FAMILY LAW

KAREN S. SENDELBACH†

I. CHILD CUSTODY, *VODVARKA* THRESHOLD NOT SATISFIED 389
II. CHILD CUSTODY, PSYCHOLOGICAL EVALUATIONS 390
III. CHILD CUSTODY, LEGAL CUSTODY 390
IV. CHILD CUSTODY, THIRD PARTY RIGHTS 392
V. CHANGE OF DOMICILE/100 MILE RULE 393
VI. CHILD SUPPORT 395
A. Modification During an Appeal 395
B. Retroactive Modification 395
C. Enforcement of a Lien for Child Support Against Property Owned by Entities 397
VII. GRANDPARENT VISITATION 398
VIII. SPOUSAL SUPPORT 398
IX. JURISDICTION 398
X. PATERNITY 400
XI. PERSONAL PROTECTION ORDERS 401
XII. POST NUPTIAL AGREEMENTS 402
XIII. TERMINATION OF PARENTAL RIGHTS 403
XIV. PROPERTY SETTLEMENT—ENFORCEMENT 404

I. CHILD CUSTODY, *VODVARKA* THRESHOLD NOT SATISFIED[1]

In *Corporan v. Henton,* the defendant father appealed the trial court's order denying him an evidentiary hearing on his motion for a change of custody.[2] He argued that he had presented sufficient evidence to warrant a hearing.[3] The Michigan Court of Appeals (1) held the trial court "employed the proper procedure by first determining whether proper cause or change of circumstances had been established by a preponderance of the evidence"; and (2) affirmed "the trial court's ruling that negative financial changes . . . are more appropriately addressed in a

† Shareholder, Nichols, Sacks, Slank, Sendelbach & Buiteweg, P.C. B.A., 1991, James Madison College, Michigan State University; J.D. *cum laude*, 1994, Syracuse University School of Law. Ms. Sendelbach is a past president of the Family Law Council of the Michigan State Bar, past president of the Washtenaw County Bar Association Family Law Section, and former chairperson of the State Bar of Michigan's Amicus Curiae committee. Ms. Sendelbach limits her practice exclusively to family law.

1. Vodvarka v. Grasmeyer, 259 Mich. App. 499, 675 N.W.2d 847 (2003).
2. Corporan v. Henton, 282 Mich. App. 599, 600, 766 N.W.2d 903, 904 (2009).
3. *Id.*

child support context rather than in a change of custody motion."[4] The father had alleged financial difficulties, (specifically that the mother failed to pay her rent timely, a fact relevant under best interests factors).[5] However, the court found this did not meet the *Vodvarka* standard because the mother's financial difficulties, if any, could be remedied by an increase in child support.[6] The father further alleged that the minor child's grades had significantly declined[7] but the trial court held that this "did not demonstrate a change of circumstances," and the court found that although "the child's grades have declined to a minor extent in certain subjects, the child's grades do not show anything 'more than the normal life changes (both good and bad) that occur during the life of a child.'"[8]

II. CHILD CUSTODY, PSYCHOLOGICAL EVALUATIONS

The role of the weight assigned to a psychological examination in a custody dispute is discussed in *McIntosh v. McInstosh.*[9] This question was raised squarely when the plaintiff father argued that the trial court "erred by failing to implement, and essentially adopt without question, the Friend of the Court's [(FOC)] psychological evaluation recommending joint legal and physical custody."[10] The court held that such evaluations are "but one piece of evidence amongst many, and are not by themselves dispositive in determining custody," thus given the weight of the argument, the trial court did not err.[11]

III. CHILD CUSTODY, LEGAL CUSTODY

The most important legal custody disputes in 2008 arguably revolved around educational decision making for children.[12] In *Parent v. Parent*, the parents were homeschooling their eldest child at the time of the divorce.[13] They agreed to continue to do so until one of them elected not to.[14] In that event, they would mediate the issue, and if that failed, they

4. *Id.*
5. *Id.* at 606, 766 N.W.2d at 907.
6. *Id.* at 607, 766 N.W.2d at 907.
7. *Id.* at 608, 766 N.W.2d at 908.
8. *Corporan*, 282 Mich. App. at 608-09, 766 N.W.2d at 908.
9. McIntosh v. McIntosh, 282 Mich. App. 471, 472, 768 N.W.2d 325, 327 (2009).
10. *Id.*
11. *Id.*
12. *See* Parent v. Parent, 282 Mich. App. 152, 153, 762 N.W.2d 553, 555 (2009).
13. *Id.*
14. *Id.*

would then arbitrate.[15] Ultimately, the father filed a motion for the child to attend public school, which was granted by the trial court.[16] The mother appealed, arguing first that the court was first required to determine the child's established custodial environment in order to determine the father's burden of proof.[17] The trial court and the court of appeals both disagreed, holding that because the father was not seeking a change in the child's custodial environment, but only her educational environment, the standard of proof was clear and convincing evidence.[18] The mother next argued that the trial court erred when it failed to consider all of the best interest factors.[19] On that issue, the court of appeals agreed,[20] reminding the trial court of its long standing obligation "when making a determination regarding a child's best interest, a trial court is required to state its factual findings and conclusions with regard to each relevant statutory best interest factor listed in MCL 722.23."[21]

The trial court had stated that it did not believe it was required to address all of the best interest factors because the only issue before it was education.[22] While the court of appeals found this "not an unreasonable, or even necessarily incorrect, view," the higher court held that:

> [T]he modification at issue does not . . . change the child's custodial environment, and some of the factors may not even be relevant. Thus, the trial court was partially correct in holding that such a limited change as the one at bar would not require exhaustive consideration of all factors or that all those factors are of equal weight. However, in a child custody dispute, the 'best interests of the child' is defined by statute as including a consideration of *all* factors enumerated in MCL 722.23. The trial court must at least make explicit factual findings with regard to the applicability of each factor. [23]

The court of appeals continued the trial court's current order to maintain an educational status quo for the child, but remanded for consideration of each factor.[24]

---

15. *Id.*
16. *Id.* at 253-54, 762 N.W.2d at 555.
17. *Id.*
18. *Parent*, 282 Mich. App. at 155, 762 N.W.2d at 556.
19. *Id.* at 155-56, 762 N.W.2d at 556.
20. *Id.*
21. *Id.* at 156, 762 N.W.2d at 556.
22. *Id.*
23. *Id.* at 156-57, 762 N.W.2d at 556.
24. *Parent*, 282 Mich. App. at 156-57, 762 N.W.2d at 556.

IV. CHILD CUSTODY, THIRD PARTY RIGHTS

In re Anjoski dealt with a situation where the child's father had been awarded primary custody of a minor child, in part because of evidence of the mother's drug use.[25] The child resided with his father and his wife.[26] When the child's father passed away, the trial court issued an order permitting the child to remain in the home with his father's widow (the child's stepmother) pending an evidentiary hearing.[27] The mother moved for rehearing, arguing that the court erred by ordering a best interests hearing instead of immediately returning the child to her, the natural parent.[28] The stepmother filed a motion to intervene.[29] While the court recognized the statutory presumption in favor of a parent, it also recognized the competing presumption under M.C.L.A. section 722.27(1)(C) in favor of maintaining the child's established custodial environment.[30] The court stated that the standard to be applied was whether or not the natural parent was deemed fit or unfit.[31]

The court of appeals and the trial court both agreed with the mother's position that the stepmother was a third party who did not have standing to initiate a custody dispute or intervene in a paternity action.[32] The court held that third parties have standing under the Child Custody Act in only two circumstances, described in M.C.L.A. section 722.26(b), and M.C.L.A. section 722.26(c)(1)(b), neither of which applied to this matter as the stepmother was never a guardian of the minor child.[33]

The court reconciled the competing presumptions (between a natural parent and an established custodial environment) by stating that:

> [B]ecause an unfit parent, or one who acts inconsistently with his or her parental interest, is not entitled to the parental presumption announced in *Hetlzel* . . . when a custody issue arises between a parent and a third party after the death of a custodial parent, which issue presents legitimate and compelling indicia on the record that raise serious concerns regarding the parent's current ability to care for the safety and welfare of the child and suggests that the parent is unfit, the trial court is required to first make a preliminary finding of parental fitness

25. 283 Mich. App. 41, 45, 770 N.W.2d 1, 6 (2009).
26. *Id.* at 46, 770 N.W.2d at 6.
27. *Id.* at 47, 770 N.W.2d at 6-7.
28. *Id.*, 770 N.W.2d at 7.
29. *Id.*
30. *Id.*, 770 N.W.2d at 6-7.
31. *In re Anjoski*, 283 Mich. App. at 47, 770 N.W.2d at 6-7.
32. *Id.* at 48, 50, 770 N.W.2d at 7, 10-11.
33. *Id.* at 51-52, 770 N.W.2d at 12-13.

> before proceeding further . . . . There is no requirement, despite the parent's fundamental liberty interest, that the child be immediately returned to an allegedly unfit noncustodial parent because these preliminary steps are necessary for the protection of the child's health and welfare and to prevent unwarranted and disruptive changes of custody.[34]

The court warned, however, that

> in the absence of any legitimate indicia indicating that a noncustodial parent is unfit to the extent that a child may be at risk if returned, and in the absence of any legal relationship between the third party and the child, the trial court is required to return the child to the non-custodial parent upon notice of a custodial parent's death.[35]

V. CHANGE OF DOMICILE/100 MILE RULE

The ability of a parent to move within 100 miles but into a different school district, and to modify the parenting time schedule based on the move, was considered in *Pierron v. Pierron*.[36] In *Pierron*, the mother, the primary physical custodian with joint legal custody, moved the children without agreement of their father from Grosse Pointe Woods to Howell.[37] She sought to enroll the children in Howell schools, and in response, the plaintiff father filed a motion to prevent the move to the Howell school district, and for the court to grant him sole legal custody.[38]

The trial court found that the plaintiff father, as a joint legal custodian, was entitled to participate in the decision regarding a change of school for the children.[39] The circuit court held an evidentiary hearing to determine whether the proposed school change would change the established custodial environment of the children.[40] The trial court found that it would, and thus the mother was held to a standard of "clear and convincing" evidence that the change would be in the best interests of the children.[41] Upon review and consideration of the twelve best interest factors, the court ultimately ruled that the mother "failed to establish by a

34. *Id.* at 57-58, 770 N.W.2d at 12.
35. *Id.* at 58, 770 N.W.2d at 12.
36. 282 Mich. App. 222, 225, 765 N.W.2d 345, 351 (2009).
37. *Id.* at 228-29, 765 N.W.2d at 352-53.
38. *Id.* at 228, 765 N.W.2d at 352-53.
39. *Id.* at 229, 765 N.W.2d at 353.
40. *Id.*
41. *Id.* at 232, 765 N.W.2d at 355.

preponderance of the evidence, much less the clear and convincing standard that it is in the best interests of the minor children to change their school district," thus rejecting the mother's petition.[42]

The Michigan Court of Appeals began its analysis by stating that the primary physical custodian has an absolute right to move with his or her children less than 100 miles away, within Michigan, without first obtaining permission from the court or consent from the other party.[43] As a preliminary matter, the court of appeals noted that "defendant did not act illegally by moving the children's residence to Howell without first seeking the permission of the circuit court or the consent of plaintiff" because she did not violate M.C.L.A. section 722.31(1) (the 10- mile rule).[44] Thus, the court of appeals found that mother was free to "relocate the children's residence to Howell" absent the court's permission or father's agreement.[45]

The court of appeals continued, stating that although the mother was entitled to move, the court must resolve the educational choice issue if the parents were unable to do so, as they shared joint legal custody, and that the court must hold a "*Lombardo* hearing," during which it "'must consider, evaluate and determine each of the factors listed at MCL 722.23' for the purpose of 'resolving disputes concerning "important decisions affecting the welfare of the child"' that arise between joint custodial parents."[46] The court of appeals disagreed with the trial court's analysis that the change would modify the children's established custodial environment, as the mother had and would continue to have primary physical custody.[47]

The court stated that when the move would require a modification of parenting time which would "amount to a change of the established custodial environment, it should not be granted unless the circuit court 'is persuaded by clear and convincing evidence that the change would be in the best interests of the child.'"[48] The court of appeals remanded the case to the circuit court to determine whether the move would be in the children's best interests.[49]

---

42. *Pierron*, 282 Mich. App. at 242, 765 N.W.2d at 361 (quoting the circuit court's unpublished ruling).

43. *Id.* at 245, 765 N.W.2d at 362.

44. *Id.* at 245-46, 765 N.W.2d at 362-63.

45. *Id.* at 246, 765 N.W.2d at 362-63.

46. *Id.* at 247, 765 N.W.2d at 363 (quoting Lombardo v. Lombardo, 202 Mich. App. 151, 160, 507 N.W.2d 788, 792 (1993)).

47. *Id.* at 248-49, 765 N.W.2d at 364.

48. *Pierron*, 282 Mich. App. at 249, 765 N.W.2d at 364 (quoting Brown v. Loveman, 260 Mich. App. 576, 595, 680 N.W.2d 432, 442 (2004)).

49. *Id.* at 263, 765 N.W.2d at 372.

Review of this case has been accepted by the Michigan Supreme Court.[50]

VI. CHILD SUPPORT

A. Modification During an Appeal

A common issue as to whether a court has the authority to modify a child support award when the custody and support case are on appeal (and therefore stayed) was raised in *Lemmen v. Lemmen*.[51] The Michigan Supreme Court, affirming the court of appeals, held that the trial court has the authority to modify child support if there has been a change in circumstances during the pendency of an appeal, reasoning that M.C.L.A. section 552.17(1) and M.C.L.A. section 552.28 "fall within an exception to the rule of MCR 7.208(A) that a trial court may not amend a final judgment after a claim of appeal has been filed or leave to appeal has been granted."[52] The court found that given the length of time appeals procedures can take to complete, the interests of the children required that the court have the ability to modify child support while the appellate process was ongoing.[53]

B. Retroactive Modification

In *Holmes v. Holmes*, the parents compromised and agreed to a fixed child support figure (which appears to have been a compromise between the full child support and the child support payable under the former Shared Economic Responsibility Formula) as well as a defined percentage of any bonus received.[54] The parties agreed that they would not modify this agreement for ten years.[55] When ten years had elapsed, father brought a petition to modify,[56] which the trial court granted.[57] The court of appeals reversed, finding that the trial court had the authority to enforce the bonus provision which the parties had included in their judgment, and that the bonus provision was enforceable and not subject to modification.[58] The court of appeals noted the court's inherent ability

50. Pierron v. Pierron, 483 Mich. 1135, 767 N.W.2d 660 (2009).
51. 481 Mich. 164, 749 N.W.2d 255 (2008).
52. *Id.* at 165, 749 N.W.2d at 256.
53. *Id.* at 167, 749 N.W.2d at 257.
54. 281 Mich. App. 575, 577, 760 N.W.2d 300, 302 (2008).
55. *Id.* at 578, 749 N.W.2d at 303.
56. *Id.* at 580, 760 N.W.2d at 304.
57. *Id.* at 585-86, 760 N.W.2d at 306-07.
58. *Id.* at 598, 760 N.W.2d at 313.

to modify child support, and found that the court erred when it concluded that it lacked the power to enforce the contractual bonus provision.[59]

The widely understood statutory requirement that the trial court lacks the authority to retroactively modify child support was challenged in *Malone v. Malone*.[60] In this matter, the father argued that the child was actually living with him during the time that some of the arrearage accrued, but that "financial hardship prevented him" from filing a motion for change of support or custody at the time of the change.[61] The mother agreed that the father had custody of the child during the time in question (and thus should have been entitled to receive child support rather than pay child support), but argued that M.C.L.A. section 552.603 states specifically that a child support order is not subject to retroactive modification except within the time period after a petition for modification has been served.[62] The trial court modified the arrearage pursuant to MCR section 2.612(C).[63] The court of appeals considered the conflict between MCR section 2.612(C) (child support is not retroactively modifiable) and M.C.L.A. section 552.603(2) (relief from judgment) and determined that:

> [T]o decide if a statute and a court rule conflict, each must be read according to its plain meaning. If a conflict exists, a reviewing court must assess whether there are substantive policy reasons for the legislative enactment. A statute is considered substantive if it concerns a matter that has as its basis in something other than court administration. . . . "If a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court administration . . . the [court] rule should yield."[64]

The court of appeals held that:

> MCR section 2.612(C) and MCLA section 552.603(2) conflict and may not be reconciled. [It] further conclude[d] that MCL 552.603(2) was drafted to reflect the public policy of ensuring the enforceability of support orders for the protection of children . . . . Therefore, [it] conclude[d] that MCL 552.603(2) represents a clear expression of legislative policy on a substantive matter

59. *Id.* at 591, 593, 760 N.W.2d at 309, 311.

60. 279 Mich. App. 280, 281, 761 N.W.2d 102, 103 (2008).

61. *Id.* at 282, 761 N.W.2d at 103-04.

62. *Id.* at 283, 761 N.W.2d at 104.

63. *Id.* at 284, 761 N.W.2d at 104.

64. *Id.* at 288, 761 N.W.2d at 107 (quoting People v. Williams, 475 Mich. 245, 260, 716 N.W.2d 208 (Mich. 2006)).

> and, as a result, MCR 2.612(C) must give way to MCL 552.603(2).[65]

The trial court was therefore reversed and the case was remanded to have the arrearage reinstated for the agreed-upon periods of time.[66] The court did opine that they "express[ed] no opinion on whether defendant can pursue a civil remedy from plaintiff for her wrongful acceptance of support when she did not have physical custody of her minor child."[67] The court further acknowledged that "there may be very rare circumstances in which constitutional due-process protections require a retroactive modification of child support," such as denial of notice of issuance of a support order.[68]

C. *Enforcement of a Lien for Child Support Against Property Owned by Entities*

In *Walters v. Leech*, the court of appeals considered the trial court's decision denying a motion to impose a lien for unpaid child support against real property owned by the plaintiff mother and her current spouse as tenants by the entireties.[69] The court of appeals affirmed the trial court's decision that it was not permitted to do so.[70]

The mother had accumulated a child support arrearage of nearly $50,000, and the FOC, while trying to enforce the arrearage, discovered that mother owned real property with her current spouse.[71] The FOC sought a lien against that property, and the court was therefore faced with a question of first impression: "whether the Support and Parenting Time Enforcement Act . . . allows child-support liens against property held as a tenancy by the entireties."[72] The court of appeals responded by stating that "as a general proposition under the common law, property that is held as a tenancy by the entirety is not liable for the individual debts of either party," codified in M.C.L.A. section 600.2807.[73] Ultimately, after its analysis, the court found that:

> Although there is a strong public-policy interest in enforcing child-support obligations, considering our longstanding common

65. *Id.* at 288, 761 N.W.2d at 107.
66. Malone, 279 Mich. App. at 289-90, 761 N.W.2d at 107-08.
67. *Id.* at 290, 761 N.W.2d at 108.
68. *Id.*
69. 279 Mich. App. 707, 708, 761 N.W.2d 143, 145 (2008).
70. *Id.*
71. *Id.*
72. *Id.* at 708-09, 761 N.W.2d at 145.
73. *Id.* at 711-12, 761 N.W.2d at 147.

law and the legislative intent expressed in both MCL 600.2807 and the law on liens for child support articulated in MCL 552.625a and 552.625b, we conclude that child-support liens may not be imposed against property held as tenants by the entirety.[74]

VII. GRANDPARENT VISITATION

For a case in which the grandparents were awarded custody of a minor child, see *Nash v. Salter* discussed in part IX of this Article.[75]

VIII. SPOUSAL SUPPORT

For a discussion on spousal support, please see *Wright v. Wright*, described in part XII of this Article.[76]

IX. JURISDICTION

The standards required for Michigan courts to exercise subject matter jurisdiction over a child custody matter under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) were described in *Nash v. Salter*.[77] The biological parents had been living in Texas with the child and paternal grandparents, and after the parents separated, the father filed a petition for conservatorship of the child in Texas.[78] Shortly after filing that pleading, the father moved to Michigan with the minor child, joining the mother, who was already in Michigan.[79] Shortly after the move, the grandparents in Texas intervened in the petition previously filed by the father and requested and were awarded the status of "joint managing conservators with the exclusive right to designate the primary residence of the child."[80]

The parents responded by filing a petition for determination of jurisdiction and custody in the Wayne County Circuit Court, arguing that the Texas court lacked jurisdiction under the UCCJEA, and that jurisdiction was proper in a Michigan court.[81] Ultimately, the Texas court awarded the grandparents the relief they sought, and required the return

74. *Id.* at 719, 761 N.W.2d at 151.
75. Nash v. Salter, 280 Mich. App. 104, 760 N.W.2d 612 (2008).
76. Wright v. Wright, 279 Mich. App. 291, 761 N.W.2d 441 (2008).
77. *Nash*, 280 Mich. App. at 106, 760 N.W.2d at 615.
78. *Id.* at 107, 760 N.W.2d at 615.
79. *Id.*
80. *Id.*
81. *Id.* at 107-08, 708 N.W.2d at 615.

of the child to their home in Texas.[82] The grandparents successfully moved to dismiss the parents' Michigan complaint for custody, and the Michigan circuit court entered an order dismissing the Michigan action for "lack of subject matter jurisdiction."[83]

The parents appealed, arguing that the Michigan court erred when it concluded that it "lacked subject matter jurisdiction for the sole reason that Michigan did not have home state jurisdiction under UCCJEA, MCL 722.1201."[84] (Michigan had not been the child's home state for six months prior to the commencement of the proceeding).[85] The court of appeals agreed with the parents that home-state jurisdiction is not the exclusive basis for jurisdiction under the UCCJEA, but affirmed the court's decision on other grounds, finding that "[j]urisdiction cannot be premised on the family's significant connection to Michigan unless the court first establishes: (1) there is no 'home state' as that term is used in MCL 722.1201(1)(a), or (2) 'a court of the home state of the child has declined to exercise jurisdiction . . . .' MCL 7722.1201(1)(b)."[86] As neither of these circumstances existed in this matter, the appellate court held that Michigan lacked "significant connection jurisdiction" over the matter.[87] The Michigan parents' remaining arguments regarding jurisdiction and the constitutionality of the matter failed, and Texas was found to have proper jurisdiction.[88]

A Michigan father asked a Michigan court to take jurisdiction over his custody matter from a Virginia court (which at one point had taken jurisdiction in a Mississippi order) in *Jamil v. Jahan*.[89] The trial court and court of appeals held that because jurisdiction was at one time vested in the Virginia court, and because the Virginia court expressly held that it did not relinquish jurisdiction, it was not error for the court to decline to exercise jurisdiction to modify the Virginia custody order.[90] The court noted that at the time of the hearing, Michigan would have had jurisdiction under the UCCJEA to make an initial custody determination, but that different standards applied under the UCCJEA to *modify* a custody order previously issued.[91]

---

82. *Id.* at 108, 708 N.W.2d at 615.
83. *Nash*, 280 Mich. App. at 108, 708 N.W.2d at 615.
84. *Id.* at 109, 708 N.W.2d at 616.
85. *Id.* at 110, 708 N.W.2d at 617.
86. *Id.* at 111, 708 N.W.2d at 617.
87. *Id.*
88. *Id.* at 119, 708 N.W.2d at 621.
89. 280 Mich. App. 92, 93, 760 N.W.2d 266, 267 (2008).
90. *Id.* at 93-94, 760 N.W.2d at 267.
91. *Id.* at 100-01, 760 N.W.2d at 271.

The jurisdiction of a Michigan court to award a child's temporary guardians custody of that child was challenged per the Indian Child Welfare Act (ICWA) in *Empson-Laviolette v. Crago*.[92] In this matter, the court of appeals clarified that: (1) Guardianship proceedings which involve "foster care placement" of a child brought the matter within the scope of the ICWA;[93] (2) the fact that the guardianship proceedings were "voluntary" did not remove the relevancy of the ICWA;[94] and (3) the ICWA preempted the stay which was otherwise triggered by the filing of a child custody action.[95]

X. PATERNITY

The complicated nature of many of today's relationships was demonstrated by the situation in *Sinicropi v. Mazurek*.[96] This matter is also notable as two out of three of the involved parties were sufficiently dissatisfied with the decision of the trial court that they appealed the matter to the court of appeals.[97]

The mother and a man to whom she was not married (Acknowledger) filed a properly executed acknowledgment of paternity for a child born out of wedlock.[98] The mother and Acknowledger stipulated to a consent order, which provided joint legal and physical custody of the child to the mother and Acknowledger.[99] The child's biological father (Biological Father) filed a paternity action under the Paternity Act, which was then consolidated with the custody case.[100] The trial court entered an order of filiation which recognized the Biological Father as the child's father, but refused to revoke the previously entered acknowledgment of paternity, leaving the child with two legal fathers.[101]

The trial court held a best-interests custody hearing, after which the trial court awarded sole legal physical custody of the child to Acknowledger, joint legal custody to Acknowledger and the mother, parenting time to the mother, and charged child support to the mother and the Biological Father.[102] The court of appeals reversed and

92. 280 Mich. App. 620, 621, 760 N.W.2d 793, 796 (2008).
93. *Id.* at 626-27, 760 N.W.2d at 798-99.
94. *Id.* at 627, 760 N.W.2d 799.
95. *Id.* at 633, 760 N.W.2d at 802.
96. 279 Mich. App. 455, 760 N.W.2d 520 (2008).
97. *Id.* at 461, 760 N.W.2d at 523.
98. *Id.*
99. *Id.* at 458, 760 N.W.2d at 521.
100. *Id.* at 458, 760 N.W.2d at 522.
101. *Id.* at 458-59, 760 N.W.2d at 522.
102. *Sinicropi*, 279 Mich. App. at 459, 760 N.W.2d at 522.

remanded.[103] On remand, the trial court refused to revoke Acknowledger's acknowledgement, causing the mother and Biological Father to appeal.[104]

The court of appeals found that (1) the facts described by the trial court did not warrant the revocation of Acknowledger's acknowledgment of paternity;[105] (2) the appellate court was precluded from considering the mother and Biological Fathers' argument that the trial court erred in refusing to enter an order of filiation (per the "law of the case" doctrine);[106] and (3) the absence of standards of guidelines defining "the equities" a trial court should apply when considering the potential revocation of an acknowledgement of parentage did not violate the mother or Biological Father's due-process rights.[107] The court of appeals upheld the trial court's decision after remand.[108]

XI. PERSONAL PROTECTION ORDERS

A son (eighteen years old) sought and received a Personal Protection Order (PPO) against his father in *Hayford v. Hayford*.[109] Prior to the issuance of the PPO, father earned his living building rifles and other firearms.[110] Because the PPO "may affect eligibility for a federal firearms license, respondent may stand to permanently lose his license and livelihood."[111] For this reason, the defendant sought to have the PPO rescinded *nunc pro tunc*.[112]

The court of appeals noted the requirements for issuance of a PPO are contained in M.C.L.A. section 600.2950(4), and further that it is "the petitioner who bears the burden of establishing reasonable cause for the issuance of a PPO . . . and of establishing a justification for the continuance of a PPO at a hearing on the respondent's motion to terminate the PPO."[113] The trial court determined, and the court of appeals affirmed, that "respondent's behavior was harassing and emotionally abusive" and it rose to the level of harassment or stalking

103. Sinicropi v. Mazurek, 273 Mich. App. 149, 152, 729 N.W.2d 256 (2006).
104. *Sinicropi*, 279 Mich. App. at 461, 760 N.W.2d at 523.
105. *Id.* at 463-64, 760 N.W.2d at 524.
106. *Id.* at 464-65, 760 N.W.2d at 525.
107. *Id.* at 466-67, 760 N.W.2d at 525-26.
108. *Id.* at 467, 760 N.W.2d at 526.
109. 279 Mich. App. 324, 325, 760 N.W.2d 503, 505 (2008).
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.* at 326, 760 N.W.2d at 506.

requiring to support a PPO based on M.C.L.A. section 750.411h(1)(d).[114] The defendant father argued that the PPO "impermissibly modified the custody of his son and that the Child Custody Act is the exclusive means through which the custody of his son may be modified."[115] Both the trial court and the court of appeals disagreed, apparently finding that children are as entitled to protection as adults.[116]

XII. POST NUPTIAL AGREEMENTS

In *Wright v. Wright*, after a long marriage in which there was significant earning disparity, the birth of two children, and the adoption of a third, along with the raising of a step child, the family was struggling.[117] At that time, rather than separate, the husband encouraged the wife to sign a postnuptial agreement that "protected all his rights to his premarital property, his retirement accounts, the marital home, and every other article of marital property requiring a substantial financial investment from him."[118] The court of appeals noted that:

> In the attachments listing the specified properties that the parties claimed and would retain as their own separate property, plaintiff listed his retirement accounts, his vacant lots, and any property 'purchased after the marriage for which I paid more than 90% of the purchase price.' The agreement provided that it would supplant any property settlement or distribution that would ordinarily follow from one of the parties obtaining a divorce or dying, and it specifically provided that the parties knew that their respective financial positions would be worse because of the agreement but that their love for one another surpassed material concerns.[119]

Eight months later, the plaintiff husband filed for divorce.[120]

The trial court found the postnuptial agreement invalid, and the court of appeals affirmed.[121] Both courts found that:

> [A] couple that is maintaining a marital relationship may not enter into an enforceable contract that anticipates and encourages a future separation or divorce. . . . As our Supreme Court stated in *Randall v. Randall*: "It is not the policy of the law to

114. *Id.* at 330-32, 760 N.W.2d at 506.
115. *Hayford*, 279 Mich. App. at 326-27, 760 N.W.2d at 506.
116. *Id.*
117. *Wright*, 279 Mich. App. at 292-94, 761 N.W.2d at 446-47.
118. *Id.* at 294, 761 N.W.2d at 447.
119. *Id.*
120. *Id.*
121. *Id.*

> encourage such separations, or to favor them by supporting such arrangements as are calculated to bring them about. It has accordingly been decided that articles calculated to favor a separation which has not yet taken place will not be supported . . . . . ." In the case at bar, the trial court correctly determined that the postnuptial agreement at issue was calculated to leave plaintiff in a much more favorable position to abandon the marriage. The contract plainly had, as one of its primary goals, defendant's total divestment of all marital property in the event of a divorce. The couple was not separated at the time and had never separated during the marriage, but plaintiff filed for divorce roughly eight months after defendant signed the agreement.[122]

The court distinguished settlement agreements done in advance of filing (supporting agreements settling issues arising in ongoing or imminent divorce litigation).[123] Both courts found that the agreement contemplated and encouraged the separation and divorce of a married couple, and ruled that it was accordingly void as against public policy.[124]

XIII. TERMINATION OF PARENTAL RIGHTS

The court of appeals reaffirmed in *In re Jenks*, the fact that "[t]o terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in M.C.L.A. 712A19b(3) has been established by clear and convincing evidence."[125] In this matter, the father pled guilty to one count of first-degree criminal sexual conduct, including penetration, with a person under seventeen years of age (his stepdaughter, the minor children's half sister).[126] The trial court judge found that this satisfied one of the statutory grounds, and then determined, by clear and convincing evidence, that "there was a reasonable likelihood that the minor children would suffer injury or abuse if ever placed in the respondent's custody [and] . . . that it was not clearly contrary to the children's best interests for respondent's parental rights to be terminated" in this situation.[127] The court of appeals affirmed this decision.[128]

---

122. *Wright*, 279 Mich. App. at 297, 761 N.W.2d at 448-49 (quoting Randall v. Randall, 37 Mich. 563, 571, 1877 WL 3839 (1877)).

123. *Id.* at 298, 761 N.W.2d at 449.

124. *Id.*

125. 281 Mich. App. 514, 516, 760 N.W.2d 297, 298 (2008).

126. *Id.* at 515, 760 N.W.2d at 298.

127. *Id.* at 515-16, 760 N.W.2d at 298.

128. *Id.*

The protections of the ICWA during a termination of parental rights proceedings were described in *In re Roe*.[129] The trial court terminated the mother's rights after determining that "her rights to another child had been terminated because of physical abuse and that prior attempts to rehabilitate her had been unsuccessful."[130] The court noted that the ICWA further required it to find that "continued custody by [the mother] was likely to result in serious emotional or physical damage to the child," and so found.[131] The mother appealed, arguing that the trial court erred in failing to require the Department of Human Services to provide that it "made 'active efforts' to provide the remedial services and rehabilitative programs that the ICWA required."[132] The court of appeals held that the ICWA required the "trial court to make findings regarding whether the Department made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and regarding whether those efforts proved unsuccessful."[133] The court of appeals remanded for that determination.[134]

XIV. PROPERTY SETTLEMENT—ENFORCEMENT

In *Estes v. Titus,* while hunting together, one man fatally shot another.[135] He was later criminally charged and convicted of murder, and the widow filed a civil action for her husband's wrongful death.[136] While the case was pending and the defendant was incarcerated, he and his wife had divorced, and in that judgment of divorce, he had transferred his entire estate to her.[137] The decedent's wife charged that this was a transfer prohibited by the Uniform Fraudulent Transfer Act (UFTA)[138], designed to transfer the assets out of the defendant husband's name so that the widow could not collect her settlement.[139] The widow sought to intervene in the divorce, which was denied; she then filed an independent action under UFTA.[140]

---

129. 281 Mich. App. 88, 90, 764 N.W.2d 789, 792 (2008).
130. *Id.*
131. *Id.* at 90-91, 764 N.W.2d at 792.
132. *Id.* at 91, 764 N.W.2d at 792.
133. *Id.*
134. *Id.*
135. 481 Mich. 573, 577, 751 N.W.2d 493, 495 (2008).
136. *Id.*
137. *Id.* at 577, 751 N.W.2d at 495-96.
138. *Id.* at 578, 751 N.W.2d at 496.
139. *Id.* at 586, 751 N.W.2d at 499.
140. *Id.* at 577-78, 751 N.W.2d at 496.

The Michigan Supreme Court was presented with a question of first impression: whether the UFTA applied to a property settlement in a divorce action.[141] The court determined that the UFTA did in fact apply to a property settlement in a divorce action.[142] The court continued to hold that property held by spouses as tenants by the entireties, which was later disposed of in a divorce judgment, was *not* subject to the UFTA; and widow's claim for relief under the UFTA did not constitute a collateral attack on a divorce judgment.[143]

141. *Estes*, 481 Mich. at 576, 751 N.W.2d at 495.
142. *Id.*
143. *Id.*