

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
FAMILY DIVISION**

**RAYMOND CARL STURGEON**

Plaintiff,

vs.

**Case: 00-027670-DM  
Hon: Maria L. Oxholm**

**MARY BETH STURGEON**

Defendant.

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**CULLEN P. GEISLER (P69024)**  
THE LAW OFFICES OF CULLEN P.  
GEISLER PLLC  
Attorney for Defendant  
28175 Haggerty Road  
Novi, MI 48377  
(248) 488-8623 phone  
(248) 442-7608  
cullengeisler@yahoo.com

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**DEFENDANT'S BRIEF IN SUPPORT OF MODIFICATION CHILD CUSTODY**

NOW COMES, Defendant MARY BETH STURGEON, by and through her attorney Cullen P. Geisler and states the following in support of her motion:

**FACTS**

A Judgment of Divorce was entered on March 5, 2001, by the Honorable Christopher M. Murray, Wayne Circuit Court Judge. This Judgment awarded Joint Legal custody of the minor children to both parties and Sole Physical custody to Plaintiff. Defendant was granted reasonable parenting time and the parties did not have a set schedule for parenting time. At this time there remains one minor child left Jillian M. Sturgeon, d/o/b 8/17/93.

On Saturday May 26, 2007 Plaintiff dropped the minor child Jillian off at

Defendant's house with all of her belongings with the intention that she live permanently with the Defendant. Because this occurred during the school year Defendant then had to find accommodations for the minor child Jillian so that she could get to and from school. Defendant was able to secure a place to drop Jillian off and pick her up after school so that she could walk safely to school with a friend.

Plaintiff and Defendant go to the same hair dresser and the hair dresser was told by Plaintiff when asking about Jillian "she lives with her mom now". While living with the Defendant the minor child Jillian's two older sisters have become a more active presence in her life. Since the Plaintiff dropped the minor child Jillian off at Defendant's home he has not had any parenting time with the minor child even though Defendant has tried to facilitate and repair the relationship. The Plaintiff has spoken to the minor child Jillian on the phone briefly.

## **LAW**

The threshold question in any change of custody is whether the moving party has established proper cause or change of circumstances. MCL 722.27(1)(c); Vodvarka v. Grasmeyer, 259 Mich App. 499 (2003). The moving party has the burden of proof by a preponderance of the evidence to establish that either proper cause or a change of circumstances exists. Vodvarka, supra. at 509. 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. Vodvarka, supra. at 511. In Vodvarka, the Court of Appeals held that grounds for proper cause should be relative to the twelve best interest factors contained in MCL 722.23(a)-(l). The grounds presented should be "legally sufficient," i.e., they must be of a magnitude to have a significant effect on the child's well-being to the extent that revisiting the custody order would be proper. Vodvarka, supra. at 512.

In order for there to be a change of circumstances, the moving party must show 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 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 in the life of a child, and there must be at least some evidence that material changes have had or will almost certainly have an effect on the child. Vodvarka, supra. at 513-514.

The Court must determine whether an established custodial environment exists before it makes a determination regarding the child's best interests in a custody proceeding. Mogle v. Scriver, 241 Mich App 192, 197 (2000). Whether an established custodial environment exists is a question of fact that the trial court must address before it makes a determination regarding the child's best interests. Mogle, supra. at 197. An established custodial environment, for the purposes of determining an appropriate child custody arrangement is one of significant duration in which the relationship between the custodian and child is marked by qualities of security, stability and permanence; however, an established custodial environment need not be limited to one household, it can exist in more than one home. Mogle, supra. at 197. See also MCL 722.27(1)(c).

Custody orders, by themselves, do not establish a custodial environment. Bowers v. Bowers, 198 Mich App 320 (1993). If no established custodial environment exists, custody may be modified by showing by a preponderance of the evidence that a change would be in the best interests of the child. Hall v. Hall, 156 Mich App 286, 289 (1986).

The best interests of the child is defined in MCL 722.23, which states:

As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.

- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

## **ARGUMENT**

Looking at this case, clearly the facts in this case show a proper change in circumstances allowing for modification based on the actions of the Plaintiff dropping the minor child Jillian off at the Defendant's home with all of her possessions. Since the May 26, 2007 parties' agreement of a change of physical custody there has been an established custodial environment with the Defendant only.

The Defendant has been the sole party that the minor child Jillian has looked to for discipline, security, stability and permanence. The Defendant has given Jillian rules to live by and responsibility around the house. The Plaintiff has had limited interaction with Jillian since May 26th and has exercised no parenting time with Jillian. Therefore, Defendant's burden of proof in this case is preponderance of the evidence.

Under the "Best Interest" factors enumerated in MCL 722.23 it is in Jillian's best interest that the Defendant be awarded sole physical custody. The minor child Jillian loves her mother very much and feels that Defendant's home is a much better and stable environment than her father's home. Defendant has given Jillian guidance, love and discipline while setting up a structure and system for Jillian to succeed in school.

Both parties are capable of providing Jillian with food, clothing, medical care, and other remedial care. Plaintiff is now retired but has taken care of Jillian since the divorce was granted in 2001. Defendant has a well paying job at CSX Automotive in Novi, Michigan making a good salary. Defendant has been paying to Plaintiff child support since the divorce was granted in 2001. Defendant wants to and has the means to provide Jillian with a stable permanent environment. Jillian's two older sisters have become, in

the short time living with Defendant, a stable fixture in her life and have helped the Defendant with Jillian's care.

Both parties are morally fit as well as mentally and physically capable of caring for Jillian. The Defendant has secured a place for Jillian to walk to and from school with a friend that is safe for Jillian. Defendant has laid down expectations for Jillian's academic work and responsibilities around the house. Jillian has made her preference to live with Defendant known to her two older sisters, the Plaintiff, and the Defendant. Further, it was Jillian's declaration to Plaintiff of her desire to live with Defendant that prompted Plaintiff to drop her off to Defendant's home with all of her possessions.

Since Jillian has been in the physical custody of Defendant, Defendant has made every effort to facilitate a relationship between Jillian and the Plaintiff. Defendant encouraged her to call Plaintiff on Father's day and to send a card. However in the past, Plaintiff has not always made every effort to facilitate a relationship between Jillian and the Defendant. Plaintiff had failed to put Defendant on the school emergency list or make Defendant aware of school functions and activities. Further, Plaintiff did not inform Defendant that he moved Jillian from her previous school.

Recently Jillian and the Plaintiff's wife have had issues with their relationship that has caused much stress in the Plaintiff's home. This fact, coupled with Jillian's desire to live with Defendant, was ultimately what led to Plaintiff dropping Jillian off at Defendant's home with all of her possessions with the intention to change physical custody.

## **CONCLUSION**

The minor child Jillian is in her developmental tough adolescent years and needs structure and balance to help her grow and succeed. Defendant has the capability and wants to provide the best stable environment for Jillian. Jillian now has her two older sisters active in her life and has their influence on her well being.

Based upon Plaintiff's actions of dropping the minor child off at Defendant's home and acquiescing to a change of custody without court action, it is in the best interests for the stability and continued growth of the child that physical custody be granted solely to the Defendant.

**RELIEF REQUESTED**

WHEREFORE, Defendant asks this Honorable Court to grant a Modification of the Judgment of Divorce to award Sole Physical custody of the minor child to Defendant.

Respectfully Submitted,

**THE LAW OFFICES OF CPG PLLC**

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Cullen P. Geisler (P69024)  
28175 Haggerty Road  
Novi, MI 48377  
(248) 488-8623

Dated: \_\_\_\_\_