



**CASS COUNTY FRIEND OF THE COURT**

**SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.**

**CASS COUNTY FOC NEWS WINTER 2021**

**Promotions**



Please help us congratulate **Barbara Daniels** who has been promoted and started her duties as a juvenile probation officer at the end of December 2020.



Please help us congratulate **Valerie Clark** who has been promoted and started her duties as Judge Dobrich's assistant in the summer of 2020.

**We are OPEN!**

The Cass County Courts and the Cass County FOC are open for business despite COVID-19. You can reach staff via phone or email and you can find COVID-19 Announcements and contact information on our Courts' website located at:

<https://casscourtsmi.org/>



**In this Issue**

<i>Promotion</i>	page 1	<i>Baxter the Therapy Dog</i>	pages 9-10
<i>We are OPEN!</i>	page 1	<i>Parents' Access to Children's Records</i>	pages 11-12
<i>FOC website</i>	page 2	<i>Case Law Updates</i>	pages 13-17
<i>The Importance of Legal Parenthood "One Less Barrier"</i>	pages 3-4	<i>2020 Toys for Tots Drive</i>	page 18
<i>Do You Need Court Permission to Move?</i>	pages 5-6		
	pages 7-8		



## CASS COUNTY FRIEND OF THE COURT

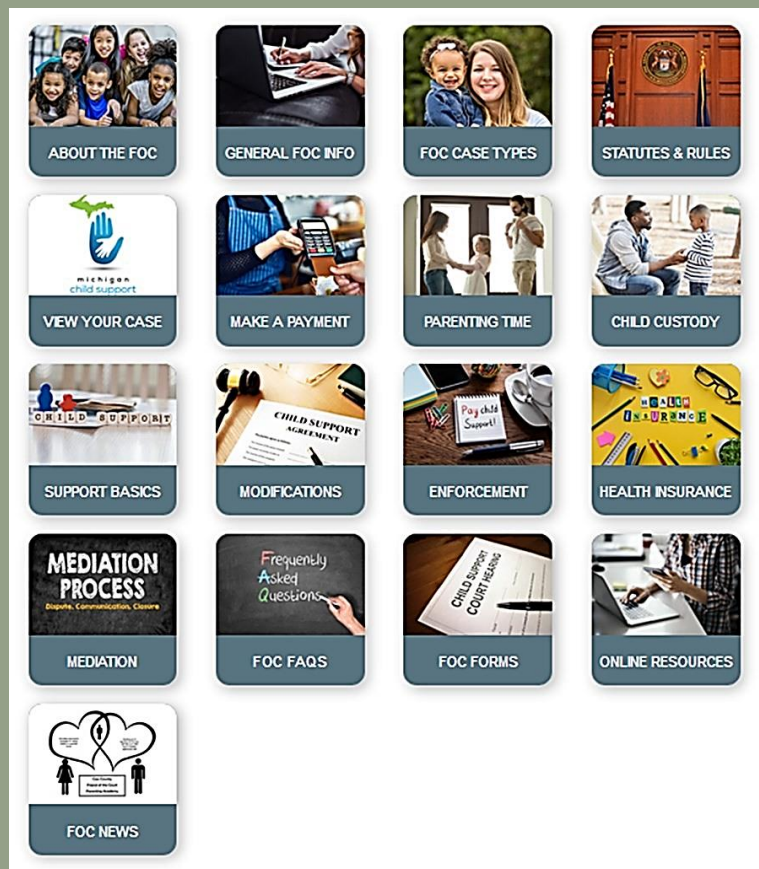
SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### FOC Website

If you haven't done so already, be sure to check out our FOC Website at:

<https://casscourtsmi.org/>

Attorneys are reminded there are model orders and forms available under the FOC forms tab on our website.





## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### The Importance of Legal Parenthood



By Carol Montavon Bealor, JD, Director, Cass County FOC

Numerous studies recognize the importance of two involved parents in children's lives. Sometimes, "legal" parenthood can be difficult to understand. Establishing a "legal" Mom is less complicated than establishing a "legal" Dad since birth records are maintained to confirm that a woman has given birth. With Dads, it is slightly more complicated.

In Michigan, women become "legal" Moms in two ways: (1) by giving birth to a child; and (2) by adopting a child. For men, Michigan law provides 3 ways for a man to become a "legal" Dad: (1) by being married to a woman who gives birth; (2) by signing an Affidavit of Parentage; and (3) by bringing a Court action and getting a Court order that says the man is the "legal" Dad. Each state has its own law related to "legal" parenthood. For both Moms and Dads, the establishment of "legal" parenthood in another state has the same effect as establishing "legal" parenthood in Michigan because Michigan respects other states' paternity determinations.

In Michigan, the paternity of a child may be established under: (1) the Paternity Act through a paternity action; (2) the Acknowledgement of Parentage Act (APA) by the Mom and Dad signing a document called an Acknowledgement of Parentage; (3) the Revocation of Paternity Act (ROPA) through a ROPA Court proceeding; the Genetic Parentage Act (GPA) through a DHHS administrative process; (4) the Summary Support and Paternity Act (SSPA) a hybrid administrative process and Court proceeding; (5) the Uniform Family Support Act (UIFSA) and the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) through a Court proceeding; and (6) the Michigan Adoption Code through an adoption proceeding.

Proper execution of an Affidavit of Parentage is the easiest way to establish a man as the "legal" Dad. Parents who sign an Affidavit of Parentage are created legal rights and obligations including confirmation that Mom has initial custody of the child until otherwise established by a Court order or agreed upon in writing by the parties and acknowledged by Court order. Additionally, a Mom signing an Affidavit of Parentage must certify that she was not married when the child was born or conceived, or that the child, though born or conceived during a marriage, is not an issue of that marriage as determined by a Court order. A properly executed Affidavit of Parentage allows the "legal" Dad to be added to the child's birth certificate.

continued on page 4





## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### **The Importance of Legal Parenthood**

Continued from page 3

Parents cannot seek a Court order for custody, parenting time, child support, or any other child-related matter until the parents are “legal” parents. This means that if a Dad wants a parenting time order for a child where paternity has not yet been established, first the Dad would need to establish paternity. Then, the Dad could ask for parenting time.

When parents receive assistance such as Medicaid or TANF benefits, DHHS seeks a child support order to ensure that children’s financial needs are met. If paternity hasn’t been established, a paternity action is filed with the Court and then when paternity is established, the Court may also enter custody, parenting time, and child support orders.

For Moms with a child born out of wedlock, if there is no Court action to establish paternity and no signed Affidavit of Parentage, by Michigan law, the Mom has sole custody of the child. The Dad, since he is not a “legal” Dad, has no rights. Of course, sometimes parents agree to an out of Court parenting time schedule or child support agreement. But if that informal, out-of-Court agreement breaks down, it is not enforceable by the FOC or the Court.

All parents need to be aware of their legal rights. A good resource for parents is Michigan Legal Help found on the web at <https://michiganlegalhelp.org/>. Michigan Legal Help is for people handling legal problems without a lawyer. Parents may also wish to consult with an attorney to get specific advice about their situation.



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### “One Less Barrier”



By Chelsea Olkowski, Cass County FOC Child Support Review, Modification & Parenting Time Enforcement Specialist

It is no secret that the Friend of the Court can be intimidating to deal with, especially for fathers. More often than not, fathers feel as though they are fighting a losing battle not only with their children's other parent, but also with the Friend of the Court. It is unfortunate that this is historically how fathers have felt when, in reality, fathers should feel empowered and supported by the Friend of the Court so that their children have the support and bond they need with both parents.

Being intimidating or difficult to deal with is not the intention of the Cass County Friend of the Court. Our mission is: *“Serving and empowering families to make children's lives better.”* Families. Not just mothers, not just fathers, families. We are here to work with both parties to ensure the best opportunities and outcomes for the family.

A recent training offered by the Michigan Judicial Institute that was called “Fathers on Child Support: I Matter Too” discussed how fathers perceive the Friend of the Court and how those fathers may feel as though they are fighting a losing battle. This training involved a panel of four fathers sharing their experiences and honest stories about their involvement with the Friend of the Court – the good, bad, and downright ugly.

After listening to this panel of fathers share these honest experiences, I had a thought – Why can't the Friend of the Court strive to be “One Less Barrier” for families?

continued on page 6



## **CASS COUNTY FRIEND OF THE COURT**

**SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.**

### **“One Less Barrier”**

Continued from page 5

In the Cass County Friend of the Court, we try to be as intentional as possible when working with families. We know what families involved in the Court system may be experiencing a variety of emotional and financial challenges, but we will never be able to feel a party's frustration from their point of view in its entirety. After all, we are dealing with their children and their finances – two very personal things. We want to help and will do what we are able to do to equally help both parties on a case.

Having both parents involved and active in a child's life, not only financially, is crucial for positive family outcomes. Sure, the Friend of the Court has historically focused on child support, the payments, enforcement, and making sure money gets into the hands of the custodial parent. This is to ensure that children are financially supported when their parents are not in the same home. After participating in this training, I do not think this needs to be a hard and fast priority. We can evolve as an office, as a system, as a community to do better. I believe that Cass County Friend of the Court is at a good place when it comes to providing intentional and engaging assistance to both parties.

We don't know what we don't know. If we aren't aware of barriers the families we serve are facing, we are unable to offer appropriate options and resources. Of course, there are times that our hands are truly tied by policies or laws. For example, the Friend of the Court cannot give legal advice. To clientele this may feel as though we aren't being helpful or that we are not listening to the challenges they are experiencing. We can, however, provide available resources we are aware of even if we can't answer legal questions.

The Cass County Friend of the Court is aware of the importance for both parents to be involved with their children, and that their experiences with our office can significantly impact parental involvement. We do not want to make what can be difficult situations any harder on families and children in our community. The more needs we are made aware of, the more resources we can provide as we commit to being “One Less Barrier.”





## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### **Do You Need Court Permission to Move?**



By Sarah Mathews, JD, Deputy Friend of the Court

Most divorce judgments (where children are involved), support orders, and paternity orders include a paragraph requiring parents to obtain the Court's permission before they can move the parties' child(ren) out of Michigan. This provision is typically titled "Domicile of Minor Child(ren)" as it deals with the child's state of domicile. These orders also usually include a provision that parents need the Court's permission to move the child(ren) more than 100 miles from their residence at the time of the entry of the judgment or order. This provision is typically titled, "Residence of Minor Child(ren)" as it deals with the child's residence within their state of domicile. Both provisions regarding a minor child's state of domicile and legal residence are required by law and are important for parents to know so they know when to request the Court's permission to move.

The requirement that parents need the Court's permission to move a child more than 100 miles from their residence is commonly known as the "100-mile rule." The 100-mile rule applies to both parents even if the child spends more time with one parent. However, it does not apply if: (1) sole legal custody is granted to one parent; (2) the other parent consents to the move; (3) at the time of the entry of the judgment or order the parties already lived more than 100 miles apart; or (4) the move would make the child's two legal residences with each parent closer together. Even if you can move a child's residence within Michigan without the Court's permission, you must still follow your parenting time order and may need to have it modified to accommodate parenting time due to moving.

If none of the four exceptions apply, a parent wishing to move a child more than 100 miles from their residence must file a motion with the Court.

continued on page 8



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### **Do You Need Court Permission to Move?**

continued from page 7

At the motion hearing, the Court will consider the following factors when determining whether to grant the request: (a) the impact on the quality of life for both the child and the relocating parent; (b) compliance with the current parenting time order by both parties; (c) whether the move is intended to impede parenting time of the other parent; (d) the ability to order a change in the parenting time schedule to preserve and continue the parental relationship between the child and each parent; (e) whether each parent is likely to comply with the modified parenting time schedule; (f) if the parent opposing the move is doing so to secure an advantage regarding child support; and (g) any domestic violence issues.

If a parent wants to move the child's domicile out of Michigan – even just across the border to Indiana and less than 100 miles from their residence – the parent must get permission from the Court to change the child's state of domicile. The Court must rule on a change in a child's domicile even if one parent has sole legal custody and even if the other parent agrees to the move. During a hearing on a request to change domicile, if the parties share legal custody the Court will consider the same factors that it would consider on a motion to change residence; whether or not the child has an established custodial environment with both or one of the parents; and if the move would change the custodial environment whether or not the move is in the best interest of the child. The Court may or may not grant the motion depending on its findings. If the parent requesting the move has sole legal custody but joint physical custody, the Court may decide the motion without considering the factors it would consider on a motion to change residence but must still consider if there will be a change to the custodial environment. If requesting parent has sole legal and physical custody, the Court must grant the motion.

If you need further information on changing a child's legal residence or domicile, free legal resources can be found at <https://michiganlegalhelp.org> or you can consult an attorney.





## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Baxter the Therapy Dog



By Deputy Tim Gondeck, Cass County FOC Bench Warrant Officer

In normal times, this is where I would get the opportunity to share with everyone all the interesting events and activities that Baxter has participated in over the last several months. However, these have been anything but normal times!

Baxter and I were able to participate in one truly memorable event, in August, put on by a young girl in Elkhart, Indiana, Ella Lanay Hunt. Ella has Spinal Muscular Atrophy (SMA) which robs children of the ability to eat, drink, stand, walk, talk, or even sit up independently. As debilitating as SMA is, Ella decided that she wanted to put up a lemonade stand for the purpose of thanking police officers, firefighters, and all first responders. With the help of her parents, Ella was able to do exactly that! Baxter and I already knew of Ella because the K-9 training center that I trained Baxter at (Indiana K-9 Learning Center) was working on training a dog to assist Ella. Baxter and I were able to spend time with Ella and enjoy an ice-cold lemonade at her stand. It was the highlight of mine and Baxter's year!



As for myself, I have been employed with the Cass County Sheriff's Office as a road patrol deputy since 2002 and a certified police officer since 1992. During my time on the road patrol, I was chosen to be CCSO's first K-9 handler in 2005. I completed handler certification with my patrol/narcotics K-9, GiGi, in 2005. During my time as a handler, I also became a K-9 trainer. GiGi was retired in 2014 at the age of 12. She remained with me until 2016 when at 14 years old she passed away. I then returned to regular road patrol duties until being assigned as the FOC Bench Warrant officer in January 2016.

continued on page 10



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### **Baxter the Therapy Dog**

continued from page 9

In 2017, I became interested in adding another dimension to CCSO's now established K-9 Unit. My position in the K-9 Unit had been filled with a new handler and patrol/narcotics K-9, Dep. Dave Nevins and Faust. The K-9 Unit had also added a dedicated K-9 tracking team with Nellie the bloodhound and handler Dep. Tiffany Graves. Working in the Law and Courts building, in my new assignment with F.O.C. I had noticed an increase in the use of K-9's as advocates/therapy dogs in other counties. I decided to make a proposal to Sheriff Behnke and Chief Judge Dobrich. The proposal was for me to acquire a puppy and train it to become a canine advocate/therapy dog. The purpose was to assist traumatized witnesses/victims during interviews as well as testifying in court. The proposal was approved at which time I acquired Baxter, a seven-week-old puppy, in October 2017.

Baxter was born August 20, 2017 at KT Labs in Allegan, MI. Baxter is an A.K.C. Registered Labrador retriever under the name of Coco's Storm Cloud Baxter. The name is a combination of Baxter's mother, KTL Sippin' Hot Coco and his father, Silver Bullet's White Storm Cloud.

In December of 2017, at 12 weeks old, Baxter began training at Indiana K-9 Learning Center in Elkhart, IN. Over the course of 16 months, Baxter completed Puppy Class I and II which provided the basics of obedience and socialization. Baxter then went on to earn 3 A.K.C. Title Certificates. A.K.C. Star Puppy, A.K.C. Canine Good Citizen, and A.K.C. Community Canine (Advanced Canine Good Citizen).

On March 26, 2019, in the 43rd Circuit Court of Cass County, Baxter was officially sworn in as a member of the Cass County Courts.

Since that time, Baxter has been a valuable asset to the courts as well as being a friend to all of its employees. In a typical year, Baxter participates in numerous events in the courts and in the community. Here's hoping that 2021 provides those opportunities once again!! Happy New Year from Dep. Tim Gondeck and Baxter!

A Facebook page was started at the very beginning of Baxter's journey and can be followed at [www.facebook.com/k9baxter](http://www.facebook.com/k9baxter).



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Parents' Access to Children's Records



By Carol Montavon Bealor, JD, Director, Cass County FOC

Absent a Court order to the contrary or other applicable law, parents in Michigan are granted equal access to their children's records or information including medical, dental, and school records, day care provider's records, and notification of meetings regarding their children's education. This equal access is granted to both custodial and non-

custodial parents under Michigan Compiled Law 722.30.

Usually, schools and other providers can charge parents a reasonable copying fee to provide records. Parents should ask about any fee waiver policy if parents cannot afford to pay for the costs of copies. If a parent plans to request records, plan for there to be a delay from the time a request is made until the records are produced and/or copied.

FERPA, the Family Educational Rights and Privacy Act, and IDEA, the Individuals with Disabilities Education Act, also provide legal rights and obligations regarding access to and privacy of children's educational information related to attendance at a public school, including information about any individualized educational plan created for a child as a result of a child's disability. FERPA's and IDEA's safeguards include protection and use of a child's personally identifiable information, who may have access to a child's records, and parents' rights to inspect their child's education records and request amendment to correct information that is misleading or inaccurate, or that violates a child's privacy or other rights. Typically, FERPA and IDEA protections do not apply to private schools since FERPA and IDEA are tied to a school's receipt of federal funding.

FERPA and IDEA also allow parents to designate others to receive information about their children's school records. The Family Compliance Office, FCO, the division of the U.S. Department of Education which provides guidance regarding FERPA, has indicated that when one parent is absent and uninvolved in their children's lives and a step-parent is in the home with the children and involved with a parent in the day to day care of their step-children, that step-parent has FERPA rights as a "parent."

continued on page 12





## **CASS COUNTY FRIEND OF THE COURT**

**SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.**

### **Parents' Access to Children's Records**

continued from page 11

A parent's rights to information about their child's records changes when a child turns 18 years old. At age 18, a child is legally considered as an adult. Information and records for a child who is 18 years of age or older can only be released to a parent if a release is signed by that child authorizing the parent to have access to their records.

Parents have an obligation to independently seek and obtain information from schools, medical providers, and others, to stay attuned with their children. The Cass County Friend of the Court encourages all parents to work together and freely share important information about their children. If parents are re-married or have significant others and those stepparents or significant others are involved in the day to day care of the children, the Cass County Friend of the Court suggests that information be shared with them as well. The adults in children's lives need to be on the same page in order to effectively make decisions in the children's best interests. Children thrive when the adults in their lives work together and collaborate putting the children's needs first. While collaboration may be difficult at first, parents report that working together gets easier with the passage of time.

The FOC has no authority to enforce a parent's rights to access children's records with schools, health care providers, or others who refuse to provide the records. Schools and doctor's offices are generally aware of these laws and are cooperative with parents. However, if you have difficulty gaining access to records, you can contact your FOC for assistance in verifying you are not prohibited by court order from access to specific records. If you continue to have difficulty accessing your children's records and you are not denied access to such records by a Court order, you may want to speak to an attorney about your legal options.



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Case Law Updates

**Olivero v Olivero**, Mich App (9/2020) unpublished    **CHILD SUPPORT**

The court held that the trial court erred by adopting the FOC's recommendation increasing defendant-father's child support by imputing defendant-father with potential overtime pay that he had not earned.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/091020/73820.pdf>

**Strech v. Bush**, Mich App (9/2020) unpublished    **USE OF GAL IN PARENTING TIME DISPUTE**

The court held that the trial court erred by treating the parties' GAL, who was an attorney and was not serving as an attorney or an LGAL in this case, as an LGAL, and denying the parties' the right to question her at a hearing. However, it found the trial court did not err by requiring the parties to compensate the parties' GAL for her services.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/091020/73844.pdf>

**Daniels v Daniels**, Mich App (9/2020) unpublished    **CHILD SUPPORT & ATTORNEY FEES**

The court held that the trial court did not err by using the parties' 2018 incomes when calculating child and spousal support. However, it erred by awarding plaintiff-ex-wife attorney fees.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/091720/73894.pdf>

**Thamilselvan v Thamilselvan**, Mich App (9/2020) unpublished    **JURISDICTIONAL REQUIREMENTS FOR DIVORCE**

The court rejected defendant-ex-husband's claim that the trial court erred in determining the parties satisfied the jurisdictional residency requirements, and in finding that an "Indian anti-suit injunction was not entitled to comity[.]" It also found no abuse of discretion in the trial court's denial of a continuance, and concluded that he was not entitled to relief from judgment under either MCR 2.612(C)(1)(b) or (f) where the parties, Indian citizens, were married in India in 1997, through an arranged marriage and later moved to Michigan.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/091720/73895.pdf>

**Brenner v Kerkstra**, Mich App (9/2020) unpublished    **CUSTODY/ECE**

The court held that the trial court erred by failing to consider up-to-date information before ordering the change of the child's ECE. Thus, it vacated the order granting defendant-father sole legal and physical custody of the child, and remanded. The record reflected that "the trial court made its decision without soliciting up-to-date information from the parties or holding an evidentiary hearing to ascertain whether additional information existed that the trial court should have considered before making its child custody decision."

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/091720/73922.pdf>

**Jones v. Foley**, Mich App (9/2020) unpublished    **MODIFICATION OF CUSTODY & PARENTING TIME**

Holding, among other things, that the trial court's conclusion defendant-mother had a substance abuse issue was not against the great weight of the evidence, the court affirmed the trial court's order modifying custody and parenting time where Defendant had primary physical custody until she was involved in an accident while she was intoxicated.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/092420/73938.pdf>



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Case Law Updates

#### **Miller v Signorelli**, Mich App (10/2020) unpublished **UCCJEA & CUSTODY & CIRCUIT & PROBATE COURTS**

Holding that the circuit and probate courts were required to comply with MCL 722.1204(4) and MCL 722.1206(2) of the UCCJEA, the court remanded to both courts. Plaintiff-uncle's brother had full custody of the child when they lived in Arizona. He moved with the child to Michigan. When his brother died, plaintiff sought custody of his nephew. The circuit court eventually dismissed the custody case on the basis that it lacked jurisdiction, but the probate court found it had jurisdiction and appointed plaintiff as the child's full guardian. On appeal, the court rejected plaintiff's argument that the circuit court erred.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/101520/74029.pdf>

#### **Campbell v Vanderhoeven**, Mich App (10/2020) unpublished **MODIFICATION OF CUSTODY & PARENTING TIME**

The court held that the trial court did not err by denying defendant-mother's motion to change custody and modify her parenting time of the parties' child. The trial court granted plaintiff-father sole custody of the child because of defendant's substance abuse issues. After she made efforts to address her substance abuse and tested negative on a drug test, it granted her unsupervised parenting time on alternating Sundays and Wednesdays. It eventually granted her joint legal custody and increased her unsupervised parenting time to every other weekend plus two weeks in the summer, but denied her motion for sole custody. On appeal, the court rejected her argument that the trial court erred by denying her motion without addressing whether there was a proper cause or change of circumstances to modify its prior order, finding the allegations supporting her motion "did not establish proper cause or a sufficient change of circumstances."

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/102220/74099.pdf>

#### **Gafford v Gafford**, Mich App (10/2020) unpublished **ATTORNEY FEES & PARENTING TIME MODIFICATION**

Holding that the trial court erred by failing to address any of the three required factors on the record, the court vacated the award of attorney fees and remanded. It also found that the trial court's findings were sufficient to support that there was proper cause or CIC under the *Vodvarka* or *Shade* standard. But it committed legal error by failing to make a determination as to whether an ECE existed, and this "was not harmless because such a finding determines what burden of proof applies to the best-interests analysis."

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/102920/74148.pdf>

#### **Wood v Goodale**, Mich App (10/2020) unpublished **MODIFICATION CUSTODY & PARENTING TIME**

The court held that because the facts alleged in defendant-father's "motion for modification of custody and parenting time failed to establish the threshold requirement of proper cause or a material [CIC] to warrant a reexamination of the previous custody order," the trial court properly denied his motion for lack of a factual basis to revisit the custody issue. It also properly declined to conduct "an evidentiary hearing on the threshold issue of proper cause or [CIC] because such a hearing is generally not required."

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/102920/74157.pdf>





## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Case Law Updates

#### **Kuiper v Kuiper** Mich App (10/2020) unpublished **DEFAULT JUDGMENT & REQUIRED FINDINGS BY THE COURT**

The court affirmed the trial court's decisions to deny defendant-ex-husband's motion to set aside the default and the default JOD. But it vacated the portions of the default JOD as to the "distribution of marital property, custody, parenting time, spousal support, and child support" and remanded for the trial court to "make the required factual findings and conclusions of law" as to these issues. It noted that the trial court must comply with MCR 3.210(B)(5) on remand.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/102920/74160.pdf>

#### **Shupe v Shupe** Mich App (11/2020) unpublished **CUSTODY MODIFICATION ON PARENTING TIME MOTION**

The court rejected plaintiff-mother's claims that she had no opportunity to be heard by an impartial decision-maker and that the trial court erred in modifying custody where defendant-father filed a parenting time motion that in effect was a request to modify custody where plaintiff-mother received notice of the initial hearing and responded to defendant-father's parenting time motion.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/111220/74213.pdf>

#### **Schaible v Angerbrandt**, Mich App (11/2020) unpublished **CUSTODY MODIFICATION**

The court held that the trial court did not err in determining that there was proper cause and a change of circumstances justifying reconsideration of the custody arrangement or in assessing the statutory best-interest factors. Further, it did not abuse its discretion when it granted defendant-father sole legal and physical custody of the parties' child. The court rejected plaintiff-mother's judicial bias claim, and found that the trial court did not err in concluding that photos she took in 2020 and related testimony were beyond the scope of the prior remand order and in excluding this evidence. The trial court determined there was proper cause and a change of circumstances based on "plaintiff's continued attempts to press CPS complaints regarding defendant's alleged sexual abuse, which resulted in the child being forced to participate in several investigations, forensic interviews, and rectal" exams.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/111920/74270.pdf>

#### **Barbu v Barbu**, Mich App (11/2020) unpublished **JURISDICTION & DEFAULT & ATTORNEY FEES & SANCTIONS**

Holding that the trial court did not err in imposing sanctions under MCR 1.109(E)(6) and MCL 600.2591 on defendant-ex-husband and appellants-attorney and law firm, his former attorneys in this divorce case, the court affirmed rejecting jurisdictional challenges where the parties had been married in Michigan in 2013 and had two children together and Plaintiff had always lived in Michigan and defendant was from the Republic of Serbia.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/111920/74288.pdf>



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Case Law Updates

**Snead v Snead**, Mich App (11/2020) unpublished    **RECONSIDERATION OF ATTORNEY FEES & SANCTIONS**

Holding that the trial court did not abuse its discretion in denying defendant-ex-husband's motion for reconsideration or his motion for sanctions and attorney fees in this divorce case, the court affirmed where the parties engaged in extensive post judgment litigation since the divorce including multiple motions regarding parenting time, custody and child support.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/112420/74332.pdf>

**Sturdavent v Spencer**, Mich App (12/2020) unpublished    **CHILD SUPPORT COLLECTION & DEFENSES**

Finding no errors warranting reversal, the court affirmed the trial court's orders in these consolidated appeals involving enforcement of a large child support arrearage owed by appellant-Spencer, and his defenses to collection efforts made by the FOC where Spencer's claims of error stemmed from correspondence he exchanged with the FOC during incarceration in prison in which he told the FOC he planned to apply for disability benefits upon release and that he did not anticipate being able to pay the sizable child support arrearage.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/121020/74395.pdf>

**Elkony v Abououf**, Mich App (12/2020) unpublished    **EX PARTE ORDERS & CUSTODY/PT & DUE PROCESS**

The court held that the trial court proceedings did not deprive defendant of his right to due process. Also, the trial court did not err by holding a trial to decide the child's best interests. Further, its factual findings as to factors (a), (b), (c), and (e) of MCL 722.23 were not against the great weight of the evidence. Finally, he failed to show that the trial court's award of parenting time was an abuse of discretion.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/121020/74407.pdf>

**Shaw v Shaw**, Mich App (12/2020) unpublished    **DIVORCE & CHILD PROTECTIVE PROCEEDINGS & INDIAN CHILDREN**

The court held that "the state court presiding over the divorce proceedings properly concluded that it did not have the authority to grant the relief" defendant-mother requested because custody issues were in the hands of the tribal court presiding over the child-protective proceeding which had started in state court and had been properly transferred to the tribal court.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/121020/74409.pdf>

**Giordana v Giordana**, Mich App (12/2020) unpublished    **MODIFICATION OF CUSTODY**

The court vacated the order denying defendant-mother's motion for modification of custody as to the parties' children and remanded for an evidentiary hearing. Based on the record, the court held that "there was a contested factual issue, i.e., whether plaintiff committed physical abuse of any of the children, that needed to be resolved for the trial court to make an informed decision on defendant's motion to modify custody.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/121720/74503.pdf>



## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

### Case Law Updates

#### **Brown v Brown**, Mich App (12/2020) unpublished   **MODIFICATION OF LEGAL & PHYSICAL CUSTODY**

The court reversed the trial court's order granting joint physical and legal custody of the parties' children to defendant-father, concluding that the trial court improperly conflated his motion to change custody with plaintiff-mother's motion to change domicile, and clearly erred by effectively placing the burden of proof on her for both motions. That she was seeking a change of domicile for her children did not relieve the "father of his burden to prove by a preponderance of the evidence that granting him joint legal custody was in the children's best interests.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/122220/74560.pdf>

#### **In re BS**, Mich App (12/2020) unpublished   **CHILD SUPPORT COLLECTION & DEFENSES**

The court dismissed this appeal in an adoption case for mootness. B, born out of wedlock in 2020, was at the center of the case. The day after B's birth, petitioner-mother filed a petition under the Adoption Code for a hearing to identify the child's father and to determine or terminate his parental rights. Petitioner identified respondent as the putative father. The trial court dismissed her petition as it determined respondent had provided substantial and regular support to B. Petitioner then moved for a rehearing. In the meantime, respondent filed a paternity action under the Paternity Act, but he did not request a stay of the adoption proceedings, and the trial court in the adoption action denied petitioner's request for a rehearing. She sought "an order terminating respondent's parental rights pursuant to MCL 710.39(1). By its terms, this statute only concerns the termination of the parental rights of putative fathers." Because respondent is B's "biological and legal father pursuant to an order of filiation entered by the Kent Circuit Court, MCL 710.39(1) is no longer applicable and it is impossible for us to grant the relief" petitioner requested, making this appeal moot.

Full text opinion: <http://www.michbar.org/file/opinions/appeals/2020/122220/74566.pdf>





## CASS COUNTY FRIEND OF THE COURT

SERVING AND EMPOWERING FAMILIES TO MAKE CHILDREN'S LIVES BETTER.

## 2020 TOYS FOR TOTS DRIVE

### Cass County Courts



## Toys for Tots Drive

2020

Cass County Courts' staff from Circuit, Probate, Family/Juvenile, & District Courts, & the Friend of the Court had fun participating in the 2020 Toys for Tots drive. Staff exchanged Secret Santa gifts with each other by Zoom and then donated the gifts to Toys for Tots.

Newsletter Editor:  
FOC Director:  
Carol Montavon Bealor, JD

For questions or story ideas,  
email her at [foc@cassco.org](mailto:foc@cassco.org).