



Sample Argument for Michigan Circuit Court, Family Division Favoring Supervised Parenting Time in Cases involving Domestic Violence¹

The following pages contain sample briefing designed for a Michigan Circuit Court, Family Division to support the argument that, where custody cases involve domestic violence, supervised parenting time is in the best interests of the children. Advocates should tailor this document as they see fit, based on their knowledge of the particular preferences of the judge in their case. We encourage advocates to include as many arguments as possible in their trial briefing so that the issues they raise are preserved for appeal. At several points along the way, this sample language contains bracketed sentences [] suggesting that advocates tailor the writing to their own cases. Before finalizing, we recommend doing a control + F search for “[” to be sure the briefing is fully tailored to your case and any irrelevant language is removed.

If advocates anticipate that a particular judge is likely to be especially skeptical about these arguments, attorneys may choose to call a domestic violence expert to respond to questions about the dynamics of domestic violence, common abuser behavior, and non-intuitive victim behavior. MCEDSV maintains a list of experts on these issues statewide, and advocates should feel free to contact Elinor Jordan, Lead Attorney of the Survivor Law Project, at ejordan@mcedsv.org or (517) 347-7000 ex.10 with questions.

¹ This briefing was initially drafted by Susan Houseknecht, legal extern at MCEDSV during Spring 2018.

I. Introduction

Supervised parenting time with [*plaintiff or defendant*] is the only way to help this family recover from the effects of domestic violence. An increasing body of research demonstrates that, in cases of domestic violence against a parent, children should remain in the care of a non-offending parent whenever possible.² “Domestic Violence is a pattern of controlling behaviors, some of which are criminal, that includes but is not limited to physical assaults, sexual assaults, emotional abuse, isolation, economic coercion, threats, stalking and intimidation. These behaviors are used . . . to control the intimate partner.” MJI Domestic Violence Benchbook (2018) at 1-2 (citing the State of Michigan Batterer Intervention Standards). Domestic violence is also defined by statute to include causing or attempting to cause physical or mental harm or placing in fear of physical or mental harm, and engaging in sexual activity through “force, threat of force, or duress.” MCL 400.1501.³ [*Include some of the most convincing details from the facts of your case to underscore the conclusion that domestic violence has occurred.*]

² *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy & Practice*, NAT’L COUNCIL JUV & FAM CT JUDGES (1999) available at <https://rcdvcpc.org/resources/resource/effective-intervention-in-domestic-violence-child-maltreatment-cases-guidelines-for-policy-and-pract.html> (stating, “Making adult victims safer and stopping batterers’ assaults are two important ways to remove risk and thereby create permanency for children.”); see also Peter G. Jaffe, et al, Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes, JUV & FAM CT JOURNAL p61 (Fall 2003) (“stating that “recent findings suggest that in ‘high-conflict’ cases, the psychological well-being of the primary caregiver and a cessation of the children’s exposure to violence are the best predictors of child adjustment”).

³ [*Consider using this briefing if you think it will be helpful in your case.*] Studies show that the period after separation can be one of the highest-risk times for families affected by domestic violence. Chris O’Sullivan, *et al.*, *Supervised & Unsupervised Parental Access in Domestic Violence Cases*, US DEP’T OF JUSTICE p4 (April 2006) (reporting that several studies suggest “that separation increases the risk of spousal homicide by a factor of six” and that another study found approximately one-third of victims experienced more severe violence after separation). Even so, domestic violence misunderstood and is “notoriously difficult to substantiate,” because “many victims suffer from a variety of trauma symptoms related to their abuse” and most partners who have abused their co-parents “present with no obvious mental health problems” courts “may overlook the basic issues of safety of the victim and their children, and accountability for the perpetrator’s behavior.” Peter G. Jaffe, et al, *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, JUV & FAM CT JOURNAL p63 (Fall 2003). Frequently, cases involving domestic violence have been mischaracterized as “high conflict.” See *id.*; Lisa Fischel-Wolovick, *TRAUMATIC DIVORCE & SEPARATION* p164–67 (2018). Scholars suggest a better approach to understanding the dynamic of a particular relationship is to learn the “interpersonal dynamics that produce violence rather than the

II. Factual Summary

[Insert the relevant facts, including specific recent instances of violence as well as details of any criminal or personal protection order cases. If you choose to attach documentation to support this motion or submit such information in connection with a hearing, redact any information that compromises the victim's privacy or safety and carefully consider whether attaching it will give rise to a collateral estoppel argument.]

III. Standard of Proof

[Determine your standard of proof based on the existing custodial environment. Even if the parties previously lived together, consider arguing that the non-abusive partner has created a custodial environment based on whether the child actually looks to them for most of their care, etc.]

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.⁴

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 interests.⁵

IV. Supervised parenting time prevents further violence after parental separation.

Supervised parenting time allows time for the relationship between the parent who has abused their co-parent and child to grow in a healthy manner, while simultaneously protecting both the parent who has been abused and the child from the harmful effects of domestic

nature of the violence itself, the context of abuse cannot be determined by looking at violent incidents in isolation. Rather, the context of abuse can only be determined by a careful analysis of the nature of the relationship in which the violence is enacted and/or embodied." Gabrielle Davis, 53 FAM CT REV 565, 569 (2015) (internal quotation omitted). Further, courts may ask *What is it like to parent, co-parent, and be parented in this environment?* to take into consideration the context of controlling or intimidating behavior that may appear innocuous by a third party who lacks context. *Id.*

⁴ *Pierron v Pierron*, 486 Mich 81, 92, 782 NW2d 480 (2010); MCL 722.27(1)(c).

⁵ *Pierron*, 486 Mich at 93.

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violence.⁶ Domestic violence has serious psychological affects not only on the abused parent, but on the children within the home—even where the abusive behaviors are not aimed at the children directly. Separation of the parents does not cure these behaviors, for “violence and its harmful effects on victims and children often continues or increases after separation.”⁷ As a result, a child will experience “behavioral, social, and emotional problems; cognitive and altitudinal problems, and long-term problems that [will] effect almost every area of their life.”⁸ A trained, conscientious supervisor of parenting time can manage and facilitate the contact between the parent who has abused their co-parent and their child to encourage the growth of a healthy parent/child relationship, and to prevent further violent and coercive behaviors from being inflicted on the child.⁹

⁶ Chris O’Sullivan, *et al.*, *Supervised & Unsupervised Parental Access in Domestic Violence Cases*, US DEP’T OF JUSTICE p5 (April 2006) (reporting that in a study, researchers observed “higher levels of minor to moderately severe psychological abuse and threats when visitation wasn’t supervised”).

[*Special Circumstances*: Supervised parenting time should never be granted to the moving party if the child is conceived as a result of sexual assault. MCL 722.27a(4) requires this Court to deny the parenting time to a biological parent whose child was “conceived as a result of acts for which one of the child’s biological parents is convicted of criminal sexual conduct . . . or a substantially similar statute of another state or federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration.” Therefore, even in cases of marital rape, the offending parent should not be given any form of parenting time in the interest of protecting both the child and victim parent. If, however, the offending parent has never been convicted of criminal sexual conduct, the victim parent may “assert an affirmative defense of the provisions of [MCL 722.27a(4)] in a proceeding brought by the offending parent regarding the child” to challenge the party’s petition for parenting time. MCL 722.27(a)(5). The victim parent must prove by clear and convincing evidence that the child was conceived as a result of nonconsensual penetration. If the court concludes the child was conceived as a result of martial or nonmarital rape, the offending parent should be denied parenting time.]

[*Special Circumstances*: Supervised parenting time should be denied if the offending parent has been convicted of criminal sexual conduct involving the child. MCL 722.27a(6). This includes sexual molestation or sexual penetration involving a minor under the age of 18. MCL 750.520a. If the offending parent has been convicted of such an act or acts, they should not have contact with that child or sibling of that child in order to prevent the possibility of further abuse from occurring. MCL 722.27a(6).]

⁷ United States Department of Justice, *Child Custody Evaluator’s Belief About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence, Knowledge and Custody-Visitation Recommendations*, 2011 (February 2, 2018).

⁸ Children’s Bureau (2002).

⁹ State Court Administrative Office, *Michigan Parenting Time Guidelines* (March 22, 2018).

a. Parents who abuse their co-parents often exhibit damaging parenting behaviors.

[Insert relevant facts where appropriate to highlight the opposing party's negative parenting style behaviors.]

Experts suggest that domestic abusers are unable to provide their children with a healthy environment because of their tendency to control and dominate individuals they deem weaker than themselves. “[Abusive partners] often expect their will to be obeyed unquestioningly, taking an intolerant view of any resistance or arguing from their children.”¹⁰ These expectations are often unattainable for children, particularly as the children navigate a changing environment and the trauma of separation and divorce. As a result, an abusive parent will often resort to harsh discipline techniques, such as corporal punishment, to elicit compliance from their children.¹¹ Such harsh or corporal punishment can affect children greatly, “Children exposed to domestic violence are very often at emotional risk because of the traumatic effects of the violence itself, and thus [authoritarian] parenting . . . can be felt more deeply than might be the case in other circumstances.”¹²

Not only do abusive partners frequently engage in authoritative parenting, but they tend to be less involved in their child's everyday life. “They commonly perceive children as a hinderance or annoyance and may arrange pretexts to be away from home much of the time in

*[In cases involving a parent who is a citizen of another country not a part of the Hague Convention: Supervised parenting time should be ordered when the abusive parent is an alien of the United States and from a country that does not recognize the Hague Convention. There is a substantial risk that, if given unsupervised parenting time, the abusive parent will take the child and flee the United States. This possibility alone constitutes the “threatened or actual detention of the child with the intent to retain or conceal the child from the other parent,” or in other words child abduction. *Abdel-Rahman v Abdel-Rahman*, (WL33362252) NW2d (1996); MCL 722.27a(6)(h). To prevent such an event from happening, supervised parenting time is the only option to ensure both the safety of the child and the rights of the protective parent.]*

¹⁰ Bancroft & Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (Los Angeles: Sage, 2, 2012) p 34.

¹¹ *Id* at 35.

¹² *Id* at 34-35.

order to evade parenting responsibilities.”¹³ Such avoidance may take the form of the abusive partner leaving the children alone at home for several hours or intentionally causing fights with the other parent. If the abusive partner does decide to take an “interest in [their] children, it is often when it is most convenient for [them] or when an opportunity arises for public recognition of [their] fathering.”¹⁴ These actions can send mixed signals to a child and may instill in the child feelings of guilt or anger towards themselves if they believe they are responsible for the abusive partner’s disinterest. These patterns of behavior are typically accompanied by the abusive partner’s use of manipulative tactics. Controlling partners are “commonly able to create confusion in children regarding the nature of the abuse in the home, which family members are responsible for it, and who is the kinder and more concerned parent” due to the child’s need to please them to receive their attention.¹⁵ Therefore, rather than building a relationship with their child based upon love and trust, they use their child for their own personal gain.

The need for control over their spouse can cause the abusive partner to undermine the parenting authority of the abused parent. “Even if the [abusive partner] does not overtly undermine the [abused parent], children absorb messages from the [abusive partner’s] behavior that can shape their responses to the [abused parent’s] parenting.”¹⁶ A child may respond to the abused parent by physically lashing out towards them or arguing with the abused parent over a simple request. These behaviors will become instilled in a child’s psyche as a normal method of responding to a situation they do not care to be a part of. “These tactics tend to further the [abusive partner’s] overall goal of dominating the family by making [their] authority the only

¹³ *Id* at 36.

¹⁴ *Id* at 37.

¹⁵ *Id* at 41.

¹⁶ *Id* at 38.

strong one in the family.”¹⁷ By maintaining custody over the children after separation or divorce, the controlling partner will still have that authority and will use it to further their need for dominance and control.

[At this point, advocates can analogize and distinguish any salient facts in their cases that pertain to the abusive partner’s parenting style and strategies that minimize the abused partner.]

b. Domestic abusers who are awarded physical custody or unsupervised parenting time will often turn their violent behaviors towards their children.

[Insert relevant facts where appropriate to support the possibility of the opposing party turning their abusive or negative behaviors towards the child[ren].]

Under the Michigan Parenting Time Statute, courts must determine whether there is a “reasonable likelihood of abuse or neglect of the child during parenting time” when making custodial and parenting time decisions.¹⁸ Conservative estimates suggest that 30–60% percent of adults that abuse their partner also physically or sexually abuse their children.¹⁹ Sometimes the results of failing to provide supervised parenting time with a parent who has abused their co-parent are tragic or even deadly. For example, recent studies have demonstrated that family courts demonstrate a tendency to award custody to parents against whom allegations of sexual abuse have been made by the other parent. Indeed, in cases that contained an allegation by one parent of child sexual abuse by the other parent, custody was awarded to the accused parent 81% of the time.²⁰ The Center for Judicial Excellence recently published a report detailing the 631 children who were murdered by a parent in the United States between 2002 and 2017; sadly, 27

¹⁷ *Id* at 39.

¹⁸ MCL 722.27A(7)(d).

¹⁹ *Final Report: Co-Occurring Intimate Partner Violence & Child Maltreatment*, Nat’l Inst. Justice, March 2006, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/213503.pdf>.

²⁰ Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse & Alienation*, 35 LAW & INEQ. 311, 328 (2017).

of those cases were in Michigan.²¹ Many of these murders took place shortly after a family court had granted a parent unsupervised access to their children.²² Researchers who interviewed court personnel after these tragedies found that most believed these were isolated incidents.²³ Because of the high stakes of this troubling reality, the U.S. Department of Justice Taskforce on Child Exposure to Violence recommended that parents who have experienced intimate partner violence “should be provided with trauma-informed services and treatment in order to assist them in providing emotional security and support for healthy development.”²⁴

Beyond the very real possibility of direct violence or severe neglect, an abusive partner who is given unsupervised parenting time is free to exercise any behavior that could ultimately harm the child. “Some domestic abusers use children as weapons, deliberately neglecting, threatening, or endangering them to intimidate or retaliate against a former partner.”²⁵ In addition, a child may be forced to become involved in the ongoing abuse of the other parent, where, for example, the child is told to convey threatening messages to the other parent.²⁶

Supervised parenting time can create an environment of safety and healing for children who have been exposed to domestic violence. First, supervised parenting time if done in the presence of a neutral third party, can create a sense of physical and emotional safety for the child.²⁷ The threat of violence perpetrated against the child by the abusive partner is lessened

²¹ U.S. Divorce Child Murder Data, http://www.centerforjudicialexcellence.org/wp-content/uploads/2018/04/INFOGRAPHIC_HCR72_Letter_no631.pdf

²² *Id.*

²³ *Id.*

²⁴ *Defending Childhood Report*, US DEP’T OF JUSTICE, 16, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

²⁵ Mary Lovik & Rebecca Shiemke, *Domestic Violence and Children’s Best Interests*, MICH BAR J (Feb 2014) at 32.

²⁶ Holt *et al*, *The Impact of Exposure to Domestic Violence on Children and Young People*, 32 *Elsevier* 797-810 (2008).

²⁷ Bancroft, *supra*, note 10, at 189-221.

because there is an individual present whose sole purpose is to ensure the child's safety. Second, supervised parenting time creates an environment of "structure, limits, and predictability" for the child.²⁸ "Domestic violence can create a sense of chaos in children's home environments, as they feel unable to predict what will happen at any given moment."²⁹ A supervised parenting time setting can prevent this by requiring the parent to conform to certain rules and procedures to encourage more healthy dialogue and interactions.³⁰ As a result, supervised parenting time can create the ability for a positive relationship to evolve between the child and the parent.

[Explain here, using the facts specific to your case, why supervised parenting time would benefit both the opposing party and the child[ren].]

c. Children who remain in the physical custody of the abusive parents will suffer from severe emotional and psychological trauma.

Children who have grown up witnessing violence within the home are already prone to life-long effects as a result. "Researchers estimate that between three and 17.8 million children are exposed to at least one incident of domestic violence each year."³¹ The effects of this exposure can manifest themselves in a child's behavior. Children who have witnessed such violent acts often experience "depressive symptoms, anxiety, and worry [in comparison to] those who have never been exposed to such violence."³² These symptoms can eventually go on and cause problems with the child's social life and learning capabilities. "These children have fewer friends, have significantly more behavioral problems, and exhibit hyperactivity, anxiety,

²⁸ *Id* at 190.

²⁹ *Id*.

³⁰ Lisa Fischel-Wolovick, TRAUMATIC DIVORCE & SEPARATION p164–67 (2018) (stating, "Children benefit from established routines during these visits, and therefore the supervisors must have the clinical skills to determine why and how the rules are being circumvented and, without hostility, set limits.").

³¹ Evans *et al*, *Exposure to Domestic Violence: A meta-analysis of child and adolescent outcomes*, 13 Elsevier 131-140 (2008).

³² *Id*.

withdrawal, and learning problems.”³³ Many learn to express themselves through violent behavior rather than through verbal communication. “The[se] behavioral effects intensify as the length of time increases that children have lived with exposure to violence at home and tend to be more pronounced if the batter is more frequently violent.”³⁴ Continued exposure can cause these behavioral problems to become a common occurrence, resulting in a possible pattern of generational domestic abuse.

A child who is forced to grow and develop in an unstable environment where their parent exhibits violent character traits are in a constant state of fear and apprehension, which consequently results in brain underdevelopment. “Trauma in childhood forms and deforms the personality. [A] child trapped in an abusive environment is faced with formidable tasks of adaption . . . unable to care for or protect [themselves, a child] must compensate for the failures of adult care and protection with the only means at [their] disposal: an immature system of psychological defenses.”³⁵ Because they do not understand how to affectively cope with continuous feelings of stress and anxiety, “childhood exposure [to violence] . . . can interfere with the sympathetic nervous system and the hypothalamic-pituitary-adrenal axis.”³⁶ This means the area of the brain responsible for the secretion of adrenalin, or the assurance that the body can instinctively prepare for a quick exit to safety or self-defense (“flight or fight”), is in constant overuse for a child in a violent home.³⁷ As a result of chronic adrenalin elevation, parts of the brain will become underdeveloped, thus causing a child to suffer from early cognitive and

³³ Tower, *Understanding Child Abuse and Neglect* (Boston: Pearson, 9, 2014) p 131.

³⁴ Bancroft, *supra*, note 10, at 34.

³⁵ Herman, *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror* (New York: Basic Books, 1992) p 92.

³⁶ Areti & Tsavoussis, *Front Public Health*, 2 US Nat Lib of Med
<www.ncbi.nlm.nih.gov/pmc/articles/PMC4193214> (accessed February 27, 2018).

³⁷ *Id.*

emotional impairment.³⁸ Therefore, if an abusive parent maintains physical custody without supervision, the child will be at risk of experiencing further brain trauma that will affect their daily living in the present moment and in the future.

V. Supervised parenting time is supported by [either a preponderance of the evidence or clear and convincing evidence].

When making a custody determination in situations where there is evidence of intimate partner violence within the home, the court should not consider separately how the domestic violence factor affects the parent-child relationship; instead, the court should apply the domestic violence factor to all twelve of the Best Interest Factors individually. Domestic violence influences every area of the familial unit, not just the relationship between the abusive and non-abusive parent. Because “the 12 factors [are] influenced by the environment in the home and the character of the parents,” instances of domestic violence have an impact on every factor the court is to consider when deciding if an established custodial environment actually exists.³⁹

This decision cannot be made by weighing the domestic violence factor independently. In order to determine the best interests of the child, the court needs to apply the instances of violence to each factor and consider how it has and will affect the abuser’s ability to parent.

a. Evidence Supports Supervised Parenting Time.

The Michigan legislature has made it clear that the courts must make custody determinations based upon clear and convincing evidence that an established custodial environment exists with either one parent or the other.⁴⁰ If such a determination has previously

³⁸ *Id.*

³⁹ Sater *et al*, *Child Custody and Parenting Time*, Michigan Family Law, ch 12, § 12.1 (2011) available at <<http://www.icle.org/modules/books/chapter.aspx?lib=family&book=2011553510&chapter=12>>.

⁴⁰ MCL 722.27.

been made and a party petitions for parenting time, the abusive partner must either prove that there has been a change in the established custodial environment that warrants their right to parenting time through clear and convincing evidence.⁴¹ If there has not been such a change, the moving party must show that parenting time is in the best interest of the child by preponderance of evidence.⁴² This determination is made by the court's application of the best interest factors to the facts of a given case, either finding the factors weigh more favorably to one party and not the other, or to both parties equally.⁴³ However, if the petition is solely addressing parenting time, the court does not need to consider each factor as in an initial custody proceeding. "In a pure visitation dispute, the trial court need not make specific findings on each factor listed in MCL 722.23 but may focus solely on the contested issues."⁴⁴ Therefore, a moving party need only show there has been a change in the custodial environment by offering evidence concerning only the factors at issue; or if there has been no change, then the moving party may address those factors that would support their argument that parenting time is in the best interest of the child.⁴⁵

While courts have broad discretion in determining whether clear and convincing evidence exists, witness testimony, professional reports, and statements from the children (depending on

[If you are establishing an initial custodial environment (i.e., divorce or separation): To make such a determination, the court is primarily interested in if "over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort; the age of the child, the physical environment, and the inclination of the custodian and the child as to the permanency of the relationship shall also be considered." MCL § 722.27(1)(c). The court looks to each parent to see if they "provide care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child . . . [for] it is both a physical and psychological environment that fosters a relationship between the custodian and child and is marked by security, stability, and permanence." *Berger* at 70; quoting *Baker v Baker*, 411 Mich 567, 579-580 (1981). If the facts indicate that one parent has proven to provide these traits consistently and has fostered a strong relationship with the child, the clear and convincing evidence standard has been met and the court can conclude that an established custodial environment exists with either both or one of the parties.

⁴¹ *Pierron v Pierron*, 486 Mich at 93.

⁴² *Id.*

⁴³ *Berger v Berger*, 277 Mich App 700 (2008).

⁴⁴ *Olepa v Olepa*, 151 Mich App 690, 720 (1986).

⁴⁵ *Id.*

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their age) are enough to meet that standard as long the piece of evidence can show the contested best interest factor weighs in the moving party's favor. In *Berger v Berger*, the court found that the plaintiff had shown by clear and convincing evidence that each factor weighed more so in her favor in comparison to the defendant primarily through witness testimony.⁴⁶ The trial court in this case considered testimony from the plaintiff's friends and family who had witnessed her on more than one occasion providing care for the party's children.⁴⁷ Each witness spoke of how the plaintiff took the children to school, prepared them meals, and provided them with discipline, love, and support.⁴⁸ While the defendant in this case did provide some witness testimony, the statements did not show the defendant provided any daily care for the children.⁴⁹ The plaintiff was thus able to satisfy the existence of a custodial relationship and was granted primary physical custody.⁵⁰ If a party can offer witnesses to testify as to their parenting ability that can prove the factors in dispute, the standard has been met. A court will also consider how long a child has been residing with either parent. In *Bowers v Bowers*, 198 Mich App 320 (1993), the court considered the length of time the daughter was in each of her parent's care to establish whether the child looked to either parent as her caregiver.⁵¹ While this can be a helpful factor, the court should note that an established custodial environment does not necessarily exist with both parents even if the children has lived with both parties. Thus, the court should also consider the relationship each party has with the child and if a bond can be found to exist between them.

⁴⁶ 277 Mich App 700 (2008).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Bowers v Bowers*, 198 Mich App 320 (1993).

A petitioner may offer evidence by simply recalling an event or pattern of events that have affected the child's life. In *Shade v. Wright*, the petitioner offered testimony showing the defendant's inability to care for their child when the child was in his custody.⁵² Petitioner told the court that the defendant's new partner, who suffered from depression and chronic pain, would supervise the minor child sometimes up to 12 hours at a time.⁵³ The partner would not allow the child to eat or drink while in her care and would also deny the child use of the telephone.⁵⁴ The court concluded this was sufficient evidence to show there was a significant change in circumstances that warranted a modification in parenting time.⁵⁵ Therefore, parties should present evidence to the court to either support or rebut a petition's assertion of a change in circumstances.

The type of evidence offered in parenting time proceedings can be broad and somewhat informal. While this is appealing to pro se and indigent parties, domestic abusers may take advantage of the system through the use of manipulative tactics. Abusive partners may project a "non-abusive image" by presenting a "new partner as a character reference and to discredit the [victim parent's] allegations of abuse."⁵⁶ The new partner may offer testimony that claims the abuser has never been violent towards them or that the victim parent is fabricating their allegations.⁵⁷ The abusive partner may offer other witnesses who give testimony claiming the abuser has never had violent tendencies or that the abuser acts as the children's primary caregiver.⁵⁸ If the abusive partner has isolated the victim parent from their family or friends, it

⁵² 291 Mich App 17, 24 (2010).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Bancroft, *supra*, note 10, at 155.

⁵⁷ *Id.*

⁵⁸ *Id.*

may be difficult for the victim parent to rebut these assertions through witness testimony.⁵⁹ Thus, in cases where there are allegations of domestic violence and the abusive parent is the moving party, the court should not grant the modification because of the abusive partner's manipulative tactics.

b. Domestic violence has an influence on all of the best interest factors and the abuser's ability to provide an established custodial environment for their child.

[In this section, add specific instances or facts that correspond to each factor and cut those portions that do not pertain.]

Acts of violence and coercion within a family affect every aspect of the home environment, including how the abusive partner parents and cares for the needs of the children. Therefore, the court needs to weigh the best interest factors against the abusive parent only after considering how the presence of domestic violence has impacted each factor on an individual scale.⁶⁰

Factors (j) and (k) deal with the relationship between the parents. As previously explained, a discussion of the existence of domestic violence within a relationship is best understood in context and cannot be distilled to a number of isolated events—a closer look at the dynamics of a relationship is required.⁶¹ Parents who abuse their co-parents utilize coercive tactics that continue after separation, frequently utilizing the courts and custody proceedings as a new venue for coercion.⁶² Accordingly, factor (k) must be carefully considered throughout custody litigation. Frequently, factor (j) is used as a red herring by the abusive co-parent to allege that the abused parent's protective tactics or requests of the court are made to alienate the

⁵⁹ *Id.*

⁶⁰ Sater at § 12.1.

⁶¹ Lovik & Shiemke, *supra*, note 25, at 31.

⁶² Lovik & Shiemke, *supra*, note 25, at 31; Fischel-Wolovick, *supra*, note 30, at 120–22.

offending parent from the children.⁶³ In reality, research indicates that the non-custodial or parent who has engaged in abuse against the other co-parent tends to make more false reports.⁶⁴ Beyond factors (j) and (k), the presence of domestic violence affects all of the other factors, each of which is discussed in turn. Factor (a), “the love, affection, and other emotional ties existing between the parties involved and the child,” the court must examine the mutual relationship between the parent and the child.⁶⁵ It can be challenging to gauge the ties between a child who has been exposed to domestic abuse and their parents. Methods of “coercive control distort children’s emotional ties with [the abusive parent],” for their “desire for a closer relationship . . . may be mixed with confusion, anger, fear, or disappointment.”⁶⁶ If given physical custody or unsupervised parenting time, the abusive partner may utilize these coercive tactics to further this distortion, thus affecting the child’s long term emotional wellbeing. Supervised parenting time can provide a child with an environment that will encourage positive interactions between the parent and child. A third-party supervisor will provide the child with a sense of safety, for they will learn the abusive partner will not be permitted to act in a threatening manner during these visits.⁶⁷ Accordingly, the relationship dynamics must be understood on a more profound level in order to properly analyze factors (j) and (k).

⁶³ See, e.g., Joan Meier, *Parental alienation syndrome and parental alienation: A research review* VAWnet, a project of the National Resource Center on Domestic Violence (2013). Retrieved from <http://www.vawnet.org>

⁶⁴ Trocme & Bala, *False allegations of abuse and neglect when parents separate*, CHILD ABUSE & NEGLECT, 29, 1333-1345 (2005).

⁶⁵ MCL 722.23(a).

⁶⁶ Lovik & Shiemke, *supra*, note 25, at 33; see also Chris O’Sullivan, *et al.*, *Supervised & Unsupervised Parental Access in Domestic Violence Cases*, US DEP’T OF JUSTICE p4 (April 2006) (reporting that in a study, “Exposure to severe injury of the mother had a significant effect on internalizing and externalizing behavior problems. Exposure to severe psychological abuse had a significant effect on internalizing behaviors.”).

⁶⁷ *Id.*

With regard to factor (b), the “capacity and disposition of the parties involved to give the child love, affection, and guidance,” research has shown that a parent who abuses their co-parent will often possess a “self-centeredness detracts from their capacity and disposition” to be involved in their child’s academic and personal affairs.⁶⁸ The abusive partner’s need for dominance and control outweighs the needs of their children, thus limiting the parent’s ability to provide the child with educational and personal support.⁶⁹ Supervised parenting time creates a structured environment in which the parent can engage with their child and support these activities.

Factor (c) can be broken down into two separate considerations: (1) the parent’s *ability* or capacity to provide for the basic needs of the child; and (2) the parent’s *willingness* to utilize the assets available to provide those basic needs.⁷⁰ Consideration of factor (c) should not focus around income alone. The court needs to consider whether the abusive partner will use their income to provide for their child’s needs, or for their own. Put simply, this factor considers the parent’s willingness to provide their children with food, clothing, and medical care.⁷¹ Further, the court should consider the reasons behind any economic disparity between the parents. An overwhelming majority of domestic violence victims, as many as 99%, report economic abuse.⁷² For example, the abuser may give the victim an allowance for groceries or other items for the children if the abusive partner believes they need them.⁷³ Usually the amount of money is less

⁶⁸ Lovik & Shiemke, *supra*, note 25, at 31; MCL 722.23(b).

⁶⁹ Lovik & Shiemke, *supra*, note 25, at 31 (citing Bancroft, *supra*, note 10, at 34–36)).

⁷⁰ MCL 722.23(c).

⁷¹ *Id.*

⁷² A.E. Adams et al, *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN, no 5, p 571 (2008), Lovik & Shiemke, *supra*, note 25, at 31 (citing Bancroft, *supra*, note 10, at 34–36));

⁷³ Tower at 132.

than what is needed, which in effect causes the children to go without their needs being met.⁷⁴ This is evidence of the violent partner's unwillingness to provide for their family and should be weighed against them. Because of this need to maintain financial control, the award of unsupervised parenting time creates a risk that the violent partner may not provide for the children when in their care.⁷⁵ Supervised parenting time would eliminate any financial dependence the child would have on the violent parent, thus effectively removing the violent partner's ability to manipulate the child and the victim parent through financial means.

Factor (d) asks the court to consider "the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining that continuity," meaning the length of time the parties have maintained a relationship with the child in that specific home.⁷⁶ The abusive partner might claim they themselves are the stable party if the protective parent has sought shelter or other refuge from the abuse in the past. However, the court should not weigh this factor against the protective parent, but instead should "consider [the child's] continuity in the relationship with the protective parent."⁷⁷ Experiencing "continuity . . . with a protective parent is a critical protective asset that promotes recovery from exposure to abuse," for the child will be exposed to "other caring adults and [a] supportive community and social attachments."⁷⁸ The court needs to contemplate the reason for the protective parent's need to leave the familial home with the children. Violence in the home creates instability, and had the abusive partner not exhibited violent behavior, the victim would not have needed to remove the children from the

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ MCL 722.23(d).

⁷⁷ Lovik & Shiemke, *supra*, note 25, at 32.

⁷⁸ *Id.*

violent partner's care. Supervised parenting time would maintain the strong bond already in existence with the protective parent. The violent partner's manipulative and coercive behaviors to undermine the child's relationship with the protective parent would be prevented by a third party's observation of the parent/child's interaction, thus effectively maintaining the bond between the protective parent and child, while simultaneously building a positive bond between the violent partner and child.⁷⁹

Factor (e) urges for the court to analyze whether there is evidence of "permanence as a family unit" within the familial home.⁸⁰ This typically refers as to whether the parents are remaining faithful to each other if married, or whether the parents are in romantic relationships with someone other than the opposing party. Domestic abusers will oftentimes have more than one partner after separating from the victim parent.⁸¹ With multiple new partners entering the child's life, the structure and familiarity needed for a child to grow and develop will be in constant upheaval. Supervised parenting time can protect children from experiencing new individuals in the home and forming an attachment with them.⁸² By ordering supervised parenting time, the court can provide the child with stability and structure.

Factors (f) and (g) focus on the personal fitness of the parties, the first on their moral character, and the second on the parent's mental and physical wellbeing.⁸³ An abusive partner of exhibits poor moral character primarily through their coercive tactics. The Michigan Court of Appeals has found this factor to favor a non-abusive parent in cases where there was verbal

⁷⁹ *Id.*

⁸⁰ MCL 722.23(e).

⁸¹ World Health Organization, *Violence by Intimate Partners*, accessible at <http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap4.pdf>.

⁸² Bancroft, *supra*, note 10, at 195.

⁸³ MCL 722.23(f), (g).

abuse and threats against a former spouse in front of the children, spying on a former spouse, filing multiple, unreliable reports with Children's Protective Services, and undermining children's therapy sessions.⁸⁴ These narcissistic and self-centered behaviors may also be signs of mental illness, but abusive partners are rarely diagnosed due to their ability to charm and manipulate others.⁸⁵ Thus, the court should strongly consider the abusive parent's violent acts and ability to be emotionally manipulative as strong evidence against their ability to provide a loving, conflict-free home for their children.⁸⁶ Supervised parenting time can prevent these tactics.

The children's relationships with other individuals besides their parents should also be taken into consideration by the court. Factor (h) calls for the analysis of "the home, school, and community record of the child," specifically the child's progress and development with their peers, academics, and neighborhood.⁸⁷ Evidence that a child has suffered as a result of the abusive partner's violence can be found in each these areas. In school, the child may be behind academically or developmentally, and typically will be reserved and withdrawn from social activities with peers.⁸⁸ Some may exhibit violent behaviors towards others, while others may be overly involved so as to avoid their home life, or not involved at all due to lack of parental support or fear of the abusive partner's disapproval.⁸⁹ Because the domestic abuser's violent behavior correlates as to the causation of these issues, this factor should be weighed against them.

⁸⁴ See *Bowers v Bowers*, 198 Mich App 320, 331; 497 NW2d 602 (1993); *Wright v Wright*, 279 Mich App 291; 761 NW2d 443 (2008); Lovik & Shiemke, supra, note 25, at 33.

⁸⁵ Bancroft, supra, note 10, at 155.

⁸⁶ *Id.*

⁸⁷ MCL 722.23(h).

⁸⁸ Lovik & Shiemke, supra, note 25, at 32.

⁸⁹ *Id.*

Finally, the court should consider the child's preference, if reasonable (factor (i)), and "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."⁹⁰ The child's preference is at risk of being influenced by the abusive partner. The domestic abuser may use threats against the protective parent and other forms of emotional coercion to intimidate the child into expressing an interest to remain with them.⁹¹ If granted custody or unsupervised parenting time, these controlling tactics will continue.

[Summarize some of the most salient facts from your case and highlight their connection to the factors.] When evidence of domestic violence within the home is applied to each best interest factor, the ability of the domestic abuser to offer the child a stable and loving home is compromised by their need to control and intimidate their former partner. These behaviors will not cease after separation but are likely to increase in both severity and occurrence.

VI. Conclusion

When a parent separates from their co-parent as a result of domestic violence, the abuse and coercion often escalates. Here, the best interest of the child is served through supervised parenting time with *[opposing party]* in order to foster a healthy relationship with that parent and to prevent further emotional trauma.

⁹⁰ MCL 722.23(i), (j).

⁹¹ Lovik & Shiemke, *supra*, note 25, at 31.