

Relocation by Custodial Parents

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One of the more difficult outcomes to successfully obtain in Family Court or in Supreme Court is for a custodial parent to be afforded permission to move with children some distance from the non-custodial parent. In effect, the *de facto* result is to deprive the non-custodial parent from frequent and meaningful contact with the children on a regular and liberal basis. The Courts continue to struggle with balancing the desires of the parties with the best interests of the children involved.

The controlling Court of Appeals case continues to be Tropea v. Tropea, 87 N.Y.2d 727 (1996), where the Court articulated several probative factors in determining the request of a custodial parent to relocate with a child or children away from the non-custodial parent. The trial courts are required to consider the following factors:

Each parents reasons for seeking or opposing the move,

The quality of the relationships between the children and each parent,

The impact of the move on the quantity and quality of the children's future contact with the non-custodial parent,

The degree to which the lives of the custodial parent and the children may be enhanced economically, emotionally, and educationally by the move, and

The feasibility of preserving the relationship between the non-custodial parent and the children through suitable visitation arrangements.

The courts require that the party seeking the relocation demonstrate that the move would enhance the children's life economically, emotionally and educationally. Kane v. Kane, 2010 WL 2108483. Failure to accomplish this requirement will result in a denial for permission to relocate. See Messler v. Simovic, 2010 WL 2108473.

Established custody agreements will not be modified or altered by a court unless there is a sufficient change in circumstances since the time of the stipulation and unless modification of the custody arrangement is in the best interest of the children. See Matter of Manfredo v. Manfredo, 53 A.D.3d 498 and Matter of Joseph F. v. Patricia F., 32 A.D.3d 938. Custodial parents will need to set forth the clear benefit available in the relocation area. The moving parent has to articulate benefits such as the lack of opportunity locally, efforts undertaken to remain. The parent must specify how the children will be improved by the move. Each application is to be examined individually and decided on a case by case basis. Negativity by the custodial parent or an unwillingness to foster a loving and positive relationship with the other parent will seriously hurt the parent proposing the move. Similarly, if the

parent being adversely impacted by the relocation demonstrates an unwillingness to cooperate, the Courts will hold such a caustic atmosphere and relationship to the detriment of that party.

Where the parties have engaged and cooperated in a truly joint parenting arrangement for the children, some courts have recognized additional factors that must be considered to arrive at the final decision with respect to the ultimate residence of the children. In Sara P. v. Richard T., 175 Misc.2d 988, additional factors where the parents split time or equally share in decisions for the children included:

Which parent is better able to provide the nurturance and guidance needed by the children,

Existence of a long standing successful equal parenting agreement, and

That the children are doing well in the local community from which they are to be removed.

Several recent courts have determined that if there was no prior order or agreement with respect to the parenting arrangement, the factors in Tropea are not applicable since the determination of the rights regarding the custodial and non-custodial parent are only then being formed. See Schneider v. Lasher, 72 A.D.3d 1417 (3rd Dept. 2010). In Schneider, the Court articulated that the best interest of the children requires a careful analysis of all circumstances, such as

Maintaining stability for children,

Children's wishes,

Home environment with each parent,

Each parent's past performance and relative fitness,

Each parent's ability to guide and provide for the children's overall well-being, and

Willingness of each to foster positive relationship between children and other parent.

Even the frequent and meaningful visitation with the children is not enough to prevent the relocation. In Tropea, the Court recognized that "it may be unrealistic in some cases to try to preserve the non-custodial parent's accustomed close involvement in the children's everyday life at the expense of the custodial parent's effort to start a new life and form a new family unit." Tropea at 740. In the end, each trial court needs to hear testimony from all the parties and the attorney for the children. Bias and motives of the parties will be pitted against the best interest of the children. As each instance is unique and unto itself, the Court is challenged to balance everyone's interests within the controlling case law and determine the appropriate and just outcome.

For more information about relocation, or any other family law question, please contact Matthew J. Mix: mmix@cdog.com.

The purpose of this publication is to alert you to legal updates and developments. This is a general informational update and

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