

**FEBRUARY 2020 MICHIGAN BAR EXAMINATION
EXAMINER'S ANALYSES**

EXAMINERS' ANALYSIS OF QUESTION NO. 1

1. Yes, the court is bound by statute to consider a party's request for joint custody. MCL 722.26a provides in part that "[a]t the request of either parent, the court shall consider an award of joint custody and shall state on the record the reasons for granting or denying a request." Because the facts indicate that Jonathon has made a joint custody request, the court was statutorily bound to consider that request. *Mixon v. Dixon*, 237 Mich App 159, 162-163 (1999). See also *Wilcox v. Wilcox*, 108 Mich App 488, 495 (1981).

2. In considering whether to grant joint custody, the court is guided by two factors specified in MCL 722.26a (Joint Custody).

"(a) the factors enumerated in section 3" (the best interest factors);

"(b) whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child."

The two factors are of importance as the decision is more than just an evaluation of the best interest factors. See *Molloy v. Molloy*, 243 Mich App 595, 607 (2000); *Wright v. Wright*, 279 Mich App 291, 299-300 (2008); *Fisher v. Fisher*, 118 Mich App 227, 232-233 (1982).

3. Joint legal custody, while not unattainable, is also not likely. These parents apparently have no ability to converse about

such important decisions as schooling, dental needs, and involvement in sports. Moreover, their own discord has spilled over into the exchanges of the children who have been enmeshed into these parents' battles. Therefore, joint legal custody, which would foist on these near-dysfunctional parents more of the same, is unlikely. The acrimonious behaviors of the parents have spilled over to impact the children's best interests. Under MCL 722.23, a myriad of factors must be considered. But in the instant situation, at least the following factors are significant. Schooling and extracurricular activities impact factor (b) (the capacity and disposition the involved parties to provide the children love, affection, and guidance and to continue the education and raising of the child in his/her religion, if any). The children have become upset, sullen and withdrawn, and Tyler is skipping meals due to nausea. These relate to factors (h) (the home record of the children) and (b). Finally, factors (a) (the love, affection and emotional ties existing between the involved parties and child) and (j) (the willingness of the parties to facilitate and encourage a close and continuing relationship with the other parent) are also involved in these parents' disputes.

Consideration of both factors under MCL 722.26(a) yields the conclusion that these parents cannot get along and their continuing squabbles negatively impact the children's best interests.

4. No, Jennifer being awarded sole physical custody would not give her any greater say than Jonathon if the two were awarded joint legal custody. Decision-making authority would still be shared "as to the important decisions affecting the welfare of the children." See MCL 722.26a(7). If shared decisions produces impasse, the court, not the sole physical custodian, would resolve any remaining dispute. See *Lombardo v Lombardo*, 202 Mich App 151, 159 (1993).