

COA Opinion: Court applies less restrictive definition of “change of circumstance” to permit changes in parenting time

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In *Shade v. Wright*, No. 296318, the Court of Appeals affirmed the trial court’s modification of a parenting time agreement and held that a liberal definition of “change of circumstance” was an appropriate basis for permitting the parenting time modification, because the change did not alter the child’s established custodial environment.

Plaintiff and defendant divorced in 2006 and incorporated an agreement regarding custody and parenting time into the judgment for divorce. In 2008, plaintiff filed a petition to modify the order of parenting time, and defendant filed a motion seeking sole physical custody of the child. The trial court denied defendant’s motion for a change in child custody, but the trial court modified the parenting time agreement. In its order, the trial court did not make explicit findings regarding the existence of proper cause or a change in circumstance that supported the modification, nor did it explicitly articulate what it believed to be in best interest of the child.

Despite these apparent deficiencies in the record, the Court of Appeals affirmed. The Court of Appeals held that plaintiff did not present sufficient evidence to establish a “change in circumstance” that would warrant a change in child custody under *Vodvarka v. Grasmeyer*, 259 Mich. App. 499 (2003). The Court distinguished *Vodvarka*, however, holding that in cases involving parenting time modifications that would not result in a change of custody, a more liberal definition of “change in circumstance” should apply because the modification would not adversely impact the stability of the child’s environment. Applying this broader definition, the Court concluded that because the child recently began high school, desired to participate in social and extra-curricular activities, and the distance between the parents’ residences made participation in these activities difficult, a modification to the parenting time agreement was appropriate. The Court stated that the trial court implicitly considered these facts in reaching its decision, and therefore, no further development of the record was required.

In a one line concurrence, Judge Jansen “concurred in the result only.”