

MSC: Pierron v Pierron

12. May 2010 By Julie Lam

On May 11, 2010, the Michigan Supreme Court issued its *per curiam* opinion in [Pierron v Pierron, No. 138824](#), affirming the Court of Appeals' decision to vacate the trial court's order. In this case, the plaintiff and the defendant have two children from their marriage. The divorced parents share joint legal custody, and the defendant has primary physical custody. The Michigan Supreme Court held that a change of schools 60 miles away did not legally effect a change in the established custodial environment of the children. Justice Corrigan issued an opinion concurring in part and dissenting in part.

The established custodial environment is defined by statute as the environment in which "over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL § 722.27(1)(c). The Michigan Supreme Court held that "when considering an important decision affecting the welfare of the child, the trial court must first determine whether the proposed change would modify the established custodial environment." The child's standpoint is controlling in making this determination.

If the trial court finds that the proposed change would modify the established custodial environment of the child, the parent proposing the change has the burden of establishing that the change is in the child's best interests, by clear and convincing evidence, using the best-interest factors set forth in MCL § 722.23. The best-interest factors generally relate to custody determinations. In cases where the proposed change would modify the established custodial environment, the trial court must consider all of the best-interest factors.

On the contrary, if the proposed change would not modify the established custodial environment of the child, the parent proposing the change has the burden of establishing that the change is in the child's best interests, by a lesser standard - a preponderance of the evidence. If the proposed change does not affect the established custodial environment, the trial court must determine whether each of the best-interest factors applies, but if a factor is not relevant, the trial court need not analyze it further.

Justice Corrigan concurs with the general approach set forth by the majority, but dissents from the conclusion reached that the established custodial environment will not be modified in this case, based on the evidence.