



Best Interests of the Minor Child

Trial courts are required to make “best interests” findings of fact in each of the following circumstances: (1) when a parent seeks to terminate a full minor guardianship; (2) when a parent or the sole parent with right to custody seeks to terminate a limited minor guardianship and the parent has not substantially complied with the limited guardianship placement plan; (3) when the court, following a review if it is in the best interests of the minor child, decides to terminate the guardianship; (4) parenting time requests; (5) requests for removal of a guardian; and (6) custody and parenting time decisions. The probate court has jurisdiction and the family division of the circuit court has ancillary jurisdiction over the first five circumstances; the family division has jurisdiction over the sixth.¹

The following checklist is a helpful devise in helping to determine what the best interests of a minor child(ren) are. Also, this checklist provides valuable information to your attorney for representation and document preparing purposes.

___Y ___N Is there a custody order now in place?

___Y ___N Has a proper cause or a change in circumstances been shown:
(See endnote 3.) If Yes, proceed to the next question. If No, stop.

___Y ___N Is there an “Established Custodial Environment”?

Y	N	
___	___	Is there a previous custody order?
___	___	Has the child been with the present custodian for a significant duration during which the child is given
Y	N	
___	___	parental care
___	___	comfort
___	___	discipline
___	___	love
___	___	guidance
___	___	security
___	___	stability
___	___	the necessities of life

Mother Father

_____ _____ (a) The love, affection, and other emotional ties existing between the parties involved and the child.⁵

Mother Father

- _____ _____ Bonding with and relationship to competing parties—to whom is the child bonded? About whom has the child made statements indicative of bonding?
- _____ _____ When the child has a problem, to whom does the child speak?
- _____ _____ When the child has a triumph, to whom does the child speak?
- _____ _____ Who spends more hours per day with the child?
- _____ _____ Who prepares the child’s meals?
- _____ _____ Who has the ability to separate the child’s needs from one’s own and to empathize with the child?
- _____ _____ To whom does the child openly show signs of affection?

Mother Father (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.⁶

Mother Father

- _____ _____ Who bathes and dresses the child?
- _____ _____ Who stays home from work when the child is sick?
- _____ _____ Who takes responsibility for involvement in academic affairs?
- _____ _____ Who takes responsibility for involvement in extracurricular activities?
- _____ _____ Who disciplines the child?
- _____ _____ Who uses preferable discipline techniques?
- _____ _____ Who has preference because of the other’s verbal abuse, substance abuse, or arrest record?
- _____ _____ Who has preference because of the ability to provide the child access to an extended family?

Mother Father

_____ _____ (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.⁷

Mother Father

- _____ _____ Who makes purchases for the child?
- _____ _____ Who attends to special needs of the child?
- _____ _____ Who has greater earning capacity?
- _____ _____ Who adjusts working hours based on the needs of the child?
- _____ _____ Who has certainty of future income?
- _____ _____ Who has the ability to provide insurance for the child?

____ ____ Who attends classes for professional involvement?
____ ____ Who has requisite knowledge to meet the needs of the child?
____ ____ Who schedules and takes the child to medical appointments?
____ ____ Who schedules and takes the child to dental appointments?
____ ____ Who arranges for and supervises child care?

Mother Father

____ ____ (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.⁸

Mother Father

____ ____ Who can provide a safe environment?

____ ____ Who can provide continuity?

Mother Father

____ ____ (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.⁹

Mother Father

____ ____ In whose custody will the family unit not be split?

Mother Father

____ ____ (f) The moral fitness of the parties involved.¹⁰

Mother Father

____ ____ Who has priority as a result of the other party having an extramarital affair known by the children? Caution: See *Fletcher* discussion in endnote 10.

____ ____ Has either party engaged in any of the following conduct:
____ ____ Verbal abuse.

____ ____ Drinking problem.

____ ____ Poor driving record.

____ ____ Physical or sexual abuse of the child.

____ ____ Other illegal or offensive behaviors.

Mother Father

____ ____ (g) The mental and physical health of the parties involved.¹¹

Mother Father

____ ____ Does either party have a physical or mental health problem that significantly interferes with the ability to safeguard the child's health and well-being?

____ ____ Age of contestant compared to age of the child—would energies of the child overwhelm the contestant?

Mother Father

____ ____ (h) The home, school, and community record of the child.¹²

Mother Father

____ ____ Who can provide leadership to attend school?

- ____ ____ Who can provide leadership in extracurricular activity participation?
- ____ ____ Who is actively involved in school conferences, transportation, and attendance at school events?
- ____ ____ Who can more adequately assist reducing the necessity for other agency involvement (the juvenile court, the DHS), or if another agency is involved, who can cooperate more fully?
- ____ ____ Who can more adequately assure the child's access to friends and peers useful for the child's development?
- ____ ____ Who can more adequately plan and supervise the child's undertaking of home responsibilities that are appropriate to the child's age and circumstances?
- ____ ____ Who takes responsibility for completion of school assignments?

Mother Father

____ ____ (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.¹³

Mother Father

____ ____ Whom does the child favor?

Mother Father

____ ____ (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.¹⁴

Mother Father

____ ____ Who can best cooperate with an appropriate parenting time schedule by the other party?

____ ____ Who is least likely to disparage the other parent in the presence of the child based upon past performance?

Mother Father

____ ____ (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child. [In guardianships, MCL 700.5101(a), this factor is (xi).]¹⁵

Y N

____ ____ Have there been incidents of violence in the home by any party against any party? If so, has there been a police report, arrest, or conviction? Has there been a pattern of violence whether reported or not reported?

Mother Father

____ ____ (l) Any other factor considered by the court to be relevant to a particular child custody dispute. [In guardianships, MCL 700.5101(a), this factor is (xii).]¹⁶

Mother Father

____ ____ Who can most likely address the special needs of the child?

____ ____ Has either parent threatened to kidnap the child?

- Does either parent spend excessive time traveling for the child?
- Does either parent have a record of failure to exercise parenting time, failure to notify, or failure to return the child?
- Who has responsibility for the actual and proposed child care arrangements?

Yes No

- Are there other children, whether a part of this litigation or not, whose custody is relevant to this child's best interests?
- Are there significant others or new spouses whose relationship with the child affects the child's best interests?