Cass County Friend of the Court

Law & Courts Building, 60296 M-62, Suite 3
Cassopolis, MI 49031
Phone: (269) 445-4436/Fax: (269) 445-4435
Email: FOC@cassco.org

"Cass County is an equal opportunity provider and employer"

FALL 2017 NEWS/UPDATES FROM THE CASS COUNTY FOC
from the Director, Carol Montavon Bealor

CHANGES IN STAFF AND DUTIES IN THE FOC

Fern Turney joined the Cass County FOC's team on October 2, 2017 as the FOC Interstate & Parenting Time Enforcement Specialist replacing Emily Bogue who was recently hired as the Circuit Court File Room Supervisor (be sure to congratulate Emily when you see her in the Circuit Court File Room!). Fern most recently worked for the Elkhart County Prosecutor's office in their child support division where she performed a variety of child support case work including interstate child support enforcement duties. Please help us welcome Fern to our team.

Parenting Time Enforcement duties were previously part of the duties of Lynnell Carter's position; however, due to recommendations from SCAO during a recent management assistance project, these duties were moved to the interstate position to provide Lynnell Carter's position with more time to handle reviews and modifications of child support as well as to take on the duties of being the back-up to Fern's position. Fern Turney will work closely with FOC Director, Carol Montavon Bealor, to handle parenting time related matters.

We appreciate everyone's patience as we move forward with these changes.

DOES CHILD SUPPORT END AT 18?

Although child support obligations generally end when a child reaches the age of eighteen, there are limited circumstances where the court may make an exception. If the child reaches 18, but is attending high school full-time and residing on a full-time basis with the child support recipient, the support obligation may continue. In the recent State of Michigan Court of Appeals case, ***Weaver v. Giffels***, the court decided that "residing on a full-time basis with the child support recipient" means the child must physically live at the residence of the child support recipient and intend to make that place the child's permanent residence. Ultimately, the case was returned to the trial court to determine whether the child resided with her mother full-time.

Take-away from this case: If an order provides a specific end-date, that order controls and may be modified only by a motion from a party. However, if an order does not provide a specific end-date, as a result of the decision in Weaver, for a child support obligation to extend past the age of 18 without the parties' consent, four factors must be met: (1) the child must be enrolled in high school and on track to graduate, (2) the child is not yet 19 1/2 years old, (3) the child physically resides with the child support recipient, and (4) the child intends the child support recipient's house to be the place of residence.

END-DATING CHILD SUPPORT OBLIGATIONS

It is important to understand that the newest Uniform Child Support Orders (UCSOs) provide that child support ends when a child turns 18, **unless the box for post-majority support is checked on page 2 of the UCSO and information is provided as to the month and year that child support ends for each child where support will continue to charge over the age of 18.**

So for example, if Child A will be 18 during her senior year in high school in 2021, you need to make sure to check the box for post-majority support on page 2 of the UCSO and make the following type of notation on the provided lines: Child A's name, support ends May 2021

To be clear, if the box for post-majority support is not checked, support will automatically end when the child turns 18.

So for each child on a child support order, it is important to know how old each child will be when they are a senior in high school so that the UCSO reflects what the parties expect to happen—either support stopping at 18 or support continuing until the child graduates from high school.

Be aware that parties to a child support case may receive high school verification forms which are automatically mailed out by our MICSES system. So some parties mistakenly think child support will automatically continue because they have gotten the high school verification forms. When support ends is controlled by the Court order in effect at the time each child turns 18 years old.

E-FILING IS COMING TO MICHIGAN

On May 1, 2017, the State signed a contract with Imagesoft to provide a single e-filing platform that supports all trial courts (Circuit, District & Probate) and can integrate with Courts' existing document management and case management systems.

The tentative time-line for the rollout of this project is as follows:
2018: Pilot courts will implement e-filing
2019-2021: Statewide expansion of e-filing

More news will be coming as this project moves forward.

DO YOU HAVE FOC QUESTIONS/CONCERNS??

Our office wants to be accessible and responsive to your needs. If you have questions or concerns, feel free to contact our office by sending an email to foc@cassco.org. Then, depending on the nature of your question, an appropriate FOC staff person will be back in touch with you.

BE SURE TO PROTECT SOCIAL SECURITY NUMBERS AND OTHER PERSONALLY IDENTIFYING INFORMATION

State and federal law provide protections prohibiting disclosure of persons' Social Security numbers and other personally identifying information. Please be sure to redact such information from all Court filings since disclosure can have a devastating impact parties and could lead to criminal/civil liability.

DEVIATION ADDENDUMS TO THE UCSO

FOC 10d is used when the child support that is being ordered, does not match the child support that is recommended pursuant to the Michigan Child Support formula (MCSF).

When you are doing a deviation, please be sure that: (1) the UCSO states what support is being ordered (what support is being deviated to); and (2) the deviation addendum (FOC 10d) states what support would have been ordered under the formula.

Be sure to fully complete the deviation addendum providing the deviation factors relied upon from the MCSF 1.04(E)—there are 21 possible factors:

(1) The child has special needs.
(2) The child has extraordinary educational expenses.
(3) A parent is a minor.
(4) The child's residence income is below the threshold to qualify for public assistance, and at least one parent has sufficient income to pay additional support that will raise the child's standard of living above the public assistance threshold.
(5) A parent has a reduction in the income available to support a child due to extraordinary levels of jointly accumulated debt.
(6) The court awards property in lieu of support for the benefit of the child (§4.03).
(7) A parent is incarcerated with minimal or no income or assets.
(8) A parent has incurred, or is likely to incur, extraordinary medical expenses for either that parent or a dependent.
(9) A parent receives bonus income in varying amounts or at irregular intervals.
(10) Someone other than the parent can supply reasonable and appropriate health care coverage.
(11) A parent provides substantially all the support for a stepchild, and the stepchild's parents earn no income and are unable to earn income.
(12) A child earns an extraordinary income.
(13) The court orders a parent to pay taxes, mortgage installments, home insurance premiums, telephone or utility bills, etc., before entry of a final judgment or order.
(14) A parent must pay significant amounts of restitution, fines, fees, or costs associated with that parent's conviction or incarceration for a crime other than those related to failing to support children, or a crime against a child in the current case or that child's sibling, other parent, or custodian.
(15) A parent makes payments to a bankruptcy plan or has debt discharged, when either significantly impacts the monies that parent has available to pay support.
(16) A parent provides a substantial amount of a child's day-time care and directly contributes toward a significantly greater share of the child's costs than those reflected by the overnights used to calculate the offset for parental time.
(17) A child in the custody of a nonparent-recipient spends a significant number of overnights with the payer that causes a significant savings in the nonparent-custodian's expenses.
(18) The court ordered nonmodifiable spousal support paid between the parents before October 2004.
(19) When a parent's share of net child care expenses exceeds 50 percent of that parent's base support obligation calculated under §3.02 before applying the parental time offset.
(20) When the amount calculated does not exceed $15, and the administrative cost to enforce and process payments outweighs the benefit of the minimal amounts.
(21) Any other factor the court deems relevant to the best interests of a child

RECENT LEGAL CASES

Geering v King, for publication opinion of the Court of Appeals, released June 13, 2017. (Docket No. 335794). Inconsistency in co-parenting, discipline, communication, and the failure to foster the relationship with the other parent did not render the parents unfit within the definition the statute provides. If two fit parents oppose an order for grandparenting time, the court must dismiss the grandparenting time request.

Jones v Jones, for publication opinion of the Court of Appeals, released June 22, 2017. (Docket No. 334937). The plaintiff, presumed father, could revoke his paternity under the Revocation of Paternity Act (RPA) because he specifically revoked his consent to defendant's assisted reproductive technology procedures and did not contribute to her *in vitro* fertilization. The court distinguished the situation in which a presumed father might have participated in *in vitro* fertilization but later revoked his consent for assisted reproductive technology by opining the best interest factors could still be used if appropriate to deny revocation.

Matthew v Trudell, unpublished opinion of the Court of Appeals, released April 5, 2017. (Docket No. 334911). When the moving party introduced evidence that a change in domicile could produce more income and access to extended family, but failed to produce evidence of how such a change would improve the child's life and further how the proposed change in parenting time would preserve and foster the parental relationship between the child and each parent, the court correctly denied the motion to change domicile.

McCoy v Main, unpublished opinion of the Court of Appeals, released April 11, 2017. (Docket No. 334659). The trial court is free to adopt the custody investigator's recommendation provided that the court indicates on the record that it makes an independent determination that the findings in the investigator's report were correct and proper.

Walker v Walker, unpublished opinion of the Court of Appeals, released April 13, 2017. (Docket No. 334752). A material change of circumstances significant enough to warrant a change in custody and/or parenting time must be greater than normal parenting struggles with children's hygiene and homework.

Daly v Ward, unpublished opinion of the Court of Appeals, released April 18, 2017. (Docket No. 333425). It was irrelevant whether the trial court's temporary order changing custody was proper; once a new established custodial environment exists—regardless of how it came to exist—it cannot be changed absent clear and convincing evidence that a change is in the child's best interests.

Landry-Chan v Chan, unpublished opinion of the Court of Appeals, released April 20, 2017. (Docket No. 331977). The trial court could properly limit evidence related to the best interest factors to events *after* the last custody order had entered because the court had already considered the best interest factors for entry of that order.

Anglin v Anglin, unpublished opinion of the Court of Appeals, released April 25, 2017. (Docket No. 331313). The failure of a party to appeal from an original judgment of divorce operates as a stipulation to the provisions in that judgment, and a party cannot later collaterally attack the validity of that judgment through a motion to modify child support.

Shimel v McKinley, unpublished opinion of the Court of Appeals, released April 27, 2017. (Docket No. 334571). The trial court need not consider all factors under MCL 722.27a(7) in determining whether to modify parenting time; only those factors that are relevant.

RECENT LEGAL CASES CONTINUED

Emmons v Vancourt, unpublished opinion of the Court of Appeals, released May 4, 2017. (Docket No. 335703). When a change in parenting time would bring plaintiff's annual overnights from 265 down to 182.5, the change would necessarily impact the child's established custodial environment. As such, the trial court should have required defendant to show proper cause or a change of circumstances to change custody and then show by clear and convincing evidence that the parenting time modification is in the best interest of the child.

Department of Health and Human Services v Birmingham, unpublished opinion of the Court of the Appeals, released May 30, 2017. (Docket No. 336553). Although the Child Custody Act allows certain designated third-parties to initiate an action for custody of a child and allows the trial court to award custody to other third-parties when the court is already engaged in a custody determination, a Family Support Action designating a great-uncle of the child as the child's *custodian* was for purposes of determining that he had the right to seek support and did not create a custody dispute sufficient to give the trial court authority to entertain a motion to grant custody to him.

Moffett v Jemmott, unpublished opinion of the Court of Appeals, released June 8, 2017. (Docket No. 330900). By signing an order for genetic testing in a paternity action without objecting to any terms of the order, a defendant concedes a court's personal jurisdiction over him.

Lessard v Londo, unpublished opinion of the Court of Appeals, released June 13, 2017. (Docket No. 336156). The trial court did not err by gradually increasing parenting time from a limited, supervised schedule and not allowing a more liberal parenting time schedule as suggested by articles plaintiff introduced because it was required to determine a parenting time schedule based on the facts of the case and not on a hypothetical child.

White v Garber, unpublished opinion of the Court of Appeals, released June 15, 2017. (Docket No. 336251). After applying the relevant factors under the Uniform Child Custody Jurisdiction and Enforcement Act and determining it does not have jurisdiction, the trial court has no reason nor obligation to contact the other state to confer.

Duncan v Booth, unpublished opinion of the Court of Appeals, released June 15, 2017. (Docket No. 336364). The trial court could properly find that the lack of time defendant spent with his other daughter and particularly his failure to exercise summer parenting time with her was a factor in determining plaintiff had the better capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion.

Magryta v Magryta, unpublished opinion of the Court of Appeals, released June 20, 2017. (Docket No. 336433). The Court of Appeals directed the trial court to find the mother in contempt and impose such sanctions as will make her comply with the court's order because when a party continuously violates the court's orders without consequence, the other party's rights under a court order are rendered meaningless.

Marchese v Marchese, unpublished opinion of the Court of Appeals, released June 22, 2017. (Docket No. 330925; 331560). Evidence of a parent intentionally withholding the other parent's court-ordered parenting time until some other condition is met (in this case, sale of the parties' cottage to the custodial parent's mother) is a clear violation of that parenting time order and grounds for a contempt ruling against the violator.

RECENT LEGAL CASES CONTINUED

Fante v Nova, unpublished opinion of the Court of Appeals, released June 29, 2017. (Docket No. 334735; 336085). The trial court improperly "placed" the children with their father under what the trial court called a temporary order pending the conclusion of a child protective services investigation of mother. Because the order amounted to a change in custody, the court should have first determined whether an established custodial environment existed and whether an analysis of the best interest factors supported a change.

Hund v Hund, unpublished opinion of the Court of Appeals, released July 6, 2017. (Docket No. 334313). In considering a request to change a child's domicile, the court is not limited to evidence of how the change would improve the child's life from the current situation but may consider a former better situation made worse by voluntary changes such as, in this case, the mother's voluntary temporary move to her parent's house to be nearer to her desired location.