

family matters

Legal News for Mental Health Professionals

Welcome to the Winter 2007 issue of *Family Matters*, a newsletter created to educate mental health professionals about issues surrounding family law. Created by Randall Pitler, an attorney experienced in family law matters in the State of Michigan, *Family Matters* will share information that can help you and your clients deal more successfully with divorce through amicable and collaborative methods.

In the Winter 2007 Issue:

● Divorce Myths

● The Question of Change of Domicile
for Parents of Minor Children

● Meet Randall Pitler



news of interest to:

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• Divorce Myths

Myth: Abandonment

There is a popular misconception that if one party moves out of the marital home they will be accused of abandonment and lose their rights to custody of their children and/or lose their right to their share of the equity in the marital home.

Abandonment has not been used as a legal theory in Michigan for decades. A parent who moves out of the marital home while the children remain in the home with the other parent may harm their chances to be awarded custody, but they do not lose any of their legal rights to parent their children and to have parenting time.

In a property settlement, a party is always entitled to their share of the marital estate, even if they no longer reside in the home. Therefore, the party who vacates the marital home should still receive their share of any equity in the property.

Incredibly, many attorneys continue to perpetuate this myth. While there are strategic reasons for advising a party to remain in the home, there are also many valid reasons for advising a party to leave, primarily when there is a potential for domestic violence.

If you know someone who would be interested in receiving our quarterly newsletter, *Family Matters*, please call 248 584 0400 or email us: info@pitlerlaw.com



• The Question of Change of Domicile

I have been asked by several therapists to address the issue of change of domicile, when one parent wants to move the legal residence of the minor children more than 100 miles or outside the state of Michigan.

Under MCL 722.31, a parent who has custody subject to a court order, may not move the legal residence of the minor child more than 100 miles from the child's legal residence at the time the order was issued, unless the other parent consents or they receive permission from the court.

First, this statute only applies if the parents have joint legal custody. In the rare cases where one parent has sole legal custody, that parent can move without the consent of the other parent or the permission of the court.

However, in the vast majority of cases, where the parents have joint legal custody, the parent wishing to relocate must obtain the consent of the other parent or permission from the court. If the non-custodial parent does not consent, the custodial parent will have to file a motion for the change of domicile.

In *Watters v. Watters*, 112 Mich App 1 (1981), the court adopted a 4 prong test which had been used in a New Jersey case, *D'Onofrio v. D'Onofrio*, 144 NJ Super 200 (1976). The factors that the court shall consider are: It [the court] should consider the prospective advantages of the move in terms of its likely capacity for improving the general quality of life for both the custodial parent and the children.

It must evaluate the integrity of the motives of the custodial parent in seeking the move in order to determine whether the removal is inspired primarily by the desire to defeat or frustrate visitation by the noncustodial parent, and whether the custodial parent is likely to comply with substitute visitation orders when she [or he] is no longer subject to the jurisdiction of the courts of this State.

It must likewise take into account the integrity of the noncustodial parent's motives in resisting the removal and consider the extent to which, if at all, the opposition is intended to secure a financial advantage in respect of continuing support obligations.

Finally, the court must be satisfied that there will be a realistic opportunity for visitation in lieu of the weekly pattern which can provide an adequate basis for preserving and fostering the parental relationship with the noncustodial parent if removal is allowed.

In 2001, the Michigan Legislature codified the *D'Onofrio* factors and added a fifth factor regarding whether there has been domestic violence, regardless of whether the violence was directed against or witnessed by the child.

These factors give courts wide discretion to decide whether to permit the move. Therefore, if a parent is planning on filing a motion to change domicile, they should make sure that they are fully prepared with as much information about their new residence as possible, specifically about quality of life issues such as the quality of the schools, parks and cultural activities.

This is an edited version of this article. For the full version of this article, please visit my website at www.AmicableDivorce.com and click on the link for Articles.



Randall B. Pitler is a family law attorney specializing in amicable divorces in Oakland, Macomb and Wayne Counties. A family law attorney for 13 years, he is a court approved domestic mediator in Oakland County.

He has developed a One Lawyer Divorce, where he can assist both parties in processing the divorce when the parties already agree on how they want to divide their assets and co-parent their children.

He is also certified in Collaborative Divorce, a unique method of divorce in which the parties are both represented by attorneys, but agree in writing to resolve all of the issues in their divorce without litigation.

For more information please visit: www.AmicableDivorce.com.



Invite me onto your couch. I am always looking for therapists for client referrals. I would be happy to spend a few minutes on your couch and learn more about you and your practice and to give you some more information on how I practice family law. **Please contact me at 248 584 0400. I look forward to hearing from you.**