

COA Opinion: Under factor (c) of the change of domicile statute, a trial court must consider whether plaintiff's proposed parenting time schedule provides "a realistic opportunity to preserve and foster the parental relationship" with the non-moving parent

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In *McKimmy v Mellling*, the Court of Appeals held that when ruling on a change of domicile motion, a trial court should consider whether a proposed parenting time schedule provides "a realistic opportunity to preserve and foster the parental relationship" and not whether the proposed schedule would be the best plan.

Plaintiff and defendant are the parents of two boys, ages 3 and 4. Plaintiff has sole physical custody, but the parties share joint legal custody, and defendant consistently exercises his weekend parenting time. Plaintiff filed a motion to change domicile under MCL 722.31(4) as she was engaged and her fiancé lived in North Dakota. Prior to the trial court's decision, plaintiff married, and she and her new husband purchased a home in North Dakota. The trial court denied plaintiff's motion to change domicile determining that technology could not meaningfully diminish the boys' separation from their father due to their ages and that the children's extended periods of time away from their father could potentially have dire consequences. The Court of Appeals concluded that the trial court improperly analyzed factor (c) of the statutory change of domicile factors, MCL 722.31(4) and vacated the order and remanded for new findings on factor (c).

Factor (c) of MCL 722.31(4) provides:

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

The Court of Appeals emphasized that implicit in factor (c) is an acknowledgment that weekly visitation is not possible when parents are separated by state borders. The Court went on to conclude that "the trial court failed to recognize that the parenting time schedule proposed by plaintiff need not be equal with the current visitation plan" and vacated the trial court's order and remanded for new findings on factor (c).