

STATE OF MICHIGAN  
48TH CIRCUIT COURT FOR THE COUNTY OF ALLEGAN  
113 CHESTNUT ST, ALLEGAN, MI 49010  
(269)-673-0300

STEPHANIE ANN MARSH,

CASE NO: 18-59153-DM

Plaintiff,

HON. MATTHEW ANTKOVIAK

v

BRETT DAVID MARSH,

Defendant,

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Kendra Ortega (P82611)  
Plaintiff's Attorney  
217 East 24<sup>th</sup> Street, Ste. 102, Box M  
Holland, MI 49423  
616-288-4664

Tara Sharp (P72908)  
Defendant's Attorney  
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**REFEREE RECOMMENDATION AND ORDER REGARDING CUSTODY, TAXES,  
AND CHILD SUPPORT**

**CASE HISTORY**

A final judgment of divorce was entered in this matter on February 7, 2019. The Judgment provided that the parties were to share joint legal and joint physical custody of the youngest two children (Jace, Joshua). The Plaintiff-Mother was granted sole legal and sole physical custody of the two eldest children who have no parenting time with the Defendant. Parenting time for Defendant-Father with regards to the youngest children was to be a two-week rotation which would consist of every Tuesday, Thursday, Friday, and Saturday overnight in week one and every Tuesday, Thursday, Sunday overnight in week two. Defendant-Father was granted no parenting time with the eldest children. Plaintiff-Mother was granted parenting time every Monday, Wednesday, and Sunday overnight in week one and every Monday, Wednesday, Friday and Saturday overnight in week two. The judgment of divorce also indicated that the parties would alternate claiming the two younger children on their taxes. A new order regarding custody and parenting time was then entered on November 4, 2021. This order had the effect of granting the Defendant-Father primary physical custody of the 2 younger children. Defendant was also awarded sole legal custody of the children until the end of the 2021-2022 school year of Martin Schools at which time the parties were to share joint legal custody. Plaintiff-Mother was permitted to have access to the children's medical and school records. The parties were also to use Our Family Wizard for communication. With regards to Plaintiff-Mother's parenting time,



she was to complete the three remaining family counseling sessions prior to unsupervised parenting time. After completion of the sessions as long as there are no objections/concerns raised by the therapist, for a four-week period she was to have parenting time 3 hours every Saturday from 12:00pm to 3:00pm. Thereafter for a four-week period she was to have 5 hours every Saturday from 12:00pm to 5:00pm. Thereafter for a period of eight weeks, she was to have every Saturday for 8 hours from 10:00am until 6:00pm. Thereafter, she was to have alternating weekends during the school year from Friday at 6:00pm until Sunday at 6:00pm. Each step must be completed before moving to the next step. All of Plaintiff's parenting time is premised on the parenting time proceeding without issue or concern from the counselors. Defendant-Father was also required to notify the Plaintiff of medical appointments as soon as is practical. A consent order regarding show cause was entered on June 20, 2023, which indicated that the Plaintiff-Mother was able to claim the children on taxes for 2023. Plaintiff-Mother has now filed a Motion Regarding Custody and Change of Schools and Defendant-Father has filed a Motion Regarding Taxes and Child Support.

### **HEARING ON AUGUST 7, 2023**

Both parties appeared with counsel and via zoom for the hearing. With respect to the Defendant's Motion, Defendant argued that none of the recent orders in the file addressed who should be claiming the minor children on their annual income taxes. Defendant stated that he has had primary physical custody of the minor children and that he has had the majority of the overnights and as a result should be entitled to claim the dependents in his care on his annual income taxes. Defendant also claimed that there was no child support order in the file with respect to the children and requested that child support be reviewed. With regards to the Plaintiff's motion, Plaintiff claimed that she has followed all the recommendations of the previous order and has completed the steps necessary to increase her parenting time. Plaintiff also claims that she has remarried and that the Defendant has recently divorced. Defendant's recent ex-wife had also submitted an affidavit indicating that she was concerned with regards to the treatment of the children. Plaintiff also indicated that she was seeking to change the children's schools only if her motion regarding custody was granted. This Referee took both motions under advisement in order to review the parties' responses which were filed with the Court but not placed in the court file prior to the start of the hearing.

### **RECOMMENDATION**

With respect to the Defendant's Motion, it is recommended that the motion be granted in part and denied in part. This Referee believes that it is appropriate to deny the Defendant's motion as it pertains to claiming the children as dependents on taxes. While Defendant is correct that he currently has the children the majority of the time and that under IRS guidelines he would typically be entitled to claim the children as dependents, this issue was already decided in the parties' consent judgment of divorce. The judgment of divorce indicates on page 11 that Plaintiff is entitled to claim the minor child Jace on taxes in all even numbered years with the Defendant claiming the minor child Joshua on all even numbered years. This provision appears to be a property settlement agreed upon by the parties. It further appears that the parties intended on not addressing who claims the children on odd years as there is no statement in the judgment regarding exemptions during odd numbered years. Property-settlement agreements are, as a



general rule, final and cannot be modified. *Zeer v. Zeer*, 179 Mich.App. 622, 624; 446 N.W.2d 328 (1989). It is well settled that property-settlement agreements are enforceable and that a court is bound by the terms of the agreement in the absence of fraud, duress, mutual mistake, or severe stress that prevented a party from understanding in a reasonable manner the nature and effect of the act in which he or she was engaged. *Smith v Smith*, 292 Mich App 699, 702; 823 NW2d 114 (2011). For these reasons, this Referee does not believe it is appropriate to modify the terms of that agreement, and it is recommended that the Defendant's motion be denied with respect to taxes. If the parties believe that exemptions in odd years should have been addressed in their judgment and was mistakenly not included due to mutual mistake, a hearing would have to be scheduled with the presiding Judge to address that issue. With regards to child support, the last child support order in this file was entered in 2019 and it is clear based upon a review of the file and the numerous changes that have been made to the parties' custody and parenting time arrangements, that there is proper cause to reevaluate child support. It is thus recommended that the Defendant's motion be granted with respect to the issues surrounding child support and that this matter be referred to the Friend of the Court for a child support review.

With regards to the Plaintiff's Motion for a Change of Custody and Change of Schools, it is recommended that the motion be denied for a lack of proper cause/change in circumstances. Plaintiff indicates that she has remarried and that the Defendant has recently divorced. These are normal life changes which are not sufficient for the Court to invade the last custody order. Plaintiff does attach an affidavit from Defendant's ex-wife stating some of her concerns with the Defendant's parenting and general behavior, however this affidavit lacks specificity and simply indicates that she has concerns with the Defendant's parenting and his alleged bad mouthing of the Plaintiff. Without further information or more specifics, this Referee does not believe that the threshold has been met to reevaluate custody and parenting time in this matter. It is thus recommended that the Plaintiff's motion with respect to custody be denied. Plaintiff also indicated during the hearing that her request to change the children's schools was conditional on her custody motion being granted, as this Referee is recommending that the custody provisions of the motion be denied, it is also recommended that the Plaintiff's request to change the children's school likewise be denied.

Each party shall notify the Friend of the Court in writing of any changes in their mailing address, residence, and employment information. MCR 3.211(C)(2).

### **REPORTING REQUIREMENTS**

All other provisions of the orders of this Court, not modified herein, shall remain in full force and effect.

8/28/23

Date



Preston J. Pietszak (P83389)

Attorney/Referee

## ORDER

This matter having been brought before the Court on the Referee's Recommendation For Order Regarding Custody, Taxes, and Child Support, and the Recommendation having been approved by the Court.

IT IS HEREBY ORDERED that the Referee's Recommendation For Order Regarding Custody, Taxes, and Child Support is hereby adopted as an Order of the Court.

This Order shall be effective immediately.

Even if an objection is filed, this Order must be followed unless changed by a later court order.

Either party may request a de novo hearing within 21 days of the date of mailing of this Order by filing: 1) specific objections and 2) a notice of hearing with the Circuit Court Clerk's Office. The party filing the objection must serve all of the above on the other party or their attorney, and the Friend of the Court.

The Court may not grant a de novo hearing if the objecting party does not file all required pleadings, does not file the required pleadings in the permitted timeframe, or does not specifically state the rulings that are the subject of the objection.

IT IS FURTHER ORDERED that the Court's previous orders in this matter shall remain in full force and effect to the extent that they do not conflict with this order.

8/29/23

Date

  
HONORABLE MATTHEW ANTKOVIK (P59449)  
CIRCUIT COURT JUDGE

## CERTIFICATE OF MAILING

I certify that on this date I mailed a copy of this document to the parties and their attorneys by first-class mail to their last known addresses as defined in MCR 3.203.

8/29/23

Date





STATE OF MICHIGAN  
IN THE 48<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

Stephanie Ann Marsh  
v

CASE NO.: 18-59153-DM

Brett David Marsh,

**Referral Order**

This matter having come before the Court on ☐ a Motion of the Plaintiff, **OR** ☒ a Motion of the Defendant, **OR** ☐ a Stipulation of the Parties, and the Court being fully advised in the premises:

☒ This matter is referred to the *Allegan County Friend of the Court* for an investigation and recommendation regarding: ☐ Custody ☐ Parenting Time ☒ Child Support

☐ This matter is referred to *Kalamazoo Psychology, LLC* for an investigation and recommendation regarding: ☐ Custody and Parenting Time

The scope of the investigation by Kalamazoo Psychology, LLC shall address all factors of the Child Custody Act, **AND** the additional related concerns of:

- |   |  |
|---|--|
| <input type="checkbox"/> Violent or Assaultive Behavior         | <input type="checkbox"/> Substance Abuse Allegations |
| <input type="checkbox"/> Sexual Abuse Allegations               | <input type="checkbox"/> Flight Risk with the Child  |
| <input type="checkbox"/> Child's Mental wellbeing/mental health |  |

*If the request is for modification of an existing custody or parenting time order, the Court has determined that proper cause exists or a change of circumstances has occurred.*

- ☐ Prior to commencing the investigation involving custody or parenting time, a fee of \$300.00 shall be paid to the Clerk of the Court as follows:
- ☐ The Plaintiff and the Defendant shall split this cost equally (\$150.00 each), **OR**
- ☐ The Plaintiff shall pay \_\_\_\_\_ % and the Defendant shall pay \_\_\_\_\_ %, **OR**
- ☐ The Court has determined that the parties are indigent and therefore the \$300.00 fee payable to the Clerk of the Court is hereby waived, **OR**
- ☐ The Court having ordered the investigation at its own initiative, no fee is ordered.

The investigation will be scheduled once documentation is provided to the Friend of the Court office by the parties or counsel that the \$300.00 fee has been paid. (This fee does not apply for FOC investigations for child support). If the fee has not been paid within 30 days from the Referral Order date the Friend of the Court office will inform the Court and the Referral Order will be dismissed.

Date: 8/29/23

  
Circuit Court Judge

**PROOF OF SERVICE**

I certify that the parties or their attorneys and the Friend of the Court were served a copy of the Referral Order by ☒ ordinary mail at the address in the file, or by ☒ personal service.

Date: 8/29/23

  
Signed \_\_\_\_\_