



## PROFESSOR LEX

BY HARVEY I. HAUER

### Dear Professor Lex:

**I have a client who has primary physical custody of her children, but shares joint legal custody with her ex-husband. One of the children is approaching high school age, and each parent has a different idea about where to send the child to high school. It is clear that the parties will not be able to agree on where to send the child to school. As my client has primary physical custody, I believe she should be able to make that determination. What do you think?**

Dear Practitioner:

The fact that your client has primary physical custody, is in and of itself a sufficient basis for deciding the proper school that the child should attend. "[T]he circuit court [has the] obligation 'to resolve disputes regarding important decisions affecting the welfare of a child according to the best interests of the child.'" *Pierron v Pierron*, — N.W.2d —, 2009 WL 257111 (Mich App) (citing *Bowers v Bowers*, 278 Mich App 287, 296 (2008)). The Court of Appeals noted that:

when parents share joint legal custody...they also "share decision-making authority as to the important decisions affecting the welfare of the child." MCL 722.26a(7)(b). A decision concerning the children's schooling and education is just such an important decision affecting the welfare of the child. *Bowers*, 278 Mich App at 296; *Shulick v Richards*, 273 Mich App 320, 327; 729 NW2d 533 (2006) (stating that "educational decisions are clearly 'important decisions affecting the welfare of' the children"). Therefore, parents with joint custody must agree concerning where their children will attend school. *Bowers*, 278 Mich App at 296; *Lombardo*, 202 Mich App at 159. [*Id* (footnote omitted).]

The Court then noted that "[a]t times, of course, joint legal custodians will not be able to agree on important decisions,

such as schooling, which affect their children's welfare." *Id*. And when " 'the parents as joint custodians cannot agree on important matters such as education, it is the court's duty to determine the issue in the best interests of the child.'" *Id* (internal citations omitted).

The court must resolve the issue by holding an evidentiary hearing and considering the relevant best-interest factors contained in *Id* (citing MCL 722.23). The Court noted that such a hearing should be referred to as a " *Lombardo* hearing." *Id*.

Concerning the "*Lombardo* hearing, the circuit court 'must consider, evaluate, and determine each of the factors listed in MCL 722.23' for the purpose of "resolving disputes concerning 'important decisions affecting the welfare of the child' that arise between joint custodial parents.'" *Id* at 15 (citing *Lombardo v Lombardo*, 202 Mich App 151, 160 (1993)).

In general, a *Lombardo* hearing will involve one parent seeking to change the child's position with respect to an important issue, and another parent seeking to maintain the child's status quo with respect to that issue....When this occurs, and the proposed change would not alter the child's established custodial environment, the proponent of the change has the burden of proving by a preponderance of the evidence that the change would be in the child's best interests. However, when the proposed change would alter the child's established custodial environment, the proponent of the change must prove by clear and convincing evidence that the change would be in the child's best interest. See MCL 722.27(1)(c). [*Id*.]

In your case, if the parents cannot agree on a school choice, the trial court may hold a *Lombardo* hearing to decide which of the schools to send the child to, based upon the child's best interests.

