

CHILD CUSTODY DECISIONS: SHOULD THE “BEST INTERESTS OF THE CHILD” STANDARD BE THE PRIMARY DETERMINANT?

JACQUELINE W. YEE[†]

I. INTRODUCTION	175
II. BACKGROUND	177
<i>A. Historical Development of Child Custody Laws</i>	177
<i>B. Fathers’ Rights Movement: Perceived Biases in Divorce and Child Custody Laws</i>	179
1. <i>Burchard v. Garay</i>	181
2. <i>In re Marriage of Hansen</i>	182
<i>C. Child Custody Act of 1970—MCLA sections 722.21–31</i>	184
<i>D. Michigan Shared Parenting Act—Michigan House Bill 4691</i> ..	186
III. ANALYSIS.....	188
<i>A. Presumption of Joint Legal Custody and Substantially Equal Parenting Times</i>	188
<i>B. The Importance of a Parent’s Financial Contribution in Child Custody Determinations</i>	190
<i>C. Is the Michigan Shared Parenting Act in the Child’s Best Interests?</i>	192
<i>D. The Best Interests Standards as the Primary Determinant in Child Custody Decisions</i>	195
IV. CONCLUSION	196

I. INTRODUCTION

This Note analyzes the standard that guides the court’s decision-making in determining child custody decisions in Michigan, which is the “best interests of the child” standard.¹ Despite taking a gender-neutral approach to custody proceedings, the best interests standard is believed to favor maternal custody.² Recently, courts have promoted the

[†] B.A., 2016, cum laude, Oakland University; J.D., 2019, Wayne State University Law School. Thank you to Professor Sarah Abramowicz for her mentorship throughout the Note writing process, the Wayne Law Review members for their assistance, and my parents, sister, and Benjamin August for their unwavering support.

1. See Child Custody Act of 1970, MICH. COMP. LAWS ANN. §§ 722.21–31 (West 2017).

2. See Elizabeth Gresk, *Opposing Viewpoints: Best Interests of the Child v. The Fathers’ Rights Movement*, 33 CHILD. LEGAL RTS. J. 390, 390–91 (2013). Mothers are overwhelmingly favored as primary custodians for children. Even in the instances when

continuing involvement of both parents by enforcing a preference for substantially equal parenting time.³ Although it is argued that the best interests of the child standard is influenced by the tender years doctrine, the best interests standard does not assume that one form of custody is best for all families.⁴ This Note supports the best interests of the child standard over a presumption of joint legal custody and substantially equal parenting time.⁵ The best interests standard is the most objective when assessing the custody decision from the perspective of the child and prioritizes the child's interests ahead of the interests of the parents.⁶

This Note outlines the historical development of child custody laws, the gender disparity in custodial parenting that led to the fathers' rights movement, the Child Custody Act of 1970, and the Michigan Shared Parenting Act.⁷ The failed Michigan Shared Parenting Act would have fundamentally changed how Michigan courts determined custody disputes and would have enforced the presumptions of joint legal custody and substantially equal parenting times rather than the best interests of the child standard, which is the current standard under the Child Custody Act.⁸ This Note compares the advantages and disadvantages of the best interests standard with the presumption of joint legal custody and substantially equal parenting time.⁹ Finally, this Note concludes that the best interests of the child standard should remain the primary determinant of child custody decisions instead of the presumption of substantially equal parenting time, because the best interests standard affords the flexibility needed to assess unique custody issues on a case-by-case basis while still providing a framework to guide child custody determinations.¹⁰

both parents are determined to be "equally suitable to care for a child," courts award "maternal custody because of a presumption that mothers are inherently better suited to raise children," which leaves fathers with only visitation rights. *Id.* at 391.

3. See LESLIE JOAN HARRIS, JUNE CARBONE, & LEE E. TEITELBAUM, *FAMILY LAW* 548–49 (Erwin Chemerinsky et al. eds., 5th ed. 2014).

4. See Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 964–65 (2005).

5. See *infra* Part III.

6. See *infra* Part III.

7. See *infra* Part II.

8. See *infra* Section III.D.

9. See *infra* Part III.

10. See *infra* Part IV.

II. BACKGROUND

A. Historical Development of Child Custody Laws

The transition of American child custody laws has been a movement from a nearly absolute rule of paternal custody to a best interests standard enforced by judicial authority.¹¹ Historically, the natural right presumption entitled the father to custody as the natural guardian unless incompetent and unfit.¹² Into the mid-twentieth century, men earned legal protection and entitlement of male familial authority by providing support to their dependent children and wives.¹³ Initially, courts believed the best interests custody standard should be awarded to only one parent.¹⁴ Courts rejected shared custody arrangements on “the notion that a single parent with primary responsibility provided consistency in a child’s discipline and moral education.”¹⁵

During the 1960s, with the rise of women’s labor-market participation, women’s property rights, and rising divorce rates, courts demonstrated an increased willingness to promote women’s autonomy within marriage.¹⁶ By 1925, the preference for fathers had changed to a presumption in favor of mothers during a child’s “tender years.”¹⁷ The maternal preference originated from a judicial belief that mothers were better suited than fathers to care for children.¹⁸ Initially, activists

11. See HARRIS, CARBONE & TEITELBAUM, *supra* note 3, at 548–49.

12. Jay Einhorn, *Child Custody in Historical Perspective: A Study of Changing Social Perceptions of Divorce and Child Custody in Anglo-American Law*, 4 BEHAV. SCI. & L. 119, 127–28 (1986).

13. Deborah Dinner, *The Divorce Bargain: The Fathers’ Rights Movement and Family Inequalities*, 102 VA. L. REV. 79, 80–81 (2016). Dinner stated the following:

The common law of coverture gave “masters” of households multiple legal entitlements . . . to their wives’ unpaid domestic labor, and control over their marital children. Over the course of the nineteenth century, the rise of women’s property rights, the advent of maternal custody presumptions, and courts’ increasing willingness to promote individual rights within the family chipped away at gender hierarchy and promoted women’s autonomy within marriage . . . Men continued to enjoy many of its socioeconomic rewards including, in particular, an unequal division of caregiving labor within marriage.

Id.

14. HARRIS, CARBONE & TEITELBAUM, *supra* note 3, at 549.

15. *Id.* at 570.

16. Dinner, *supra* note 13, at 81–82, 86.

17. HARRIS, CARBONE & TEITELBAUM, *supra* note 3, at 549; *see also* Einhorn, *supra* note 12, at 128–29.

18. HARRIS, CARBONE & TEITELBAUM, *supra* note 3, at 570; Gresk, *supra* note 2, at 391. Gresk states the following regarding the origin of the maternal preference:

The fact that fathers were the primary wage-earners and increasingly spent time out of the home as industrial jobs became more popular, further supported the

considered the tender years presumption detrimental and discriminatory against men.¹⁹ However, women are generally perceived to possess characteristics and behavioral traits that are nurturing and suitable when caring for a young child.²⁰ These maternal characteristics and traits include being more empathic, compassionate, and attentive to a child's physical and emotional needs.²¹ The "father's natural right presumption" was overturned and replaced with the established presumption of the distinctive superiority of maternal love.²²

While a presumption of maternal love was evident, courts have recently recognized shared parenting and authorized joint custody to both parents who contribute to child rearing.²³ Society's "greater acceptance of shared parenting and more egalitarian gender roles" has allowed some jurisdictions to enforce a "preference for the continuing involvement of both parents."²⁴ "Under a joint custody award, the [parents] share the responsibility for raising the child, but this does not . . . mean an equal [allocation of parenting] time."²⁵ Some courts grant "joint legal custody, while denying joint physical custody."²⁶ Forty-seven states, including Michigan and the District of Columbia, have statutory provisions authorizing courts to award joint custody in either the form of legal, physical, or both.²⁷ The remaining three states, New York, North Dakota, and Rhode Island, do not have statutes providing for joint custody and permit joint custody awards through caselaw.²⁸ Some states explicitly reject joint legal custody and joint physical custody presumptions while other states are silent, giving the courts wide discretion to apply the best interests standard in custody decisions.²⁹

Not all jurisdictions have created a legal presumption in favor of shared custody and not all courts have imposed the involvement of both

conclusion that mothers were best situated to provide the care children needed. Consequently, children remained for the most part, in the custody of their mothers in the event of divorce or separation.

Gresk, *supra* note 2, at 391.

19. See Dinner, *supra* note 13, at 113–14.

20. David L. Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 MICH. L. REV. 477, 517 (1984).

21. *Id.* at 515, 517.

22. Einhorn, *supra* note 12, at 128.

23. HARRIS, CARBONE & TEITELBAUM, *supra* note 3, at 549.

24. *Id.*

25. 27A C.J.S. *Divorce* § 1057 (2017).

26. *Id.*

27. J. Herbie DiFonzo, *From the Rule of One to Shared Parenting: Custody Presumptions in Law and Policy*, 52 FAM. CT. REV. 213, 217 (2014).

28. *Id.* at 217 n.48.

29. *Id.* at 222. Some jurisdictions have also adopted a preference for joint custody such as California. *Id.* at 215–16.

parties.³⁰ Most courts now use the gender-neutral best interests standard when determining custody disputes, largely disregarding the tender years presumption.³¹ However, research suggests the tender years doctrine, which promotes the belief that a mother is the ideal parent to provide caregiving and emotional support, influences the best interests standard.³² As of 2013, courts in every state have used a form of best interests analysis when determining child custody.³³

In 2014, about five of every six custodial parents were mothers (82.5%) compared to one of every six being fathers (17.5%).³⁴ Fathers' advocates argue that even when a court takes a gender-neutral approach to custody proceedings, courts still overwhelmingly grant maternal custody and leave fathers with only partial visitation rights.³⁵ This gender disparity in custodial parenting led to the development of the fathers' rights movement.³⁶

B. Fathers' Rights Movement: Perceived Biases in Divorce and Child Custody Laws

In the 1970s, the fathers' rights movement challenged women's legal entitlements within divorce and child custody laws.³⁷ Supporters of the movement believe that children benefit from knowing and developing

30. See *id.*

31. See Maldonado, *supra* note 4, at 964 (quoting *State ex re. Watts v. Watts*, 350 N.Y.S.2d 285, 289 (1973) ("The simple fact of being a mother does not, by itself, indicate a capacity or willingness to render a quality of care different from that which the father can provide.")).

32. See *id.* at 967–68.

33. Gresk, *supra* note 2, at 390.

34. See *id.*; see also Timothy Grall, *Custodial Mothers and Fathers and Their Child Support*, U.S. DEP'T OF COM. (Jan.

2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/P60-255.pdf> (noting that the proportions in 2014 were not statistically different than the proportions from 1994 and custodial mothers were more likely than custodial father to have two or more children living with them in 2014 (47.2% and 36.4% respectively)).

35. See Gresk, *supra* note 2, at 391.

36. *Id.* at 391–92.

37. Dinner, *supra* note 13, at 86. Dinner details the fathers' rights movement as follows:

The fathers' rights movement adopted liberal legal frames that became hegemonic in the late civil rights era—sex discrimination, sex neutrality, and equal treatment—to argue for the elimination of women's legal entitlements upon divorce The turn to sex equality as a legal frame, however, catalyzed fault lines within the movement, generating disputes about the relationship of fathers' rights to the women's rights and men's rights movements.

Id.

relationships with both parents.³⁸ Fathers' rights activists are in favor of "a strong presumption . . . of joint custody at the state level," but want minimal federal involvement pertaining to child support.³⁹

Leaders of the fathers' rights movement believe "joint custody to mean . . . equal physical and legal custody."⁴⁰ They contend that a presumption of joint custody eliminates judicial bias favoring mothers over fathers and recognizes both parents' role in child rearing.⁴¹ Supporters of the fathers' rights movement claim divorced fathers genuinely sought "to play greater caregiving roles in their children's daily lives," and that joint custody would "advance[] sex equality under law."⁴² Further, fathers' rights activists argue that fathers are "losing relationships with their children" due to the historical presence of a sole custody system.⁴³ Absent fathers are often blamed for their child's "social, emotional, and behavioral problems."⁴⁴ Activists argue that children who grew up without a father are more likely to abuse drugs, have lower grades, engage in delinquent behavior, have higher high school dropout rates, and are less likely to attend college.⁴⁵

Fathers' rights activists argue that a father's presence in their child's life would enhance the child's development and "well-being by enabling them to receive greater parental affection and by avoiding the need for children to choose between loyalties to each of their parents."⁴⁶ Additionally, fathers' rights activists contend that joint custody would "enabl[e] fathers to fulfill caregiving roles" while allowing "mothers to fulfill breadwinning roles."⁴⁷

38. Gresk, *supra* note 2, at 392.

39. Dinner, *supra* note 13, at 123.

40. *Id.* at 126.

41. *Id.* at 125.

42. *Id.* at 125-26. There were some women's rights activists who supported joint custody because it advanced sex equality under law, specifically in the labor market. *Id.* at 126. Additionally, women's rights activists believed joint custody would foster a legal and political climate accommodating to fathers. *Id.* Conversely, some women's rights activists believed joint custody would only be beneficial if both parents "demonstrated the capacity for cooperation." *Id.* at 130.

43. *Id.* at 124.

44. Maldonado, *supra* note 4, at 925. "Studies have [demonstrated] that the relationship with the nonresidential parent is just as [imperative] to the [child's] emotional stability after divorce as the relationship with the residential parent." *Id.* at 958. Maintaining a relationship with both parents may help children cope "with the grief of not [residing] with both parents." *Id.* One study reported adult participants yearned for their fathers, even though other men "such as stepfathers, uncles, grandfathers, and older brothers" presumed the parental role. *Id.*

45. *See id.* at 951.

46. *See* Dinner, *supra* note 13, at 127.

47. *Id.* at 128.

Due to the increase of working mothers, modern fathers are assuming many of the child-rearing responsibilities that mothers traditionally performed.⁴⁸ Fathers' rights organizations highlight the importance of fathers embracing an active role rather than merely an economic role in post-divorce situations.⁴⁹

1. Burchard v. Garay

"Fathers' rights activists . . . fought for a legislative presumption that joint custody promoted the best interest of the child *in all* [custody] cases."⁵⁰ In *Burchard v. Garay*, the court did not enforce a legislative presumption and instead determined that when custody continues for a substantial period, maintaining the current arrangement with continuity and stability is in the best interests of the child.⁵¹ Ana Burchard gave birth to a son, William Jr.⁵² The father, William, denied paternity and "did not visit the child or provide any support."⁵³ About a year later, Ana filed a paternity and support action that established William as the father.⁵⁴ William visited his son for the first time at the end of that year and provided \$200 a month in support.⁵⁵ Both parents then filed a petition for exclusive custody, which the trial court awarded to William.⁵⁶

The California trial court applied the best interests standard and awarded William custody based on three considerations: William was able to provide more financially, had more reliable means of child care, and was willing to provide Ana with visitation.⁵⁷ The California Supreme Court reversed the decision and concluded the trial court did not err in using the best interests standard but misapplied it.⁵⁸ The California Supreme Court stated the grounds that the trial court relied on were

48. Maldonado, *supra* note 4, at 923-24; *see also In re Marriage of Estelle*, 592 S.W.2d 277, 278 (Mo. Ct. App. 1979) (awarding custody to the working father and emphasizing that the father was active in caring for his daughter, including preparing her breakfast and evening meals, picking her up from the babysitter or day care center, and putting her to bed).

49. Maldonado, *supra* note 4, at 944-45.

50. Dinner, *supra* note 13, at 131.

51. *Burchard v. Garay*, 724 P.2d 486, 490-491 (Cal. 1986).

52. *Id.* at 487-88.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 487-88.

57. *Id.* at 488.

58. *Id.* at 486.

insignificant compared to the fact that Ana had been the child's primary caretaker from birth to the date of the trial court hearing.⁵⁹

In determining the custody of the child, the California Supreme Court emphasized the importance of assessing stability and continuity in the child's life, and the potential harm "from disruption of established patterns of care and emotional bonds."⁶⁰ The court reasoned that emotional bonds between the parent and child include the "ethical, emotional, and intellectual guidance the parent [provides] to the child throughout their formative years."⁶¹ The court stated that there must be a factual determination, not based on assumptions or unsupported by scientific evidence, of how the parent best "provide[s] continuity of attention, nurturing, and care."⁶²

2. *In re Marriage of Hansen*

Advocates of the fathers' rights movement maintained that a presumption of joint physical custody would allow fathers to have a larger caregiving role, but the Iowa Supreme Court rejected this in *In re Marriage of Hansen*.⁶³ In the same case, the Iowa Court of Appeals assessed the best interests of the child standard and emphasized that "the best interests of [the child] is promoted by stability and continuity."⁶⁴ Lyle and Delores Hansen's marriage lasted for eighteen years and provided two children.⁶⁵ Delores was the primary caregiver, while Lyle was the main breadwinner.⁶⁶ The Iowa district court granted joint legal custody and joint physical custody of the two children, which would alternate on six-month intervals between Lyle and Delores.⁶⁷

59. *Id.* at 492 ("[T]here is no basis for assuming a correlation between wealth and good parenting or wealth and happiness." (quoting Ramsay Laing Klaff, *The Tender Years Doctrine: A Defense*, 70 CAL. L. REV. 335, 350 (1982))).

60. *Id.* at 493.

61. *Id.* at 489-90.

62. *Id.* at 492; *id.* at 494 (Bird, C.J., concurring).

63. See *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). The Supreme Court of Iowa in *In re Marriage of Hansen* stated the following:

While the amendments clearly require that courts consider joint physical care at the request of any party and that it make specific findings when joint physical care is rejected, the legislation reiterates the traditional standard—the best interest of the child—which appellate courts in the past have found rarely served by joint physical care.

Id. at 692.

64. *Id.* at 691.

65. *Id.* at 686.

66. *Id.*

67. *Id.* at 688.

Delores appealed and sought to overturn the district court's award of joint physical custody.⁶⁸ The Iowa Supreme Court awarded Delores, the primary caregiver, exclusive physical custody.⁶⁹ The court concluded that Delores would be able to provide the children with the best environment possible while "promot[ing] their long-term physical and emotional health."⁷⁰ There is evidence that Lyle and Delores had "significant difficulties in communication," a history of sexual improprieties, domestic abuse, and mutual distrust.⁷¹ A joint physical care context could disrupt the children's lives and would fail to advance the best interests of the children.⁷²

The court cited Iowa appellate court decisions that stated joint physical custody is "strongly disfavored" and is "not in the best interests of [the child] except in the most unusual of [situations]."⁷³ For instance, courts will award joint physical custody to both custodial parents upon the request of either parent or when "both parents historically contributed to physical custody in [about] the same proportion."⁷⁴ A court may determine not to award joint physical custody based on "specific findings of fact and conclusions of law" that it would not be in the best interests of the child.⁷⁵

In *Hansen*, the court referred to precedent which concluded that joint custody "induces a feeling of not belonging to either parent."⁷⁶ Although a child's best interests may benefit from continuing a relationship with both parents, joint physical custody may be harmful or disruptive and may "depriv[e] a child of a necessary sense of stability."⁷⁷ The court acknowledged that although no post-divorce physical custody arrangement is identical to the arrangement prior to the dissolution, it is imperative to try to preserve the greatest amount of stability.⁷⁸ Imposing

68. *See id.* at 689.

69. *Id.* at 701.

70. *Id.* at 700.

71. *Id.* at 700–01.

72. *See id.* at 700–01.

73. *Id.* at 691.

74. *Id.* at 697–98.

75. *Id.* at 692.; *see also id.* at 691 (citing IOWA CODE § 598.41(5) (2018)). The Iowa Code "mandate[s] certain procedures regarding the request, award, and denial of joint physical care" and promotes the "best interests of the child" standard as the traditional standard in child custody matters. *Id.* at 691–92.

76. *Id.* at 691.

77. *See id.*; *see also In re Marriage of Muell*, 408 N.W.2d 774, 776 (Iowa Ct. App. 1987) (noting that although Iowa statutes recognize the importance of maintaining a child's relationship with both parents after the onset of divorce, the state courts have emphasized that this preference does not instruct synonymously divided physical care).

78. *Hansen*, 733 N.W.2d at 696–97.

a new physical custody agreement on children can “cause serious emotional harm, and . . . not be in the child’s best interest[s].”⁷⁹

“[S]tability and continuity of caregiving” are the primary factors considered for joint physical custody because these factors allow the courts to ascertain intangible qualities, including “parental abilities and emotional bonds.”⁸⁰ These factors tend to support the parent who was primarily responsible for the physical care and the emotional development of the child prior to the divorce.⁸¹ The best interests factors do not have an inclination for mothers over fathers, or vice versa.⁸² Additionally, the best interests standard encourages courts to make child custody determinations with the goal of providing children with the most stable environment possible.⁸³

C. Child Custody Act of 1970—MCLA sections 722.21–31

A majority of the states have “established guidelines for determining the best interest[s] of the child,” and some state legislatures have relied on caselaw expanding the guidelines.⁸⁴ However, there is no consensus amongst the states as to what a child’s best interests means or how to value the best interests factors.⁸⁵ In Michigan, the Child Custody Act of 1970 governs custody disputes between a child’s parents.⁸⁶ Likewise, the Child Custody Act is the statutory authority that has guided child custody disputes from the time of its enactment.⁸⁷ Michigan law establishes that before deciding a custody matter, the trial court must consider and evaluate each factor enumerated in MCLA section 722.23 to determine the best interests of the child.⁸⁸ These factors include the following:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.

79. *Id.* at 697.

80. *Id.* at 695.

81. *Id.* at 696.

82. *Id.* at 700.

83. *Id.* at 696–97.

84. DiFonzo, *supra* note 27, at 216–17.

85. *Id.*

86. Child Custody Act of 1970, MICH. COMP. LAWS ANN. §§ 722.21–31 (West 2017).

87. See Mark A. Snover & Marcus M. Kasper, *Maintaining the Child’s Best Interest in the Determination of a Child Custody Dispute*, 96 MICH. B.J. 18 (2017).

88. See *Thompson v. Thompson*, 683 N.W.2d 250, 256 (Mich. Ct. App. 2004) (“The trial court cannot blindly accept the stipulation of the parents, but must independently determine what is in the best interests of the child.” (quoting *Phillips v. Jordan*, 614 N.W.2d 183, 186 (Mich. Ct. App. 2000))); see also *Arndt v. Kasem*, 353 N.W.2d 497 (Mich. Ct. App. 1984) (citing *Speers v. Speers*, 310 N.W.2d 455 (Mich. Ct. App. 1981)).

(b) The 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 or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.⁸⁹

Courts must establish a conclusion on each factor.⁹⁰ Regardless of any alternative dispute resolution the parties utilize, the court must

89. Child Custody Act of 1970, MICH. COMP. LAWS ANN. § 722.23.

independently decide “what custodial placement is in the best interests of the child” pursuant to the Child Custody Act.⁹¹ The best interests of the child is the primary factor in judicial determination of custody disputes.⁹² Michigan courts are required to determine the best interests of the child prior to enforcing a custody order.⁹³ The Child Custody Act does not grant “parents or any . . . party the [ability] to exclude the legislatively mandated ‘best interests’ factors from the court’s deliberations.”⁹⁴

D. Michigan Shared Parenting Act—Michigan House Bill 4691

In 2017, twenty-five states, including Michigan, considered laws to encourage shared parenting or make shared parenting a legal presumption even in the instance in which the parents disagree on shared parenting arrangements.⁹⁵ In May 2017, Michigan State Representative Jim Runestad introduced Michigan House Bill 4691, also known as the Michigan Shared Parenting Act.⁹⁶ The Act would have fundamentally changed the manner in which courts determine custody in Michigan.⁹⁷ The starting point for courts in custody decisions would have been the presumption of joint legal custody and substantially equal parenting time rather than the best interests of the child standard, which is the current standard under the Child Custody Act.⁹⁸ “‘Joint legal custody’ means [that] the parents share decision-making authority as to the important decisions affecting the welfare . . . of the child.”⁹⁹ The bill defined substantially equal parenting as the child residing with each parent for alternating periods of time, in which the court provides balance and

90. *Thompson*, 683 N.W.2d at 256.

91. *Harvey v. Harvey*, 680 N.W.2d 835, 836 (Mich. 2004).

92. *Snover & Kasper*, *supra* note 87.

93. *Harvey*, 680 N.W.2d at 838–39.

94. *Id.* at 839.

95. See Michael Alison Chandler, *More than 20 States in 2017 Considered Laws to Promote Shared Custody of Children After Divorce*, WASH. POST (Dec. 11, 2017), https://www.washingtonpost.com/local/social-issues/more-than-20-states-in-2017-considered-laws-to-promote-shared-custody-of-children-after-divorce/2017/12/11/d924b938-c4b7-11e7-84bc-5e285c7f4512_story.html?utm_term=.4510d2253982.

96. Michigan Shared Parenting Act, H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017) (stating that the Child Custody Act of 1970 will be renamed as the Michigan Shared Parenting Act, which will require parents to be “advised by the court of the presumption of joint legal custody and substantially equal parenting time[s]”).

97. See *id.*

98. *Id.*; see also MICH. COMP. LAWS ANN. §§ 722.21–.31 (West 2017).

99. Michigan Shared Parenting Act, H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017).

equality in overnights.¹⁰⁰ If a party believes joint legal custody and substantially equal parenting time should not be granted, they must rebut the presumption by clear and convincing evidence.¹⁰¹

Under the Michigan Shared Parenting Act, if a child is at least sixteen years of age, the child's preference on custody would have been given predominant weight by the judge.¹⁰² The bill emphasized how "both parents . . . contribute directly and financially, and . . . parenting includes a division of labor."¹⁰³ A new factor the bill accounted for is a parent's capacity and history of providing financial support towards the child's education endeavors, healthcare needs, and other necessities of the child's daily life.¹⁰⁴ This is different from the Child Custody Act.¹⁰⁵ The Child Custody Act states that although a court may consider a parent's financial condition, it is not a controlling factor in determining custody.¹⁰⁶ The Michigan Shared Parenting Act would have been a drastic change from the current best interests factors. It would have changed how courts determine child custody disputes because it provided a different foundational framework for courts to utilize.¹⁰⁷ Representative Runestad believes judges merely determine custody and do not take into account individualized differences between parents.¹⁰⁸ The bill would have removed a great deal of discretion from the judges and enforced a

100. *Id.* The Michigan Shared Parenting Act states the following: "'Substantially equal parenting time' means the child resides for alternating periods of time with each parent and that the court seeks to provide balance and equality in overnights, with 1 parent not to exceed 200 overnights in a year unless otherwise adjusted for or agreed to by the parties." *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Compare id.*, with Child Custody Act of 1970, MICH. COMP. LAWS ANN. §§ 722.23 (West 2017).

106. *Id.*

107. *Compare id.* (stating that although a court may consider a parent's financial condition, it is not a controlling factor in determining custody), with Michigan Shared Parenting Act, H.B. 4691, 99th Legislature, Reg. Sess. (Mich. 2017) (introducing a new factor that accounts for a parent's capacity and history of providing financial support towards the child).

108. See Kathleen Gray, *Required Joint Custody Bill Passes Michigan House Panel*, DET. FREE PRESS (June 20, 2017,

9:18 PM), <https://www.freep.com/story/news/politics/2017/06/20/joint-custody-bill-michigan-house/412119001/>; see also Emily Lawler, *Michigan Parents Could Get More Joint Custody, Shared Parenting Time Under House Bill*, MLIVE (Aug. 27, 2017), http://www.mlive.com/news/index.ssf/2017/08/michigan_parents_could_get_mor.html (characterizing child custody cases determinations by "proving who took a child to more activities").

standard of parenting that has changed over the past forty years.¹⁰⁹ However, the bill's presumptions of joint legal custody and substantially equal parenting time would have put the interests of the parent ahead of the interests of the child, assuming that one form of custody is suitable for all families.¹¹⁰ Despite the fact that the Michigan Shared Parenting Act did not pass, this is a necessary discussion given that this proposal garnered significant support and would have fundamentally changed child custody laws in Michigan.

III. ANALYSIS

A. Presumption of Joint Legal Custody and Substantially Equal Parenting Times

The Michigan Shared Parenting Act is an indication that more lawmakers are supporting joint legal custody and substantially equal parenting time and are responding to the fathers' rights movement's "appeal for gender equality" in child custody determinations.¹¹¹ For instance, Kentucky passed a law that makes joint physical custody and equal parenting time the "standard for temporary orders" while a divorce is being finalized.¹¹² The Florida legislature overwhelmingly passed a bill that presumed equal parenting time for child custody determinations, but Governor Rick Scott vetoed it.¹¹³ Similarly, the Michigan Shared

109. Gray, *supra* note 108 (providing some examples of how the standard of parenting has drastically changed including same-sex marriages and an increasing amount of people having children out of wedlock).

110. See Lawler, *supra* note 108; see also Gray, *supra* note 108.

111. Chandler, *supra* note 95; see also Gray, *supra* note 108; H.B. 4691, 99th Leg., Reg. Sess. (2017) (stating that "'the best interests of the child' means . . . [m]aintaining an ongoing relationship with each parent and the right of the child to a *substantially equal parenting time arrangement* that promotes a strong relationship between a child and his or her parents." (emphasis added)).

112. See Chandler, *supra* note 95; see also KY. REV. ANN. § 403.270 (West 2018).

113. See Chandler, *supra* note 95; see also S.B. 668, 118th Leg., Reg. Sess. (Fla. 2016). In 2016, the Florida legislature passed Senate Bill 668, which would have changed the laws governing the dissolution of marriage, spousal support, and time-sharing. *Id.* Current law requires a judge to prioritize the needs and interests of the child when devising a parenting plan and time-sharing schedule. See FLA. STAT. § 39.810 (2018). The bill would have required a court to consider particular alimony factors and obligate the court to make specified findings before ruling on a request for alimony. S.B. 668, 118th Leg., Reg. Sess. (Fla. 2016). Additionally, the bill would have established a premise that a minor child should spend relatively equal amounts of time with each parent and would have revised the factors that a court must evaluate when establishing or modifying parental responsibility or a parenting plan. The bill passed the Florida State Senate twenty-four to fourteen and the Florida State House seventy-four to thirty-eight but was

Parenting Act would have made substantially equal parenting time the starting point for custody assessments.¹¹⁴ The National Parents Organization, an organization guided by the fathers' rights movement, encouraged lawmakers to push such bills to ensure children have the opportunity to build relationships with their fathers.¹¹⁵

Advocates of the fathers' rights movement claim the legal system is biased against fathers, and that this bias makes it difficult for fathers to obtain sole or joint custody.¹¹⁶ Many divorced fathers acknowledge that the language of child custody laws are mostly gender-neutral, but contend that judges continue to favor mothers and perceive fathers to be less competent parents.¹¹⁷ One judge noted that "there remains a temptation for many judges to consider the right to custody as the mother's to lose and unless her fitness is legitimately challenged, the father's right of equal consideration is often ignored."¹¹⁸ Many divorced fathers believe judges view them as "visiting uncles" who are awarded "no right to contribute in their children's upbringing."¹¹⁹ The presumption of joint legal custody and substantially equal parenting time would allow fathers to remain involved in their children's lives and upbringing after divorce.¹²⁰ Further, the presumption would encourage a gender-neutral approach to determining custody and would reject the maternal preference that is currently being applied with the best interests standard.¹²¹

However, some states have recognized the difficulties of enforcing a joint custody order between newly divorced parents.¹²² Additionally, a

ultimately vetoed by Governor Rick Scott, who believed the bill favored the wants of a parent before the child's best interests. *See* S.B. 668, 118th Leg., Reg. Sess. (Fla. 2016), <https://www.fl.senate.gov/session/bill/2016/0668/ByVersion>.

114. *See* H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017).

115. Gray, *supra* note 108.

116. Maldonado *supra* note 4, at 967.

117. *Id.*

118. *Id.* at 968–69 (quoting *Ayyash v. Ayyash*, 700 So.2d 752, 755 n.3 (Fla. Dist. Ct. App. 1997)).

119. Maldonado, *supra* note 4, at 969.

120. *See id.* at 984–85.

121. *See id.* at 964–65.

122. DiFonzo, *supra* note 27, at 219. Numerous states have avoided the terms "joint custody presumptions or preferences" in their statutory provisions and have instead directed courts to award "as much parenting time with each parent as is reasonably possible." *Id.* at 217. States continue to frame custody determinations in terms of the best interests of the child and presumptions and preferences are subservient to the traditional best interests standard. *See id.* at 217–18. For instance, Iowa's custody statute lacks a custody presumption and notes the court "may" provide for joint custody. *Id.* at 218. Arkansas amended its child custody laws in 2013 to indicate that joint custody is "favored" and defined as "the approximate and reasonable equal division of time with the

presumption of joint legal custody and substantially equal parenting time is problematic as it requires both parents to cooperate and devote their time to ensure the arrangement is not burdensome on the child.¹²³ New York's highest court stated that a court-ordered arrangement ordering joint physical custody would "only enhance familial chaos" between "already embattled and [resentful] parents."¹²⁴ Even if the parties had agreed to the joint custody arrangement, joint custody awards are not appropriate if the parties are hostile towards each other and are unable to cooperate.¹²⁵ In *Wellman v. Wellman*, the Michigan Court of Appeals held that when either party requests joint custody, the plain language of MCLA section 722.26(a) does not create a presumption in favor of joint custody.¹²⁶ Instead, the statute "merely requires that 'the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request.'"¹²⁷ The court in *Wellman* found there was ample evidence of the parties' inability to communicate and cooperate, and denied joint physical custody because it was not in the best interests of the young children.¹²⁸ If courts order joint physical custody that is not favorable to the child, such an order would be adverse to promoting a stable and satisfactory living environment.¹²⁹

B. The Importance of a Parent's Financial Contribution in Child Custody Determinations

Currently, under the best interests factors under the Child Custody Act, a court may consider a parent's financial condition, but it is not a controlling factor in determining custody.¹³⁰ "[T]he mere fact that the financial status of one parent is" superior to another parent is "not

child by both parents individually as agreed to by the parents or as ordered by the court." *Id.*

123. *See id.* at 219–20.

124. *Id.* at 216, 219 (quoting *Braiman v. Braiman*, 378 N.E.2d 1019, 1021 (N.Y. 1978) (stating that "joint custody is encouraged primarily as a voluntary alternative for relatively stable, amicable parents behaving in a mature civilized fashion . . .").

125. *See Braiman*, 378 N.E.2d at 1021.

126. *Wellman v. Wellman*, 512 N.W.2d 68, 72 (Mich. Ct. App. 1994).

127. *Id.* at 72.

128. *Id.* at 69–70; *see also* MICH. COMP. LAWS ANN. § 722.26a(1)(b) (West 2017) ("The court shall determine whether joint custody is in the best interest of the child by considering . . . [w]hether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.").

129. *See Wellman*, 512 N.W.2d at 71; *see also* MICH. COMP. LAWS ANN. § 722.23(d) (West 2019).

130. 27C C.J.S. *Divorce* § 1066 (2017).

sufficient to justify a custody award.”¹³¹ Under the failed Michigan Shared Parenting Act, “the capacity and a history of the parents providing for, through financial support and otherwise,” various, enumerated needs of their child would have been a factor the courts would use when making custody determinations.¹³² In *Dempsey v. Dempsey*, the Michigan Supreme Court agreed with the Michigan Court of Appeals in concluding “that the circuit judge committed a ‘palpable abuse of discretion’ in the weight he afforded to the [father’s] greater economic capacity to provide for the children’s material needs.”¹³³ “The trial judge evaluated the relevant economic circumstances of the parties” in such a manner that it almost precluded the mother from being granted custody, as there was excessive weight given to the economic circumstances of the parties.¹³⁴ While the parties’ economic circumstances are an important factor in child custody determinations, it should never be conclusively determinative.¹³⁵

The court in *Mazurkiewicz v. Mazurkiewicz* also rejected the prominence of a party’s economic circumstances in custody determinations and stated that undue emphasis on a party’s economic status would have a detrimental effect upon the child’s best interests.¹³⁶ In *Mazurkiewicz v. Mazurkiewicz*, the Michigan Court of Appeals acknowledged that trial courts should not place undue reliance on MCLA section 722.23(c), the factor that takes into account the economic capacity and disposition of the parties to provide for their children.¹³⁷ The plaintiff argued that the trial court erroneously “weighed [that] factor in favor of [the] defendant on the basis of his stable earnings and employment history.”¹³⁸ Although the court did not find that undue reliance had occurred in the case, it recognized that placing undue reliance on the economic factor is unjust because, in cases when the mother is a homemaker, she will be economically disadvantaged.¹³⁹ The court further stated that placing “undue emphasis on the economic factor

131. *Id.*

132. Michigan Shared Parenting Act, H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017).

133. 296 N.W.2d 813, 813 (Mich. 1980).

134. *Id.* at 814.

135. See *Dempsey v. Dempsey*, 292 N.W.2d 549, 554 (Mich. Ct. App. 1980).

136. See *Mazurkiewicz v. Mazurkiewicz*, 417 N.W.2d 542, 546 (Mich. Ct. App. 1987).

137. *Id.* (noting section 722.23(c) states, “[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.”).

138. *Id.*

139. *Id.* Although the court recognized undue reliance should not be placed on the financial factor, it found that in this case the trial court did not place undue influence on the factor. *Id.*

will have a potentially prejudicial effect upon the child's best interest[s]."¹⁴⁰

Generally, a parent with greater economic stability does not necessarily equate to the parent being emotionally invested in the child's best interests.¹⁴¹ A parent who has demonstrated earning capacity must be willing to financially invest for the advantage of their child and provide for the child's other necessities, including emotional, physical, and intellectual well-being.¹⁴² As evidenced by caselaw, the financial emphasis pursuant to the Michigan Shared Parenting Act would have created an unjust consideration.¹⁴³

C. Is the Michigan Shared Parenting Act in the Child's Best Interests?

The presumption of substantially equal parenting time under the Michigan Shared Parenting Act would have created "confusion and instability for [a child] at the . . . time" when certainty and finality is of the utmost importance.¹⁴⁴ This is particularly true if the parents are not devoted to the substantial collaboration and cooperation needed to have a successful joint custody arrangement.¹⁴⁵ Deciphering a child's best interests by using a presumption assumes the presumption works well for most families when it may actually hinder achievement of the child's best interests in circumstances in which the presumption is not appropriate.¹⁴⁶ Further, a joint custody presumption does not provide any incentive for a parent to increase or maintain their caretaking during the

140. *Id.*

141. See FRIEND OF THE COURT BUREAU, CUSTODY AND PARENTING TIME INVESTIGATION MANUAL 11, 40 (2018), http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/cp_investigationmnl.pdf.

142. See generally *id.* ("The amount of income is not the sole basis for determining the capacity of a parent to provide for the needs of a child Notwithstanding a parent's earning capacity, the parent must be willing to use income for the benefit of the child.").

143. See discussion *supra* Section III.B.

144. See DiFonzo, *supra* note 27, at 216.

145. *Id.*

146. See Katharine T. Bartlett, *Child Custody in the 21st Century: How the American Law Institute Proposes to Achieve Predictability and Still Protect the Individual Child's Best Interests*, 35 WILLAMETTE L. REV. 467, 477 (1999); see also *Braiman v. Brainman*, 378 N.E.2d 1019, 1019 (N.Y. 1978) ("Entrusting the custody of young children to their parents jointly, especially where the shared responsibility and control includes alternating physical custody, is insupportable when parents are severely antagonistic and embattled.").

marriage.¹⁴⁷ Awarding custody to a parent who does not take the initiative to care and raise their child is not in the child's best interests.¹⁴⁸

Many judges, advocates against domestic violence, family court employees, and the family law section of the State Bar of Michigan voiced their opposition to the Michigan Shared Parenting Act.¹⁴⁹ The state legislature introduced the Michigan Shared Parenting Act to address gender stereotypes that favor mothers over fathers in custody disputes decided under the Child Custody Act.¹⁵⁰ The bill would have established one form of custody—equal parenting time—as being suitable for all families, but such an assumption is unfair to the child.¹⁵¹ The presumption of substantially equal parenting time “would limit the court’s ability to examine” each factor when determining the child’s best interests.¹⁵² Members of the Michigan Judges Association believed that the bill would have put the best interests of the parents ahead of the best interests of the child and that the “presumption (of shared custody) disregards the actual facts as to which parent provides day-to-day support, maintenance[,] and nurturing of the child and instead substitutes the mere presence of a parent.”¹⁵³ In a situation when a child may benefit from one parenting situation over another, it is best to think of the child’s interests during formative years and to promote a stable growing environment.¹⁵⁴

Under the Michigan Shared Parenting Act, the court would have awarded substantially equal parenting time unless one parent demonstrated instances of abuse, neglect, or domestic violence by clear and convincing evidence.¹⁵⁵ In divorce cases, it can be difficult for domestic violence victims to demonstrate a history of abuse.¹⁵⁶ To establish an evidentiary record of abuse, the victim must have previously

147. See Bartlett, *supra* note 146, at 481.

148. See *id.*

149. See Gray, *supra* note 108.

150. See Tracy Rozens, *Opponents Say Reforming Michigan Custody Law Not in Best Interest of Children*, THE PENINSULA (May 9, 2017), <https://michiganpeninsulanews.com/news/4088-opponents-say-reforming-michigan-custody-law-not-best-interest-children/>.

151. See *id.*

152. Evan Dean, *Bill Would Revamp How Child Custody Decided*, WOOD TV (Aug. 21, 2017, 11:13 PM), <http://woodtv.com/2017/08/21/bill-would-revamp-how-child-custody-decided/>.

153. Gray, *supra* note 108.

154. See Gresk, *supra* note 2, at 390.

155. See Michigan Shared Parenting Act, H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017).

156. Rozens, *supra* note 150.

disclosed the violence to law enforcement or medical personnel.¹⁵⁷ If a party was not able to show by clear and convincing evidence a history of abuse, neglect, or domestic violence, a court would have mandated substantially equal parenting time, which would have put the child and adult victims of domestic violence at a greater risk of harm.¹⁵⁸ Additionally, under the Michigan Shared Parenting Act, if the child was at least sixteen years of age, the judge would have given predominant weight to the child's preference on custody.¹⁵⁹ Giving substantial weight to the child's preference would present the child with a difficult situation by forcing them to outwardly favor one parent over the other.¹⁶⁰ Despite the child being able to provide input of their custodial preference, an unfair burden would be placed on the child tasked with this decision.¹⁶¹ These provisions of the Michigan Shared Parenting Act are not the most effective way to obtain the child's input while being mindful of the child's best interests.¹⁶²

Although it may be argued that the best interests standard provides courts with too much discretion when determining custody disputes, the best interests standard is the most objective with regard to assessing the custody decision from the child's perspective.¹⁶³ Given that the life of the child changes equally, if not more, than those of the parents, it is important to protect and prioritize the child's interests.¹⁶⁴ It is misleading to assume that all family dynamics are substantially similar in divorce proceedings.¹⁶⁵ Awarding joint legal and physical custody based on a presumption also assumes that the parents have a working relationship

157. *Id.*

158. See H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017); Rozens, *supra* note 150. This is assuming the party cannot rebut the presumption using other factors in determining the best interests of the child.

159. See H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017); see also MICH. COMP. LAWS ANN. §§ 722.21–31 (West 2017).

160. See H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017) (giving children's preferences regarding custody predominant weight once they reach sixteen years old.).

161. See *id.*

162. See *id.*

163. See Carl E. Schneider, *Discretion, Rules and Law: Child Custody and the UMDA's Best-Interest Standard*, 89 MICH. L. REV. 2215, 2219 (1991) (stating the best interests standard has been widely criticized on the grounds that it is indeterminate and "too little a rule and too much an award of discretion."); *supra* Part III; see also Schneider, *supra*, at 2225–26 (stating that criticisms are reductionist of "best interests" complexity).

164. See Harris, *supra* note 3, at 548–49.

165. See, for example, the factors enumerated in MCLA section 722.23. MICH. COMP. LAWS ANN. § 722.23 (West 2017). How a court decides custody necessarily depends upon on it balancing various family dynamics. See *id.*

and are both willing to put the child's best interests ahead of their own.¹⁶⁶ It is not the amount of parenting time that is important, but rather the quality of the parenting and the relationship the children have with their parents.¹⁶⁷

D. The Best Interests Standards as the Primary Determinant in Child Custody Decisions

Some may argue that the Michigan Shared Parenting Act would have provided fathers with the opportunity to overcome the maternal preference promoted by courts and would have allowed both parents the opportunity to remain involved in the upbringing of their child.¹⁶⁸ The presumption of shared parenting under the Michigan Shared Parenting Act would have replaced the approach in which courts award mothers significantly more parenting time than fathers.¹⁶⁹ The presumption of shared parenting would have rid any potential gender bias in custody decisions, redefined gender roles, and enabled children to maintain a relationship with both parents.¹⁷⁰ The increasing number of younger fathers and of fathers committed to caregiving and household responsibilities provides women with the opportunity to return to school or advance their careers.¹⁷¹ Further, the best interests standard is simply a "state-prescribed view of the children's interests," in which the judge lacks guidance of a rule that creates a presumption for, or placing the burden of proof on, either party.¹⁷²

While the presumption of joint legal custody and substantially equal parenting time promotes an active role for both parents, it does not prioritize the best interests of the child over the best interests of the

166. See Chandler, *supra* note 95 (stating that children may benefit from shared parenting, largely because children in joint custody arrangements have civil and amicable parents).

167. *Id.* (noting children are not cognizant of the number of minutes spent with each parent but children do "respond if they have a [positive] relationship with their parents.").

168. See Michigan Shared Parenting Act, H.B. 4691, 99th Leg., Reg. Sess. (Mich. 2017); see also HARRIS, CARBONE & TEITELBAUM, *supra* note 3, at 549; Rozens, *supra* note 150.

169. See Chandler, *supra* note 95 ("The way the system is set up now, two parents enter the courtroom. When they leave, one is a parent, and the other is a visitor.").

170. See *id.*

171. *Id.* (stating that if society is "to create a new generation of men who view caregiving and work at home as meaningful work," then fathers must be accepted into non-traditional roles and protections must be created "in the [instance] that their marriages do not last.").

172. Schneider, *supra* note 163, at 2221 (quoting David L. Chambers' criticism of the best interests standard as being a standard that refers to the majority or judge's preferences over the children's interest).

parents.¹⁷³ The presumption treats the mere presence of a parent as evidence that the parent is involved in all aspects of the child's life.¹⁷⁴ Conversely, the best interests standard is the most suitable approach in determining child custody matters because it recognizes a parent's daily support, care, and nurturing of the child.¹⁷⁵ The best interests standard determines custody disputes on an individualized basis by recognizing that different family dynamics require specific custody arrangements.¹⁷⁶ Furthermore, the best interests standard affords the flexibility needed to assess unique custody issues on a case-by-case basis while still providing a framework to guide child custody determinations.¹⁷⁷

IV. CONCLUSION

Divorce is a challenging time in a parent and a child's life. It is a trying experience in which families are significantly altered and the legal system plays a substantial role in determining custody arrangements. The best interests standard does not simply assume that one form of custody is suitable for all families and accounts for significant variation in family dynamics. This standard encourages child custody determinations to be made with the goal of providing children with the most stable environment possible.¹⁷⁸ The best interests standard should remain the primary determinant of child custody disputes instead of the presumption of joint legal custody and substantially equal parenting time, as it is the most objective in assessing the arrangement that is best for the child. Given the responsibility entrusted to the courts in divorce proceedings, it is imperative that this common-sense approach be enforced to ensure the well-being of the child is prioritized over that of the parents.

173. See Gray, *supra* note 108.

174. See *id.*

175. *Id.*

176. See factors enumerated in MCLA section 722.23. MICH. COMP. LAWS ANN. § 722.23 (West 2017); see also *In re Hansen*, 733 N.W.2d 683, 697 (Iowa 2007).

177. *Hansen*, 733 N.W.2d at 696.

178. *Id.*