

Factor a: **The love, affection, and other emotional ties existing between the parties involved and the child.¹**

Interpretation:

Factor a examines the mutual relationship between the parent and child. Therefore the factor does not rest solely on a determination of which parent is more loving,² nor whether the parent has a desire to establish a better relationship with the child.³ Rather, it must be determined which of the parents has bonded more closely with the child.⁴ It would be wrong to find that the child is more closely bonded with a parent under this factor if the bonding is the result of an inappropriate relationship between the parent and child.⁵

It is appropriate to find that this factor favors a parent because the child primarily has love and respect for only one of the parents.⁶ It is proper to find that the parents are equal because the parents love their child and the child loves both parents.⁷ It should be noted that there is a natural overlap between some of the factors. For example, it may not be possible to separate a child's emotional attachment to a parent from the child's preference, or other factors examined under the Child Custody Act.⁸ An effort to separate these factors should be made when evidence is available.

¹ MCL 722.23(a).

² *Baker v Baker*, 411 Mich 567 (1980).

³ *Glover v McRipley*, 159 Mich App 130 (1987).

⁴ *Glover v McRipley*, 159 Mich App 130 (1987).

⁵ See e.g. *Brewer v Brewer*, COA 221521 (unpublished 2001), where the relationship between the plaintiff and oldest daughter, while representing a close bond, was described as the daughter acting in the role of a caretaker and confidant to the father.

⁶ *Kurtz v Kurtz*, 32 Mich App 366 (1971).

⁷ *Eigner v Eigner*, 79 Mich App 189 (1977).

⁸ *Carson v Carson*, 156 Mich App. 291 (1986).

Considerations for the Investigator:

- Does one parent show respect, love, affection, and warmth toward the child more than the other parent?

Practice Tip: Determine which parent the child goes to when in need of sympathy or consolation, or to share a victory or an accomplishment.

- Does one parent show kindness and courtesy toward the child more than the other parent?
- Which parent, historically, has provided the day to day care for the child?

Practice Tip: Look for each parent's routines or rituals (discussing daily activities when tucking into bed, having a weekly game night, etc.) that foster interaction with the child.

- Does either parent demonstrate, frustration, anger, bickering, physical or verbal fighting behavior toward the other parent? Does this occur in the presence of the child?
- Is there any evidence that one parent shares problems with the child demonstrating an inappropriate parent-child relationship?
- Is there a readily apparent difference in the bond that exists between each of the parents and the child?

Practice Tip: Find if each parent gives priority to the relationship with the child. Determine whether a parent routinely invests time in vocations, hobbies, interests, or adult friends over spending time with the child.

- Are facts present in the case that may confuse the child's emotional ties and bonding with other issues?
- With whom does the child consult concerning personal problems or questions?

Factor b: **The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.**¹

Interpretation:

Factor b examines both the willingness and the ability of the parents to provide the child with love, affection, and guidance. This includes whether each parent will continue the child's education and raising the child in his religion or creed, if any. In evaluating the capacity and disposition of the parents to provide education and guidance, it may be necessary to examine which parent is involved more with the child's academic affairs and whom the child asks questions about personal matters.² The effects of substance abuse on a parent's ability to provide guidance may also be considered.³

The effectiveness of the discipline techniques the parents use to keep the children within bounds is an appropriate consideration in determining the parents' capacity and disposition to provide guidance.⁴ Accordingly, when one parent's ineffective discipline resulted in the children being habitually late for school and dawdling, and when they were awake very late on week nights when they should have been asleep, the other parent should prevail on this factor.⁵

A parent's willingness to allow a child to obtain guidance or comfort through religion when the child so desires, can be considered in evaluating the parents on this factor.⁶ Similarly, when one parent stopped attending the church of the

¹ MCL 722.23(b).

² *Fletcher v Fletcher*, 200 Mich App 505 (1993).

³ *Bowers v Bowers*, 198 Mich App 320 (1993) (Plaintiff with drinking problem lied on substance abuse assessment and had second OUIL conviction after testifying that he had problem under control.).

⁴ *Harper v Harper*, 199 Mich App 409 (1993) (The testimony was that one parent planned on using only non-corporal discipline while the other testified that she was counseled by a protective-services worker to use corporal punishment if necessary. The court did not focus on the merits of the techniques but rather on the effectiveness of the discipline in providing guidance.).

⁵ *Harper v Harper*, 199 Mich App 409 (1993).

⁶ *West v Smallman*, COA 223163 (unpublished 2001) (One parent's wife dropped the child off occasionally at church but the other parent made no effort to take the child to church despite the child's requests.).

denomination in which the children were raised and instead attended an alternative home church, the factor could be weighed in favor of the other parent.⁷ Religious participation, by itself, may not be a sufficient basis to allow a parent to prevail on this factor. Rather, the question is whether the parents have instilled or are likely to instill a solid religious foundation in the child's life.⁸ Thus, even though a parent is involved in the child's religion, the fact that the parent's lifestyle is contrary to the doctrines of that religion may be considered in determining which parent should prevail on this factor.⁹

Considerations for the Investigator:

- Try to measure which parent is able to show love and affection for the child? For example, is one parent able to outwardly display signs of affection more than the other (e.g., verbal affirmation, hugging, other non-verbal signs of affection)?

Practice Tips: Instead of assessing this factor as a whole, it may be useful to separate it into several parts: ability and willingness to appropriately cultivate an emotional bond (e.g., providing: love, affection, and guidance) with the child; ability and willingness to promote the child's education; ability and willingness to promote and continue the child's religious practices or spiritual training. It may be necessary to ask each parent to describe the bond each has with the child.

- If the child is of school age, is the child on time for school, tardy, or absent more than normal?
- How is the child performing in school?
- Does the parent help the child complete homework or review it?
- Is the parent involved with academic or extracurricular activities that benefit the child (e.g., conferences, PTA, scouts, clubs, etc.)?

⁷ *McCain v McCain*, 229 Mich App 123 (1998).

⁸ *Carson, v Carson*, 156 Mich App 291 (1986) (The child was merely exposed to religious training through both parents rather than having one parent instill the religion to which the child has been exposed.).

⁹ *Ulvund v Ulvund*, COA 224566 (unpublished 2000).

Practice Tip: Discuss each parent's ability and willingness to promote the child's education both with the child and teachers. Look for who assists the child with homework, attends conferences, or communicates with the teacher(s) regarding the child's education. Ascertain whether or not the child arrives for school on time, prepared, appropriately dressed, and ready to go. Ask each parent to describe their involvement with the child's education and religious practices, if any.

- Is either parent engaged in activities that would impair the parent's ability to exercise good judgement?
- Does one parent more effectively discipline the child?
- Is either parent able to get the child to bed on time?
- Do the parents have physical or emotional impairments that may affect each parent's ability to provide love, affection, and guidance?
- Is the parent able to give priority to the child's welfare over the parent's personal activities?
- Does the child regularly attend religious services or other activities?
- Is one parent primarily responsible for the child's participation in the religious activities?
- Does the parent facilitate the child's practice of the child's religious beliefs?

Practice Tips: Historically, family practices may have been different than the child's current religious practices. Find out what are the child's established religious practices. Will both parents assure the continuation of the child's religious practices?

- Are there any special needs the child has and if so, is it evident that each parent recognizes this and can act on it? Does each parent believe the other parent can also do this?

Factor c: **The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care and other material needs.**¹

Interpretation:

There are two principal aspects of Factor c: The parents' ability to provide for the basic needs of their child and their willingness to provide for the basic needs of their child. A parent with a greater household income compared to the other's minimal earnings can be considered to have the greater capacity to provide for the child's basic needs.² Similarly, a parent who has voluntarily accepted a reduction in income below the parent's earning capacity may be considered to lack the disposition to provide for the child's basic needs.³ A parent who has demonstrated an excellent employment history but who has recently become self-employed, may still be considered to have a greater capacity than a parent who had a less successful employment history and whose earnings in her most recent position depended on future sales.⁴

The amount of income is not the sole basis for determining the capacity of a parent to provide for the needs of a child. The extent to which the disparity in incomes will be counterbalanced by child support may be considered as an offsetting factor.⁵ A disparity in the debt load a parent has incurred will also be a consideration for this factor.⁶

Notwithstanding a parent's earning capacity, the parent must be willing to use the income for the benefit of the child. A parent who had sufficient income to provide secure and adequate housing was found to be lacking in this factor when she decided to save money by sharing an apartment with an adult couple who had

¹ MCL722.23(c).

² *Carson v Carson*, 156 Mich App 291 (1986). See also *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987), noting that disparity in income is a factor, but that it should be weighed carefully to avoid placing an undue emphasis on economic factors alone.

³ *McCain v McCain*, 229 Mich App 123 (1998).

⁴ *Harper v Harper*, 199 Mich App 409 (1993).

⁵ *LaFleche v Ybarra*, 242 Mich App 692 (2000).

⁶ *Schuiteboer v Schuiteboer*, COA 224020 (unpublished, 2000).

negative aspects to their relationship and where the children slept on a sofa bed and cot.⁷ Another parent was found to lack a disposition to provide for the children's necessities when she chose to participate in extracurricular activities instead of providing for a child's medical care.⁸

Parents have also been considered to lack a disposition to provide for a child's necessities by acting in ways that make it more difficult for their children to have access to income or benefits available to that parent. A parent was found lacking by his actions in taking on the support of another individual and that individual's children,⁹ and in failing to inform the other parent that medical insurance coverage was available for their children.¹⁰

Considerations for the Investigator (There are two parts to this factor. One is the capacity to provide, and the other is the disposition to provide):

- Is one parent's capacity to provide for the child impacted because of a mental/physical disability?

Practice Tip: In addition to individual income and exercising the parents' earnings potential, given an appropriate payment of support from the other parent, consider whether each parent would be able to provide for the child's physical and medical needs. Gather the parents' income information and calculate a child support recommendation for the different custodial arrangements under consideration.

- Is the parents' education or training sufficient enough to prepare each to earn a wage that provides for the child's needs?
- Do the parents have a capacity to earn a stable income?
- Did one of the parents recently begin a new job and what is the likelihood that income will continue?

⁷ *Fletcher v Fletcher*, 229 Mich App 19 (1998).

⁸ *Moser v Moser*, 184 Mich App 111 (1990).

⁹ *Williams v Williams*, COA 220488 (unpublished, 2000).

¹⁰ *Bowers v Bowers*, 198 Mich App 320 (1993).

- Is one of the parents deliberately earning less than the parent is capable of earning?
- Is one of the parents earning less because of recent self-employment and does that parent have capacity to earn more?
- Does either parent have a large debt that may prevent that parent from providing for the physical needs of the child?
- Did the parents use their incomes for the benefit of the child since the separation (e.g., adequate housing, medical care, food, and clothing)?
- Does either parent's income go to support another individual (present boyfriend, girlfriend, present spouse, or someone's child) instead of the parent's own child?
- Have the parents provided appropriate medical care or its equivalent for the child?
- Have both parents shared medical coverage information that would benefit the child?

Practice Tips: Beyond the past practices, compare the relative ability and likelihood that each parent will care for the needs of the child while in each parents' custody.

- Has one parent been responsible for the child's school clothes being appropriate, clean, and in good repair?
- If the child is of school age, is one parent responsible for waking the child, feeding the child, and making sure the child arrives to school on time?
- If the child has special needs, does one parent have the training necessary to provide for those needs?
- Is either parent willing to receive the necessary training to provide for the special needs of the child?

- Did either parent offer financial assistance to the other parent for the benefit of the child before being ordered by the court to do so?

Practice Tips: If a parent was ordered to pay support or maintain medical coverage, what is the likelihood that parent will not pay it, or try to prevent it from being withheld. If a parent were to receive support payments, what is the likelihood that parent will use it for purposes other than the care of the child?

Factor d:

The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.¹

Interpretation:

Factor d examines the stability of the child's home. For instance, when a child was allowed to stay home alone with no structured activities and no supervision, his parent worked for 6 companies in the last 8 years, and the parent had multiple live-in partners, there was a lack of a stable environment.² Similarly, when a parent moved several times, remarried and divorced in the short time since the parents divorced, and now planned on marrying her boyfriend, the facts did not demonstrate a stable environment.³ Frequent moves by themselves do not conclusively demonstrate a lack of a stable environment. Where the evidence demonstrated that the child was relatively unaffected by the mother's frequent moves and considered her home to be wherever she and her mother resided, the court found that the moves did not weigh this factor in favor of the father.⁴ Although a stable environment may currently exist, if a parent plans to change that environment under circumstances that may lead to instability, it may be necessary to consider the environment unstable.⁵

Considerations for the Investigator:

- Has either parent moved frequently because of evictions, foreclosures, or broken relationships?
- If either parent has moved frequently, what impact has this had on the child?

¹ MCL 722.23(d).

² *Riley v Downs*, COA 224314 (unpublished, 2000).

³ *Hilliard v Schmidt*, 231 Mich App 316 (1998).

⁴ *Phillips v Jordan*, 241 Mich App 17 (2000).

⁵ *Bowers v Bowers*, 198 Mich App 320 (1993) (The father's intention to change a five year stable environment by moving out of his parents' house and perhaps out of state, coupled with his frequent job changes and his drinking problem, made factor equal when compared to the mother who lived with multiple roommates and occasional boyfriend visitors.).

Practice Tip: Moves alone do not conclusively prove a lack of a stable environment. When attempting to determine the stability of a child's environment try to identify the length of key relationships, predictability, and structured activity.

- Where has the child resided since the separation?
- Does either parent's home offer the child a place of comfort, stability, and a settled atmosphere?

Practice Tip: Determine where the child finds a sense of belonging and comfort. Compare the relative security that the child finds in each parent's household.

- Does either parent intend on moving soon? Would the move cause instability in the child's life?
- Who resides in each parent's home, either on a regular or sporadic basis?
- Has either parent had numerous live-in relationships?
- Has either parent had numerous divorces?
- Does either parent frequently leave the child alone without adult supervision?
- Does either parent frequently leave the child alone without any structured activities?

Practice Tip: Causes of instability may include: evictions, foreclosures, and erratic behavior (substance abuse, mental illness, abuse, etc.) within the household, broken relationships, frequent changes in caretakers, lack of supervision, unreliability of a parent, etc. Try to identify events in the child's life that may have caused instability and what impact this has had on the child.

Factor e: **The permanence as a family unit, of the existing or proposed custodial home or homes.**¹

Interpretation:

The focus of this factor is the child's prospects for a stable family environment,² not the acceptability of the home in which the child will live.³ All information should be considered that indicates which of the parents can provide the child with benefits of a custodial home marked by permanence as family unit. The fact that one of the parents is single should not preclude a finding that there is a stable family environment.⁴ However, it is appropriate to consider a parent's social interests outside the home coupled with frequent use of babysitting which could impact on the permanence and continuity of the custodial family unit.⁵ The fact that a person has had multiple relationships within a short period of time is also an appropriate consideration under this factor.⁶

Considerations for the Investigator:

- Are there indications the current families of each parent will not remain together?
- Does the child have a relationship with siblings (biological or step) in either of the parent's homes?
- Has either parent had a number of non-family members reside in the home?

¹ MCL 722.23(e).

² *Ireland v Smith*, 451 Mich 457 (1996).

³ *Fletcher v Fletcher*, 200 Mich App 505, 517 (1993).

⁴ *Zuziak v Zuziak*, 169 Mich App 741 (1988).

⁵ *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492 (1987).

⁶ *Hilliard v Schmidt*, 231 Mich App 316 (1998) (Court of Appeals affirmed lower court's finding that mother's living arrangements were not stable when she had remarried and divorced in the five years since her divorce and she claimed to plan on marrying her boyfriend but did not want to rush into anything.); *Riley v Downs*, COA 224314 (unpublished, 2000) (The father had numerous live-in female companions in and out of his house.).

- Is it readily apparent the stability of the child's live is impacted by the frequent use of child care providers? Is it evident that either parent's multiple relationships, including marriages, have impacted the stability in lives of the child?

Practice Tip: Stability of a family unit is demonstrated by the strength of key relationships, reliability of each member, and likelihood of continuing the existing/proposed structure.

Factor f: **The moral fitness of the parties involved.**¹

Interpretation:

This factor examines the parents relative moral fitness. Case law concerning this factor is rare.² Cases that do exist indicate that immorality alone is not sufficient to find in favor of one of the parents on this factor.³ For example, unmarried cohabitation by itself does not show a lack of moral fitness for the purposes of the Child Custody Act. Rather the immorality must have a bearing on the person's ability to function as a parent.⁴ Thus, a father who had two OUIL convictions, was verbally abusive and threatening to the other parent in front of the children, lied about his past alcohol record, lived with the child's babysitter, and allowed the child to drink from his beer, evidenced immorality exceeding that of the mother who allowed her boyfriend to occasionally spend the night.⁵

Considerations for the Investigator:

- Is either parent engaged in the use of an illegal substance?
- Does either parent routinely and excessively consume alcohol?
- Are there indications that either parent provided an illegal substance or alcohol to a child?
- Does either parent promote or rationalize criminal behavior to the child?

¹ MCL 722.23(f).

² Most of the case law centers on a claim that one or both of the parents had engaged in some form of sexual misconduct (unmarried cohabitation or adultery).

³ *Williamson v Williamson*, 122 Mich App 667 (1982) (unmarried cohabitation).

⁴ *Fletcher v Fletcher*, 447 Mich 871 526 NW2d 889 (1994) (error in finding that this factor favored plaintiff; there was no evidence that defendant's extra-marital affairs had any adverse effect on her ability to raise children). See e.g., *Helms v Helms*, 185 Mich App 680 (1990) (plaintiff's pregnancy was an "aggravating factor" when she was unmarried and living with her boyfriend).

⁵ *Bowers v Bowers*, 198 Mich App 320 (1993).

- Has either parent verbally abused or threatened the other parent in the presence of the child?
- Has either parent been prosecuted or convicted of a violent crime?
- Is there any indication that either parent abused the child (physically, sexually, emotionally, or verbally)?

Practice Tip: It may be necessary to contact law enforcement agencies, protective service agencies, and court offices for information about criminal activity.

- Does either parent reside with someone who is involved in the use of an illegal substance?
- Does either parent reside with an individual who routinely and excessively consumes alcohol?
- Does either parent allow another individual who threatens or abuses that parent in the presence of the child?
- Has either parent allowed the child to be threatened or abused by another individual?
- Has either parent been involved with multiple partners?
- If either parent is cohabiting with another individual, is the child's development impacted?

Practice Tips: Try to identify who will reside with or have frequent contact with the child. Ask the parents what effect would the conduct of these individuals have on the child. Should the parent be allowing or limiting the contact between the child and any of these individuals?

Factor g: **The mental and physical health of the parties.**¹

Interpretation:

This factor pertains to whether the parents have physical or emotional health problems that would interfere with their ability to care for the child.² In evaluating the parents for this factor, it must be decided if the parent’s mental or physical health poses a potential threat to the child’s health and well-being.³ For instance, evidence of a person’s drinking problems and outbursts against the other parent may be an indication of poor mental health.⁴

While a person’s physical disability and its effect on the child’s ability to develop, must be considered it is also necessary to consider whether there can be alternative ways of assisting the child’s development. Thus, where a parent’s deafness may have impaired the child’s oral communication development, the fact that other means of obtaining verbal language stimulation were available, made a decision to remove the child from that parent’s custody inappropriate.⁵

Considerations for the Investigator:

- Does either parent have a physical or emotional health condition that would impact that parent’s ability to parent? If so, should an appropriate professional conduct an evaluation?

Practice Tip: Ask each parent if that parent or the other parent suffers from any physical or psychological condition that could directly affect the parents’ ability to care for the child? If so, ask for details about these conditions.

¹ MCL 722.23(g).

² *Cf. Wilson v Upell*, 119 Mich App 16 (1982).

³ *Harper v Harper*, 199 Mich App 409 (1993).

⁴ *Bowers v Bowers*, 198 Mich App 320 (1993).

⁵ *Bednarski v Bednarski*, 141 Mich App 15 (1985).

- If under the care of a doctor or therapist, does that parent follow recommended treatments and take all prescribed medications?
- Does either parent reject treatment of diagnosed disorders?
- Does either parent show outbursts of anger or other inappropriate behavior directed at the other parent?
- Does either parent have a history of a drinking, drug, or other substance abuse problems?

Practice Tip: Secure a release of confidential information form signed by both parents at the beginning of every investigation. Most health care and mental health care professionals will not discuss or release patient information without being provided with a copy of the release form. See the Appendix 3 for examples of release forms.

- Does the parent have means available to assist with a disability, that provides necessary skills, to raise the child?

Factor h: **The home, school, and community record of the child.**¹

Interpretation:

This factor examines a child's progression and development in three areas: home, school, and community. There are times when it may not be possible to measure this factor, especially when the child is too young to have developed a home, school, or community record² or when the parents would each continue the child in the same church, school, and community.³ However, there may be a difference in the child's record when the child is with each of the parents. When a child does poorly in one parent's care, this factor may favor the other parent.⁴ Similarly, it would be appropriate to find in favor of one parent if there are indications the child showed improvement in school while residing with that parent,⁵ or when the other parent failed to make preparations necessary for the child's education.⁶

Information to consider in examining the community record, includes long-term community contacts evidenced by: attendance at the same school, contact with the same friends or playmates, visits to relatives in the community, and participation in sports programs.⁷

¹ MCL 722.23(h).

² *Wellman v Wellman*, 203 Mich App 277 (1994) (children 6 ½ months and 2 ½ years).

³ *Harper v Harper*, 199 Mich App 409 (1993).

⁴ *Moser v Moser*, 184 Mich App 111 (1990) (poorly performing child missed more school days when she was with the other parent).

⁵ *Hall v Hall*, 156 Mich App 286 (1986).

⁶ *McCain v McCain*, 229 Mich App 123 (1998).

⁷ *Baker v Baker*, 411 Mich 567 (1981); cf *Schubring v Schubring*, 190 Mich App 468 (1991) (The children did well in school, were involved in a number of social activities and extracurricular educational activities, and mother promised to move if necessary to keep them in the same school). The parent's proposed child care arrangements may also be an appropriate consideration under this factor. *Ireland v Smith*, 451 Mich 457 (1996).

Considerations for the Investigator:

Home

- Does the child have a healthy relationship with siblings, step-parents, step-siblings, and others in each parent's home?
- Is the child respectful to other members of each parent's household?
- Do both parents provide appropriate child care for the child?

School

- Does the child show greater academic progress when with one parent?
- Does the child have lower school attendance when with one parent than the other?
- Is the child's homework completed more often when with one parent?
- Has the child been in trouble at school? How did each parent respond?

Practice Tip: Secure a release of confidential information form signed by both parents at the beginning of every investigation. Some school officials will not discuss or release student information without being provided with a copy of the release form. See Appendix 3 for examples of release forms.

Community

- Does each parent encourage the child to become involved with community or extracurricular activities?
- Does each parent enroll and attend the child's community and extracurricular activities?

- If the parents reside in different communities, does either community offer the child interaction with friends and relatives?
- Has the child been in trouble with law enforcement?

Practice Tip: Try to identify situations where the child may have been in trouble, arrested, or exhibited inappropriate behavior.

Factor i: **The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.¹**

Interpretation:

The child's preference must be taken into account if the child is old enough to express a preference.² The exact point at which a child is old enough to express a preference is dependent on the child's age and maturity, and will be different for different children. Thus, it was proper to find that this factor was inapplicable for children who were aged six and a half months and two and a half years,³ but improper not to interview a seven year old to determine whether he was capable of expressing a preference.⁴

While it is generally necessary to speak to a child to determine the child's preference, the preference may be determined in other ways such as when the parents acknowledge that the child has a preference for one of them and that preference is reasonable based on other information.⁵ Similarly, even when a child has expressed a preference, that preference may be disregarded when the child's motivation for the preference is inappropriate⁶ or based on undue influence by a parent.⁷

In a child custody dispute, the parents must be informed of whether a custody preference expressed by the child was considered, evaluated, and determined by the court, but the parents must not be informed of the preference expressed by the child.⁸

¹ MCL 722.23(i).

² *Stevens v Stevens*, 86 Mich App 258 (1978).

³ *Wellman v Wellman*, 203 Mich App 277 (1994).

⁴ *Flaherty v Smith*, 87 Mich App 561 (1978). But see *Harper v Harper*, 199 Mich App 409 (1993) (children ages 7 years and 3 years were too young to express a preference).

⁵ *Fletcher v Fletcher*, 200 Mich App 505 (1993).

⁶ *Hall v Hall*, 156 Mich App 286 (1986) (preference for mother may have been related to her lack of discipline).

⁷ *Baker v Baker*, 411 Mich 567 (1981).

⁸ MCL 552.507(4).

Considerations for the Investigator:

- Does either parent acknowledge that the child has a preference?
- Is it readily apparent the child is aware that the child's choice alone is not the only factor the court will consider in determining the outcome?
- Is the child of an age and maturity to freely express a preference?
- Besides interviews with the child and parents, are facts present that indicate the child's preference?
- Do you see any indication that either parent has attempted to influence the child's preference?
- Do you believe the child's preference is honest and sincere?
- Do any of the child's preferences come out of concern for what will happen to a parent if the child does not live with the parent?
- Are any preferences due to loyalty to a parent, fear of a parent, or what a parent might do?

Practice Tip: Try to determine each child's reasoning for any preferences given. Try to determine if the preference is reasonable.

Practice Tips: For additional information about interviewing children please refer to the Appendix 1 for "Guidelines for Interviewing Children About Custody."

Factor j:

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.¹

Interpretation:

The focus of this factor is whether each parent has the ability and willingness to encourage a close relationship between the child and the other parent. When a parent had demonstrated such vindictive behavior toward the other that he would likely attempt to destroy the other's relationship with the child, this factor was weighed against that parent.² Lesser actions, such as a parent's reluctance to allow parenting time in the early stages of a divorce action have also been found to make it less likely that the parent would encourage a close relationship between the child and the other parent.³ Other circumstances that allow a finding against a parent for this factor are a parent's uncooperative attitude toward parenting time,⁴ allowing the child to make other plans for weekends when the other parent is scheduled to have parenting time,⁵ or berating the other parent in the children's presence.⁶ On the other hand, a parent who seeks the other parent's input before making decisions involving the child would be more likely to prevail on this factor.⁷

In determining whether a parent has acted sufficiently to determine that this factor should be weighed against the parent, it is important to determine the parent's motivation for acting as the parent did. Thus, it was permissible not to weigh this factor against a parent who denied parenting time on the advice of a psychologist.⁸

¹ MCL 722.23(j).

² *McCain v McCain*, 229 Mich App 123 (1998).

³ *Wellman v Wellman*, 203 Mich App 277 (1994).

⁴ *Barringer v Barringer*, 191 Mich App 639 (1991).

⁵ *Bowers v Bowers* 198 Mich App 320 (1993).

⁶ *Hilliard v Schmidt*, 231 Mich App 316 (1998).

⁷ *Fletcher v Fletcher*, 229 Mich App 19 (1998).

⁸ *Hillard v Schmidt*, 231 Mich App 316 NW2d 263 (1998).

Considerations for the Investigator:

- Does either parent insult or berate the other parent in the presence of the child?
- Does one parent allow the child to make plans during the other parent's scheduled time without consulting with the other parent first?
- Prior to a court order, did each parent allow the other parent access to the child?
- Does one parent show an uncooperative attitude toward parenting time?
- Does one parent allow other adults to interfere with the relationship between the other parent and the child?
- Is it apparent that each parent seeks input from the other about decisions regarding the child?
- Historically, did one parent have legitimate reasons for denying parenting time (e.g., recommendation of mental health professional, or the child was extremely ill)?

Practice Tips: Ask each parent to describe the co-parenting relationship with the other parent. Does each parent think both will be able to work together for the best interests of their child in the future?

Factor k:

Domestic violence, regardless of whether the violence was directed against or witnessed by the child.¹

Interpretation:

Very few appellate cases have addressed this factor. Those cases that address domestic violence were decided before this factor became a separate consideration. The fact that one parent struck and shoved the other many times, attempted to force her way into his truck, and reached through the truck window to slap him can be weighed against that parent.² In the same case, there was testimony that the parent threatened to slash her wrists with a razor blade if her stepdaughter would not say she loved her. The court has also found that the fact that a father insulted, berated, and threatened the mother could be weighed against the father.³

Considerations for the Investigator:

- Are there indications that an act of physical violence was committed by either parent against another individual?
- Are facts present that either parent verbally, mentally, or emotionally abused (e.g., tormented, berated or threatened) the other parent or another family member including the minor child, live-in relationships, and stepchildren?
- Does one parent have a personal protection order against the other parent?

¹ MCL 722.23(k).

² *Harper v Harper*, 199 Mich App 409 (1993) (This case was decided before the domestic violence factor was added to the custody factors. The court weighed the facts in this case under the mental and physical health factor.).

³ *Bowers v Bowers*, 198 Mich App 320 (1993) (This case was decided before the domestic violence factor was added to the custody factors. The court weighed the facts in this case under the willingness and ability of each parent to facilitate and encourage a close relationship between the child and the other parent.).

Practice Tips: For questions and issues regarding domestic violence please refer to Appendix 2 for Domestic Violence & Personal Protection Orders, by Ms. Carol Hackett-Garagiola, and Ms. Joyce Wright.

Factor 1: **Any other factor considered by the court to be relevant to a particular child custody dispute.¹**

Interpretation:

This factor examines any other issues that relate to the best interests of the child that were not addressed in the previous 11 factors.

An appropriate consideration under this factor is the relationship between the parents and their families. Thus, the fact that the parents have had difficulty in communicating and cooperating could be considered in determining whether to order joint custody.² And the fact that a father left his wife with one child while she was pregnant with another could be weighed against him.³ This factor has been weighed in favor of a parent when custody with that parent could keep a child together with a sibling.⁴ However, if the best interests of the individual child will be better served by separate custody of the children, that custody arrangement should prevail.⁵

The ability of the parents to consider the interests of the child is also a consideration. When a parent has exhibited a willingness to defer to the best interests of the child in previously voluntarily relinquishing custody, that fact may be weighed in her favor under this factor.⁶ On the other hand, when a mother's anger toward the father interfered with her ability to consider the needs of her children and when she tended to blame others, including the children for her problems, the factor may be weighed against her.⁷

¹ MCL 722.23(1).

² *Wellman v Wellman*, 203 Mich App 277 (1994) (considering whether joint custody was appropriate).

³ *Wellman v Wellman*, *supra*.

⁴ *Helms v Helms*, 185 Mich App 680 (1990) (stepsister).

⁵ *Wiechmann v Wiechmann*, 212 Mich App 436 (1995); *Bowers v Bowers*, 198 Mich App 320 (1993).

⁶ *Zuziak v Zuziak*, 169 Mich App 741 (1988).

⁷ *Hilliard v Schmidt*, 231 Mich App 316 (1998).

The special needs of a child and the manner in which each parent's home can satisfy those needs may be considered. Thus, it is permissible to find that a two-parent home is preferable to a single-parent home when a child had special needs that were better met with the permanence and stability offered by that home.⁸ Child-care arrangements are also a relevant consideration.⁹

While it is appropriate to consider a number of issues under this factor, it is inappropriate to interject a personal philosophy when it contravenes public policy. It is, therefore impermissible in weighing this factor to consider a parent's association with a person of another race.¹⁰

Considerations for the Investigator:

- Do the parents have difficulty communicating and cooperating with each other?
- Is it readily apparent that the children should be kept together?
- Does one parent put the child's best interest above the parent's own interest more than the other parent?
- Did one parent voluntarily relinquish custody because it was in the child's best interest?
- Do you see any indication that one parent has such anger for the other parent that it interferes with the ability to consider child's needs?
- Does one parent blame the child for the parent's own problems?
- Does each parent's home provide for the special needs of the child?
- Can the child's special needs be better met by living in a two parent home, and does either parent live in a two parent home?

⁸ *Mogle v Scriver*, 241 Mich App 192 (2000).

⁹ *Ireland v Smith*, 451 Mich 457 (1996).

¹⁰ *Edel v Edel*, 97 Mich App 266 (1980).

- What are each parent's child care arrangements?
- Has the child been pressured by either parent to make a decision regarding the child's preference, or other decisions the child must make?

Practice Tip: Look for issues that are possibly unique to this family that may not have been addressed in the previous 11 factors that the court should be aware of before making a custody decision.