LEGISLATIVE, COURT RULE, & CASE LAW UPDATES 2015-2016

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LEGISLATIVE UPDATES

2015 Statutory Changes

- 2015 PA 50, 51, & 52 (effective 9-7-2015):
  - These three Acts modify the requirements for filing a motion for change of custody or parenting time when a parent who has been called to active military duty.
  - The Acts modify the Child Custody Act to conform with the federal Servicemembers Civil Relief Act.
    - Under these Acts, when a motion for change of custody or parenting time is filed while a parent is on active duty,
      - The deploying parent must notify a parent with whom they share custody of an upcoming deployment.
      - The deployed parent may file an application for a stay of the proceedings or an extension of a stay, and the trial court must consider the application.
      - The trial court cannot modify a previous custody judgment or order or issue a new order that would change the child's placement or parenting time from what it was when the deployed parent was called to active duty.
      - The trial court may enter a temporary custody or parenting time order if clear and convincing evidence exists that it is in the best interests of the child.
      - The deployed parent must inform the trial court of the official end date of the parent's active duty within 30 days after the end date.
      - The stay must be set to end not less than 90 days after the end date.
      - After notification of the end date, the trial court must reinstate the custody or parenting time order in effect prior to the parent's deployment.

2015 Statutory Changes, con.

- 2015 PA 253, 254, 255, & 256 (effective 1-1-2016):
  - These four Public Acts repealed the 1996 version of the Uniform Interstate Family Support Act [UIFSA], replaced it with the 2008 version in accord with 2015 federal requirements, and updated the references to UIFSA in other Acts.
    - The new UIFSA is encoded at MCL 552.2101-552-2905.
    - It contains:
      - Expansion of the definition of "state" to include Indian nation or tribes.
      - More specifics regarding jurisdiction and exclusive continuing jurisdiction.
      - Expansion of the collection of child support for the support orders issued by foreign countries unless the law of those countries is incompatible with US and Michigan public policy, i.e., fails to grants the right of due process in a substantially similar manner to that guaranteed under the US Constitution and the 1963 Michigan Constitution.
        - 2008 UIFSA is based on the 2007 Hague Convention on the International Recovery of Child Support, which has been ratified by the European Union nations, among other countries.

2016 Statutory Changes

- 2016 PA 35 (effective 3-8-2016):
  - This Act requires DHHS to implement an online reporting system for the immediate reporting of suspected child abuse and neglect by mandatory reporters to a centralized intake, subject to appropriation.
    - This would mean that reports of suspected abuse could be made either over the telephone or through the online reporting system.
      - If reports are made using online reporting, the reports would be considered written reports such that no additional written report would be needed.
    - The Act requires that all written reports be made to a centralized intake, rather than a county department of human services.

2016 Statutory Changes, con.

- 2016 PA 93, 94, 95, & 96 (PA 93, 94 , & 96 effective 8-1-2016; PA 95 effective 9-1-2016): These four Acts address domestic violence issues.
  - PA 93: Prohibits a trial court from sending contested issues in a domestic relations proceeding to mediation when a PPO has been entered protecting one party and restraining the other, or if one or both of the parties were involved in a child protective proceeding, unless the court first conducts a hearing to determine whether mediation is appropriate.
  - PA 94: Allows a domestic violence PPO under MCL 600.2950 to prohibit respondent from harming or taking an animal in which the petitioner has an ownership interest.
  - PA 95: Actions taken by a parent to protect a child or the parent from abuse cannot be considered for purposes of factor j of the child custody best interests factors, MCL 722.23(j) (willingness and ability of each party to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent).
  - PA 96: The bar under Michigan law against awarding custody or parenting time to a biological parent who is convicted of criminal sexual conduct for an act that led to the conception of a child is extended to convictions under substantially similar statutes of other states or the federal government; the convicted parent would still be liable for child support, however.
    - Those who not convicted will be barred from custody or parenting time if a fact-finding hearing establishes by clear and convincing evidence that the conception resulted from nonconsensual sexual penetration by that person.

COURT RULE CHANGES

2015 Court Rule Changes

- ADM File No. 2013-09: Amends MCR 3.216(A)(1) (effective 1/1/2015)
  - Adds actions for divorce and separate maintenance involving property distribution to the cases that can be heard by a mediator.
- ADM File No. 2013-08: Amends MCR 3.210, 3.215, 6.104 and Adopts new MCR 2.407 (effective 1/1/2015)
  - Allows testimony to be taken by judges and referees via videoconferencing, for which the standards are set forth in new MCR 2.407.
  - Videoconferencing is in addition to telephone testimony.
- ADM File No. 2010-32: Amends MCR 3.210 (effective 1/1/2015)
  - Amends the processes for obtaining a default or default judgment in a domestic relations case, for setting aside a default judgment in a domestic relations case, and for entering a consent judgment in a domestic relations matter.

2016 Court Rule Changes

- ADM File No. 2014-20: "Housekeeping" Amendments of MCR 3.210, inter alia (effective 3-6-2016)
  - Eliminates the requirement that the judgment fee be deposited with the court clerk before proofs can be taken for a default judgment of divorce.

CASE LAW

Categories Covered

- The categories of cases published from 1/1/2015 through 5/12/2016 include:
  - Child Custody
  - Child Support
  - Grandparenting Time
  - Paternity
  - Parenting Time
  - Spousal Support
  - Stepparent Adoption

Child Custody

Cheesman v Williams, 311 Mich App 147; Mich Ct App Case No. 320446 (6-18-2015)

- Mother and father of child never married, but they did execute an AOP as to the child, who was born in 2003; the child lived jointly between M and F until 2009, when M was incarcerated; after M was released, the child remained in Michigan until 2011, but then moved with M first to Ohio, then to Georgia, then back to Ohio; during this time, the child visited F in Michigan during the summer and during school breaks; F filed a child custody action in 2013, and the trial court dismissed his case after concluding that Michigan did not have jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and that Michigan would have been an inconvenient forum if it had possessed jurisdiction.
- The Mich Ct App vacated and remanded the case.
  - Because of the child's many moves, she did not have a home state, but the trial court abused its discretion when it did not consider whether there was another basis for jurisdiction in another subsection of MCL 722.1201(1).

Howard v Howard, 311 Mich App 218; Mich Ct App Case No. 323124 (5-19-2015)

- Mother and Father divorced in 2006; the parties were awarded joint legal custody of the children with primary physical custody given to M and extensive PT to F; M and children moved in with M's Brother; M died in 2013, and the children remained with B; F brought a motion to have the children returned to him; B responded that F had brain tumors and MS and lived in a one-bedroom apartment in a facilitated living facility; the motion hearing revealed that F's sister had power of attorney for him and that F could not cognitively speak and was in a wheelchair; a GAL was appointed, and F could not tell her where the children went to school or where they lived; the trial court held a best interests hearing and determined that B had established by clear and convincing evidence that awarding F custody was not in the children's best interests.
- The Mich Ct App affirmed.
  - Contrary to F's arguments, the parental presumption did not mean that the children had to automatically be given to him on M's death.
  - While B lacked standing to file a petition seeking custody, F's initiation of the custody dispute meant B could present evidence that the children's best interests were served by awarding him custody.
  - The Child Custody Act allows a third party custodian to be awarded custody if clear and convincing evidence shows it is not in the children's best interests to award their custody to the parent.

Maier v Maier, 311 Mich App 218; Mich Ct App Case No. 322109 (6-25-2015)

- Plaintiff mother and Defendant father married, and their son was born in 2005; the parties separated in 2006, divorcing in 2012; custody issues arose during the divorce and continued afterward; P instigated 4 unsubstantiated CPS investigations against D; a petition to change custody was filed, & the trial court held a 4 month evidentiary hearing; the court granted D sole legal and physical custody with P having unsupervised PT; when P's first PT session with the child was acrimonious, the court ordered supervised PT for P unless a psychological evaluation recommended otherwise; P appealed.
- The Mich Ct App affirmed.
  - When a child has been coached, the court need not interview the child about his or her reasonable preference under best interests factor i.
  - The trial court did not abuse its discretion in reaching its custody determination without a psychological evaluation of P.
  - It was harmless error when the trial court weighed factors g and l against P due to her inability to get a psychological valuation, as not enough factors weighed in her favor to alter the custody award even if those factors favored her.

Reimer v Johnson, 311 Mich App 632; Mich Ct App Case No. 321057 (8-18-2015)

- Plaintiff father, an ophthalmologist, had a child with Woman 1 and later had a child with Defendant mother; Plaintiff signed an AOP for D's child; the parties' relationship deteriorated due to D's jealousy of Woman 1 and her child, and P filed a complaint for custody and parenting time of his child with D; over the course of 2 years, the trial court issued a series of temporary parenting time and child support orders and then held a 19 day trial; after trial, the court ordered joint legal custody, that physical custody would transition to shared and equal physical custody, that P would pay child support of varying significant amounts per month, and that P would pay part of D's attorney and expert witness fees. P & D appealed.
- The Mich Ct App affirmed.
  - Custody: Expert testimony showed that D's poor actions when her relationship with P was ending were unlikely to repeat; the trial court's assessment of child custody best interest factors b, d, f, and g was thus not against the great weight of the evidence.
  - Parenting Time: The adjustment of parenting time over 3 ½ years to equal was appropriate based on child development; proper cause or change in circumstances for each change was unneeded when the full effect was contemplated in the order.
  - Child Support: The child support amount in the temporary orders was retroactively modifiable as those orders indicated the trial court's intent to modify child support.
  - Attorney Fees: The trial court's determination that P should pay D's attorney fees and the amount of fees was within the range of principled outcomes even though D was only compensated for the amount that one attorney would charge at an hourly rate of $200 instead of the actual 2 attorneys' rates of $200/hour and $325/hour.

Stankevich v Milliron, 498 Mich 877; Mich S Ct Case No. 148097 (9-11-2015)

- Plaintiff and Defendant entered into a same sex marriage in Canada in 2007; prior to the marriage, D conceived a child through artificial insemination; the child was born during the marriage; the parties separated in 2009; initially they agreed on a parenting time schedule, but the agreement did not last; P thereafter filed a complaint for dissolution of the marriage and for a declaration that she was a parent of the child, along with seeking orders for custody, parenting time, and child support; D moved for summary disposition under MCR 2.116(C)(8), asserting that P lacked standing to petition for custody; the trial court granted D's motion and the Mich Ct App affirmed on the basis that the equitable parent doctrine did not apply to same sex couples.
- The Mich S Ct vacated the Ct App's judgment and remanded the case based upon the US S Ct's decision in *Obergefell v Hodges*.

Child Support

Adler v Dormio, 309 Mich App 702; Mich Ct App Case No. 319608 (3-19-2015)

- Plaintiff Mother filed paternity complaint on 12/7/2006, which named Defendant as the biological father of her son (dob: 4/14/2005); Defendant was served by substituted service on 12/27/2006 and with an order for genetic testing on 1/8/2007; Defendant failed to respond; default judgment of filiation and USCO requiring payment of child support of $297/month, retroactive to child's birth, was entered on 2/12/2007; USCO was modified to include $368/month for childcare, effective 10/6/2006, making Defendant's total liability $669/month; Defendant asserted that he first learned of lawsuit upon garnishment of his wages in summer 2009; Defendant moved in 9/2012 to set aside the Order of Filiation under ROPA; genetic testing excluded him as the father, and his child support obligation was terminated as of the date of his ROPA petition; Defendant then moved to vacate the support orders under MCR 2.612(C)(1)(f), which the trial court denied on the basis that it did not think such relief was available under ROPA.
- The Mich Ct App affirmed.
  - In MCL 772.1443(3), ROPA allows a defendant to seek relief from prior support orders under court rules such as MCR 2.612(C)(1).

Lee v Smith, 310 Mich App 507; Mich Ct App Case No. 320123 (5-19-2015)

- Plaintiff mother filed her action for child support when the parties' son was 18 years old and a full-time high school student; the trial court ordered defendant father to pay child support of $580 per month to plaintiff from August 7, 2013, to May 31, 2014; Defendant appealed on the basis that the trial court could not enter an order of child support after the son turned 18 absent an agreement by the parties.
- Mich Ct App affirmed.
  - Defendant's view that the parties had to agree regarding post-majority support was contrary to MCL 552.605b.
    - Under MCL 552.605b(2), a court could order child support for the time that the child is attending high school on a full-time basis with a reasonable expectation of graduation; under MCL 552.605b(5), the parties could also agree regarding post-majority support for a child; the two provisions were not mutually exclusive.

People v Iannucci, __ Mich App __; Mich Ct App Case No. 323604 (1-19-2016)

- Defendant did not pay the child support he agreed to pay in the consent JOD on the basis that he was a disabled military veteran and that his veteran's disability benefits should not have been considered as income for purposes of calculating child support and that including the benefits was illegal and contrary to federal law; he was convicted of felony nonsupport under MCL 750.165, sentenced to 60 months of probation with 5 days to be served in jail, and ordered to pay $21,951 in unpaid child support; Defendant acting *in pro per* appealed his conviction.
- The Mich Ct App denied his appeal as an impermissible collateral attack on the validity of the underlying support order.
  - A defendant cannot challenge the validity of a civil support order within an appeal from a criminal prosecution.
  - Defendant could have challenged the child support order via an application for leave to appeal the child support order, but did not do so.

Grandparenting Time

Falconer v Stamps, __ Mich App __; Mich Ct App Case No. 323392(12-22-2015)

- Plaintiff mother and Defendant father had a child when they were both teenagers; at the time, they both lived with Defendant's mother, who became the Intervenor in this case; when D and then P moved to Arizona, Intervenor got full guardianship of the child; P and D returned to Michigan, and both had issues with drugs; P moved out of Intervenor's house, stopped doing drugs on her own, and petitioned to terminate the guardianship; Intervenor interfered with P's parenting as much as possible and enabled D to behave badly, including domestic abuse; P filed for custody and was granted sole legal and physical custody, but the trial court also sua sponte granted Intervenor grandparenting time; P appealed.
- MI Ct App affirmed the custody order for P but vacated the grandparenting time order.
  - Grandparenting time should not have been granted when Intervenor had not moved for grandparenting time and when P had not denied grandparenting time.
  - The grandparenting time factors weighed against grandparenting time.

Varran v Granneman, 312 Mich App 591; Mich Ct App Case No. 321866; 322437(10-13-2015)

- Mother and Father were minors when their child was born on 11-17-2002; they never married; at 8 months of age, the child went to live with F and his parents; the child stayed with F's parents when F moved out 2 years later, but F had the child with him for increasing amounts of time; M died in 2007; by 2012, the child lived with F during the week, visiting F's parents each weekend; by 2013, the visits were every other weekend and, when F told his parents they would no longer have overnights with the child and that he would supervise the visits, they moved for grandparenting time; the trial court granted the motion and F appealed.
- On remand from the MI S Ct, the Ct App majority held:
  - F had an appeal as of right from the grandparenting time order, as it affected custody (the dissent felt the appeal should be by leave);
  - MCL 722.27b(4)(b)'s preponderance of the evidence standard by which a grandparent had to prove that a parent's decision to deny grandparenting time created a substantial risk of harm to the child's mental, physical, or emotional health was constitutional, as it adequately protected the parent's fundamental right to make decisions regarding the care, custody, and control of their children; and
  - There is no requirement in MCL 722.27b(1) that grandparenting time be completely denied before a grandparent can seek a grandparenting time order.

Parenting Time

Eickelberg v Eickelberg, 309 Mich App 694; Mich Ct App Case No. 318840 (1-27-2015)

- Parents divorced; at time of filing of divorce action, both parents lived in Clinton Twp; in consent JOD, Mother was given physical custody of their 3 minor children, with joint legal custody; Father, a lieutenant in US Army, had moved to Perry, MI, 86 miles from mother's home during divorce action; he later moved to Marshall, MI, 126 miles from M's home; M contended that F's move to Marshall violated the 100-Mile Rule in MCL 722.31; in response, F asked for change of parenting time; trial court denied M's motion on basis that F's residence before his Marshall move should be used and granted F's motion; M appealed.
- COA ruled that F's residence at time of divorce filing had to be used under the statute, so F needed court approval for move.
  - When a move requires a modification of parenting time that changes the children's custodial environment, the best interests factors in MCL 722.23 need to be considered to determine whether the moving party has proven by clear and convincing evidence that the move and the resultant change in the established custodial environment and parenting time is in the children's best interests.

Kaeb v Kaeb, 309 Mich App 556; Mich Ct App Case No. 319574 (3-12-2015)

- Parties' 7/2010 consent JOD gave them joint legal and physical custody of their 3 children; Mother [M] moved for change of custody in 3/2011 due to Father's [F's] alcohol and gambling problems; trial court entered stipulated order giving M sole legal and physical custody and giving F very limited supervised parenting time [PT], with F to continue alcohol treatment and therapy; F moved for unsupervised PT in 7/2012, and the trial court entered an order allowing unsupervised PT on specified days and requiring that F continue with AA and counseling; in 5/2013, a review of PT was held, and trial court ordered F to continue to attend AA and counseling; in 8/2013, F moved for elimination of the AA and counseling requirement, presenting reports from a psychologist opining that there was no clinical need for F to attend AA and a letter of discharge from his counsellor; trial court denied F's motion on grounds that it was without legal basis and frivolous; trial court awarded M costs and attorney fees; F appealed.
- COA reversed, and established a standard for addressing conditions on PT.
  - Changes to conditions on PT must be based on a demonstration by moving party of proper cause or a change in circumstances that the condition no longer serves child's best interests, rather than the more stringent test for changes of custody.
  - Because F's motion to eliminate the PT conditions was not frivolous, costs and attorney fees were not warranted.

Paternity

Demski v Petlick, 309 Mich App 404; Mich Ct App Case No. 322193 (3-5-2015)

- Woman and Man 1 ended 4 year relationship in March 2010, and W started a relationship with Man 2 in April 2010, becoming pregnant in May 2010; W and M2's relationship ended in August 2010, and she resumed seeing M1; W and M1 set about trying to get M2, who wanted to be in his child's life, to give up his rights (via messages with many !!!!!s); W and M1 married hours after her water broke and before the child was born in January 2011; W and M1 told M2 he could be in child's life, but then reneged; M2 filled his paternity complaint in July 2012, and trial court thereafter awarded joint legal custody based on the child's best interests to W and M2, sole physical custody to W, and supervised parenting time to M2; W and M1 appealed.
  - COA majority upheld trial court, as ROPA requirements for determining that child was born out of wedlock existed, best interests of the child under both ROPA and Child Custody Act weighed clearly and convincingly in M2's favor, and parenting time factors weighed in favor of the child seeing M2 because no clear and convincing evidence was presented that child's physical, mental or emotional health would be endangered.
  - COA minority dissented because no showing was made by M2 that it was in the child's best interests to have a declaration that she was born out of wedlock, because ROPA statutory priorities requiring that the best interests determination be made prior to declaring the child to be born out of wedlock were not honored, and because a separate evidentiary hearing on the child's best interests under the Child Custody Act should have been held.

Graham v Foster, 311 Mich App 139; Mich Ct App Case No. 318487 (6-16-2015)

- Woman and Man 1 married in 2004 and remain married; in 2008, Woman and Man 2 had an affair that allegedly led to the birth of a child in September 23, 2009; however, Man 1 was named as the father on the birth certificate; Man 2 filed a complaint under the Paternity Act in 2010 that was dismissed for lack of standing; in 2013 Man 2 filed a complaint against Woman under the Revocation of Paternity Act [ROPA] alleging that he was the child's biological father; Woman moved for summary disposition, averring that Man 2 could not satisfy the requirements of MCL 722.1441(3), as he knew at all times that she was married to Man 1; Woman also asserted that Man 1 was a necessary party to the action; the trial court ruled that Man 1 did not have to be named as a party and denied Woman's motion on ground that there were genuine issues of material fact; Woman appealed.
- Mich Ct App held that Man 1 was a necessary party to the ROPA action, as he had an interest in the paternity of the child as the presumed father that would not be adequately addressed if he were not a party; further, the statute of limitations would not bar adding Man 1 as a necessary party as Woman was already named as the defendant.

Rogers v Wcisel, 312 Mich App 79; Mich Ct App Case No. 318395 (8-25-2015)

- Man and Woman had "off and on" dating relationship; a child was born in 2007, and Man signed an AOP at the hospital; he subsequently admitted parentage in his answer to a complaint for child support in 2008; in 2012, he moved to revoke the AOP after a DNA test showed he was not the child's father; he argued that he had signed the AOP under the erroneous belief that he was the father and that Woman had stated that he was the father prior to and at the birth; the trial court held that Man had not meet his burden of proving a mistake of fact and denied the motion and then the reconsideration motion.
- The MI Ct App reversed.
  - While an unchallenged DNA test is not sufficient on its own to set aside an AOP, it will suffice when coupled with a mistake of fact.
  - An erroneous belief that a fact exists when it actually does not exist constitutes a mistake of fact if the person with the belief acts on it, even if there is some doubt on that person's part.

Spousal Support

Loutts v Loutts, __ Mich App __; Mich Ct App Case No. 318468 (2-10-2015)

- Husband and Wife are Russian immigrants who came to the US after they married in 1988; H had a company named QPhotonics, for which W worked; H filed divorce action in 12/2008, and JOD was entered in 2010; W was awarded $1510/month in spousal support for 4 years beginning on 4/23/2009; after remand following first appeal, trial court increased W's spousal support to $1790/month but declined to extend it for longer because W asked for the extension (for health reasons) after the initial spousal support period had ended; it determined that the value of QPhotonics should be used only for property division and not for both spousal support and property division; and it declined to award attorney fees and expert fees; W appealed.
- COA affirmed.
  - Trial court erred in holding that W had to seek extension of spousal support before the initial support period ended, but as W had not shown a change of circumstances since the JOD, her motion was properly denied.
  - Trial court did not use an improper "bright line" rule, but thoroughly explained its decision to use QPhotonics' value only for property division.
  - Trial court properly denied W's request for attorney and expert witness fees because the amount of money she'd received ($310,000 in cash) meant W would not have to use her spousal support assets to pay those fees.

The End