WE NEED MORE TOOLS IN OUR TOOLBOX

by Hon. Lisa Langton
Sixth Circuit Court, Family Division

As I sat in my courtroom one Wednesday morning and watched as a case before me went from bad to worse, I realized that what I was witnessing was not an isolated incident. I'm one of many judges who sit and watch as children on contentious domestic cases spiral downward with little hope of relief. We desperately need another tool in our judicial toolbox when it comes to the complicated, important and emotionally draining issues surrounding changes of custody – the ability to remove a child from one homelife environment and place them in another.

Those of you who practice in this area know that once a judgment is entered, a trial judge cannot make a temporary change in custody without first conducting a hearing. I support the current statute that requires these hearings. They allow a measured approach to resolve emotional and impactful issues through fair, mindful and meaningful hearings. They also assure that we minimize unwarranted and disruptive changes of custody.

However, there are many post-judgment matters that scream for a temporary order – where there is clearly a level of distress and dysfunction that demands our attention. Sadly, too many judges have witnessed these types of cases and have been frustrated by our lack of ability to relieve the pain and angst of these children and their families. Courts do have the *limited* ability to grant *ex parte* temporary orders for immediate change of custody where there is a clear finding of "irreparable injury, loss, or damage." However, those circumstances are rare and case law suggests that even temporary orders should only be for a "few days" or until the immediate issue can be resolved. That, in my opinion, is not much of a solution.

A real solution would give judges, in limited circumstances, the ability to issue a temporary custody order where the best interest of the child demands it.

I am suggesting that much like an emergency *ex parte* order, before entry of a temporary order (and after the requisite findings of change of circumstance or proper cause), the judge would be required to specify the reasons for issuing the temporary order and would further be required to base it on affidavits and/or verified pleadings, and even elicit testimony on a limited basis where possible. There might even be the need to agree that under these limited circumstances, the court can take the issuance of the temporary court order into consideration with respect to the required analysis regarding established custodial environments. That would ensure there would be no prejudice to the former custodial parent.

At the very least, the court needs the discretion to enter a temporary order to remove children from an emotionally harmful or destructive custodial environment ***before*** the situation escalates to one where "irreparable injury, loss or damage" occurs. These cases scream for respite on behalf of the children and time IS of the essence.

Currently, when judges identify these cases, we have two options: We can set a hearing date as soon as our docket permits, while these children remain in their difficult situation. In a perfect world we should be able to conduct these hearings within a few weeks or perhaps a month. Unfortunately, given the number of other cases on our dockets, this is rarely possible. In the meantime, these children's lives, along with their mental and emotional well-being, are put on hold. It's a shameful situation that should not be tolerated.

The second choice is not much better. We can conduct a hearing either on a motion call day or within a few days, while recognizing that the parties won't have adequate time to prepare or have the benefit of presenting all witnesses, records, experts or the extensive testimony necessary to allow us to make a thoughtful and meaningful decision. This quick turnaround might allow us to make perfunctory findings that "satisfy" the statute, but is this how we want our courts to make these delicate and compelling decisions? Of course not! We must and can do better.

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If we truly care about the best interests of our children, we absolutely need a measured approach that allows the court to issue a temporary order, set a hearing and allow the parties a reasonable amount of time to prepare and provide the court with the sort of meaningful assistance the court needs to make difficult decisions. To deny this ability is to exacerbate the already unfortunate circumstance in which these children find themselves.

The Family Division in the state of Michigan was created, in great part, to provide families and children with courts and judges who gain knowledge of their cases and become experts in the area of family law. After all, we are the ones who see these cases week after week, month after month. In just about every instance, we are in the best position to gauge the temperature of the case and assess the needs of the children. That's our job, and it's a job we take seriously. Based on our training and background, we are often in the best position to assume the responsibility of protecting these children when their parents are unable or unwilling to recognize the destructive path they're on. I recognize that judges aren't perfect. We make mistakes. But there are built-in checks and balances to guide our hand as we strive to improve.

Knowing this, when we see an area of our practice that falls short or does not allow us to adequately protect families or children, we must take appropriate measures to remedy it.

That's why, with the support of my colleagues on the Family Division bench, I'm establishing a task force – a collection of dedicated of attorneys – to lead the charge to improve our local practice and champion these issues of statewide importance. Ours will be that clarion call.

If you are an attorney who is interested in being part of the solution, please contact my chambers at 248-858-1704. Help us get more tools in our toolbox that will allow our kids to have more of a voice.