Domestic Relations Statutory, Court Rule, and Case Law Updates

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Statutory Changes

2010 Statutory Changes

2010 Public Acts 19 & 20

- 2010 PA 19 (MCL 600.2950a(2)(a) & (b))
  - Mandates granting a stalking PPO when only one incident has occurred if court determines that respondent has been convicted of a sexual assault of petitioner or that respondent was convicted of furnishing obscene material to petitioner
  - Gives court discretion to issue stalking PPO if petitioner was subjected to, threatened with, or placed in reasonable apprehension of sexual assault by respondent, MCL 600.2950a(2)(b)
    - No conviction is required; petitioner need only present sufficient evidence showing that respondent threatened to or actually did sexually assault petitioner
    - Provides that evidence respondent furnished obscene material to a minor petitioner constitutes evidence that respondent threatened sexual assault against petitioner
- 2010 PA 20: Amended concealed weapons act, MCL 28.422, to reflect the previous renumbering of laws cited

2010 Public Acts 56 & 57

- 2010 PA 56 (Amends MCL 565.232)
  - This statute allows a seal of a court, public officer, or corporation to be electronically affixed upon a written document, such as a deed or court order, or upon an electronic document
- 2010 PA 57 (Amends MCL 8.3n)
  - Amends definition of "seal" to include the use of electronic seals either on court documents or affixed to electronic documents

2011 Statutory Changes

None so far!

Court Rule Changes

2010 Court Rule Changes

ADM File No. 2009-30 (Eff. 9/21/2010)

- Amends MCR 1.108
  - Excepts days on which a court is closed pursuant to court order from the computation of periods of time prescribed under court rules, court order, or statute

2011 Court Rule Changes

ADM File No. 2010-30 (Eff. 9/1/2011)

- Amends MCR 2.403, 2.411, and 3.216; creates MCR 2.412
  - New MCR 2.412 provides parameters on confidentiality and disclosure of communications during mediation
    - Per subrule (C), mediation communications are confidential
      - Not subject to discovery
      - Not admissible in a proceeding
      - Not to be disclosed to persons who did not participate in the mediation except in the circumstances listed in subrule (D)
    - Subrule (D) exceptions include: written agreement of parties to disclosure; statutory or court rule requirement of disclosure; inclusion of medication communication in mediator's report; resolution of disputes over mediator's fee or failure of a party to attend; court personnel's need for the communication to administer mediation program; threats or crimes; claims of abuse or neglect of child; issues of professional misconduct or legal malpractice; when needed to enforce document signed by mediation parties
  - MCR 3.216(H)(8) was amended to refer to the new confidentiality provisions in MCR 2.412

2010-2011 Case Law

Case Law Categories

- The cases published from 1/1/2010 to 5/12/2011 address:
  - Arbitration
  - Attorney Fees
  - Child Custody
  - Child Support
  - Change of Domicile
  - Divorce Jurisdiction
  - Paternity
  - Parenting Time
  - PPO
  - Property Division (including QDRO)
  - School District Change
  - Spousal Support
  - UCCJEA

Arbitration

Cipriano v Cipriano,__ Mich App __;
Mich Ct App Case Nos. 291377, 292806 (8/10/2010)

- H moved to amend either spousal support or property award after trial court awarded W 55% of the marital property and $5,500/month in alimony; after Mich Ct App ruled that W was entitled to 55% of the value of H's business plus interest, trial court issuedsupplemental JOD awarding W $941,287 for her interest in H's business; parties agreed to binding arbitration
  - Arbitrator eliminated interest, leaving W with $485,155, but kept spousal support payment at $5,500/month
  - W moved to vacate, modify, or correct arbitration award on basis of H's ex parte conversation with arbitrator before award issued
  - Trial court denied W's motion and reduced amount spousal support payment to $3,870 for no stated reason; W appealed
- Mich Ct App ruled that H's ex parte contact with arbitrator was improper, but did not require vacation of arbitration award as it was not precluded by arbitration agreement; it also reinstated original spousal support award of $5,500/month

Attorney Fees

Keinz v Keinz, __Mich App__; Mich Ct App Case No. 292781 (9/16/2010)

- W sought increase in H's child support payments after end of his disability leave; at referee hearing, H falsely said his annual income for 2008 was $41,458.56, although voluntary overtime increased his income to $81,808.32; after income was revealed, parties reached settlement that increased H's child support
  - W requested her attorney fees incurred due to H's maintenance of positions with no reasonable basis in law or fact; trial court denied on basis that H had not deliberately misled referee; W appealed
- Mich Ct App reversed due to MCL 600.2591(1), which allows sanctions in form of award of attorney fees and costs to prevailing party for other party's frivolous action or defense
  - W was a prevailing party because parties' settlement favored her
  - H's failure to be honest about his income gave H no reasonable basis to believe that income he reported to the referee was true, so sanctions in the form of attorney fees for H's frivolous defense were appropriate

Child Custody

Dailey v Kloenhamer, __ Mich App__ (2011); Mich Ct App Case No. 300698(3/8/2011)

- Based upon the escalating disputes and acrimony between the parties regarding the child's health, religion, and education, the trial court changed the child's custody from joint legal custody with primary physical custody with the father to joint physical custody with the father having sole legal custody; W appealed
- Michigan Court of Appeals held that, under the plain language of Child Custody Act regarding joint custody, the trial court could award sole legal custody to one party while giving the parties joint physical custody

Child Support

In re Beck, 287 Mich App 400; 488 Mich 6 (2010)

- H's rights to parties' children were terminated in a Juvenile Code proceeding; the trial court nonetheless ordered that H continue to pay child support to W; H appealed
- Mich Ct App affirmed trial court, reasoning that the Juvenile Code (MCL 712A.19b) permits a court to terminate parental rights, but is silent as to parental responsibilities
  - Per Ct App, this meant that parental responsibilities continued
  - Because a child has an inherent, fundamental right to support from both his or her parents, child retains the right to support from a parent whose parental rights had been terminated, either voluntarily or involuntarily (except Adoption Code terminations)
- Mich S Ct affirmed Ct App, on basis that under Mich statutes, parental rights were distinct from parental responsibilities
  - Nothing in statutory structure indicates that loss of parental rights results in automatic loss of parental obligations

People v Likine, 288 Mich App 648 (issued 6/8/2010)

- H & W divorced in June 2003; W was ordered to pay child support for the 3 minor children, which increased from $54/month to $181/month; in 2005, after W purchased a $500,000 home and a new car, H sought further increase; FOC recommended imputing income of $5,000/month to W and increasing child support to $1,131/month as of 6/1/2005, which circuit court adopted; W paid less than $600 of child support and owed $40,182.71 by end of February 2008; W was prosecuted for felony nonsupport under MCL 750.165, and she asserted that statutory inability to raise defense of failure to pay in felony nonsupport cases was unconstitutional
- Mich Ct App rejected W's constitutional claim
  - Civil proceedings prior to felony non-support prosecution gave W ample opportunity to contest proper amount of child support
  - Mich Ct App especially noted that W had not sought a reduction of child support within the support case itself

Change of Domicile

McKimmy v Melling, __ Mich App __; Mich Ct App Case No. 298700 (2/10/2011)

- W and M had joint legal custody of 2 young sons; W had sole physical custody, but M exercised his parenting time consistently; W sought permission from trial ct to move to ND, where W's fiancé lived; W proposed modified parenting time plan with boys staying with M over entire summer and alternate holidays; trial court denied due to potential dire consequences on M's relationship with sons; W appealed
- Mich Ct App vacated denial of mother's motion for change of domicile
  - Trial court's interpretation of MCL 722.31(1)(c)'s provisions regarding modification of parenting was incorrect; trial court compared the pre-move parenting plan to the post-move plan and found the pre-move plan to be in the best interests

Divorce Jurisdiction

Kar v Nanda, __ Mich App __; Mich Ct App Case No. 292754 (1/13/2011)

- H and W are both citizens of India and were married in India in 2007; W was a graduate student at U of M, while H had work that required him to move frequently around the US; H filed for divorce in Washtenaw County in 2009 while he was living in Atlanta, GA, and W was in Ann Arbor
  - W asserted that Washtenaw County Circuit Court did not have jurisdiction over divorce action because she planned to return to India after finishing graduate school
  - Trial court ruled that it had jurisdiction, and W appealed
- Mich Ct App held there was jurisdiction, construing the residency requirement in MCL 552.9(1) ("the complainant or defendant has **resided** in this state for 180 days immediately prior to the filing of the complaint") as referencing a place of abode accompanied with intention to remain for some period of time, which need not be permanent and indefinite

Paternity

Pecoraro v Rostagno-Wallat, __ Mich App __;
Mich Ct App Case Nos. 293355 & 293445 (1/18/2011)

- New York court determined that M was father of child conceived and born during W's marriage to H, and issued an order of filiation that a Michigan circuit court enforced; W and H appealed
- Mich Ct App held that M lacked standing to seek paternity under Michigan's Paternity Act because there was no legal determination in proceedings involving H and W establishing that child was born out of wedlock as required for standing under MCL 722.711(a) and 722.714.
  - NY court did not have personal jurisdiction over H and so could not issue rulings regarding his parental status
  - NY order of filiation did not have to be given constitutional Full Faith and Credit by the Michigan trial court due to NY's lack of jurisdiction over H

Parenting Time

Shade v Wright, __ Mich App __; Mich Ct App Case No. 296318 (12/2/2010)

- Parties' JOD incorporated parenting time schedule giving H 2 weekends per month and 8 weeks during the summer; 2 years later, circuit court modified parenting time to give H one weekend per month and entire summer without making explicit findings re: existence of proper cause, change of circumstances, or best interests of minor child; H appealed
- Mich Ct App affirmed
  - The law of the case doctrine did not bind circuit court to JOD's parenting time schedule, as best interests determination is a question of fact, and the facts had materially changed since JOD
  - Modification was proper based on parenting time factors in MCL 722.27a(6)(a)-(i); the modification did not change H's parenting time amount, and JOD schedule interfered with child's activities
  - Parenting time change did not change established custodial environment, so there was no change in circumstances and child custody best interest factors in MCL 722.23(a)-(l) did not apply

PPO

Jenson v Puste, __ Mich App __; Mich Ct App Case No. 292731 (10/21/2010)

- Parties were divorced in March 2006, and W filed PPO petition in November 2006, which was granted; in April 2009, H moved to vacate PPO *nunc pro tunc* and to seal court file on basis that, even after its expiration, PPO appeared on background checks and prevented H from obtaining employment; although both H and W signed proposed consent order, trial court denied H's motion on basis that it lacked authority to seal PPO file; H appealed
- Mich Ct App ruled that trial court was prohibited from sealing PPO orders by plain language of MCR 8.119(F)(5)
  - Court rule specifically prohibits a court from sealing court orders and opinions and contains no provisions allowing court to exercise discretion regarding whether to seal PPO records.

Property Division

Biondo v Biondo, __ Mich App __; Mich Ct App Case No. 294694 (3/15/2011)

- In July 2007, after 43 years of marriage, H and W agreed to enter a consent JOD that required them to equally divide the marital estate, including equalizing Social Security benefits
  - H worked for Ford, while W was a stay-at-home mom
- H did not make the Social Security equalization payments
  - H asserted that the Social Security provision violated federal law
  - Circuit court enforced the provision on contract grounds
- Mich Ct App reversed due to federal preemption, as federal law prohibits transfer of Social Security benefits [42 USC 407(a)]

Cunningham v Cunningham, 289 Mich App 195 (2010)

- After 10 years of litigation over H's worker's compensation claim, H received monthly benefit of $2,850 and lump sum of $150,000; while comp claim was pending, H and W married; when claim was resolved, lump sum went into H & W's joint savings account and $90,000 went toward purchase of marital home; W filed for divorce after 25 years; trial court returned $90,000 to H as his separate property; W appealed
- Mich Ct App ruled:
  - Workers' compensation payments received during a marriage for an injury occurring prior to marriage could be marital assets subject to division if they compensate for wages lost during the marriage
  - Conversely, workers' compensation payments could be separate property if they compensate worker for wages lost prior to the marriage
  - Nonetheless, H had commingled his otherwise separate workers' compensation assets with the parties' marital assets in their joint bank account, such that they lost any separate property characteristics

Genaw v Genaw, 486 Mich 940 (2010)

- H bought life insurance policy in 2001, with W as beneficiary; H & W divorced on 7/3/2006, and JOD extinguished parties' interests in life insurance policies on the other's life; W was not yet removed as beneficiary when H died in car accident 3 days later; insurer's loss report stated that W was H's ex-wife, & W's claim for benefits said H was divorced; insurer paid W benefits anyway; H's personal representative sued to recover benefits; only part could be recovered from W, & circuit court ordered insurer to pay remainder; insurer appealed
  - Mich Ct App held that W's claim for benefits, which mentioned her status as H's ex-wife, was sufficient notice to insurer to prevent discharge of insurer's liability under MCL 552.101(2)
- Mich S Ct reversed for reasons in Mich Ct App dissent: W, as designated beneficiary, was not a person who had to give insurer notice of the divorce; under statute, payment to W prior to such notice extinguished insurer's liability

Megee v Carmine, __ Mich App __; Mich Ct App Case No. 292207 (11/16/2010)

- Parties' 1989 JOD awarded W 50% of H's Navy disposable retirement pay; award was incorporated into a QDRO; JOD barred any other benefit election; W began receiving her portion of H's retirement pay in 2008; H was then diagnosed as disabled due to his service in Vietnam and declared eligible to elect combat-related special compensation [CRSC]; H elected to take CSRC without asking W; this terminated his retirement pay, including W's portion
  - W moved to enforce JOD; trial court ordered H to pay W 1/2 of CSRC
- Mich Ct App reversed, as federal law does not allow direct division of disability pay such as CSRC
  - However, amount of waived retirement pay should still be divided in order to honor terms and intent of JOD, which will compensate W for her share of the property division in lieu of the waived retirement pay
  - H could fulfill obligation from any source, including CRSC

Shouneyia v Shouneyia, __ Mich App __; Mich Ct App Case No. 297007 (1/18/2011)

- 2008 JOD awarded W $50,000 in property settlement and ordered H to pay $40,000 for W's attorney fees; when H did not pay, W sought appointment of receiver to collect the money; trial court appointed receiver over H's corporation, a non-party
- Mich Ct App held that circuit court's failure to join H's corporation as a party defendant in the underlying divorce action precluded it from exercising authority over corporation
  - However, pursuant to MCR 2.207, misjoinder of parties is not a ground for dismissal of an action, which led Mich Ct App to direct circuit court to add corporation as a necessary party to the divorce action on remand.
    - Corporation could be added as party to divorce action based on W's allegation that corporation had joined with H to defraud W out of her property interests
- Receiver could be appointed to preserve funds and property to satisfy H's judgment debt once corporation was made a party

Woodington v Shokoohi, ___ Mich App ___ (2010); Mich Ct App Case No. 288923 (5/4/2010)

- H & W divorced & W sought $55,000 per year in spousal support so that she could remain a stay-at-home mom until the parties' younger child started high school; even though H was willing to pay the requested support, the circuit court awarded W alimony in gross instead of spousal support & provided no reasons for doing so; the circuit court also provided no basis for its denial of W's request for discovery of the business records of the PC employing H, its overall valuation of & division of the marital property, its award of attorney fees to W, and its interpretation of the parties' prenuptial agreement; W appealed
  - Court of Appeals remanded the issues as to which the trial court's findings were inadequate for further findings and proceedings

School District Change

Pierron v Pierron, 282 Mich App 222 (2009); 486 Mich 81 (2010)

- Seven years after parties divorced, W purchased home in Howell, 60 miles from H's home, and sought to enroll the children in Howell Public Schools; H objected and trial court ordered that children remain enrolled in Grosse Pointe Public Schools; W appealed
- Mich Ct App vacated trial court's order
  - Change in school districts would not alter the children's established custodial environment
  - Consideration of child custody best interest factors in school change cases should narrowly focus on factors relevant to school change, with consideration to children's reasonable preferences
- Michigan Supreme Court agreed with Court of Appeals
  - Important decisions affecting the welfare of the children that require adjustment in parenting time do not modify established custodial environment if they do not change to whom children naturally look for guidance, discipline, necessities of life, and parental comfort

Spousal Support

Estate of Luckow v Luckow, __ Mich App __; Mich Ct App Case No. 294398 (1/27/2011)

- H and W divorced in 2003, and, per arbitration award, JOD required H to pay modifiable spousal support of $2,500/month until W's death or remarriage based upon his income from his business; after H sold business, he moved for reduction of spousal support, and arbitrator reduced it to $0; H then died and W sought increase in spousal support from H's estate; original judge denied W's motion on basis that she could not get from estate what she could not get from H while he was alive; successor judge granted reconsideration and H's estate appealed
- Court of Appeals reversed on basis that reconsideration was not appropriate as there was no palpable error, but merely a difference in opinion regarding the appropriate outcome
  - Footnote 3 suggests that W might have improved her position by asserting that her financial expenses could not be met by her spousal support award

Licavoli v Licavoli, __ Mich App __; Mich Ct App Case No. 295901 (4/26/2011)

- H & W divorced in 2005; JOD provided for H to pay child and spousal support to W; H bought a home while divorce was pending, which was awarded to H and subsequently deeded by quit claim deed to H and new spouse; H's business closed in 2007 due to economic considerations; thereafter, H filed for bankruptcy and ceased making child and spousal support payments; W moved to enforce JOD
  - Trial court ordered lien on H's home and 50% of H's current income withheld to pay spousal support; H appealed as house was held in tenancy by entireties and due to high % of income withheld
- Mich Ct App reversed as to lien on H's home
  - Per MCL 600.2807, judgment lien does not attach to tenancy by entireties property unless underlying debt is against both spouses
- Mich Ct App upheld 50% withholding due to H's failure to comply with trial court's child and spousal support orders

Myland v Myland, __ Mich App ___; Mich Ct App Case No. 292868 (11/23/2010)

- Trial court used a mechanistic formula without a legal basis to determine amount of spousal support to be paid to W by H; trial court did not consider W's needs, such as health care costs, and her lack of earning ability; trial court also denied W's need-based request for attorney fees due to lack of egregious behavior; W appealed
- Mich Ct App reversed because trial court used made up formula instead of *Olson* spousal support factors; it noted that the factors were particularly important because W had progressive multiple sclerosis with little probability of an ability to work in the future
  - Mich Ct App also reversed trial court's denial of W's request for attorney fees due to improper application of "egregious conduct" standard rather than MCR 3.206(C)(2)'s need-based standard

Rose v Rose, 289 Mich App 45 (2010)

- H & W entered into consent JOD in 2006; instead of dividing H's tool and die company's stock, consent JOD awarded W $230,000 per year in nonmodifiable spousal support in exchange for her foregoing any interest in company; H thereafter gave responsibility for company's operations to his son from previous marriage, who then committed financial improprieties; W agreed to receive a temporarily modified spousal support amount while H tried to rescue company; H's efforts failed, and he sought relief from spousal support obligation; trial court lowered H's spousal support payments to $900/month; W appealed
- Mich Ct App ruled that trial court erred in not honoring parties' agreement, which was clearly and unambiguously not modifiable
  - H & W's agreement honored finality at expense of modifiability
  - No basis for overturning agreement when it was not unconscionable when enacted and when H & W presumably considered possibility of an economic downturn when they entered into the agreement

UCCJEA

Foster v Wolkowitz, 486 Mich 356 (2010)

- W and M moved to Michigan from Illinois in 2006 shortly before birth of child; parties filed Michigan Acknowledgment of Parentage on 1/25/2007; parties returned to Illinois in April 2007, and relationship ended in May 2008; W and child returned to Michigan, and W filed paternity action in Monroe Circuit Court; in June 2008, M filed custody action in Illinois court; the two courts conducted UCCJEA conference and concluded that Acknowledgment of Parentage was initial custody determination giving Michigan jurisdiction; M appealed
- Mich Ct App agreed with Circuit Court, but Mich S Ct did not
  - Mich S Ct held that a judicial determination of custody was required for UCCJEA purposes, and that Acknowledgment of Parentage was not a judicial determination as it was not a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to the child

Thanks for attending!