

## Spring or Summer 2011 Family Law Article

### Surrendering legal custody of minor children a la Charlie Sheen— is it in the children's best interest?

A few months ago, if you looked at the history of people and places surrounding actor Charlie Sheen it would have been a safe bet to say that he had been miraculously beyond reproach and unscathed. In 2010, Sheen was reportedly the highest paid actor on television, earning \$1.8 million per episode on the sitcom CBS series of *Two and a Half Men*. His successes seemingly came easily relative to the decades of drama and debaucheries involving the Hollywood Madam Heidi Fleiss, ongoing bouts with drug abuse, and a penchant for prostitutes and porn stars.

Charlie Sheen's luck seems to be running out, however. His show was cancelled in February of 2011, and there has been increased scandal surrounding custody of his two youngest sons with Brooke Mueller.

Charlie and Brooke have two fraternal twin toddlers, Max and Bob. A temporary restraining order instigated by Mueller expired March 22, 2011, and the parties appear to have reached an agreement. It has been reported, however, that Sheen has agreed to submit to a psychological exam in order to see his sons.

In early March of 2011, the Los Angeles Superior Court judge who has jurisdiction over Sheen's two sons had forced Sheen by way of a temporary restraining order to give custody of Charlie's kids to Mueller in response to her petition wherein it was reported that she alleged such personal threats by Sheen that he would cut her head off, put it in a box and send it to her mother. Also reported were Mueller's allegations that Sheen removed the two boys from her care in violation of custody orders and that he refused to return the kids to her. Mueller is reported as stating that she was in great fear that Sheen would find and attack her and that she also feared for her children's safety.

Compared to Mueller's recent and expired restraining order, Sheen's custodial negotiations with Denise Richards had been much less acrimonious. Sheen's two daughters with Richards, Lola and Sam, reside primarily with their mother.

In April of 2010, Sheen and Richards had reportedly come to an agreement that Richards would retain full legal custody of the girls while Sheen was caught in the midst of his tumultuous marital relationship with Brooke Mueller. The Sheen-Richards custodial arrangement had reportedly spawned out of a December 2009 domestic spat between Sheen and Mueller. According to reports, Sheen did not put up a fight with Richards and he agreed to the change in custody. Given the combative relationship between Sheen and Mueller, as well as Mueller's reported narcotics abuse, it would be

a surprise if Sheen would ever voluntarily give up legal custody to Mueller of his two sons.

Under Michigan law, giving up full *legal* custody of the kids could mean that the custodial parent could theoretically even take the children out of the country. The applicable statute, MCL 722.31 provides in relevant part:

(1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order **shall not change a legal residence of the child to a location that is more than 100 miles** from the child's legal residence at the time of the commencement of the action in which the order is issued.

(2) A parent's change of a child's legal residence is not restricted by subsection (1) if the other parent consents to, or if the court, after complying with subsection (4), permits, the residence change. **This section does not apply if the order governing the child's custody grants sole legal custody to 1 of the child's parents.**

MCL 722.31 (emphasis added).

The statute appears to allow a parent with sole legal custody to move their children greater than 100 miles. This does not seem surprising, given that a parent with sole legal custody would be the only parent authorized with decision-making authority as to the important decisions affecting the welfare of the child, such as educational and medical decisions.

The applicable Court Rule, MCR 3.211(C), however, conflicts with the statute. In Michigan, there is one judge to a family, and that judge or that specific judge's successor must approve any out-of-state move involving a minor child who is subject to the jurisdiction of the court. The 2009 Michigan Court of Appeals decision of *Brauch v Brauch*, affirms this and holds that approval of the minor child's move by your family judge is a must—even if the parent wanting to move has sole legal custody or if the non-moving parent consents.

Michigan Court Rule 3.211(C) is a provision that must be included in any order or judgment concerning custody and serves as notice to parties that *they must* get their judge's approval to move a minor child's residence out of state—even if the parties agree on it.

It would be interesting to see under Michigan law what would happen if Denise Richards retained sole legal custody and decided to move the children out of California and against Charlie Sheen's will. As a father, Sheen has constitutionally protected rights to his children and if he changes his wild ways, a change to joint legal custody is conceivable.

To change legal custody in Michigan, Sheen would have to show proper cause or change of circumstances before even revisiting the issue. Even then, he would still have to demonstrate by clear and convincing evidence that it would be in his children's best interest if the judge were to find that there would ultimately be a change in the established custodial environment were the court to permit that change.

Would Charlie Sheen's termination from Warner Brothers in *Two and a Half Men* be proper cause or a change of circumstances? Probably not in Michigan, but it could impact child support if his income changed.

If you have questions about legal custody, or moving your child's residence out of Michigan, you can contact me to make sure you know what your rights are or which facts could be relevant to the judge's decision.

--by Lana Panagoulia