

## Change of Domicile

Generally as part of a judgment of divorce in Michigan, or an initial custody order, the court enters a restriction on the custodial parent's freedom to change of the domicile of the child. This is done for obvious reasons, the plainest being to prevent the custodial parent from moving to the far end of the earth to avoid the noncustodial without the court's permission.

In years past if the custodial parent wished to move he was free to do so without court approval, so long as the move was confined to the state of Michigan. However, if he wished to move out-of-state he was forced to seek the court's permission. Due to the glaring inequity of giving a custodial parent carte blanche to move the 600 miles from Detroit to Ironwood, for example, but restricting a 58 mile move from Detroit to Toledo, Ohio, the law was changed in 2001, restricting movement to 100 miles from the original domicile, whether in-state or out.

The newer restriction is important to know because it now means that there is a greater likelihood than before that the average custodial parent will need to bring a petition to change domicile. Considering this, it is a good idea for all custodial parents to know and understand the factors the court used when asked to approve a change of domicile, and how they are applied.

Most parties to a custody action are more than familiar with the 'best-interest factors' the court uses to decide custody and in a change of domicile action, the court uses a modified version of this test, reduced to a five prong test:

- 1) Does the proposed move have the capacity to improve the quality of life for both the custodial parent and the child;
- 2) Is the move inspired by the custodial parent's desire to frustrate the noncustodial parent's visitation will the custodial parent comply with a substitute visitation order;
- 3) Is the custodial parent using the move to gain a financial advantage over the noncustodial parent through increased support payments;
- 4) Is there a realistic opportunity for adequate visitation to foster the relationship between the child and noncustodial parent if the change is allowed; and,
- 5) Domestic violence, whether directed at or witnessed by the child

It is important to understand that in this inquiry the court is not looking simply at the best interests of the child, but rather the best interests of the custodial parent *and* the child. Indeed, because the court reads the best interests of the custodial parent and the child as being intertwined one need really only plead that there will be an improvement in the parent's life because, by extension, the child's life is assumed to improve.

It is also important to understand that in addition to holding to a lower standard of the best-interest factors, the court likewise holds to a lower standard of proof. Instead of requiring a showing of clear and convincing evidence to justify the move, as might be necessary in a custody action, here the court only asks for a preponderance of the evidence. In addition to the lower standard of proof the court must also be mindful that while the custodial parent's movements are restricted and he is tied to a geographic area, there are no restrictions on the noncustodial parent. He or she may come and go as they please.

In today's world, with constant movement for work being a reality, it is good to know what is needed to obtain a change of domicile before the need should arise. And should the need arise, be sure to contact an attorney for a consultation.

MCL 722.31

*Watters v. Watters*, 112 Mich App 1 (1981)

*Costantini v. Costantini*, 446 Mich 870 (1994) (Riley, J. concurring)

*Watters v. Watters* 112 Mich.App. 1(Mich.App., 1981)

*D'Onofrio v. D'Onofrio*, 365 A2d 27 (N.J. 1976)

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