

EXAMINERS' ANALYSIS OF QUESTION 8

Motions to change custody awards are governed by statute. Under MCL 722.27(1)(c), a court may revisit a prior custody award on a showing of proper cause or a change of circumstances. Michigan case law has interpreted this language as limiting a court's ability to re-evaluate a prior custody award.

In *Baker v Baker*, 411 Mich 567 (1981), the Michigan Supreme Court explained that the portion of the Child Custody Act pertaining to modifications was "intended to minimize the prospect of unwarranted and disruptive change[s] of custody . . ." *Baker*, at 576-577. In *Vodvarka v Grasmeyer*, 259 Mich App 499 (2003), the Court of Appeals took the concept a step further, focusing on the language in the statute salient to modification motions in MCL 722.27(1)(c): "...the court may modify or amend its previous judgments or orders for proper cause shown or because of a change of circumstances..." See *Vodvarka*, at 499 (emphasis added). *Vodvarka*, relying on other Michigan precedent, concluded "if the movant does not establish proper cause or change in circumstances, then the court is precluded from holding a child custody hearing." *Vodvarka*, 259 Mich App at 508. See *Rossow v Aranda*, 206 Mich App 456, 458 (1994); *Killingbeck v Killingbeck*, 269 Mich App 132, 145-146 (2005), applying *Vodvarka*. Therefore, for a court to even entertain a request to change custody, the movant must demonstrate a change of circumstances or proper cause.

The grounds presented by Oscar do not amount to a change of circumstances or proper cause to re-evaluate the prior custody award. A child's change in custody preference, while certainly a factor in the best interest constellation, is not controlling in the threshold analysis. That the children have grown older and become more desirous of including their father in their school sports is certainly a development in their lives but not one that "could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Vodvarka*, 259 Mich App at 511 (emphasis added). As *Vodvarka* added, not any change will do, and those attendant to normal life changes will not suffice. A remarriage and expanded family unit would likely be considered insufficient. See *Vodvarka*, 259 Mich App at 513.

Yes, the answer may be different if Oscar were simply seeking additional parenting time instead of a custody change. Changes in parenting time do not carry with them the destabilizing effects of changes in custody. See *Shade v Wright*, 291 Mich App 17 (2010). In this regard, normal life changes could warrant a hearing where the best interest of the child would be considered in determining any modifications to a prior parenting time award. *Shade*, 291 Mich App at 25-29. In short, while a child growing older and wanting greater involvement with a parent related to school and extracurricular activities would not warrant proper cause or a change in circumstances nor warrant re-evaluation of a custody award, these changes may nevertheless warrant re-evaluation of a parenting time award. See *Shade*, 291 Mich App at 25-29. See in accord, *Lieberman v Orr*, 319 Mich App 68, 83 (2017).

In sum, to obtain a hearing on a motion to change custody, the movant must establish that proper cause or a change in circumstances has occurred. The grounds presented by Oscar do not meet that threshold. A more relaxed standard could be employed, had his request simply pertained to additional parenting time.