

**EXAMINERS' ANALYSIS OF QUESTION NO. 13**

Because Carol and Henry's divorce judgment contains all required provisions under Michigan law, it contains the following language from MCR 3.211(C) (1):

A judgment or order awarding custody of a minor must provide that the domicile or residence of the minor may not be moved from Michigan without the approval of the judge who awarded custody . . .

Carol has properly sought the court's approval. This rule requires the court's approval but does not require an evidentiary hearing. Henry is incorrect that the Michigan statute pertaining to a change of domicile requires the court to conduct an evidentiary hearing. The statute only comes into play where the judgment or order awards shared or joint legal custody. MCL 722.31(1) provides in relevant part that:

. . . a parent of a child whose custody is governed by a court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.

While Carol's request to move 150 miles away to Ohio would seem to be encompassed by this statute, MCL 722.31(2), states:

A parent's change of a child's legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits the residence change. *This section does not apply if the order governing the child's custody grants sole legal custody to one of the child's parents.* (Emphasis added.)

Because Carol had sole legal custody, the statute Henry wishes to employ is inapplicable. *Spires v Bergman*, 276 Mich App 432, 437 (2007), (statutory factors need not be considered where parent has sole legal custody). Accord, *Brausch v Brausch*, 283 Mich App 339, 349-350 (2009) ["Simply stated, when

a parent with sole legal custody desires to relocate, he or she must first obtain the trial court's approval but the factors . . . codified in MCL 722.31(4) do not apply . . ."]. See also *Brecht v Hendry*, 297 Mich App 732, 743 (2012) (If 722.31 does not apply, a proper request should be granted "without further ado.").

Carol, the sole legal custodian of the minor children, did what was required to relocate the children. Henry's demand for an evidentiary hearing must be denied.

As to the second inquiry, the process would be considerably different if the parties shared joint legal custody because MCL 722.31 would be fully applicable to Carol's request. Because Carol was moving more than 100 miles away, she would need the court's approval. MCL 722.31(1) and (2). Before ruling on Carol's request, the court would have to hold an evidentiary hearing to consider the factors in MCL 722.31(4), which provides:

Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each

parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

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

The party requesting the change, Carol, would have to prove by a preponderance of the evidence that the change is warranted, *Rains v Rains*, 301 Mich App 326-327 (2013), or the request would be denied.

In sum, the existence or absence of a joint custody award in the judgment or order will determine the process by which a requested change of residence or domicile is made.