

The Relocation of Children: An Annotated Bibliography 1988–98

by
Mary Kay Kisthardt & Nancy Levit

Anticipating Relocation Issues at Divorce

Willard H. DaSilva, *The Relocation Trial: Techniques To Use—Techniques To Avoid*, 11 FAM. ADVOC. 36-42 (Winter 1989) (focusing on three key issues in relocation cases—the reasons for the move, preservation of the child’s relationship with the non-custodial parent, and the environment for the child in the new location; offering a range of strategies to use at the relocation hearing, from the very basic (be prompt, dress nicely) to the more innovative (bring photographs of the new locale); and suggesting some ways to cross-examine an expert witness testifying regarding relocation).

Kathleen Donelli & Joshua E. Kimerling, *The Drafting of Relocation Clauses and the Challenge It Presents*, 14 MATRIMONIAL STRATEGIST 1-5 (May 1996) (noting that while one court has held that neither party bears the burden of proof in relocation cases, most courts will give weight to an initial custody determination; and suggesting the inclusion in relocation agreements of specific factors, such as standards regarding economic necessity or career opportunities, or even for the noncustodial parent, economic disincentives to discourage relocation).

John E. Finnerty, *Relocation—How To Do It (Or Stop It)*, 11 FAM. ADVOC. 13-15 (Winter 1989) (suggesting that motivation for a move is crucial to courts, who are typically wary of general impulses toward a “fresh start”; and listing documents that relocating clients should gather).

Barbara Ellen Handschu, *13 Negotiated Provisions that Anticipate Geographic Relocation*, 14 MATRIMONIAL STRATEGIST 1-5 (Jan. 1997) (arguing that under the best interests test, “no move”

clauses will be unenforceable; and listing areas that should be covered in a relocation agreement, including: school payment provisions, economic incentives specific to the child's activities (such as enrichment or dance lessons that may be conditional on residing in the jurisdiction), automatic renegotiation of support triggered by a relocation request, forfeiture of maintenance, specifying priorities of considerations, attorneys fee payments, sanctions, continuing jurisdiction, and notice requirements).

General

Scott Altman, *Should Child Custody Rules Be Fair?*, 35 U. LOUISVILLE J. FAM. L. 325-354 (1996) (examining moral arguments regarding custody and relocation rules, seeking to balance those that focus on child welfare with those emphasizing fairness to adults, exploring criteria of merit, gender equality, and vulnerability in assessing fairness arguments, and concluding that child welfare concerns should prevail over most arguments for equitable treatment of adults).

Roger M. Baron, *Custody Relocation Restrictions: A Tool for Preventing Conflicts*, 17 FAIR\$HARE 5-6 (Apr. 1997) (viewing restrictions on relocations as ways to prevent parental kidnaping and arguing that parents' constitutional rights to travel do "not include the freedom to 'travel with the child.'").

Roger M. Baron, *Refining Relocation Laws—The Next Step in Attacking the Problem of Parental Kidnaping*, 25 TEX. TECH. L. REV. 119-36 (1993) (describing different states' varying substantive criteria to permit relocation, and suggesting that each state's relocation laws should include requirements of notice, consent, and acknowledgment of exclusive jurisdiction for six months in the state from which the child is moving).

Nancy Zalusky Berg & Gary A. Debele, *Postdecree Custody Modification: Moving Out of State and Changes to the Parenting Relationship*, 10 AM. J. FAM. L. 183-95 (1996) (providing an overview of removal case law, focusing on the presumptions and burdens of proof used in several jurisdictions—such as the presumption that the custodial parent acts in the child's best interests, presumption against removal, and burden on the party

opposing relocation to show detriment or endangerment to the child).

Emanuel A. Bertin, *Relocation: No Common Ground—All States Agree That What's Good for the Child Is What Counts—But That's All They Agree On*, 11 FAM. ADVOC. 6-8 (Winter 1989) (recapping briefly states' differing approaches to relocation).

Edward B. Borris, *Parents' Ability and Willingness to Cooperate: "The Friendly Parent Doctrine" as a Most Important Factor in Recent Child Custody Cases*, 10 DIVORCE LITIG. 65 (Apr. 1998) (discussing courts' tendencies to award custody to the parent who tries to foster a strong relationship between the child and the other parent, and using relocation cases as an example of the point).

Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 U. KAN. L. REV. 433-463 (1998) (maintaining that the geographic restrictions on custodial parents date back to historic notions of fathers' privileges; describing restrictions on relocation as a "tool for batterers," Bowermaster examines the consequences of fleeing intimate partner abuse with and without children and seeking court permission; also considering the limitations in the relocation context of the Model Code on Domestic Violence).

Janet M. Bowermaster, *Sympathizing with Solomon: Choosing Between Parents in a Mobile Society*, 31 U. LOUISVILLE J. FAM. L. 791-884 (1992) (surveying comprehensively state approaches to relocation and suggesting that the child's "best interest" actually devolves to a choice of which parent's relationship with the child is afforded priority; exploring in depth the policy considerations supporting giving priority to the custodial parent; comparing social science literature regarding the benefits of post-divorce visitation with studies showing the paramount importance of the custodial parent-child relationship).

Carol S. Bruch & Janet M. Bowermaster, *The Relocation of Children and Custodial Parents: Public Policy, Past and Present*, 30 FAM. L.Q. 245-303 (1996) (examining changes in demographic mobility, research regarding the need for a stable custodial parent-child relationship, and studies regarding the effect on children of frequent visitation transfers to argue for supporting the

primary custodial parent's decision to relocate, except in extraordinary cases).

Janet Bulow & Steven G. Gellman, Note, *The Judicial Role in Post-Divorce Child Relocation Controversies*, 35 STAN. L. REV. 949-74 (1983) (early examination of the relocation controversy, arguing that custodial parents should be permitted to relocate absent a residence restriction negotiated by the parties).

Mandy S. Cohen, Note, *A Toss of the Dice . . . The Gamble with Post-Divorce Relocation Laws*, 18 HOFSTRA L. REV. 127-156 (1989) (noting the multiplicity of conflicting state laws regarding relocation, and proposing unifying legislation).

Pamela Coyle, *A Parent's Moving Checklist: Sell and Buy House, Call Mover, Seek Court's Permission*, 84 A.B.A. J. 26-27 (Feb. 1998) (discussing Louisiana's adoption of the Matrimonial Lawyers model relocation statute).

Ellen J. Effron, *Fighting Over a Good Education: Quality of Schools Can Be a Key Factor in the Outcome of Custody Cases*, 82 A.B.A. J. 78 (July 1996) (containing specific suggestions on evidence to offer in a relocation hearing regarding the quality of a school—evidence which is typically available from local school districts or state boards of education: statistical information regarding class size and student-teacher ratio, budget additions or cuts, special programs in various subject areas, and faculty quality; also suggesting hiring a service that analyzes educational programs).

Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Of Welfare Reform, Child Support, and Relocation*, 30 FAM. L.Q. 765, 782-83 (1997) (reviewing briefly the California and New York cases that liberalized rules permitting custodial parents to relocate, but noting several restrictive decisions in other states).

Major Fenton, *Relocation After Initial Custody Determination*, 1998-Jul Army Law 58 (advising military attorneys about the special concerns of military personnel who are anticipating a change of station).

Chris Ford, *Untying the Relocation Knot: Recent Developments and a Model for Change*, 7 COLUM. J. GENDER & L. 1-53 (1997)



(recapping the major relocation decisions in 1996 and commenting on states' varying approaches; focusing specifically on the relocation decisions in the eight states using the Uniform Marriage and Divorce Act, and applauding this model).

Harry J. Gruener, *The Custody Relocation Conundrum*, 14 FAIR\$HARE 18-21 (Nov. 1994) (discussing practical aspects of relocation cases and detailing a series of questions to ask about the parties' relationship to the child, the mental and emotional state and preferences of the child, the motives for the move, and the practical consequences of the move on the child).

Hanley M. Gurwin, *Settling Relocation Issues Through Dispute Resolution*, 20 FAM. ADVOC. 24-25 (Fall 1997) (presenting the possibility of mediating relocation disagreements, and suggesting settlement agreement provisions to avoid relocation disputes).

Kimberly K. Holtz, Comment, *Move-Away Custody Disputes: The Implications of Case-by-Case Analysis and the Need for Legislation*, 35 SANTA CLARA L. REV. 319-66 (1994) (considering factors that tend to influence courts in relocation cases, including: public policy principles, parental rules and relations, the child's community bonds, visitation possibilities, economic circumstances, the child's preferences, the "fresh start" justification for a move, and constitutional considerations).

Dennis J. Jacobsen, *A Judge Looks at Relocation: What Works in Court?*, 11 FAM. ADVOC. 30 (Winter 1989) (providing a list of factors the attorney should be prepared to discuss in making or defending a relocation case).

Cheryl S. Karner, *Relocation: What Ought To Be*, 20 FAM. ADVOC. 12-14 (Fall 1997) (discussing briefly the *Burgess* and *Tropea* cases and what the burden of proof should be in relocation cases).

Arthur B. LaFrance, *Child Custody and Relocation: A Constitutional Perspective*, U. LOUISVILLE J. FAM. L. 1-158 (1995-96) (observing that most courts decide relocation cases as family law matters without reference to the constitutional implications affecting privacy, autonomy and travel rights, developing in depth the federal and state case law concerning these constitutional ar-

guments, and suggesting that constitutional analysis offers the promise of a uniform national standard).

Steve Leben & Megan Moriarty, *A Kansas Approach to Custodial Parent Move-Away Cases*, 37 WASHBURN L.J. 497-542 (1998) (presenting a thoughtful review of social science studies relevant to relocation cases and suggesting that the sociological literature does not uniformly point toward or against relocation, but may impel different results depending on case-specific facts).

Sandra Morgan Little, *A Move in the Right Direction: How to Sidestep Relocation Troubles Through Cooperation and Coparenting*, 20 FAM. ADVOC. 32-33 (Fall 1997) (offering some very pragmatic suggestions about the ways in which the noncustodial parent can keep in touch across a distance, including: reading stories on tape, providing and sending postcards, giving a magazine subscription, creating videotapes and photo albums, providing phone cards, and other connectors).

Dorene Marcus & Jeffrey I. Garfinkel, *The Trial: Opposing Relocation in a Society in Which Mobility and the Right to a Fresh Start Are Highly Valued, A Lawyer for the Parent Opposing Relocation Must Marshal for Trial Every Fact Likely to Tip the Balance Against Relocation*, 20 FAM. ADVOC. 41-43 (Fall 1997) (collecting practical discovery suggestions and lists of documentary evidence and possible witnesses for the parent opposing relocation).

Pamela Markert, *Custody Relocation: More Questions Than Answers Result from High Court Opinions in California and New York*, 38 SANTA CLARA L. REV. 521 (1998) (analysing the *Tropea* and *Burgess* decisions and offering a proposal for legislative changes).

Albert A. Menashe & William E. Hensley, *What About the Parent Left Behind?*, 11 FAM. ADVOC. 16 (Winter 1989) (offering practical suggestions for addressing clients' needs in relocation cases).

Samuel Roll, *How a Child Views the Move: The Psychology of Attachment, Separation, and Loss*, 20 FAM. ADVOC. 26 (Fall 1997) (suggesting that in relocation cases, consideration be given to minimizing the emotional trauma experienced by children fac-

ing a loss by recognizing the goal of keeping children emotionally connected to the parent who no longer lives close).

Arnold H. Rutkin, *Children Caught in Middle By Parental Moves*, 78 A.B.A. J. 94 (Oct. 1992). (arguing that too few courts have given sufficient weight to the child's right to maintain frequent contact with the non-custodial parent).

Katherine C. Sheehan, *Post-Divorce Child Custody and Family Relocation*, 9 HARV. WOMEN'S L.J. 135 (1986). (suggesting that current custody rules do not further the best interests of children and that litigation over relocation 1) focuses on factors that reflect economic bias against women, 2) does not reflect the realities of most post-divorce families and 3) is used as a weapon).

Diane C. Sheiring, Annotation, *Removal by Custodial Parents of Child from Jurisdiction in Violation of Court Order as Justifying Termination, Suspension, or Reduction of Child Support Payments*, 8 A.L.R. 4TH 1231 (1981; Supp. 1996).

Karen Tapp, *In Whose Best Interest? Legal Standards on Relocation of the Custodial Parent*, 3 KY. CHILDREN'S RTS. J. 19 (Spring 1993) (reviewing relocation standards in several states).

Norma Levine Trusch, *A Panoramic View of Relocation: Where Have We Been? Where Are We Going?* 20 FAM. ADVOC. 18 (Fall 1997) (surveying various state approaches to relocation and providing a quick recap of the AAML model relocation statute).

Norma Levine Trusch, *Relocation of Children After Divorce: The Winds of Change*, 18 FAIR\$HARE 2 (Apr. 1998) (offering a brief overview of the reversals in approach to relocation cases by California and New York courts, and the social science research cited by Dr. Judith Wallerstein in her amicus brief in *Burgess v. Burgess* that suggests courts should not intervene in ways that disrupt a child's relationship with the primary custodial parent; also including a synopsis of the AAML's model relocation statute).

Danny R. Veilleux, Annotation, *What Types of Proceedings or Determinations Are Governed by the Uniform Child Custody Jurisdiction Act (UCCJA) or the Parental Kidnaping Prevention Act*, 78 A.L.R. 4TH 1028 (1991; Supp. 1996).

Judith Wallerstein & Tony J. Tanke, *To Move or Not To Move: Psychological and Legal Considerations in the Relocation of Chil-*

dren Following Divorce, 30 FAM. L.Q. 305 (1996) (adapted from the authors' *amica curiae* brief in the *Burgess* case, the article also contains two case studies of actual relocation cases).

Wanda Ellen Wakefield, Annotation, *Desire of Child as to Geographical Location of Residence or Domicile as Factor in Awarding Custody or Terminating Parental Rights*, 10 A.L.R. 4TH 827 (1981; Supp. 1996).

Debra E. Wax, Annotation, *Interference by Custodian of Child with Noncustodial Parent's Visitation Rights as Ground for Change of Custody*, 28 A.L.R. 4TH 9 (1981; Supp. 1997).

International Relocations

James Grayson, *International Relocation, the Right to Travel, and the Hague Convention: Additional Requirements for Custodial Parents*, 28 FAM. L.Q. 531 (1994) (highlighting some of the distinctions regarding international relocation such as a more limited right to travel, the concern over jurisdictional conflicts and the difficulties posed by long distance travel).

M. David LeBrun, Annotation, *Propriety of Awarding Custody of Child to Parent Residing or Intending to Reside in Foreign Country*, 20 A.L.R. 4TH 677 (1981; Supp. 1996).

Caroll J. Miller, Annotation, *Court-Authorized Permanent or Temporary Removal of Child by Parent to Foreign Country*, 30 A.L.R. 4TH 548 (1981; Supp. 1996).

Social Science References

I. Anderzen, et al., *Stress and Sensitization in Children: A Controlled Prospective Psychophysiological Study of Children Exposed to International Relocation*, 43 J. PSYCHOSOMATIC RES. 259 (Sept. 1997).

T.A. Cornille, *Support Systems and the Relocation Process for Children and Families*, 19 MARRIAGE & FAM. REV. 281 (1993).

D. J. DeWit, *Frequent Childhood Geographic Location: Its Impact on Drug Use Initiation and the Development of Alcohol and other Drug-Related Problems Among Adolescents and Young Adults*, 23 ADDICTIVE BEHAVIORS 623 (1998).



Frank F. Furstenberg, Jr., et al., *Paternal Participation and Children's Well-Being after Marital Dissolution*, 52 AM. SOC. REV. 695 (1987).

R.A. Gardner, *The Burgess Decision and the Wallerstein Brief*, 26 J. AM. ACAD. PSYCHIATRY & LAW 425 (1998).

S.P. Herman et al., *Practice Parameters for Child Custody Evaluations*, 36 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 57 (Oct. 1997).

C. Humke & C. Schaefer, *Relocation: A Review of the Effects of Residential Mobility on Children and Adolescents*, 32 PSYCHOLOGY 16 (1995).

Marla Beth Isaacs, *The Visitation Schedule and Child Adjustment: A Three-Year Study*, 27 FAM. PROCESS 251 (1988).

Joan B. Kelly, *Current Research on Children's Postdivorce Adjustment: No Simple Answers*, 31 FAM. & CONCILIATION CTS. REV. 29 (1993).

Joan B. Kelly, *Longer-Term Adjustment in Children of Divorce: Converging Findings and Implications for Practice*, 2 J. FAM. PSYCHOL. 119 (Dec. 1988).

Valarie King, *Nonresident Father Involvement and Child Well-Being: Can Dads Make a Difference?*, 15 J. FAM. ISSUES 78 (1994).

J.Z. Nathanson & M. Marcenko, *Young Adolescents Adjustment to the Experience of Relocating Overseas*, 19 INT'L J. INTERCULTURAL RELATIONS 413 (1995).

D. Wood, et al., *Impact of Family Relocation on Children's Growth, Development, School Function, and Behavior*, 270 J. AM. MED. ASS'N 1334 (Sept. 15, 1993).

Specific States

Frank G. Adams, Comment, *Child Custody and Parental Relocations: Loving Your Children from a Distance*, 33 DUQ. L. REV. 143-158 (1994) (Pennsylvania).

Richard M. Bryan, *Beyond Burgess: One Year Later*, 20 FAM. ADVOC. 14-17 (Fall 1997) (California).

Ann M. Driscoll, Note, *In Search of a Standard: Resolving the Relocation Problem in New York*, 26 HOFSTRA L. REV. 175-215 (1997).

Leonard G. Florescue, *The New View of Relocation of the Custodial Parent*, N.Y. L.J., May 13, 1996, at 3 (New York).

Jennifer Gould, Comment, *California's Move-Away Law: Are Children Being Hurt by Judicial Presumptions that Sweep Too Broadly*, 28 GOLDEN GATE U. L. REV. 527 (1998).

Barbara Ellen Handschu, *Revolution in Relocation Law*, N.Y. L.J., May 17, 1996, at 1 (New York).

Barbara Ellen Handschu, *Summary Relocation Cases Since Tropea*, 270 PLI/Est 227 (1998) (New York).

Michele A. Katz, *Tropea and Its Recent Aftermath: Relocation Cases Decided After Tropea*, 177 PLI/Crim 59 (July 1997) (New York).

Jennifer L. Linngren, Note, *The Feuding Fortins: South Dakota Adopts a Presumption in Favor of the Custodial Parent's Right to Remove a Minor Child from the Jurisdiction in Fortin v. Fortin*, 39 S.D. L. REV. 661 (1994).

Ira Lurvey, *California: Appellate Courts' Interpretation of Relocation Law*, 18 FairShare 16 (June 1998).

David L. Manz & Jesse J. Bennett, Jr., *Mize: Florida's Disenchanted Response to the Relocation Dilemma*, 68 FLA. B.J. 53 (Dec. 1994).

Pamela Markert, Comment, *Custody Relocation: More Questions Than Answers Result from High Court Opinions in California and New York*, 38 SANTA CLARA L. REV. 521 (1998).

Sondra Miller, *Whatever Happened to the "Best Interests" Analysis in New York Relocation Cases*, 15 PACE L. REV. 339 (1995).

James S. Moody & Philip S. Wartenberg, *The Birth of a Legal Presumption: The Law's Latest Answer To a Difficult Sociological Problem: Geographical Relocations After Dissolution*, 70 FLA. B.J. 68-72 (Nov. 1996) (Florida).

Shirani B. Ponnambalam, *Relocation of the Custodial Spouse: Are We Really Seeing a Change in Judicial Attitudes?*, 19 WEST-CHESTER B.J. 33 (Winter 1992) (New York).

Arthur M. Read, *When the Custodial Parent Relocates: Weighing the Best Interests of the Child*, 45 R.I. B.J. 7 (June 1997). (Rhode Island).

Arthur M. Reed, II, *The Chess Game of Parental Relocation . . . It's Your Move or Is It?*, 42 R.I. B.J. 7 (June 1994) (Rhode Island).

Merril Sobie, *Whatever Happened to the "Best Interests" Analysis in New York Relocation Cases? A Response*, 15 PACE L. REV. 685 (1995).

Richard Updegrave, *The Double-Edged Sword of Child Relocations: Successful Representation of the Parents*, 45 R.I. B.J. 11 (June 1997) (Rhode Island).