Michigan Judicial Institute
Family Division Referee Webinar:
Domestic Relations Division

January 27, 2022

Statutory, Court Rule, and Caselaw Update

Materials presented by:

Ryan O'Neil
Domestic Relations Referee
Oakland County Friend of the Court
oneilr@oakgov.com

Michigan Judicial Institute
Domestic Referee Seminar
Statute, Court Rule, Caselaw Update
2021-22

By: Ryan M. O'Neil
Oakland County Friend of the Court

Court Rules

MCR 2.107(G)

(G) Notwithstanding any other provision of this rule, until further order of the Court, all service of process except for case initiation must be performed using electronic means (e-Filing where available, email, or fax, where available) to the greatest extent possible. Email transmission does not require agreement by the other party(s) but should otherwise comply as much as possible with the provisions of subsection (C)(4).

MCR 2.407(G)

(G) Notwithstanding any other provision in this rule, until further order of the Court, AO No. 2012-7 is suspended and trial courts are required to use remote participation technology (videoconferencing under this rule or telephone conferencing under MCR 2.406) to the greatest extent possible. In doing so, courts must:

> (1) Verify that participants are able to proceed remotely, and provide reasonable notice of the time and format of any such hearings for parties, other participants, and the general public in a manner most likely to be readily obtained by those interested in such proceedings.
>
> (2) Allow some participants to participate remotely even if all participants are not able to do so. Judicial officers who wish to participate from a location other than the judge's courtroom shall do so only with the written permission of the court's chief judge. The chief judge shall grant such permission whenever the circumstances warrant, unless the court does not have and is not able to obtain any equipment or licenses necessary for the court to operate remotely.
>
> (3) Ensure that any such proceedings are consistent with a party's Constitutional rights, and allow confidential communication between a party and the party's counsel.
>
> (4) Provide access to the public either during the proceeding or immediately after via access to a video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule.
>
> (5) Ensure that the manner in which the proceeding is conducted produces a recording sufficient to enable a transcript to be produced subsequent to the proceeding.

(6) Ensure that any such remote hearings comply with any standards promulgated by the State Court Administrative Office for conducting these types of proceedings.

(7) Waive any fees currently charged to allow parties to participate remotely.

Courts may collect contact information, including mobile phone number(s) and email address(es) from any party or witness to a case to facilitate scheduling of and participation in remote hearings or to otherwise facilitate case processing. A court may collect the contact information using a SCAO-approved form. The contact information form used under this provision to collect the information shall be confidential. An email address for an attorney must be the same address as the one on file with the State Bar of Michigan.

Statutes

MCL 552.628

(1) For a friend of the court case, a payer's occupational license or recreational or sporting license, or any combination of the licenses may be suspended if both of the following circumstances are true:
    a. An arrearage has accrued in an amount greater than the amount of periodic support payments payable for 2 months under the payer's support order.
    b. An order of income withholding is not applicable or has been unsuccessful in assuring regular payments on the support obligation and regular payments on the arrearage.
(2) For a friend of the court case, a payer's driver license may be suspended if both of the circumstances in subsection (1) are true and both of the following additional circumstances are true:
    a. The court has conducted an ability to pay assessment and determined that the payer has an ability to pay the support but is willfully not making his or her support payments.
    b. The office of the friend of the court determines that no other sanction would be effective in assuring regular payments on the support obligation and regular payments on the arrearage.
(3) Before seeking the suspension of a license described in subsection (1) or (2), the office of the friend of the court shall send the payer a notice that includes all of the following information:
    a. The amount of the arrearage.
    b. That the payer's occupational license, driver license, or recreational or sporting license, or any combination of the licenses may be subject to suspension.
    c. That a suspension order or notice will be sent to the licensing agency unless the payer responds by paying the arrearage or requesting a hearing within 21 days after the date of mailing the notice.
    d. That, if a hearing is requested, the payer may do either of the following at the hearing:
        i. Object to the proposed suspension based on a mistake of fact concerning the overdue support amount or the payer's identity.

ii. Ask the court to order a schedule for the payment of the arrearage.

e. That, if the payer believes that the amount of support ordered should be modified due to a change in circumstances, the payer may file a petition with the court for modification of the support order.

Case Law

Custody

O'Brien v. D'Annunzio **_____ Mich ____, _____ NW2d_____ (Docket No. 161335) (June 11, 2021)**

In a November 2017 order, the trial court suspended Mother's parenting time without a hearing violating MCL 722.27(1)(c). The suspension modified the minor children's' established custodial environment which necessitated a hearing. The trial court's order following a hearing, entered fifteen (15) months after the suspension of parenting time, was based on events that occurred before the established custodial environment was altered by the trial court's ruling in 2017. The Supreme Court vacated the trial court's ruling and ordered that the matter be remanded to a new judge to conduct an evidentiary hearing.

A concurring opinion declared that, while parenting time can be suspended using an ex parte order pursuant to MCL 722.27a, the trial court modified custody without first conducting a hearing. That opinion did not fault Mother for attempting to resolve the issue with Father instead of immediately appealing. The opinion noted that the real cause for a change in custodial environment was the trial court's initial ex parte order (this opinion was a direct refute the dissenting opinion).

A third opinion, which concurred in part and dissented in part, agreed with the majority to vacate but believed that more guidance should be given to the trial court on how to proceed on remand. The opinion also dissented with the re-assignment to a different judge. The opinion also rejected the reading of the majority order that the custody order be vacated and that the children be placed with Mother whom they have not seen in 3 ½ years. Instead, the third opinion would remand with direction that the trial court consider updated information to fashion a new order.

A fourth opinion dissented entirely from the majority finding that the application for leave should have been denied as Mother herself contributed to the delay in seeking to adjourn multiple hearings.

Kostreva v. Kostreva**_____ Mich App. ____, _____ NW2d_____ (Docket No. 352029,353316) (June 24, 2021)**

Mother and Father shared joint legal custody of the minor child. Father retained possession of the minor child's passport. In 2019, Mother's mom died while visiting Mother in the United States. Mother requested that Father consent to permitting the minor child to travel with her to Poland. Father did not consent and would not provide the passport. Mother filed an emergency motion which was granted. The trial court held an evidentiary hearing to determine which parent should be the custodian for the minor child's passport. The Friend of the Court recommended that

Father continue to remain as custodian but that he pay Mother's attorney fees in the amount of $1,112. Father objected and a hearing was held before the trial court. The trial court ordered that Father pay fees in excess of $6,000 and that Mother be the custodian of the passport. Father appealed.

The Court of Appeals rejected Father's claims under the Uniform Child Abduction Prevention Act ("UCAPA") that Mother should have been prevented by the trial court for abducting the minor child to Poland. First, Father did not raise the UCAPA before the trial court. Second, the Court of Appeals did not find that allowing the minor child to travel to Poland with her mother to plan for the return of Mother's mom to the United States for burial presented a credible risk of abduction.

The Court also affirmed the trial court's ruling to change custody of the minor child's passport without first determining whether proper cause or a change in circumstance exists because whichever parent was custodian of the passport had no impact on the minor child's established custodial environment.

The Court further rejected Father's claims that the issuance of an ex parte order deprived him of his due process rights. The Court was not persuaded by his arguments that the ex parte motion lacked an affidavit and verification as required in MCR 3.207. The Court pointed to a United States Supreme Court ruling that some cases require emergency relief to be granted by the courts and that, in those cases, strict adherence to formal requirements such as affidavits and verification can be waived.

The Court also rejected Father's claims that, because Mother did not object to the Referee's recommendation that he retain custody of the passport, that the issue was precluded from being reviewed by the trial court under MCR 3.215(E)(4)&(5). Father provided no legal authority that the trial court was precluded from reviewing the issue on its own motion.

The Court further rejected Father's claims that the award of attorney fees against him was improper. The parties' judgment requires that the parties "cooperate to the extent which may be appropriate under the circumstances in accommodating one another should one wish to have the minor child for some special event or occasion. . ." The trial court did not error in finding that Father's motives to object to the travel were both frivolous and nefarious.

***Echols v. Kabza*, unpublished per curiam opinion of the Court of Appeals, issued November 9, 2021 (Docket No. 355876)**

Pursuant to the terms of the Judgment of Divorce, entered in 2013, Mother and Father were awarded joint legal custody of their minor child with equal parenting time. The parties struggled to co-parent which prompted the trial court to appoint an L-GAL. Father tried to have the L-GAL removed on multiple occasions. The trial court held an evidentiary hearing which last twenty-two (22) days spanning over a year. The trial court awarded Mother sole legal custody, ordered that the parties continue to equally share parenting time, and discharged the L-GAL.

The Court of Appeals rejected Father's argument that the trial court erred in considering evidence relating to events that transpired prior to the most recent custody order. *Vodvarka* does not preclude a trial court from considering such evidence. The Court affirmed the trial court's finding that Factor (b), the capacity and disposition of the parties to give the child love, affection and guidance and to continue the education of the minor child, favored Mother. By way of a non-exclusive list of examples, the Court noted the following findings by the trial court:

- Father had a history of being combative with school officials and was eventually banned from Ann Arbor's elementary school campus.
- Father sent emails to school staff members containing negative comments and information about Mother.
- Father also provided his input to school administrators as to how the school as a whole could function more efficiently and made accusations that the school violated various codes and ordinances.
- Father did not adhere to the school's requirement for checking students out, instead he slipped in behind a parent leaving the building to remove the minor child from the school.
- Father was combative with the minor child's kindergarten teacher. Specifically, Father threatened to have the minor child removed from the school citing a lack of progress with the child's reading after one-week in kindergarten and implied that the teacher was incompetent.
- At the same time, Father would remove the minor child early from school so he could spend time with her.
- The kindergarten teacher felt threatened by Father who also asked that he observe the class in an effort to obtain evidence that the teacher was actually teaching the minor child how to read.
- Father refused to use electronic software to review the child's progress and communicate with the school until he had time to research the software.
- Father did not allow the child to use a backpack on his parenting days and directed the school not to send home a work folder or other "paraphernalia"
- The principal received excessive emails from Father that exceeded the volume of those sent by a normal parent.
- Father refused to allow the minor child to bring a quarter on a field trip to the Farmer's Market as he did not want her to learn "the value of money."
- Father required that the kindergarten teacher not use general greetings towards him, as she did for other parents, instead requiring that she greet him by saying "Good Morning Mr. Kabza."

The Court highlighted Father's penchant for self-absorbed overreactions in a footnote. "The record showed that Kabza even overreacted in court when he felt slighted. When Kabza repeatedly failed to answer a question with a simple yes or no, Sisson began to restate the question and stated that Kabza "either can't answer or won't answer" the question. Kabza exclaimed: "Sorry; I take umbrage at that." "Yes, I'm taking umbrage; I'm signifying I'm taking umbrage at that question." After expressing his umbrage, Kabza gave Sisson permission to proceed."

***Masters v. Masters*, unpublished per curiam opinion of the Court of Appeals, issued June 24, 2021 (Docket No. 355290)**

Mother and Father divorced in 2018. Mother was granted sole physical custody of the minor child while Father underwent therapy and treatment to address emotional issues. During this time, Mother was to supervise Father's parenting time. A year later Father filed a motion to enforce his parenting time. Father alleged that Mother was not allowing him to exercise parenting time with the minor child outside of seven (7) occurrences. The trial court ordered father to have therapeutic parenting time at Growth Works. Father sought further enforcement as Mother would not arrange for the minor child to appear at Growth Works. Mother went into hiding with the minor child and Father could not serve her. Father then moved to change custody alleging that Mother's disappearance was a change in circumstance. The detective testified that the minor child and Mother were still in Canada. The trial court issued a bench warrant for Mother's arrest but denied the motion to change custody.

The Court of Appeals vacated the trial court's order. First, the Court rejected the trial court's assertion that a change in circumstance could not be determined without Mother present. The fact that Mother engaged in parental kidnapping was, in and of itself, a change in circumstance. The trial court, on remand, was directed to consider Mother's disruption to the child's living and educational settings as well as frustrating a meaningful relationship between the minor child and Father.

***Pueblo v. Haas*, unpublished per curiam opinion of the Court of Appeals, issued December 28, 2021 (Docket No. 357577)**

Plaintiff and Defendant were in a same-sex relationship and were never married. Defendant underwent in-vitro fertilization and gave birth to the child. Plaintiff did not adopt the minor child but both parties held themselves out as the parents of the child. The parties continued to co-parent the minor child even after their relationship terminated. Plaintiff filed a complaint under the Child Custody Act of 1970 which was dismissed with prejudice by the trial court. Plaintiff appealed and argued that she had standing as the child's equitable parent.

The Court of Appeals rejected Plaintiff's claim that she was a natural parent as the parties were not married pursuant to *Lake v. Putnam*, 316 Mich App 247 (2016). Plaintiff countered that she has standing under the "elastic definition" of natural parent pursuant to *LeFever v Matthews*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353106). The Court distinguished this case from *LeFever* as in that case, Plaintiff's eggs were used and Defendant gave birth thereby giving a physical connection to the children as a result of the genetic relationship. The Court also declined to extend the equitable parent doctrine to parties who were not married irrespective of the fact that marriage was not a legal option for the parties at the time the child was conceived.

Parenting Time

***Kuebler v. Kuebler*, unpublished per curiam opinion of the Court of Appeals, issued November 18, 2021 (Docket No. 354327, 355934, 356641, 356709)**

Highly contentious post-judgment matter. Mother is a research scholar at the University of Michigan. Father is an assistant United States attorney. Pursuant to the terms of the Judgment of Divorce, Father was awarded sole legal and physical custody while Mother was awarded supervised parenting time as a result of Mother's "serious personality disorder." Mother was also to undergo psychotherapeutic treatment. Mother has a history of making allegations against Father of domestic violence against Mother and abuse against the minor children. None of these allegations were substantiated. Father also had anger issues and the judgment provided that he was to undergo mental-health treatment.

Mother filed a motion to modify parenting time in 2017. That motion was denied without a hearing by the trial court and following two (2) remands from the Court of Appeals, an evidentiary hearing was eventually held. The trial court treated Mother's request as a motion to modify custody and denied the request finding no change in circumstance and/or proper cause and opined that Mother's conduct had gotten worse instead of improving. The trial court increased Mother's child support obligation after she obtained employment at the University of Michigan and made the support retroactive to when Mother obtained her new position. Finally, the trial court awarded Father $37,000 in attorney fees.

The Court of Appeals affirmed the trial court's rejection of Mother's motion to modify custody (which Mother had titled as a request to move parenting time). Mother's motion alleged that she was simply seeking to modify the conditions of parenting time and that the court should apply the standard in *Kaeb v Kaeb*, 309 Mich App 556, 570; 873 NW2d 319 (2015). However, Mother's motion was not to transition from supervised parenting time for two (2) hours per week to unsupervised parenting time for two (2) hours per week. Instead, Mother's motion sought overnight weekend parenting time, expanded weekday parenting time, and holiday parenting time. The Court of Appeals appears to have given great deference to the trial court's finding that Mother's request to modify parenting time from supervised time to overnight parenting time altered the established custodial environment and found that, regardless of the standard applied, the trial court correctly found that Mother did not demonstrate a change in circumstance or proper cause and that her behavior had worsened and not improved since the last custody order. Mother had fabricated a PPO petition against Father, disparaged him in Facebook posts, wrote a letter to the State Bar of Michigan commissioner, and filed a complaint with his employer.

***Gittler v. Steenhoven*, unpublished per curiam opinion of the Court of Appeals, issued September 23, 2021 (Docket No. 356034)**

Following the entry of a judgment of divorce, the trial court ordered Mother's parenting time take place exclusively at her parents' home, that her parents be present at all times, and that an alarm be placed on the minor child's bedroom door. These safety measures were put into place as a result of a CPS investigation following Mother's homicidal ideations against the minor child. Mother filed a post-judgment motion to lift safety restrictions and to change custody for the

minor child to attend kindergarten. Mother testified about her mental health diagnoses and her treatment. She testified that she did not pose a threat to the minor child. Mother's counselor testified that she had no concerns about Mother exercising parenting time alone with the minor child. Father opposed lifting the restrictions and about the choice of school for the minor child's kindergarten. Defendant worked from home and took care of the minor child and his daughter. Following a referee hearing, the FOC recommended that the safety restrictions be lifted and the minor child attend STEM Academy which was Mother's choice of school. The Referee further recommended that physical custody be modified with the minor child living primarily with Mother. This recommendation was adopted by the trial court.

The Court of Appeals reversed the trial court's lifting of the restrictions finding that it was against the great weight of the evidence to lift safety restrictions where Mother had previously had ideations of slitting the minor child's throat and had, in the past, voluntarily gone off her medications. The Court did affirm the choice of school and modification of physical custody. The Court rejected Father's argument that the trial court did not apply each best interest factor noting that, if a factor does not apply, the trial court does not have to address it in any further detail.

The Court affirmed the school choice and modification of physical custody. The Court found that the trial court did apply the clear and convincing evidence standard. The Court found that Mother did take care of the child (getting him ready in the morning, etc.) and that the shortcomings cited by Father (i.e. not transporting the minor child) were a result of the safety plan. The Court also affirmed the trial court's findings that Mother's mental health issues did not prevent her from parenting the minor child.

A dissenting opinion would have affirmed the trial court's removal of the safety restrictions finding that they were no longer necessary.

UCCJEA

***Veneskey v. Sulier*, _____ Mich App _____, _____ NW2d _____, 2021 (Docket No. 355471)**

Minor child was living in North Carolina with her Mother, Stepfather and half-sibling in a home owned by Grandparents. Mother died. Grandparents obtained a power-of-attorney from the stepfather and removed the minor child from North Carolina to Michigan. The minor child's Father was not consulted. The probate court in Michigan granted a limited guardianship to Grandparents. Grandparents then sought custody in Michigan with Father being identified as the defendant. Father sought summary disposition as he filed a custody action in North Carolina which was the last residence of the minor child. The trial court granted Father's motion and dismissed the Michigan custody action.

Grandparents contended that there was a gap of time between the minor child having a parent in North Carolina and a custody action being filed in Michigan, and thus, North Carolina was not the minor child's home state. The Court of Appeals disagreed and ruled that "[A]n individual who removes a minor child from the home state should not obtain a benefit between the removal date and date of filing of a custody petition in Michigan by claiming that this period destroyed the prior occupancy period and relationship to the home state." In this case, the guardianship petition was

filed only days after the minor child was removed from North Carolina which is the child's home state pursuant to MCL 722.1102(1)(a).

Additionally, the Court found that Michigan should decline jurisdiction as it was not a convenient forum pursuant to MCL 722.1207, specifically, that the minor child spent more time in North Carolina.

Child Support

***Milne v. Milne*, unpublished per curiam opinion of the Court of Appeals, issued September 23, 2021 (Docket No. 355862)**

Parties were unmarried but held themselves out as married. Parties had 2 children. After Mother traveled to Albania with the minor children, Father petitioned for custody. After Mother returned, the trial court entered an interim order for joint legal custody and equal parenting time. The interim order was reduced to a final order after an evidentiary hearing. The Court of Appeals affirmed the trial court's findings regarding the children's established custodial environment and best interest findings. The Court also affirmed the trial court's finding of joint legal custody.

The trial court did reverse the trial court's child support order as the trial court did not properly consider the imputation factors pursuant to MCSF 2.01(G)(2). Specifically, the trial court made general findings that Mother was capable of working a full-time job without making any findings regarding her actual ability to do so.

***Kuebler v. Kuebler*, unpublished per curiam opinion of the Court of Appeals, issued November 18, 2021 (Docket No. 354327, 355934, 356641, 356709)**

The trial court retroactively modified the child support obligation pursuant to MCL 552.603(b) finding that Mother did not properly inform the Friend of the Court office of her new employment. Mother obtained new employment in January of 2018 and that month did inform the FOC of her new employment but not the amount of her new income. The trial court concluded that Mother did not commit a fraud on the court by not disclosing her income, and in making that finding, MCL 552.603(b) was inapplicable. Even Mother's misrepresentation that there was a no-contact order between the parties does not rise to the level of a misrepresentation under the statute. The Court ordered that the support be modified to the month/year in which the motion was filed.

Spousal Support

***Glowacki v. Glowacki*, unpublished per curiam opinion of the Court of Appeals, issued June 10, 2021 (Docket No. 350691)**

Wife and Husband married in 2004. At the time the parties married, Wife worked in the aviation industry and Husband was completing medical school. He ultimately opened his own practice with contributions from Wife who also worked in the practice until 2012 when she remained at home to take care of the children from a previous relationship. The parties ultimately found

themselves with a tax liability to the state and federal government totaling nearly $2.7 million. Wife was initially granted innocent spouse status but that status was later denied for the periods of 2011-2014 and 2016. The parties blamed one another during trial for living beyond their means. Following trial, the court awarded Husband the marital home in Michigan and Wife the home in Colorado. It also found that the parties were equally responsible for the tax liability. Wife's counsel argued that the value of the medical practice ($184,000 per a valuation expert) was only relevant as to spousal support and both attorneys confirmed the trial court's inquiry that the Colorado and Michigan homes were the only assets to be divided. Wife did not request that the value of the medical practice be divided. Accordingly, Husband was awarded the medical practice. The trial court ordered Husband to pay Wife $30,000 per month in spousal support for four (4) years and then held that Wife's claim to support would be forever barred. The spousal support was offset by various liabilities assigned to Wife including her share of the tax liability, her car payment, and attorney fees.

The Court of Appeals vacated the portion of the spousal support award that barred any future spousal support after four (4) years as the parties did not negotiate or consent to the spousal support award and modification of spousal support was not barred. The Court denied Wife's claim that the trial court erred in not awarding her a portion of the medical practice as Wife did not request a share of the practice at trial. Finally, the Court vacated the assignment of responsibility for the tax debt. While the trial court did make a finding the parties were equally responsible for excessive spending, the trial court did not examine any other *Sparks* factors in order to make a determination for an equitable division of the marital estate.

***Elliot v. Elliot,* unpublished per curiam opinion of the Court of Appeals, issued July 15, 2021 (Docket No. 353269)**

Consent Judgment of Divorce provided that Husband would pay Wife $3,000 per month in spousal support and that Husband's anticipated retirement at age 65 would constitute a change in circumstance to consider a modification. Husband retired in 2019 and petitioned to terminate the support obligation. The trial court did an interim reduction from $3,000 to $2,000 per month and following a two (2) day evidentiary hearing, reduced the obligation further to $1,700, and then ultimately $1,500 per month.

The Court of Appeals affirmed the fact that the trial court made findings as to the factors set forth in *Loutts*. The fact that the factors were identified in a preceding paragraph and then analyzed in preceding paragraphs satisfies the requirement set forth in *Loutts.*

The Court found that the trial court's error in this case came by applying the legal standard set forth in *Walker v Walker,* 155 Mich App 405; 399 NW2d 541 (1986). That case was established before 1990 and is no longer binding as there is a more recent case on point. Instead, the trial court should have applied *McCallister v McCallister,* 205 Mich App 84, 85;517 NW2d 268 (1994). In *McCallister*, the Court held that it was appropriate for a trial court to consider a party's property when contemplating whether he/she had an ability to pay. The trial court is required to consider "all circumstances" of the case including retirement accounts.

The Court also held that parties are unable to "contract away" the equitable powers that are granted to the circuit court. Such agreements would be void as they are contrary to public policy.

***McGlown v. Hall*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2021 (Docket No.353885)**

Wife worked for Chrysler earning $120,000 per year. Husband owned several closely held businesses with gross receipts of $2.5 million. Following a 7-day trial, the trial court issued a lengthy opinion. Wife appealed three (3) specific findings by the trial court. First, Wife challenged the trial court's findings that her retirement accounts were entirely marital but failed to preserve this issue before the trial court. Second, Wife challenged the value of Husband's businesses and income, but failed to provide any legal authority in her brief. The Court of Appeals remarked, because this state's courts do not serve as the research assistants of litigants before them, *Walters*, 481 Mich at 388, "[t]his Court will not search for authority to sustain or reject a party's position," *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995). Finally, the Court rejected Wife's argument that she was entitled to spousal support and affirmed the trial court's finding that the property awarded to her was "sufficient to ensure the suitable support and maintenance of both plaintiff and the minor child for purposes of MCL 552.23(1).

Personal Protection Order

***SP v. BEK*, _____ Mich App _____, _____ NW2d _____, 2021 (Docket No. 353984, 353992)**

The Court addressed the novel issue of whether a petitioner can issue a PPO on behalf of minor children against a parent whose rights have been terminated. Petitioner (Mother) and Respondent (Father) were divorced when the PPO petitions were filed. Respondent had been charged with five (5) counts of criminal sexual conduct against the minor children. CPS pursued parental termination based upon the allegations. The trial court terminated Father's rights. Respondent was acquitted on the CSC charges. Nearly two (2) years after the parental termination, Petitioner sought a PPO on behalf of the minor children against Respondent alleging that Petitioner was showing up to the minor children's basketball games and making intimidating gestures towards the children. An ex parte PPO was entered. Respondent alleged that the trial court is precluded from issuing a PPO against him pursuant to MCL 600.2950(26)(b) unless both parents have their rights terminated. The Court of Appeals rejected this argument and found that the MCL 600.2950(26)(b) applies to a child where the parental rights of either or both parents have been terminated. Additionally, the Court of Appeals rejected Respondent's arguments that his actions at the minor child's basketball games did not support the issuance of an ex parte PPO. Not only was his behavior at the basketball game driven by a desire to intimidate and threaten the children, but the child also sexual abuse allegations against Father alone were sufficient to traumatize the children by just his mere presence at the game.

Attorney Fees

***Messaros v. Messsaros*, unpublished per curiam opinion of the Court of Appeals, issued November 9, 2021 (Docket No. 356567, 357467)**

Mother appealed the trial court's denial of her request for attorney fees. Mother alleged that she earned $18,000, that Father earned substantially more, and that the case was "financially devastating." Mother alleges that MCR 3.206(D) provides that the trial court should have awarded attorney fees because she was unable to bear the expense and Father was. The Court of Appeals found that while Father did earn more than Mother, she did not demonstrate that she was *unable* to bear the expense of the litigation.

Property Division

***Estate of Judy Zilka v. Robert Zilka*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2021 (Docket No. 350739)**

Wife (in this case, represented by her Personal Representative) was diagnosed with ALS. While Husband initially served as her caregiver, there was evidence he was emotionally and physically abusive to her both before and after her diagnosis. Wife filed for divorce which resulted in a bench trial. A judgment of divorce was entered with Wife passing away eleven (11) days later. The trial court awarded Husband the vacation home and ordered him to take out a loan in the amount of $163,000 - $125,000 of which was to pay to Wife as well attorney fees and QDRO fees. Wife was granted a life estate in the marital home with Husband receiving a remainderman interest (the life estate was valued at $125,000). Wife also received a life estate in the personal property at the marital home with Husband receiving a remainderman interest. The trial court also awarded Wife items of personal property including a horse trailer and retirement accounts. Husband was also ordered to assume full liability on all joint debt. The initial division was a 70/30 split in favor of Husband. The trial court then ordered a $100,000 life insurance policy on Judy's name be awarded to her. Wife's estate appealed arguing that the division was not equitable as the life insurance policy was not something Wife could enjoy during her life. Husband likewise cross-appealed arguing that the trial court did not consider his ability to pay the debts and in "double dipping" the award of a life estate to Judy by allowing her to live in the home and by requiring Husband to pay her $125,000.

While the trial court made mistakes in the division, the errors were found to be harmless by the Court of Appeals. The Court rejected the way in which the trial court divided property to ensure that Wife was taken care of until she passed. The trial court also should not have awarded the $100,000 life insurance policy to Judy as it was essentially an award to her heirs. The award of $100,000 to Wife was also speculative as there was no certainty with when she would pass.

The Court also rejected the trial court's award of "life estates" to Wife as "questionable." It also contradicts the policy of finality in a divorce proceeding. The trial court also erred but not making any findings nor did the trial court consider MCR 3.206(D).

Ultimately, the court did not reverse the trial court, despite the errors, because it reasoned that even if it were to reverse the life insurance award, it would still require awarding Wife's estate $100,000. Similarly, the attorney fees were intended to "equalize" the marital estate and a similar reversal would require Husband to pay Wife's estate.

***Sutariya v. Sutariya*, unpublished per curiam opinion of the Court of Appeals, issued October 28, 2021 (Docket No. 345115)**

Second appeal to the Court of Appeals following a prior remand to the trial court regarding the award of $1 million of stock to Wife as the stock. The stock ("SE") was designated as premarital and belonging to Husband. The trial court was directed to articulate its findings as to the reason for the award. The trial court was also directed to consider the award of Husband's interest in Chicago Circuit Boards ("CBB") and to make a finding as to whether this asset was premarital and subject to division.

On remand, the trial court considered the *Hanaway* factors and found that Wife was employed during the marriage in various roles at SE and that her role as the primary caretaker for the minor children allowed SE to grow in value since Husband was able to focus on that firm. The Court rejected Husband's argument that MCL 552.401 is inapplicable because it was purchased prior to the marriage. A court may invade a separate asset when the other party contributed to the *improvement* of the property.

The Court affirmed the trial court's award of CCB stock to Husband as his separate property as that property was acquired before the parties' marriage, was not commingled, and received by Husband without any involvement in the day-to-day operation of the company.