

## COA Opinion: Under the Child Custody Act, a court may grant sole legal custody of a minor child to one parent even if the parents have joint physical custody of the child.

9. March 2011 By Layla Kuhl

In *Dailey v Kloenhamer*, the Court of Appeals affirmed the circuit court's grant of sole legal custody of the parties' minor child to the defendant father, holding that the Child Custody Act (MCL 722.26a) allows a court to grant sole legal custody to one party even when the parties share physical custody.

Plaintiff and defendant divorced in 2003 and stipulated to joint legal and physical custody of their minor child. The parties began to disagree about the proper treatment of the child's chronic cough. In 2009, the court issued an order modifying parenting time and ordering plaintiff to schedule an appointment with an allergist for the child's respiratory condition. The parties continued to disagree about medical treatment for their child. Plaintiff filed a motion for a change in parenting time and also a change in school. Defendant filed a motion for sole legal custody. The court denied plaintiff's motions but granted defendant sole legal custody finding that it was in the child's best interest. Plaintiff appealed arguing, among other things, that a parent with joint physical custody must also have joint legal custody.

On appeal plaintiff argued that the circuit court erred in determining that proper cause or a change in circumstances existed for the court to review the 2009 custody order, that defendant failed to show that the change was in the child's best interests, and that the Child Custody Act requires that a parent who has physical custody to also have legal custody of the child.

The Court of Appeals concluded that there was proper cause to modify the custody order since the parties' disagreements about medical treatment was delaying the child's medical care. The Court also determined the trial court did not clearly error in finding that it was in the child's best interests for defendant to have sole legal custody.

Finally, although not raised below, the Court of Appeals addressed whether the Child Custody Act (MCL 722.26a) allows a court to grant sole legal custody to one party when the parties have joint physical custody. MCL 722.26a authorizes the circuit court to award joint custody. MCL 722.26a(7) provides:

As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

- (a) That the child shall reside alternately for specific periods with each of the parents.
- (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

The Court reasoned that “the ‘1 or both’ provision specifically authorizes a court to order that the child reside alternately with each parent and to also order that only one parent has ‘decision-making authority as to important decisions affecting the welfare of the child.’ MCL 722.26a(7). In support of this interpretation, the Court noted that the Act itself states that it is equitable in nature and should be liberally construed. MCL 722.26(1). The Court disagreed with plaintiff’s suggestion that the circuit court could have apportioned legal decision-making between the parties. The Court relied on *Shulick v Richards*, 273 Mich App 320, 328-329; 729 NW2d 533 (2006), which held that the Legislature did not intend to provide for joint custody arrangements where important decision-making authority is apportioned between the parties.