

Can a Child Decide Whom They Want to Live With in Michigan?

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“Doesn’t my child get to decide where she lives? She is 13.”

Any parent who is in the middle of a child custody dispute finds themselves asking this question. In making a decision about child custody, Michigan law requires that the court consider and determine custody after looking at the 12 best interest factors set forth in MCL 722.23.

Child Preference in Custody Disputes

Under Michigan law, a child does not legally get to decide where she lives until she is 18. The reasonable preference of a child is only one factor of the 12 best interest factors. Although the court’s analysis does not require that each factor be given equal weight, the weight to be given to any factor is in the court’s discretion. *Riemer v. Johnson*, 311 Mich App, 632, 876 NW2d 279 (2015). If the issue of child custody is brought before the court in an evidentiary hearing or trial, the court interviews the child privately, outside of the courtroom to protect the child from the trauma of choosing between the parents in open court. *Impullitti v. Impullitti*, 163 Mich App 507, 415 NW2d 261 (1987). Furthermore, the court is not to cover any other matters other than the child’s preference during the interview. In fact, the Michigan Court of Appeals has held that reversible error may occur if the court uses information during the interview about which parent took the child to the doctor, cooked meals, cleaned or helped with homework when determining the best interest of the child. *Thompson v. Thompson*, 261 Mich App 353, 364-65, 683 NW2d 250 (2004).

The interview itself is not required to be recorded, although many judges do record the interview to preserve the record for the appeal. The private interview is limited to what the child likes or dislikes about each parent’s home, and how the child would set things up if she was in charge. The court is not required to disclose the child’s preference, and the child’s preference is only one element used to make the court’s decision. There are different developmental considerations depending on a child’s age, and while there is no rule that a teenager’s preference must be given great weight, the teenage child’s preference may have more influence than the preference of a younger child. In conclusion, a child does not get to decide which parent to live with in any child custody matter. However, the child’s preference is one factor for the court to take into account in making its decision.

National Law Review, Volume XIII, Number 59

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