Emerging Issues in Relocation Cases
Characteristics of Relocation Disputes
2 Models Approaching Relocation

Happy Mom, Happy Kid
- With this perspective, the view is typically to allow the move of the child
- The problem with this perspective is that children typically benefit from relationship with both parents

Both Parents are important
- With this perspective, the view is typically to deny the move of the child
- The problem with this perspective is that 2 parents are often not involved AND if one parent moves regardless, they can’t be involved
Therefore

• It Depends
• The key is determining what parenting plan serves the child best
• It’s always about Best Interests
Relocation Dilemmas

- Competing Constitutional Rights
- Moral Outrage by the “losing” parent
- Relocation-Engendered Conflict
- Allegations of Alienation
- Inevitability of Harm with Long Distance
Best Interests or Least Detriment?

- Best Interest Legal Standard
- Statutory Factors to Consider?
- LDA as Conceptual Obverse to BIC
- Relocation as General Risk factor for children of divorce
- Evaluator is predicting risk of harm
Two Types of Harm

• Relationship Harm – to nonmoving/distant parent-child relationship

• Development Harm – due to diminished parent-child relationship; loss of social capital
4 Decisional Alternatives for the Court

- Relocation Allowed
- Relocation Denied and Moving Parent does not move (status quo)
- Relocation Allowed, Nonmoving Parent decides to move
- Relocation Denied, Moving Parent moves without child; change in custodial parent
Is the Nonmoving Parent a Viable Candidate to be the Custodial Parent?

• If not, then the issue is how to craft a best interests long distance parenting plan.
• Unless the court can deny relocation without being prepared to designate the nonmoving as the custodial/residential parent
Common Ambiguities in the Law

• Can the court consider if the moving parent would move without the child?
• Or, if the nonmoving parent would also move and follow the child?
• Can the court deny relocation without being prepared to change custodial parent?
Relocation Research

• There is not very much but there is some writing about relocation issues in the custody literature

• What little research there is has the following problems:
  – Small sample sizes
  – Confounds the issues
  – Potentially has some “political” issues or built in bias

• Nonetheless, let’s discuss the research that exists
Courts appear to be making it easier for custodial parents to move (e.g., Burgess in CA and Baure in NJ).

In a relocation request, as a strategic matter, both contesting parents are best off portraying their own interests as aligned with the child’s.

Some relocation requests are more and some requests are less compelling. Some cases are simply quite difficult.

There’s no specific research that looks at relocation and its effect on children. Such research could assist in public policy decisions.
Authors surveyed nearly all students enrolled in introductory psychology classes in fall, 2001.

2,067 students surveyed and 602 (29%) had divorced parents. This is consistent with other research on % of college students with divorced parents.

Essentially, they asked if either they or one of their parents had moved more than an hour away.

They looked at various variables to see if there were differences between effects for those in which there had been a move and those in which there had not been a move.
They found:

- A preponderance of negative effects associated with parental moves by mother or father, with or without the child, as compared with divorced families in which neither parent moved away. These included:
  - Receiving less financial support
  - Worrying more about that support
  - Felt more hostility in their interpersonal relationships
  - Suffered more distress from parents’ divorce
  - Perceived parents less favorably as sources of emotional support and as role models
  - Believed the quality of their parents’ relationships with each other to be worse
  - Rated themselves less favorably on general physical health, life satisfaction, and personal and emotional adjustment.
In a great majority of these families (82%), the move separated the child from the father, because either mother and child moved or father alone moved. No significant differences between those two groups, except

- greater worry about college expenses when father moved
- and greater hostility and worse general health for girls when father had moved.

Children less likely to experience a parent moving if their parents had joint legal custody (48% to 75%).

Ultimately, their data cannot establish with certainty that moves cause children harm. They do conclude, however, that there is no empirical basis on which to justify a legal presumption that a move by a custodial parent to benefit the parent’s life will necessarily confer equivalent benefits on the child.
Ultimately, the authors encourage courts to consider “the strategic use of a conditional change-of-custody order”.

They acknowledge some disadvantages to such orders:

- They are of no value in restraining moves of the non-custodial parent.
- Their use is inconsistent with recent legal doctrine (e.g., Burgess in CA).
- They add, “clearly, no court should issue a conditional change-of-custody order if it believes that any custodial change would yield important disadvantages for the child.

They conclude with the belief that their data suggest that there may be real value in discouraging moves by custodial parents, at least in cases in which the child enjoys a good relationship with the other parent and the move is not prompted by the need to otherwise remove the child from a detrimental environment. This would avoid what the trial judge in Bryant was faced with, i.e., “selecting what is next best in the children’s interest”, when allowing the move.
International Research


• M. Freeman, “Relocation: The Reunite Research”, London Research Unit, July, 2009 (in Taylor & Freeman, above)
Findings Include

- Most applicants had more than one reason for wanting to move. Reasons include:
  - Returning home to family and support
  - Move to be with a new partner
  - Move to make a fresh start in a new place
  - Move to have a better lifestyle
  - Move to escape violence and control
In those studies:

- 65% - 73% moved
- In some cases, the father followed the mother and also moved
- In other cases, the mother either didn’t move or didn’t move as far as the court authorized
- Other mothers moved even when the court didn’t allow them to take the children
• In all 3 countries, children experienced the burden of travel, enduring lengthy car, bus, plane, or ferry trips
• International relocations were very difficult to manage and maintain frequent contact
• The need for a parent to accompany the children increased the costs
• Many relocations led to fathers experiencing difficulty arranging and exercising contacts
• Conflict and interpersonal violence were factors in many of the relocation cases
• Many parents found the need for a monitoring system to help make sure that relationships continued after the relocation
• Mediation could assist some of the families in resolving relocation disputes
• When courts either allowed or denied relocation, mothers and fathers were devastated, depending on the decision
• However, when both parents were child-centered and willing to recognize and encourage the relationships with both parents, both direct and indirect, relocation was a more positive experience
Children’s Experiences

- In one New Zealand study, children were described as relatively happy, well-adjusted, and satisfied with how things worked out over time.
- At the same time, the children did experience significant stress and difficulty, at least at first.
- Two over-arching themes:
  - Children who moved to be with extended family were regarded positively
  - Moving away from family and a parent, and missing them, was hard
• Some children wished for more contact with the other parent and wished that the other parent lived closer
• Technology, including Skype, texting, and email was often used
• At the same time, this did not replace the preference for regular face-to-face contact
• Finally, having a say in the legal proceedings, in some fashion, was important to the children.
Taylor & Freeman Conclusions

• Polarized views, i.e., that children are harmed when moved, or that moving with the primary parent is best, are not based on conclusive research and are not helpful in making decisions

• More research, especially on child outcomes, is important

• Many children are at greater risk when the relocation occurs, but whether or not a relocation is harmful for an individual child depends on both risk and protective factors that may be present

• “Thinking of relocation as a ‘risk context’ for children means that knowledge about which familial and residential and mobility factors ameliorate or elevate risk and resiliency for particular children is vital.”
“It is tempting to resolve these difficult cases with the assistance of wishful thinking. That makes the decision a little easier. The value of empirical research is to help test that wishful thinking against the realities of other people’s experience.”
Laws - General
Widely Divergent Approaches to Relocation in Different Jurisdictions

- *Child’s welfare / best interests paramount consideration*

- **Presumption in favor of relocation** (Oklahoma, Washington states; England domestically)

- **Presumption against relocation** (Alabama)

- **Custodial parent** has the right to solely determine where they and child live (some European civil law countries)

- **Both guardians must agree** on child’s place of residence (Australia, Canada, NZ)

- **Pre-Decree or Shared Custody** – de novo review by the court (e.g., California)
Types of Statutory or Case Laws

- Presumptions in Favor of Moves with Child by Custodial Parent
- Presumptions Against Moves with Child by Custodial Parent
- De Novo Review in All Situations
- No Guidance from Statutory or Case Law
- In most jurisdictions, law changes every 10 years, on average
What’s Wrong With That Picture

• Provides Little or no Direction for Families Where Parents Share Custody
• What About Moves Without Children by Non-Custodial Parent
• Not Usually Consistent with Children’s Needs or Best Interests, Rather with Rights of Custodial Parents
Statutory and Case Law Example

Arizona Statute 25-408

- Whether the relocation is being made or opposed in good faith and not to interfere with or to frustrate the relationship between the child and the other parent or the other parent’s right of access to the child
- The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child
- The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders
- Whether the relocation will allow a realistic opportunity for parenting time with each parent
- The extent to which moving or not moving will affect the emotional, physical, or developmental needs of the child
- The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations
- The potential effect of relocation on the child’s stability
Decision in Marriage of LaMusga, 2004

A California Case
LaMusga Decision - Factors

“Among the factors that the court should ordinarily consider when deciding whether to modify a custody order in light of the custodial parent’s proposal to change the residence of the child are the following:

- The children’s interest in stability and continuity of the custodial arrangement;
- The distance of the move;
- The age of the children;
- The children’s relationships with both parents;
- The relationship between the parents, including but not limited to:
  - Their ability to communicate and cooperate effectively and
  - Their willingness to put the interests of the children above their individual interests
- The wishes of the children if they are mature enough for such an inquiry to be appropriate;
- The reasons for the proposed move; and
- The extent to which the parents are currently sharing custody”.
Critical Issues to Assess

Motive

• For Moving
• For Objecting to the Move

Conflict

• Prior to the proposed move
• As a result of proposed move
What's Different in International Cases?

1. The People

The following slides on international relocation were copied / adapted from material by Jeremy Morley from NY. His website is www.international-divorce.com
What's Different in International Cases?

2. The Countries
What's Different in International Cases?

3. The Language
What's Different in International Cases?

4. The Culture
Conditioning Relocation

- Bond
- Consent to U.S. court’s continuing jurisdiction
- Prohibition against attempting to modify overseas
  - Register judgment overseas
  - Obtain overseas mirror order
  - Waive extradition
- Deposit support payments in trust to finance travel
- Award joint legal custody (helps with Hague cases)
- Forfeit support if violation
Always remember …

…There are no exit controls for people leaving the United States.
Relocation Logistics
Risk - Benefit Analysis

Inferential Decision-Making

- We have to make judgments about what life will be like for the child in the future.
- Relocation cases call for predictions into the future concerning a child’s adjustment, welfare, and potential for negative outcomes under different sets of conditional living arrangements.
Putting the Package Together

- Back to It Depends!
- Need Analysis of the Following:
  - Risks and benefits of Primary Mother-Custody in Location A
  - Risks and benefits of Primary Father-Custody in Location B
  - Risks and benefits of Shared Custody – what level?
    - If Mother doesn’t move
    - If Father does move
Key Issues

- Motive of each parent
- Fuzzy Logic
Gatekeeping continuum from FG to RG

- Proactive toward other parent ➔ Severely Alienating
- Inclusive of other ➔ Marginalizes other
- Boosts image of other ➔ Derogates other
- Ongoing communication ➔ Refuses to communicate
- Flexible time-sharing ➔ Rigid adherence to schedule
- Ensures Child’s opportunity to develop relationship with other ➔ blocks attempts for engagement / closeness with other

1 Austin, Fieldstone, and Pruett – Benchbook on Parental Gatekeeping
Justified Restrictive Gatekeeping

- Limits to parental access for purpose of protecting children
  - Corroborated history of CCV
  - Harsh discipline / child abuse
  - Parent’s abuse of substances / alcohol
  - Parent’s major mental health disorder / not taking prescribed medication
  - Parent’s continued inappropriate parenting / co-parenting behaviors that negatively affect child
Unjustified Restrictive Gatekeeping

Limits parental access reinforces inappropriate behavior of RG parent

– Parental belief in greater importance of his/her role, most common among mothers
– Parent questioning competence of other parent without adequate foundation
– Parent feels child’s presence is essential to parent’s coping causing reluctance to share child
– Parents misperceiving being marginalized and value as parent not recognized, most common among fathers
– Parent is angry and wishes to punish other parent
Table 1

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<thead>
<tr>
<th>GATEKEEPING CONTINUUM</th>
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<tbody>
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<td>Ranges in Attitudes/Behavior from Facilitative Gatekeeping (FG) to Restrictive Gatekeeping (RG)</td>
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- Very Facilitative → Cooperative → Disengaged → Restrictive → Very Restrictive
- Proactive Toward Other Parent → Severely Alienating Behaviors
- Inclusive of Other Parent → Marginalizes Other Parent
- Boosts Image of Other Parent → Derogates Other Parent
- Ongoing Efforts at Communication → Refuses to Communicate
- Flexible Time-sharing → Rigid Adherence to Parenting Time Schedule
- Ensures Child’s Opportunity to Develop Relationship with Other Parent → Severe Child Alienation

Recent References


Austin’s New Risk Assessment Model

Relevant Factors to Consider:

- Age of the Child
- Distance of the Move
- Child’s Strengths and Vulnerabilities
- Strengths, resources, and vulnerabilities of moving parent
- Parenting effectiveness of both parents
- History of parental conflict or domestic violence
- Ability of residential parent to support other parent
- Residential parent’s ability to be responsible gatekeeper
Is Factor Risk or Protective?

• Within those factors, along a continuum, one end is a risk factor and other end is a protective factor
• Primary protective factor is child’s healthy relationship with moving parent
• Moving Parent’s attitude toward non-moving parent
  • Ways to be supportive
• Relationship between children and moving parent
• Gatekeeping / Good-Bad Faith of the Move
• Attitudes vs. Behaviors
Putting the Package Together

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BIAS?
How to Help Parents Help Their Children in Long Distance Parenting

• Communication between the parents, not the child and parent

• Regular access
  – Face-to-face
  – Virtual

• Distant parent coming to child’s residential home for parenting time during the year

• Some time in distant parent’s location

• Parents managing conflict away from the child
  – Using 3rd parties if necessary to help
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