listened, without response, to defendant and characterized his actions as "disconcerting and inappropriate." The court noted that the parties' agreement made no provision as to ex parte contact and the contact did not involve legal argument. While plaintiff suggested that there is a rule that ex parte contact with the arbitrator results in the award being vacated, the cases she cited were based on ex parte contact that violated the parties' agreements on the procedures for their arbitration. Further, while defendant's conduct "was improper, the arbitrator responded promptly and decisively to disclose the contact and prevent further contact." Although the arbitrator adjusted his planned award after the contact, the adjustment "did not result in a substantial difference in the arbitration award by reason of a substantial error of law." The final award did not change the total amount of the property award. The court upheld the arbitration award, but reversed the trial court's order reducing the monthly payments awarded to plaintiff to \$3,870 a month where defendant filed his motion to reduce the payments several months after the arbitration award and neither he nor the trial court referred to any of the provisions of MCR 3.602(K)(2) to justify modifying the award.</p>

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Cunningham v Cunningham	289 Mich App 195; ___ NW2d ___ (2010); Mich Ct App Case No. 285541 (issued 7/13/2010)	<p>In an issue of first impression, the court held worker's compensation benefits for an injury occurring before the marriage but received during the marriage are considered marital property only to the extent they compensate for wages lost during the marriage. However, while the pre-marriage portion of the defendant-husband's retroactive award was initially his separate property, the trial court erred by excluding from the marital estate the \$90,000 of the award he contributed to the down payment on the marital home because those funds lost any separate character they had due to the parties' actions and course of conduct (commingling those funds with marital funds and the plaintiff-wife's separate funds). Defendant suffered a severe and permanently disabling injury when he was 16 years old while employed in construction work. While his claim for benefits under the WDCA was pending, he married plaintiff in 1982. The claim was resolved in 1987. In addition to a lifetime award of benefits paid on a monthly basis, he was awarded a \$150,000 lump-sum payment retroactive to the date of injury (the retroactive award), all of which was placed into the parties' joint savings account. They purchased the marital home in 1987, using \$90,000 of the retroactive award, \$25,000 in proceeds from the sale of their first home (purchased together when they married), and about \$20,000 from plaintiff's pre-marital 401k. At trial, defendant successfully requested the \$90,000 of the retroactive award he contributed to purchase the marital home be awarded to him as his separate property. On appeal, plaintiff argued the entire retroactive award was marital property subject to equitable division because it was received during the marriage. The court disagreed, holding a worker's compensation award received during the marriage is not necessarily marital property. Rather, "a benefit received during marriage is marital property only if it compensates for wages lost between the beginning and end of marriage." Any compensation benefits awarded for "periods before the marriage or after its dissolution are akin to a party's individual earnings and are to be considered separate property, as those earnings fall outside the beginning and end of the marriage." Thus, the portion of the retroactive award compensating defendant for wages lost before the marriage could potentially have been considered his separate property. However, he took no steps to maintain that portion of the award as his individual property where he deposited the funds in a joint account in which both parties deposited funds from their own earnings and commingled the \$90,000 from the award with plaintiff's funds and proceeds from the sale of their first home. Reversed and remanded.</p>

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<p><i>Dailey v Kloenhamer</i></p>	<p>___ Mich App __; __NW2d __ (2011); Mich Ct App Case No. 300698 (issued 3/8/2011)</p>	<p>The court held, <i>inter alia</i>, that the trial court did not err in ordering that the parties would have joint physical custody of their minor child while granting sole legal custody to the defendant-father. Further, the court held that a proper cause or change in circumstances existed for the trial court to revisit the 3/9/09 custody order, the trial court's factual findings on the best interest factors were supported by the record, and its decision to grant defendant sole legal custody was supported by fact and logic. The parties were divorced in 2003 and had one child. During the divorce proceedings they stipulated that they would share legal custody, the child would reside with defendant, and agreed on a parenting time schedule. At first, their disputes centered on parenting time, but recently there were disputes over education, religion, and a proper diagnosis and treatment for the child's chronic cough. Plaintiff filed a motion for primary physical custody of the child. The parties reached an agreement on the motion in 2009, resulting in an order modifying parenting time and requiring plaintiff to schedule an appointment with an allergist to obtain a second opinion on the child's respiratory condition. The disputes continued and the parties disagreed about numerous aspects of the child's health and education. Plaintiff filed a motion to change the child's school to a private school in the Detroit area, which defendant opposed. The trial court found there was proper cause or a change in circumstances to review the prior custody order, found the child had ECEs with both parents, and after reviewing the best interest factors, granted defendant's motion for sole legal custody, and denied plaintiff's motions. Plaintiff argued on appeal, <i>inter alia</i>, that the trial court erred in finding a change in circumstances or proper cause to review the custody order. The court disagreed and noted that the record demonstrated that the parties' disagreements had escalated and expanded to topics that could have a significant impact on the child's well-being. The court held it was not against the great weight of the evidence for the trial court to revisit the custody issue. The court also held that the trial court properly considered each best interest factor, found the parties equal on a majority of them, but found factors (c), (g), and (h) all favored defendant. The court held that the trial court's decisions as to the best interest factors were supported by the record and it did not abuse its discretion in awarding defendant sole legal custody of the child. Finally, the court held that given the plain language of the joint custody provisions and the equitable nature of the CCA, the act authorizes trial courts in proper circumstances to grant joint physical custody to the parties while granting sole legal custody to one party. Affirmed.</p>

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<p><i>Estate of Stanley Luckow v Luckow</i></p>	<p>___ Mich App ___, ___ NW2d ___ (2011); Mich Ct App Case No. 294398 (issued 1/27/2011)</p>	<p>Concluding that the original trial court did not abuse its discretion by not requiring the plaintiff-former husband to invade marital assets awarded to him to pay spousal support, the court held that given the absence of any "palpable error" in the original trial court's opinion and order, the successor trial court's decision to grant the defendant-ex-wife's motion for reconsideration fell outside the range of principled outcomes, constituting an abuse of discretion, and reversed. The plaintiff (estate of the deceased former husband) appealed the successor trial court's opinion and order granting the ex-wife's motion for reconsideration as to an alimony award rendered by the predecessor trial court. The parties divorced in October 2003. Pursuant to a prior arbitration award, the judgment of divorce ordered the husband to pay the ex-wife modifiable spousal support in the amount of \$2,500 per month until her death or remarriage, whichever occurred first. Neither has occurred. The spousal support was based on the husband's \$90,000 annual income and the ex-wife's imputed income of \$15,000. It was to be secured by naming her as a beneficiary of a portion of the husband's life insurance proceeds. As part of the property division, the husband was awarded the value of his life insurance policies, subject to the ex-wife's interest in the proceeds as security for spousal support, and the marital interest in his business. The ex-wife was awarded assets including the marital home, one-half of the husband's IRA, and a portion of his company's profit sharing account. In January 2005, the husband moved to reduce his spousal support obligations. The original trial court denied the motion concluding that the husband had not demonstrated a significant change in circumstances. The husband then moved to set aside the original trial court's order denying his motion for a reduction of spousal support. The trial court granted the motion. The parties stipulated to arbitration. The record showed that the husband sold his interest in the business and received his last paycheck on 9/15/06. The arbitrator issued his binding opinion recommending that the husband's obligation to pay spousal support should be abated to zero, but reserving future spousal support obligation for future adjudication. It was determined that the ex-wife was entitled to more than \$35,000 in spousal support arrearages and the award limited the husband's obligation to secure future spousal support by way of a <u>life insurance policy</u> to the arrearage. The husband died, and the original trial court recognized that it had the authority to modify the spousal support after his death. The original trial court entered an order adopting the arbitration award. The husband's obligation to pay spousal support was abated as of 12/31/06, the issue of any future spousal support obligation was reserved for later adjudication, and life insurance for spousal support was limited to the arrearage. Two weeks later, the ex-wife filed a motion to increase spousal support. The original trial court denied the motion holding that general principles of equity made increasing spousal support inappropriate, and awarded her the arrearage from the life insurance. She moved for reconsideration. The successor judge granted the motion, held the original trial court made a palpable error, held that the estate had enough assets to pay spousal support and an increase was warranted, and ordered an evidentiary hearing to determine the amount. The court disagreed and reversed.</p>

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<p><i>Foster v Wolkowitz</i></p>	<p>486 Mich 356; 785 NW2d 59 (2010)</p>	<p>Holding the statutorily required presumptive award of custody given to a mother when an AOP is executed pursuant to the APA does not serve as an initial custody determination under the UCCJEA because it does not satisfy the UCCJEA definition of "initial custody determination," the court concluded Illinois was the minor child's (M) home state under the UCCJEA and only the Illinois courts had the authority to determine whether Michigan was the more appropriate forum in this case. The plaintiff-mother and the defendant-father cohabited but never married. They moved from Michigan to Illinois months before M was born in Michigan. They executed and filed an AOP naming defendant as the child's father and establishing paternity. The parties and M returned to Illinois and continued to live together. The parties had Illinois driver's licenses and M received state health insurance requiring Illinois residency. After the parties' relationship ended, plaintiff and M returned to Michigan to live with plaintiff's parents, and she filed a paternity suit in Michigan court. Defendant filed a custody case in Illinois. The trial court ruled Michigan had jurisdiction to hear the case because by executing an AOP, the parties consented to Michigan jurisdiction on the issues of custody, support, and parenting time. The trial court later awarded the parties joint legal custody, physical custody to plaintiff, support, and parenting time. The trial court later awarded the parties joint Court of Appeals affirmed, holding the trial court could properly exercise home-state jurisdiction under the UCCJEA because a properly executed AOP operated as an initial custody determination as a matter of law. The court held the Court of Appeals erred, concluding nothing in the plain language of the APA equated "the execution of an AOP to a judicial determination regarding custody" - the statutory language led to the opposite conclusion. Further, an AOP does not satisfy the UCCJEA's definition of a child custody determination because it is not a "judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child." Rather, an AOP is filed in the executive branch with the State Registrar and kept in a specific parentage registry. "The judicial branch has absolutely no involvement in the execution of an AOP." While the APA requires, as a condition of executing an AOP, the parents consent "to the general, personal jurisdiction" of Michigan courts as to the issues of custody, parenting time, and support, "jurisdiction over a person has never been synonymous with jurisdiction over a case, and the parties' consent to personal jurisdiction provides no support for the conclusion that Michigan has home state jurisdiction under the UCCJEA." The record showed M's home state for UCCJEA purposes was Illinois. The court noted pending resolution of the interstate child custody dispute, the parties' stipulation in the AOP granting plaintiff custody remained intact, as did the child support and parenting time orders. The court reversed the Court of Appeals judgment and remanded the case to the trial court for further proceedings.</p>

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<i>Genaw v Genaw</i>	486 Mich 940: 782 NW2d 208 (2010)	<p>In an order in lieu of granting leave to appeal, the Michigan Supreme Court reversed the judgment of the Court of Appeals that was issued in a published opinion (see e-Journal # 43942 in the 10/8/09 edition) for the reasons stated in the Court of Appeals dissenting opinion, and remanded to the probate court for entry of an order granting defendant-Unum's motion for summary disposition. The defendant-insurer was discharged from all liability under MCL 552.101(2) when it paid the policy benefits to the named beneficiary prior to receiving any notice of a competing or adverse claim to those benefits.</p> <p>In her dissent, Justice Kelly would grant leave to appeal to resolve the differing interpretations of MCL 552.101(2), which addresses entitlement to life insurance proceeds after a divorce. The statute declares, "absent an express designation to the contrary, once a divorce is final all policy benefits are payable to the insured." This addresses the problems posed when an ex-spouse is inadvertently left as the named beneficiary after a divorce. Another clause protects insurance carriers. It provides a carrier is discharged from liability for distribution of the insurance proceeds if it pays them to the named beneficiary, absent notice of a competing claim. The Supreme Court should resolve the correct interpretation of MCL 552.101(2). The majority "hastily accepted the dissenting opinion as correct" without full briefing or oral argument. Under the language of the statute, petitioner's ex-wife, a named beneficiary of the policy, appeared to be a "person having interest in the policy." The statute does not contain a requirement the notice be given by someone other than the named beneficiary or the insurer be advised of a competing claim to the insurance benefits.</p>

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<i>In re Beck</i>	488 Mich 6; 793 NW2d 562 (2010); Mich S Ct Case No. 140842 (issued 12/20/2010)	<p>Since the Legislature "made a clear distinction between parental rights and the parental obligation to support a minor child, and nothing in the statutory structure indicates that the termination of parental rights automatically results in the severance of the parental support duty," the court held that the support duty continues unless it is modified or terminated by a court of competent jurisdiction. Because the trial court declined to modify or terminate the respondent-father's support obligation, and he did not show that this was an abuse of discretion, the court concluded that his obligation remained intact and affirmed the Court of Appeals judgment (although based on a different analysis than that given by the Court of Appeals). Respondent's parental rights were terminated pursuant to §§ 19b(3)(c)(i), (g), and (j). On appeal, he challenged the propriety of the trial court's order requiring him to continue paying child support after his parental rights were terminated. He argued that his obligation to pay child support ended as a matter of law when his parental rights were terminated and that any continued obligation violated his constitutional right to due process. The Court of Appeals rejected his argument. Noting that nothing in the statutory scheme defines the scope of "termination of parental rights," the court turned to the meaning of "parental rights." "As a constitutional matter, parental rights encompass parents' fundamental liberty interest in 'the care, custody, and control of their children.'" Respondent did not claim that terminating his parental rights violated his liberty interests. He claimed that his right to due process was violated by the order requiring him to continue paying child support after his parental rights were terminated. However, he did not cite any authority, and the court found none, holding that a parent has either a federal or state constitutional entitlement to have his child support obligation suspended when his parental rights are terminated. Thus, the court found no merit in his constitutional claim. "MCL 722.2 defines the scope of parental rights as encompassing the 'custody, control, services and earnings of the minor . . .'" Pursuant to the plain statutory language, "parental rights do not include or contemplate parental obligations." Rather, MCL 722.3 identifies the sole parental obligation imposed by the Legislature - the duty to provide child support, which is imposed on both parents, jointly and severally. The duty may be enforced where neither parent has custody of the child, and even when the state has custody of the child. "Because the parental rights identified in MCL 722.2 are distinct and detached from the parental duty identified in MCL 722.3, it is clear that the Legislature has determined that parental rights are independent from parental duties." There is no indication that the support duty is conditioned on retaining parental rights. Further, the plain language of the termination statute (MCL 712A.19b) only implicates "parental rights." "Because nothing in the language of MCL 712A.19b affects the duty of support articulated in MCL 722.3, the obligation remains intact." MCL 722.3 provides that a court has the discretion to modify or terminate a parent's support obligation, but is not compelled to do so.</p>

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<i>Jenson v Puste</i>	<p>___ Mich App ___,          ___NW2d __ (2010);          Mich Ct App Case No.          292731 (issued          10/21/2010)</p>	<p>Holding that a court is prohibited from sealing court orders and court opinions pursuant to MCR 8.119(F)(5), the court affirmed the trial court's order denying the defendant's motion for entry of a consent order to vacate a PPO nunc pro tunc and to seal the court file. The parties were divorced in March 2006. The plaintiff-ex-wife sought a PPO in November 2006 and her petition was granted. The PPO remained in effect for a year, apparently without further incident, and she did not seek to renew it after it expired. In April 2009, defendant moved for entry of a consent order to vacate the PPO nunc pro tunc and to seal the court file, contending that while the PPO had been removed from the LEIN system, a background check of defendant through the court system revealed its existence. He alleged that he was unable to obtain employment because his background check revealed the PPO. Thus, he asked the trial court to find "good cause" to seal the court file pursuant to MCR 8.119(F)(1) and enter a consent order vacating the PPO nunc pro tunc. The trial court denied the motion, concluding that MCR 8.119(F)(5) does not grant a court discretion to seal a court order or opinion. On appeal, defendant argued that MCR 8.119 gave the trial court the discretion to seal the court file, including the PPO, and that sealing the records was justified upon his showing of good cause and the fact that no less restrictive means were available to adequately protect his interest. The court disagreed with his interpretation of the court rule. While MCR 8.119(F) establishes a procedure allowing a court to seal court records, MCR 8.119(F)(5) "specifically prohibits a court from sealing court orders and opinions." Significantly, subrule (F)(5) "does not allow a court the authority to exercise discretion in deciding whether to seal these two types of court records, unlike the limited discretion that subrule (F)(1) allows when a motion involves other court records." Reading the two subrules together, the court concluded that, in light of the definition of "court records," it was clear that "the limited discretionary authority that is extended to a court deciding a motion to seal court records under subrule (F)(1), is not extended to a court deciding a motion to seal a court order or court opinion under subrule (F)(5)." The court concluded this understanding of (F)(5) was supported by a reading of subrule (F) as a whole. Defendant's interpretation "would make subrule (F)(5) a superfluous provision and would render it nugatory." Further, in light of the rule's general purpose of granting public access to court records, the court concluded that the intent of the rule was contrary to an interpretation that would give a court "unbridled discretion in deciding whether to seal a court order or opinion." Affirmed.</p>

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<i>Kar v Nanda</i>	<p>__ Mich App __,  __NW2d __ (2011);  Mich Ct App Case No.  292754 (issued  1/13/2011)</p>	<p>Though the courts have held that the "resided" requirement in MCL 552.9(1) constitutes "a place of abode accompanied with the intention to remain," it does not require an intention to remain permanently and indefinitely. The court held that the defendant-wife clearly "resided" in this state for the requisite period under MCL 552.9(1), the trial court correctly ruled that it had jurisdiction over the parties' divorce case, and properly denied defendant's motion to dismiss. The record reflected that plaintiff-husband and defendant are both citizens of India and they married there in 2007. In 2009, while living in Georgia, plaintiff filed the complaint for divorce in Washtenaw County. He travels for work and does not live in any area of the country for long. Defendant lived in Ann Arbor when plaintiff filed for divorce, but she denied that she is a "resident" of Ann Arbor because she plans to return to India when she finishes graduate school. Defendant's temporary student visa expires on April 30, 2012. Plaintiff argued the statute requires a complainant or defendant in a divorce action to simply facially comply with the statute, by being physically present in the state for 180 days before filing for divorce. Defendant maintained the statute requires a party to not only have been physically present in the state for 180 days, but also to satisfy the legal definition of residence which, by her interpretation, requires an "intent" to remain permanently or indefinitely in the state. Though Michigan case law holds that intent is a key factor under MCL 552.9(1), the court disagreed with defendant's position that "intention to remain" requires that a party intend to remain "permanently or indefinitely" and Michigan courts have never held as such. To the contrary, for several reasons, the court interpreted "intention to remain" to mean something less than a commitment to stay permanently or indefinitely. Though, again, intent is a consideration for jurisdiction under MCL 552.9(1), the Legislature's use of the past tense "resided" could not be ignored. The use of the term "resided" showed the Legislature did not intend to base a jurisdictional finding on conduct after the filing of divorce. Indeed, the cases that define "resided" focus on the party's intent and conduct at and prior to the time of filing. Further, the Legislature's use of the term "resided" must be considered intentional and it is well-settled that the Legislature is presumed to mean what it says in a statute. It is also axiomatic that courts "may not read into the statute what is not within the Legislature's intent as derived from the language of the statute." The court declined to read language or requirements into the statute to require a continuing intention to remain permanently in the state when it is not within the Legislature's intent as derived from the language of the statute. The court further held that policy considerations favor a reading of MCL 552.9(1) that confers jurisdiction in this case. Though defendant intends to leave the state once her studies are completed in 2012, there was no dispute that she lived in Michigan for years before the divorce complaint was filed, far longer than the 180-day statutory requirement, and, when the action was filed, she intended to remain in the state for several more years. Affirmed.</p>

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<i>Keinz v Keinz</i>	___ Mich App ___; ___ NW2d ___; Mich Ct App Case No. 292781 (issued 9/16/2010)	<p>Since the parties' settlement resulted in a higher child support award, the plaintiff-ex-wife was the prevailing party on her motion to increase child support. Further, because the defendant-ex-husband had no reasonable basis to believe that the biweekly gross income he reported to the referee was true, his initial response in opposition to the motion was frivolous. Thus, the trial court abused its discretion by denying plaintiff's motion for attorney fees and costs pursuant to MCL 600.2591(1). The parties' 2005 divorce judgment granted plaintiff primary physical custody of the parties' two minor children and required defendant to pay \$682.88 per month in child support for two children and \$449.51 per month for one child. At the July 2008 hearing on plaintiff's motion to increase child support (where the parties proceeded without counsel), defendant stated that his biweekly gross income was \$1,594.56 (resulting in an annual income of \$41,458.56) and presented a supporting letter from his employer. The referee recommended that his general care assessment be \$734 for two children and \$481 for one child. Plaintiff filed objections, but the referee's recommendation was adopted in a court order. Plaintiff successfully moved to set aside that order, and the trial court reserved the issue of attorney fees. The parties later settled the child support issue, with defendant agreeing to pay \$1,175 support for two children and \$800 for one child. In arguing for sanctions, plaintiff contended that defendant misrepresented his income at the initial hearing, causing several court appearances that would have otherwise been unnecessary. Defendant admitted that he had already earned \$40,000 in 2008 by the time of the July 2008 hearing and he actually earned \$81,808.32 in 2008. His attorney stated that defendant excluded voluntary overtime because he had reduced expectations for similar income in the future. On appeal, defendant argued, inter alia, that MRE 408 precluded consideration of the parties' settlement. However, the court rejected his argument because the settlement was offered to prove whether plaintiff was a prevailing party, not to prove defendant's liability for the agreed upon amount of child support. Further, "even if the anticipated loss of overtime would have made application of the formula based on his actual income in July 2008 unjust, defendant had no reasonable basis to believe that the biweekly gross income he reported to the referee was true and it was in the referee's discretion, not defendant's, to recommend a deviation from the formula after it had been calculated based on accurate facts." Reversed and remanded.</p>

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<i>Licavoli v Licavoli</i>	<p>___ Mich App ___;          ___NW2d ___ (2011);          Mich Ct App Case          No.295901 (issued April          26, 2011)</p>	<p>Holding that the real property owned jointly by the plaintiff-ex-husband and his new wife as tenants by the entireties could not be attached by judgment lien to satisfy the parties' divorce judgment, the court reversed the trial court's order granting the defendant-ex-wife's motion to attach the property in order to provide payments to her as spousal support. However, the court affirmed the trial court's income withholding order in the amount of 50% of plaintiff's salary. The parties were divorced on 9/13/05. The divorce judgment contained a provision setting child and spousal support. Plaintiff acquired the property at issue (a home) during the divorce proceedings, and the divorce judgment awarded the home to him. He remarried in 2005 and filed a quit claim deed deeding the property jointly to his new wife and himself. When the divorce judgment was entered, plaintiff was the owner and operator of a business, which he was also awarded in the divorce judgment. The business later ceased operations and he filed for Chapter 7 bankruptcy. He stopped making child and spousal support payments, and defendant moved to enforce the divorce judgment. The trial court entered orders on 6/22/07 and 9/25/07 ordering the release of funds from plaintiff's IRA accounts to pay the support he owed to defendant. Plaintiff remained delinquent in his payments to defendant, and she filed another motion to enforce the judgment. In a 4/3/09 order, the trial court directed the liquidation of plaintiff's 401(k) account and ordered that the proceeds be paid to defendant. The trial court's opinion and lien ordering the attachment of the house followed, along with the order that 50% of plaintiff's current income be withheld to pay his spousal support obligation. In ordering attachment of the house, the trial court relied on <i>Wood</i>. However, <i>Wood</i> predated the applicable statute, MCL 600.2807(1), which provides, "A judgment lien does not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment is entered against both the husband and wife." Thus, while "Michigan law grants the trial judge in a divorce case broad discretion to do equity regarding the disposition of property," the Legislature "made it clear in MCL 600.2807 that a judgment lien does not attach to property owned as tenants by the entirety unless the judgment is against both the husband and wife." The underlying judgment here, the divorce judgment, was not entered against plaintiff and his current wife. As to the withholding order, the court noted that under the FCCPA, the federal limit on withholding is usually 50% of disposable income, but may be increased to as much as 65%. While plaintiff "may have experienced financial troubles that made it difficult for him to meet his obligations, for a significant length of time" he failed to comply with the trial court's orders to pay child or spousal support. Affirmed in part, reversed in part, and remanded.</p>

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<p><i>McKimmy v Mellling</i></p>	<p>___ Mich App ___,          __NW2d __ (2011);          Mich Ct App Case No.          298700 (issued          2/10/2011)</p>	<p>Since the court held that the trial court misapplied factor (c) of the statutory change of domicile factors, the court vacated the trial court's order denying plaintiff-mother's motion for change of domicile and remanded for new findings on factor (c). The parties are the parents of two young boys. They share joint legal custody of the boys, while the plaintiff maintains sole physical custody. The defendant-father has parenting time every weekend from 9:00 AM on Saturday until 7:00 PM on Sunday. He consistently exercises his parenting time, and his bond with the boys is "[e]xceptional." In October 2009, plaintiff moved the trial court for permission to change the boys' domicile from Michigan to North Dakota, where her fiancé lived. At the evidentiary hearing, she testified that she had since married her fiancé and that they had purchased a four-bedroom house in a safe and family-oriented neighborhood. Plaintiff proposed a modified parenting time schedule for defendant, where the boys would stay with him over the summer and on alternate holidays. Plaintiff also suggested that defendant could have regular contact with the boys over the telephone and Internet. Defendant acknowledged that under plaintiff's proposed parenting time schedule, he would have substantially more overnights with the boys, but he believed that regular physical contact with the boys was necessary to maintain his bond with them. Plaintiff maintains that the trial court "fixated too heavily" on the frequency of the visits under her proposed parenting time schedule and whether the boys could effectively use technology, while failing to consider whether awarding defendant extended periods of parenting time would preserve and foster the parent-child relationship. The court agreed that the trial court erred in its application of factor (c), but for a reason different than that argued by plaintiff. Implicit in factor (c) is an acknowledgement that weekly visitation is not possible when parents are separated by state borders. When the domicile of a child is changed, the new visitation plan need not be equal with the old visitation plan, as such equality is not possible. The new visitation plan "only need provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed" by the nonrelocating parent. Here, in applying factor (c), the trial court failed to recognize that the parenting time schedule proposed by plaintiff need not be equal with the current visitation plan. The trial court, in considering whether modern technology could diminish the separation between defendant and the two boys, stated, "[I]t's probably a little more difficult to say that telephone contact and email contact and Skyping is gonna be as meaningful as . . . having them spending time weekly in the physical presence of [defendant]." The trial court essentially compared plaintiff's proposed parenting time schedule with the current visitation plan, and found that the current plan was in the best interests of the boys. But the inquiry under factor (c) is not which plan, the current visitation plan or the proposed schedule, is the best plan. Rather, the inquiry is only whether the proposed parenting time schedule provides "a realistic opportunity to preserve and foster the parental relationship previously enjoyed" by the nonrelocating parent. Thus, the trial court should have considered whether the parenting time schedule proposed by plaintiff provided "a realistic opportunity" or "an adequate basis," to preserve and foster the relationship defendant currently shared with the boys, without regard to whether plaintiff's proposed schedule was equally beneficial to the boys as the current visitation plan.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<i>Megee v Carmine</i>	<p>__ Mich App __;  __NW2d __ (2010);  Mich Ct App Case No.  292207 (issued  11/16/2010)</p>	<p>In an issue of first impression, the court held that Michigan now joins those jurisdictions providing relief to the non-military spouse and held that a military spouse remains financially responsible to compensate his or her former spouse in an amount equal to the share of retirement pay ordered to be distributed to the former spouse as part of a divorce judgment's property division, where the military spouse makes a unilateral and voluntary postjudgment election to waive the retirement pay in favor of disability benefits contrary to the terms of the divorce judgment. Pursuant to a judgment of divorce entered in September 1989, the defendant-wife was awarded 50% of the plaintiff-husband's Navy disposable retirement pay as part of the property division, and the judgment incorporated a QDRO to enforce that provision. The QDRO acknowledged the 50% division of plaintiff's disposable retirement pay, also referred to as his pension, and it prevented plaintiff from making another benefit election "that would otherwise reduce the monthly pension allotment without the written consent [of defendant]." In 2008, plaintiff was officially diagnosed by the government, for purposes of entitlement to disability benefits, as being disabled as a result of combat-related activities and exposure to Agent Orange in Vietnam. He was declared eligible to elect CRSC, but the election required plaintiff to waive further receipt of his retirement pay. Plaintiff elected to receive CRSC, resulting in termination of his retirement pay and the cessation of funds flowing to defendant under the QDRO. Defendant filed a motion to enforce the divorce judgment and QDRO. Conceptually, and consistent with extensive case law from other jurisdictions, the court was dividing "waived" retirement pay in order to honor the terms and intent of the divorce judgment. The court held that it was not ruling that a state court has the authority to divide a military spouse's CRSC, nor that the military spouse can be ordered by a court to pay the former spouse using CRSC funds. Rather, the compensation to be paid the former spouse as his or her share of the property division in lieu of the waived retirement pay can come from any source the military spouse chooses, but it must be paid to avoid contempt of court. To be clear, nothing in this opinion was to be construed as precluding a military spouse from using CRSC funds to satisfy the spouse's obligation if desired. Although the court agreed with the trial court that plaintiff must compensate defendant, it reversed the trial court's order directing the plaintiff to act as trustee for the benefit of defendant with respect to half of plaintiff's monthly CRSC, which funds were then to be delivered to defendant because the order required plaintiff to pay defendant from CRSC funds and required plaintiff to pay an amount equal to half of his CRSC and not half of his retirement pay. The court remanded for entry of an order requiring plaintiff to compensate defendant with monthly payments, from any source or combination of sources, in an amount equal to 50% of his retirement pay that he would be receiving but for his election to waive the retirement pay in favor of disability benefits.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
Myland v Myland	<p>___ Mich App ___;          __NW2d __ (2010);          Mich Ct App Case No.          292868 (issued          11/23/2010)</p>	<p>Holding that "MCL 552.23 prohibits the use of rigid and arbitrary formulas that fail to account for the parties' unique circumstances and relative positions" and reaffirming that a trial court awarding spousal support must consider the relevant factors, the court reversed the divorce judgment and remanded the case. The court also held that the trial court failed to apply the proper needs based analysis in denying the plaintiff-wife's request for attorney fees based on need. Plaintiff argued on appeal, inter alia, that the trial court erred by failing to adequately consider the parties' ages, health, abilities to work and to pay alimony, their needs, and their prior standard of living. She also contended that the trial court erred in imputing \$7,000 in income to her and in failing to consider the costs of her COBRA health insurance. The trial court determined that the defendant-husband's income was \$62,500 per year and imputed \$7,000 in income to plaintiff. It then awarded plaintiff \$13,875 of spousal support per year (\$1,156 per month) after only considering the length of the parties' marriage. The trial court "applied a mechanistic formula," multiplying defendant's income less plaintiff's imputed income by .25 (apparently using .25 based on the number of years the parties were married - 25). The court held that this "limited, arbitrary, and formulaic approach is without any support in the law. It totally fails to consider the unique circumstances of the parties' respective positions and fails to reach an outcome that balances the parties' needs and incomes." The trial court failed to consider several of the required factors "that were highly relevant" in this case. The court also held that the trial court clearly erred by imputing an income of \$7,000 to plaintiff where it was clear from plaintiff's testimony and her doctor's deposition that plaintiff did not have the ability to work or to earn \$7,000 per year due to her progressive MS. Further, the trial court erred by failing to consider plaintiff's needs, specifically her health care costs (she pays \$383 a month for COBRA benefits). The court held that the "trial court's award of spousal support, in light of plaintiff's health condition and earning ability, was deficient and clearly inequitable." The court also agreed with plaintiff that the trial court abused its discretion by denying her need based request for attorney fees. On remand, "the trial court must apply the correct legal analysis, giving special consideration to the specific financial situations of the parties and the equities involved." The trial court was also instructed to consider whether plaintiff was entitled to appellate attorney fees. Reversed and remanded.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<p><i>Pecoraro v Rostagno-Wallat</i></p>	<p>___ Mich App ___, ___NW2d __ (2011); Mich Ct App Case No. 293355 (issued 1/18/2011)</p>	<p>Since there was no paternity determination made in legal proceedings involving defendant-Wallat and defendant-Rostagno-Wallat that established Wallat was not the father of the child, the court held that plaintiff-Pecoraro lacked standing to seek paternity under the MPA. Further, because the New York court concluded that it lacked personal jurisdiction over Wallat, a necessary party to the paternity proceedings, the court held that the Full Faith and Credit Clause did not require it to give effect to the New York order of filiation. The trial court's opinion and order in favor of plaintiff was reversed and the case remanded for entry of a judgment consistent with the court's opinion. The Wallats appealed an order issued by the trial court which, <i>inter alia</i>, enforced an order of filiation issued by a New York court declaring plaintiff to be the father of a child conceived and born to Rostagno-Wallat during her marriage to Wallat. The Wallats have been married to each other since June 4, 1994. At all times pertinent to this action, they have resided in Michigan. Two children were conceived and born to Rostagno-Wallat during her marriage to Wallat. The birth certificates of both children identify Wallat as the father. Rostagno-Wallat in 1999 and the other in 2002. The birth certificates of both children identify Wallat as the father. Rostagno-Wallat and plaintiff attended law school together in Michigan. An intimate relationship between them continued on an "on and off" basis after Pecoraro graduated from law school in 1998 and returned to his home in New York. Rostagno-Wallat informed plaintiff that he was the biological father of the child born in 2002. DNA testing performed in 2002 confirmed that plaintiff was the biological father of the child. In April 2005, Rostagno-Wallat and plaintiff permanently ceased their relationship and litigation commenced. Plaintiff filed in the trial court a "Complaint for Paternity" against Rostagno-Wallat in which he, <i>inter alia</i>, sought enforcement of the New York order of filiation. This complaint alleged that the parties were never married and had one minor child born out of wedlock. In July 2008, Wallat filed a complaint for declaratory judgment against Rostagno-Wallat and plaintiff. In this action, Wallat sought a determination that he is the legal father of the child. The court agreed with the Wallats' argument that the trial court erred by finding that plaintiff had standing under the MPA. The court also agreed that the trial court erred in concluding that it was constitutionally required to give full faith and credit to the New York order of filiation issued by the New York court. In Michigan, a child conceived and born during a marriage is legally presumed the legitimate child of that marriage and the mother's husband is the child's father as a matter of law. A third party may not rebut this legal presumption unless there first exists a judicial determination arising from a proceeding between the husband and the wife that declares the child is not the product of the marriage. Because Rostagno-Wallat and Wallat have not asked a court to declare that the child was born out of wedlock, plaintiff lacked standing to claim paternity under the MPA. The court also held that plaintiff could not use the CCA to obtain a determination that he is the father under the MPA. Whether the putative father would be considered a natural or biological parent under the CCA is irrelevant unless he can first establish paternity under the MPA. Thus, the court rejected his claim under the CCA. The court was not persuaded that the New York court order should be honored because in arguing the merits of the underlying claim, Rostagno-Wallat protected the interests of Wallat. The court held that the interests of Rostagno-Wallat, the mother, were not consistent with the interests and rights of Wallat, the legal father. Rostagno-Wallat's parental rights as mother were never at risk in this litigation. More significant, however, was the notion that a judgment issued in a matter that does not include a necessary party has no effect. As a result, the courts of the state of Michigan were not obliged to give the New York order of filiation full faith and credit.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<i>People v Likine</i>	<p>___ Mich App ___, ___ NW2d ___ (2010); Mich Ct App Case No. 290218 (issued 4/20/2010)</p>	<p>[This opinion was first released as an unpublished opinion on 4/20/10]. Concluding the defendant's reliance on Jenkinson was misplaced because unlike the defendant in Jenkinson, she was prosecuted for failing to comply with a court order entered after a judicial determination was made she had the financial means to comply with the court order, the court rejected her claim MCL 750.165 was unconstitutional and affirmed her conviction for failing to pay child support. Defendant was ordered to pay her ex-husband (E) child support after their divorce because he was awarded custody of their three minor children. The child support was initially set at \$54 a month. Later, E sought an increase after he learned defendant had purchased a home worth about \$500,000 by securing 2 mortgages in her name, for \$2,000 a month and \$1,000 a month, respectively. She also purchased a new vehicle. After hearings on the matter, the FOC recommended income of \$5,000 a month be imputed to defendant consistent with her standard of living and her child support obligation be increased to \$1,131 a month, retroactive to June 1, 2005. The trial court in the child support case adopted the recommendation after holding a hearing. Defendant's payment history was very sporadic. She paid nothing in 2006 and \$488.85 in 2007. The amount of arrearage as of February 29, 2008 was \$40,182.71. Felony charges for failure to pay child support were filed against her in March 2008. The trial court granted the prosecution's motion in limine to prevent defendant from offering any evidence related to her alleged inability to pay the ordered child support. On appeal, defendant argued, inter alia, she was entitled to a new trial because her rights under Michigan's Due Process Clause were denied by the trial court's order prohibiting her from presenting her inability to pay as a defense. The court disagreed, concluding unlike the defendant in Jenkinson, the duty imposed on defendant was adjudged possible for her to perform. She was a party to civil proceedings involving the modification of her child support obligation, which gave her ample opportunity to present evidence of her ability or inability to pay an increased amount of child support. In accordance with the evidence of her standard of living, she was adjudged capable of paying \$1,131 in child support a month. "Thus, unlike the defendant in Jenkinson, the State did not impose upon her a duty that was impossible for her to perform." The court concluded her argument was actually an impermissible collateral attack on the underlying support order. Affirmed.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<i>Pierron v Pierron</i>	48 6Mich 81; _782 NW2d 480 (2010); Mich S Ct Case No. 138824 (issued 5/11/2010)	<p>Agreeing with the Court of Appeals the proposed change of schools to a school district 60 miles away from the children's present school and the plaintiff-father's home would not modify the ECE, the court affirmed the Court of Appeals decision to vacate the trial court's order ruling to the contrary. The court also held when a trial court is considering a decision affecting a child's welfare but not modifying the ECE, such as the change-of-school issue here, it must consider the applicability of all the best interest factors, but if it determines a particular factor is irrelevant to the issue, the trial court does not have to make substantive factual findings on the factor - it only needs to state this conclusion on the record. The parties had joint legal custody of the two children, whose primary residence was with the defendant-mother in Grosse Pointe Woods. She relocated to Howell, and the plaintiff objected when she tried to enroll the children in Howell public schools. The trial court ruled the ECE was with both parents, the proposed change of schools would modify the ECE because plaintiff's parenting time would be adversely affected, and defendant did not satisfy her burden of proof under the clear and convincing evidence standard to show the change was in the children's best interests. The Court of Appeals remanded the case for the trial court to reevaluate the issue and determine if defendant established by a preponderance of the evidence the school change was in the children's best interests. The court concluded while the testimony at the evidentiary hearing showed plaintiff was conscientiously involved with his children's education, there was no reason to believe the change of schools would significantly modify the ECE they shared with him. In determining if a proposed change would modify the ECE, "it is the child's standpoint, rather than that of the parents, that is controlling." The record showed they visited his home about three weekends out of every four, but before the case was filed, they did not visit overnight on weeknights during the school year. Plaintiff occasionally picked them up from tutoring and took them to dinner during the week, and one week out of every seven he took them to lunch. The court concluded given this arrangement, his weekend parenting time would be unaffected, and his weekday involvement with the children was limited because it was all his work schedule allowed. While the 60-mile distance was more inconvenient for him, it was not so far he could not continue his occasional midweek activities with the children and his involvement in their education. The court concluded from the children's perspective, the changes in the ECE they shared with plaintiff "should be minor, if at all." Because there was no change in the ECE, defendant had to prove by a preponderance of the evidence the proposed school change would be in the children's best interests. The court noted even under this standard, the case presented "a very close" question. Remanded to the trial court.</p> <p>Justice Corrigan concurred with the majority when a trial court determines an important decision affecting a child's welfare would not modify the child's ECE, all 12 best interest factors may not be relevant to the specific decision. She also agreed in those cases the trial court must consider the applicability of all the factors and state its factual findings and conclusions as to each relevant factor on the record. However, she dissented from the majority's conclusion the ECE between plaintiff and the children would not be modified in this case, concluding the record "abundantly supports the trial court's findings." The justice would reverse the Court of Appeals decision and reinstate the trial court's order directing the children remain enrolled in Grosse Pointe Public Schools.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<p><i>Rose v Rose</i></p>	<p>289 Mich App 45; ___ NW2d ___ (2010); Mich Ct App Case No. 286568 (issued 6/22/2010)</p>	<p>In light of the divorce judgment's clearly expressed, enforceable and nonmodifiable spousal support wording, the court held the trial court erred in failing to give proper deference to the parties' binding agreement and abused its discretion in granting the defendant-husband's motion for relief from judgment, reducing his spousal support obligation. The parties married in 1983 and entered into a consent judgment of divorce in 2006. Their most valuable asset was stock defendant owned in a tool and die company. He wanted to avoid liquidating or selling the company because, in part, he hoped his son from a prior marriage would eventually buy the business. Rather than convert the company's holdings into cash, the parties agreed defendant would pay the plaintiff-wife spousal support in the amount of \$230,000 a year and she would forego any interest in the company. The parties also agreed the spousal support would be nonmodifiable. After the divorce, defendant ceded responsibility for the company's day-to-day operations to his son. He later learned his son committed financial improprieties severely compromising the company's ability to remain solvent. Plaintiff agreed to temporarily modify the spousal support payment schedule while defendant tried to rescue the company, but his efforts proved unsuccessful. When plaintiff moved to enforce the divorce judgment's spousal support provision, defendant countered with motions to modify his support obligation and for relief from the spousal support portion of the judgment. The trial court denied the motion to modify, but granted the motion for relief from judgment, reducing defendant's support obligation to \$900 a month. The court noted when the parties included the clear and unambiguous nonmodifiable of spousal support language in their divorce judgment, they were represented by counsel and presumably understood without this language, a trial court had the authority to revise spousal support if circumstances changed. "Instead of opting for flexibility, the parties struck a bargain favoring finality, benefiting both." Where the parties expressly elect finality in lieu of flexibility, a trial court "considering relief under MCR 2.612(C)(1)(f) must strictly apply the factors limiting relief from judgment. . . ." Those factors confine application of (f) to "extraordinary situations" not covered by (a)-(e) and mandate a court refrain from vacating a judgment if doing so "detrimentally affects the rights of the opposing party." The court concluded "vacation of the spousal support term detrimentally affected plaintiff's substantial rights" and the "extraordinary circumstances" cited by the trial court did not overcome this detrimental effect. Reversed and remanded.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<p><i>Shade v Wright</i></p>	<p>___ Mich App ___,          __NW2d __ (2010);          Mich Ct App Case No.          296318 (issued          12/2/2010)</p>	<p>The court held that, in a case where a modification of parenting time does not alter the ECE, the fact that a child has begun high school and seeks to become more involved in social and extra-curricular activities (normal life changes that do not constitute a change of circumstances under <i>Vodvarka</i>) constitutes a change of circumstances sufficient to modify parenting time. Thus, the trial court properly granted plaintiff-wife's motion to modify parenting time. The parties were married in December 1993 and had one child. The plaintiff filed for divorce in September 2005. The parties agreed on a custody and parenting time arrangement that, in part, allowed plaintiff to move with the child from Michigan to Ohio, and also established a parenting time schedule. After the judgment of divorce was issued, both parties became dissatisfied with the custody and parenting time arrangement that they had agreed to and that was incorporated into the judgment of divorce. Plaintiff filed a petition to modify the order of parenting time, arguing that a change of circumstances warranted the change. The defendant-father filed a motion for change of custody, in which he sought sole physical custody of the child. The trial court denied his motion for change of physical custody of the child, but modified the parenting time schedule. Defendant argued that the trial court erred in changing parenting time without a showing of proper cause or a change of circumstances that would warrant such a change. In her petition to modify parenting time, plaintiff did not assert that there was proper cause to warrant a change of parenting time, but asserted that there was a "substantial change of circumstances" because after the judgment of divorce was entered, defendant began to live with D (who suffered from depression and chronic pain) who would care for and supervise the minor child while defendant was away for work, sometimes for 12 hours at a time. The only other change of circumstance alleged by plaintiff was that the current parenting time schedule did not require defendant to contribute to transportation costs, and the cost of fuel had doubled. The court found that plaintiff did not present sufficient evidence to establish a change of circumstances as defined in <i>Vodvarka</i>. Evidence was presented that D was no longer defendant's girlfriend and for obvious reasons, defendant's relationship and residence with D was not a change of circumstances. Also, the price of gas was not a condition surrounding custody of the child. Concluding that plaintiff's evidence as to a change of circumstances was not sufficient to constitute a change of circumstances under <i>Vodvarka</i> did not end the inquiry, because the court held that the <i>Vodvarka</i> definitions of proper cause and change of circumstances did not control the facts of this case since it involved a modification of parenting time rather than a change in custody. The court held that the trial court's modification of parenting time was not so significant that it resulted in a change in the minor child's custodial environment. The court also held that a more expansive definition of proper cause or change of circumstances was appropriate for determinations as to parenting time when a modification in parenting time does not alter the ECE. Since the child is a freshman in high school, her school and extra-curricular schedule is changing. The court held that given the geographical distance between the parties and the time necessary to transport the minor child from Ohio to Michigan to permit defendant to exercise his parenting time, such changes constituted proper cause or change of circumstances sufficient to modify parenting time to permit the child to engage in social activities and participate in extra-curricular activities, so long as the modification in parenting time does not affect the ECE. The court further held that it did not seek to precisely define the proper cause or change of circumstances necessary to change parenting time, but limited its conclusion to the "normal life changes" that occurred with the child in this case were sufficient to modify parenting time. Affirmed.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<p><i>Shouneyia v Shouneyia</i></p>	<p>___ Mich App ___,            __NW2d __ (2011);            Mich Ct App Case No.            297007 (issued            1/18/2011)</p>	<p>The court held that in light of (1) the defendant-former husband's (appellant) poor past performance in making any payments under the divorce judgment despite the trial court's employment of less drastic methods other than receivership, and (2) the plaintiff-former wife's showing that defendant exercises control over the Shouneyia Brothers Corporation (appellant) and has not accounted for regular, large deposits into the corporation's bank accounts, the trial court acted within its discretion by appointing a receiver to preserve funds and property that could satisfy defendant's judgment debt to plaintiff. Thus, the court affirmed the order appointing a receiver, but remanded for the addition of the corporation as a party defendant. In October 2008, the trial court entered a divorce judgment, awarding the plaintiff a \$50,000 property settlement and ordering defendant to pay plaintiff \$40,000 in attorney fees. In June 2009, plaintiff requested that the trial court appoint a receiver "to collect the money Defendant owes Plaintiff" pursuant to the divorce judgment. At a later hearing, she accused him of having lied under oath at the divorce trial about his lack of income from several property rentals, his purchase of a winning lottery ticket (\$15,000), and his receipt of checks from his mother, one in the amount of \$50,000. The trial court ordered a creditor's exam. Defendant was evasive and answered most of the questions by not recalling the information. Later, plaintiff filed a renewed motion for appointment of a receiver to collect the divorce judgment award defendant owed her. The trial court found defendant was less than honest in the creditor's exam and that a receiver was justified. On appeal, defendant and the corporation contended that the trial court's failure to join the corporation as a party defendant in the underlying divorce case precluded the trial court from exercising its authority over the corporation. The court concluded since the corporation was an interested party the trial court did not have authority to adjudicate the rights of the corporation without first making it a party to the case. The court noted that the corporation could be joined in the case and once it was made a party, the receiver could appropriately investigate corporate assets, funds, and records. The allegations and record evidence "strongly suggesting" that defendant had tried to conceal income in the corporation, made irrelevant the appellant's claim that the trial court could not appoint a receiver over the corporation because it "owe[d] no debt" to the plaintiff.</p>

Case Name	Citation (Date Issued)	E-Journal Case Description
<i>Woodington v Shokoohi</i>	288 Mich App 352; 792 NW2d 63 (2010); Mich Ct App Case No. 288923 (issued 5/4/2010)	<p>Since the trial court failed to make relevant findings on several matters including its decision to award alimony in gross and deny the plaintiff-wife's request for spousal support precluded meaningful appellate review, the court reversed and remanded for further findings. The plaintiff argued the trial court erred in awarding her alimony in gross in lieu of the spousal support she sought and failed to make findings of fact in support of this decision. She sought spousal support in the amount of \$55,000 annually (rounded to \$4,600 monthly) until the parties' younger child began attending high school, which would enable her to continue her status as a full-time stay-at-home mom until the children completed middle school. The defendant-husband stated he would be willing to pay spousal support in the amount of \$55,000 per year for two years. Plaintiff claimed the trial court abused its discretion because it essentially denied her spousal support, and elected instead to award her alimony in gross, "a division of property." The trial court did not explain its reasons for awarding alimony in gross, its reasons for awarding the specific amount of alimony in gross, or its reasons for denying plaintiff's request for periodic spousal support subject to modification under MCL 552.28. Accordingly, the court was unable to discern why the trial court believed this decision was appropriate for the parties' circumstances. The trial court could have ordered spousal support or an award of property called "alimony in gross" but the trial court was required to make findings of fact to support its dispositional ruling in order to make it susceptible to appellate review. The court affirmed the trial court's judgment as to the disputed property and the Chemical Bank Primvest Account, remanded to the trial court for further findings and proceedings as to the decision to award plaintiff alimony in gross in lieu of spousal support, discovery of the PC's business records, the trial court's overall property division, the valuation of specific assets, the award of attorney fees to plaintiff, and the interpretation of the prenuptial agreement with respect to divorce.</p>