

Michigan Court of Appeals Affirms Enforcement of Custody MSA

by

Lee Hornberger

This article reviews *Rettig v Rettig*, ___ Mich App ___ (Docket No. 338614; issued January 23, 2018). *Rettig* is the most recent Michigan Court of Appeals published decision concerning the enforceability of a mediation settlement agreement since *Vittiglio v Vittiglio*, 297 Mich App 391 (2012), lv dn 493 Mich 936 (2013). As we will see, *Rettig* seriously impacted on *Vial v Flowers*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2016 (Docket No. 332549)

In *Rettig*, the parties signed a mediated settlement agreement (MSA) concerning custody. Over the objection of one parent that the Circuit Court should have a hearing concerning the Child Custody Act, 722.21 *et seq* best interest factors and whether there was an established custodial environment, the Circuit Court entered a judgment that incorporated the MSA. The Court of Appeals affirmed. The Court of Appeals said although the Circuit Court is not necessarily constrained to accept the parties' stipulations or agreements verbatim, the Circuit Court is permitted to accept them and presume at face value that the parties meant what they signed. The Circuit Court remained obligated to come to an independent conclusion that the parties' agreement is in the child's best interests, but the Circuit Court is permitted to accept an agreement where the dispute was resolved by the parents. The Circuit Court was not required to make a finding of an established custodial environment.

The Court of Appeals indicated:

The agreement between the two parties was signed by both parties and therefore valid. The trial court concluded that the agreement appeared to be in the best interests of the child and included it in the court's order. In context, the trial court was not required to make a finding of an established custodial environment The evidence shows that there was no clear legal error or abuse of discretion falling outside of the range of principled outcomes. Defendant was aware of the provisions in the agreement that settled the disputes over parenting time and custody, shown by his signature. The trial court

properly entered the order effectuating the parties' agreement, and properly declined to grant defendant's motion for reconsideration, rehearing, and relief from judgment.

Rettig raises the following questions.

- What effect does *Rettig* have on *Vial v Flowers, id?* In *Vial*, the Court of Appeals rejected the wife's contention that the parties had not entered into an MSA concerning custody. The December 2015 mediation resulted in an MSA. *Vial* held that the Circuit Court failed to adequately consider the child's best interests before it entered a custody judgment in April 2016. *Vial* said a party is bound by the party's signature on a custody MSA as long as the Circuit Court agrees that the MSA is in the best interests of the child. The MSA signed by parties was binding on the parties subject to the Circuit Court doing a best interests analysis. When the parties enter into an otherwise binding custody agreement, the Circuit Court is not relieved of its obligation to examine the best interest factors. By entering a judgment of custody, the court implicitly acknowledges that it has (1) examined the best interest factors, (2) engaged in a profound deliberation as to its discretionary custody ruling, and (3) is satisfied that the custody order is in the child's best interests. An evidentiary hearing is not necessarily required given the custody MSA. *Vial* indicated the Circuit Court also erred by not considering whether an established custodial environment existed.

- Was it appropriate for the *Rettig* court to refer to the established custodial environment holding of *Vial* as "nonsensical?"

- If *Rettig* resulted in the demise of *Vial*, did *Vial* deserve a better demise?

- If *Vial* had never existed, would *Rettig* have been a published decision?

About the Author

Lee Hornberger is Chair of the State Bar of Michigan's ADR Section, former Editor of *The Michigan Dispute Resolution Journal*, former member of the State Bar's Representative

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