



# PROFESSOR LEX

BY HARVEY I. HAUER

**Dear Professor Lex:**

**I have a divorce case where custody is an issue. Opposing counsel is making a big deal that his client earns more money than my client, and he will be better able to provide the children a quality home environment in the coming years. It is extremely unlikely that my client would obtain an alimony award (even combined with child support) that would level the financial playing field between them. Are you aware of any law on this issue that could be useful for my case?**

**Practitioner**

Dear Practitioner:

When deciding a custody dispute, the trial court will apply the best interest factors to the evidence presented to it. The best interest factors are set forth in MCL 722.23. Among the best interest factors is Factor (c), which provides:

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. [MCL 722.23(c).]

In *Dempsey v Dempsey*, 96 Mich App 276 (1980), the Court of Appeals reversed the trial court's custody determination due to an "undue reliance upon economic circumstances in relation to other factors." *Id* at 289. The *Dempsey* Court noted:

Economic matters are of considerable consequence in child-rearing, but not preponderantly more important than other factors. Indeed, it can be argued that economic circumstances never should be conclusively determinative. The reason is plain. In most cases the mother will be disadvantaged,

although with changing life patterns this is not always so. It is not merely a question of prejudicial effect upon mothers; the danger in placing undue reliance on economic circumstances is its potential prejudicial effect upon the child's best interests. [*Dempsey*, *supra* at 289-290.]

More recently in *Corporan v Henton*, 282 Mich App 599, 2009 WL 579290 at \*4 (Mich App)(2009), the Court of Appeals, relying on *Dempsey*, *supra*, echoed the *Dempsey* Court's reasoning, and further noted that a trial court has the power to adjust the parties' financial circumstances:

In *Dempsey* [*supra*], this Court reasoned that a parent with 'more modest economic resources' is nonetheless entitled to equal consideration in the child custody context, because '[i]f the parties are substantially different as to economic circumstances, the [trial] court has ample power through its orders, if it be in the best interests of the child or children, to equalize those circumstances.' " [*Corporan*, *supra* at \*4 (quoting *Dempsey*, *supra* at 289-290).]

You should review the *Dempsey* and *Corporan* cases to assess whether the facts in those cases apply to your case.

Answer respectfully submitted by  
Harvey I. Hauer, Hauer & Snover.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

Please send questions for Professor Lex to [Hhauer@hauersnover.com](mailto:Hhauer@hauersnover.com).

