

**MODIFICATION OF PARENTING TIME
AFTER SHADE vs WRIGHT**

(Docket #296318; published opinion decided 12/2/10)

By: Michael A. Robbins

I. Existing Law on Modification of Custody and Parenting Time

1. Custody

- a. **MCL 722.27 (1) (c)**. Under MCL 722.27 (1) (c), a trial court may “modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances...”

A modification of such a judgment or order is only permissible when it is in the minor children’s best interests.

- b. **Vodvarka v. Grasmeyer**, 259 Mich. App. 499 (2003)

According to the Vodvarka Court, “proper cause means one or more appropriate grounds that have or 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.” *Id.* at 511.

To establish “proper cause” necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court. The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child’s well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors. (*Id.* At 512)

In order to establish a “change of circumstances”, a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child’s well-being, have materially changed. Again, not just any change will suffice, for over time there will always be some changes in a child’s environment, behavior, and well-being. Instead, the evidence must demonstrate something more than the normal

life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will most certainly have an effect on the child...*Id.* At 513-514 (emphasis in original)

c. **Pierron vs. Pierron**, 486 Mich 81 (2010)

When a modification would change the established custodial environment of a child, the moving party must show by clear and convincing evidence that it is in the child's best interest.

If the proposed change does not change the custodial environment, however, the burden is on the parent proposing the change to establish, by a preponderance of the evidence, that the change is in the child's best interest.

2. **Parenting Time**

a. **MCL 722.27(a)**

b. **Stelman vs. Stelman** (Docket #294105 – unpublished opinion dated 8/3/10)

Vodvarka standard applies to both custody and parenting time modifications

In *Stelman v Stelman*, Docket No. 294105 (Unpublished August 3, 2010), the Court of Appeals affirmed the trial court's order denying his motion to modify a parenting-time schedule, refusing him an evidentiary hearing. The Plaintiff there claimed that because he sought only a modification of parenting time, rather than full change of custody, he was not obligated to demonstrate proper cause or a change in circumstances.

The COA disagreed, holding that the Vodvarka standard, relying upon and citing its previous holding that the Child Custody Act governs parenting-time determinations as well as true custody decisions. *Terry v Affum* (On Remand), 237 Mich App 522, 533-534 (1999).

c. **Terry v Affum (On Remand), 237 Mich App 522, 533-534 (1999)**

In *Terry*, this Court observed that "generally, within the Child Custody Act the term "child custody dispute" is broadly

interpreted "to mean any action or situation involving the placement of a child." *Id.*, quoting *Frame v Nehls*, 452 Mich 171, 179; 550 NW2d 739 (1996). Because parenting-time decisions necessarily "involv(e) the placement of a child" at least to some degree, such decisions fall within the scope of the Child Custody Act. See *Terry*, 237 Mich App at 533-534.

II. **Shade vs. Wright** (Docket #296318; Published Opinion decided 12/2/10)

a. Facts

b. Comments and holdings

1. We conclude that the definitions of proper cause and change of circumstances from *Vodvarka* do not control the facts of this case because this case involves a modification of parenting time rather than a change of custody. *Vodvarka* was a custody case, and this Court's definitions of proper cause and change of circumstances in *Vodvarka* specifically related to "the child's custodial situation" and "the conditions surrounding custody of the child" () *Id.* At 511, 513. Furthermore, the proper cause and change of circumstances definitions as articulated in *Vodvarka* are guided by the best interest factors in MCL 722.23(a)-(l), and do not take into account the parenting time factors in MCL 722.27A(6)(a)-(i).
2. If a change in parenting time results in a change in the established custodial environment, then the *Vodvarka* framework is appropriate.
3. In this case, however, the trial court's modification of parenting time was not so significant that it resulted in a change in the minor child's custodial environment.
4. For reasons that will be explained below, we hold that a more expansive definition of proper cause or change of circumstances is appropriate for determinations regarding parenting time when a modification in parenting time does not alter the established custodial environment.
5. Whereas the primary concern with child custody determinations is the stability of the child's environment and avoidance of unwarranted and disruptive custody changes, the focus of

parenting time is to foster a strong relationship between the child and the child's parents. See MCL 722.27a.

6. The facts of this case present circumstances which, under *Vodvarka*, would not, and should not, constitute a sufficient change of circumstances to warrant a change of custody. Simply put, the minor child in this case is growing up; she is a freshman in high school and her school extra-curricular schedule is changing. The existing parenting schedule precluded the minor child from participating in certain activities. These are the type of normal life changes that occur during a child's life and that do not warrant a change in the child's custodial environment. However, in this case, we find that given the geographical distance between the parties and the time necessary to transport the minor child from Ohio to Michigan to permit defendant to exercise his parenting time, such changes do constitute proper cause or change of circumstances sufficient to modify parenting time to permit the child to engage in social activities and participate in extra-curricular activities, so long as the modification in parenting time does not affect the established custodial environment.
7. **The very normal life change factors that *Vodvarka* finds insufficient to justify a change in custodial environment are precisely the types of considerations that trial courts should consider in making determinations regarding modification of parenting time.**
8. **Therefore, we hold that, in a case where modification of parenting time does not alter the established custodial environment, the fact that a child has begun high school and seeks to become more involved in social and extra-curricular activities (normal life changes that do not constitute a change of circumstances under *Vodvarka*) constitutes a change of circumstances sufficient to modify parenting time.**
9. **With our holding today, we do not seek to precisely define the proper cause of change of circumstances necessary to change parenting time. Our holding is limited to our conclusion that the normal life changes that occurred with the minor child in this case are sufficient to modify parenting time.**

Custody decisions require findings under all of the best interest factors, but parenting time decisions may be made with findings only on the contested issues.

10. In this case, the trial court did not explicitly address the best interest factors in MCL 722.23, nor did it need to because this modification of parenting time did not result in a change of custody. While the trial court did not explicitly address the factors in MCL 722.27(a) (6) in modifying defendant's parenting time, it was clear from the trial court's statements on the record that the trial court was considering the minor child's best interests in modifying defendant's parenting time.
11. In its opinion, the Court also makes reference to the Michigan Parenting Time Guideline, promulgated by the State Court Administrative Office (SCAO) for use in the state's friend of the court offices, for additional factors or "normal life changes" which could be sufficient to warrant a change in parenting time.

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