

## **Emerging Issues in Relocation Cases**

by

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In a mobile society, a parent may have to choose between a career, a new relationship, moving to be near the comfort of family and friends or the need to care for aging family members, and the parenting of his or her child. When one parent needs (or wants) to move with the children and the other parent wants the children to stay, children become caught in a battle over parenting time, custody, and access.

In my work teaching judges, attorneys, mediators, and child custody evaluators, I often ask my audiences what types of situations are the most difficult and challenging. Without a doubt, the most common response is relocation cases. Mediators do not like them because even low-conflict families often have difficulty reaching agreement on a parenting plan when one parent wants (or has) to move. Attorneys do not like relocation cases because there is no room for negotiation, and depending on whom they represent, they often feel as if the law is stacked against their client. In some jurisdictions, the law makes it especially hard for a parent to move with the children and in other jurisdictions, the law makes it especially hard for one parent to prevent the other parent from moving with the children. Judges do not like relocation cases because it is often hard to choose between two good parents when the motive of each parent is in good faith. Finally, child custody evaluators do not like relocation cases because they are so complex and there is no middle ground from which to make a choice and because evaluators often have trouble with the legacy of their psychotherapeutic training in which their desire is to help everyone be happy. Evaluators often struggle with the legal aspects of relocation cases because many evaluators have difficulty keeping up with case law in their state or are not particularly interested in understanding the law. Finally, child

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custody evaluators typically believe that it is in the child's best interests for both parents to be regularly involved in the child's life (unless, of course, one parent truly presents risks/dangers to the well-being of the child). This causes evaluators trouble when they need to make a recommendation that does not allow for this. For these and other reasons, many people struggle with these cases.

This article is subdivided into 5 sections. In Part I, this article will focus on a brief history of judicial approaches to relocation cases. Part II will focus on legal considerations in relocation matters, including examples of statutory and case law from various jurisdictions. Part III will focus on psychological research relevant to relocation and Part IV will highlight relevant research from international jurisdictions, including special issues to pay attention to in international cases. Finally, Part V addresses critical issues in pulling your relocation case together, focusing on various practitioner roles. Within Part V is a special focus on avoiding bias in relocation cases.

## **I. Brief Historical Perspective**

Historically, moves were not very complicated. Prior to 1980, when California became the first state to authorize joint custody, there were typically two scenarios. Custodial parents could move with children, usually without restriction. At most, they might have to give notice of the move, but there were rarely provisions that interfered with this move. Additionally, non-custodial parents could move without the children, usually without restriction. In both situations, parents rarely went to court for relocation disputes. Often times, parents would agree on new visitation arrangements, and unfortunately, all too often, the distant parent, usually the father, would disengage and be only marginally involved in his children's life.

With joint custody and the notion of shared parenting, which became more common in the 1980s, relocation disputes increased. Fathers were less willing to become marginal parents, only seeing their children for two to three weeks in the summer and on holidays. While non-custodial fathers could still move at whim, usually for better jobs or new relationships, some non-custodial fathers tried to prevent custodial mothers from moving be-

cause it might interfere with their parenting rights. This led to a rise in relocation-related disputes.

The mid-1990s saw a dramatic shift, with case laws around the world that changed the landscape of relocation cases.<sup>1</sup> As a result of *Payne v. Payne* and *In re Burgess*, it became easy for custodial parents to move with their children. While other cases were published that put some limits on relocation, identified the difficulties of relocation matters, or even dealt with international relocations,<sup>2</sup> the movement in the 1990s generally allowed custodial parents to relocate, with the belief that, if it's good for the custodial parent, it must be good for the child. In the late 1990s, the AAML proposed a Model Relocation Act, designed to bring some uniformity to critical issues in relocation law. By this time, relocation law became a "household word." In 2000, this author was honored to be a speaker at a relocation conference sponsored by the ABA Section of Family Law, where the entire conference was focused on relocation, relocation law, and psychological issues associated with relocation.

However, in recent years, there has been a substantial shift in both case and statutory law.<sup>3</sup> Perhaps as a result of a trend toward more shared physical and legal custody, including getting away from the notions of "custody" and focusing on "parenting rights and responsibilities," as well as "parenting time and decision-making,"<sup>4</sup> there has been a shift in thinking about relocation as well. In some states, presumptions are trending against the parent who wishes to move,<sup>5</sup> while in other states, a multi-part test helps determine the outcome. For example, in California,<sup>6</sup> if there is a primary custodial parent, that parent has a presumptive right to move unless the other side makes a showing of detriment

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<sup>1</sup> See, e.g., *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (Can.); *Payne v. Payne* [2001] EWCA (Civ.) 166; *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996); *Baures v. Lewis*, 770 A.2d 214 (N.J. 2001); *In re Tropea*, 665 N.E.2d 145 (N.Y. 1996).

<sup>2</sup> See, e.g., *In re Marriage of Bryant*, 110 Cal. Rptr. 2d 791 (Cal. Ct. App. 2001); *In re Marriage of Condon*, 62 Cal. App. 4th 533 (Cal. Ct. App. 1998); *Cassady v. Signorelli*, 49 Cal. App. 4th 55 (Cal. Ct. App. 1996).

<sup>3</sup> See, e.g., ARIZ. REV. STAT. § 25-408 (LexisNexis 2012); *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004).

<sup>4</sup> ARIZ. REV. STAT. § 25-408, *supra* note 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Burgess*, 913 P.2d at 476.

to the child. If the parent opposing the move has shown detriment, or if there has been no court-determined custody plan, or if there is joint physical custody, then the case will be heard by the trial court *de novo*.

For some observers, these trends have been important and helpful. Other commentators have criticized bright line rules, such as those embedded in *Payne* and *Burgess*.<sup>7</sup> Similarly, scholars have raised concerns about the indeterminacy of rules that do not clearly convey proscribed moves.<sup>8</sup> At the same, several recent decisions and statutes have focused on factors to be considered when the court makes a determination about the relocation of the children.<sup>9</sup>

Along with this, the psychological literature has also focused on factors that are important when considering the question of children's relocation.<sup>10</sup> Unfortunately, this has been largely theoretical, based on extrapolating from other research that does not pertain directly or even primarily to matters of relocation.<sup>11</sup> Austin in particular has identified many factors and noted that, depending where on the continuum the facts of a case fall, certain factors may either be risk factors – i.e., they increase the risk of a child's harm in moving – or protective factors – i.e., they would

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<sup>7</sup> See, e.g., Richard A. Warshak, *Social Science and Children's Best Interest in Relocation Cases: Burgess Revisited*, 34 FAM. L.Q. 83 (2000).

<sup>8</sup> See, e.g., AMERICAN LAW INSTITUTE, *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS* (2002); Robert E. Emery, et al., *Custody Disputed*, 16 SCI. AM. MIND 64 (2005).

<sup>9</sup> See, e.g., *LaMusga*, 88 P.3d 81; W. Dennis Duggan, *Rock-Paper-Scissors: Playing the Odds with the Law of Child Relocation*, 45 FAM. CT. REV. 193 (2007).

<sup>10</sup> See, e.g., PHILIP M. STAHL, *COMPLEX ISSUES IN CHILD CUSTODY EVALUATIONS* (Sage Publications 1999); William G. Austin, *A Forensic Psychology Model of Risk Assessment for Child Custody Relocation Law*, 38 FAM. CT. REV. 192 (2000); William G. Austin, *Relocation, Research, and Forensic Evaluation, Part II: Research in Support of the Relocation Risk Assessment Model*, 46 FAM. CT. REV. 347 (2008); William G. Austin, *Relocation, Research, and Forensic Evaluation, Part I: Effects of Residential Mobility on Children of Divorce*, 46 FAM. CT. REV. 137 (2008); Philip M. Stahl, *Avoiding Bias in Relocation Evaluations*, 3 J. CHILD CUSTODY 109 (2006).

<sup>11</sup> Writers have largely looked at the risk and protective factors associated with adjustment versus harm in divorce and in general relocation literature and extrapolated those data to a theoretical understanding of what might happen in relocation matters.

ameliorate the risk of harm in moving or even serve as factors suggesting that the move would be good for the child. As statutory and case law encourages judges to consider relevant factors in a particular case before determining the appropriate parenting plan following the request by one parent to move with the children, it is hoped that decisions can be made which reduce the risks of harm to children. At the same time, it is also important to avoid bright-line rules that are likely to create harm to some children, even while reducing harm for others. Since each family is unique and the circumstances of each family is similarly unique, avoiding bright-line rules is likely to result in better outcomes for families.

Finally, there has been very little research directly looking at relocation and children's well-being. In the United States, one sample has been studied to retrospectively identify how college students who lived more than one hundred miles from the other parent (regardless of why that happened) were faring as compared with college students whose parents were divorced but who did not live that far from one another.<sup>12</sup> In brief, the authors found that there was harm associated with such longer-distance living arrangements between parents. In more recent years, however, we need to look at research outside the United States, primarily in New Zealand, Australia, and the United Kingdom and Wales, to develop a better understanding of various nuances about relocation and the actual impacts of moves on children.<sup>13</sup> This international research is the first of its kind to actually study reasons for moves, consideration of how children are doing by asking the parents, and consideration of how children are doing by actually interviewing children.

With the foregoing background discussion in mind, the rest of this paper will address each of these issues in greater detail.

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<sup>12</sup> See, e.g., Sanford Braver, et al., *Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations*, 17 J. FAM. PSYCHOL. 206 (2003); William Fabricius & Sanford Braver, *Relocation, Parent Conflict, and Domestic Violence: Independent Risk Factors for Children of Divorce*, 3 J. CHILD CUSTODY 7 (2006).

<sup>13</sup> See, e.g., Marilyn Freeman & Nicola Taylor, *The Reign of Payne*, 2 J. FAM. L. & PRAC. 20 (2011); Patrick Parkinson, et al., *The Need for Reality Testing in Relocation Cases*, 44 FAM. L.Q. 1 (2010); Nicola Taylor & Marilyn Freeman, *Relocation: The International Context*, 1 J. Fam. L. & Prac. 19 (2010).

## II. Legal Considerations in Relocation Matters

### A. Case Law

Using California decisions as an example of how case law in a variety of states has evolved since 1990, I will try to unpack the complexity of relocation law and the importance to evaluators in understanding this complexity. Since 1990, the statutory law in California has not changed. California Family Code § 7501 has always stated, in essence, that the custodial parent has a presumptive right to move the child, absent a showing of harm to the child. That statute would suggest that moves would generally be allowed. However, the prevailing case in the early 1990s was *In re Marriage of McGinnis*,<sup>14</sup> which essentially stated that the moving parent had to show that the child's life would substantially benefit from the proposed move, in spite of Family Code § 7501. This put the burden on the moving parent to affirmatively demonstrate that the move would be in the child's interests. At that time, few parents who requested to move were able to do so with their children. Certainly, showing that a move is actually beneficial to a child is a tall order, and in practice, made it very difficult, even for a custodial parent with good reasons for the move, to be allowed to move with the child.

Then, in 1996, the California Supreme Court made a substantive change when it held in the *In re Marriage of Burgess* that

A parent seeking to relocate after dissolution of marriage is not required to establish that the move is "necessary" in order to be awarded physical custody of a minor child. Similarly, a parent who has been awarded physical custody of a child under an existing custody order also is not required to show that a proposed move is "necessary" and instead "has the right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child."<sup>15</sup>

Another key provision of *Burgess* is that

[a] different analysis may be required when parents share joint physical custody of the minor children under an existing order and in fact, and one parent seeks to relocate with the minor children. In such cases, the custody order  
'may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of

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<sup>14</sup> 7 Cal. App. 4th 473 (Cal. Ct. App. 1992).

<sup>15</sup> 913 P.2d at 476 (from Family Code § 7501).

the child requires modification or termination of the order.’ The trial court must determine de novo what arrangement for primary custody is in the best interest of the minor children.<sup>16</sup>

In spite of the fact that the first cited case after *Burgess* denied the relocation of the moving parent,<sup>17</sup> by and large, most court decisions for the next nine years continued the trend of generally allowing moves by custodial parents. Along the way, there were many other decisions by the California appellate courts that generally allowed the move by a custodial parent, either by upholding a trial judge’s decision to allow the move or by overturning the trial judge’s decision to deny the move. Some of those decisions focused on the percentage of time necessary for a parent to be considered the “custodial parent” — this typically ranged from at least 60% to 65% of the parenting time.<sup>18</sup> Given footnote 12 in *Burgess*, the amount of parenting time was critical in helping to determine whether or not there was a sole-custodial parent or there was a joint physical custody order in place.

Another case, *In re Marriage of Edlund and Hales*,<sup>19</sup> decided that neither judges nor custody evaluators could ask the moving parent what she (or he) would do if the court denied the request to move with the child. The rationale for that was that it would put the parent who wants to move in the difficult position of choosing between her or his goals for the future (e.g., job, pending marriage, return to family, etc.) and the child. To my knowledge, evaluators and judges in other states can ask that question, and it may be a relevant consideration in any relocation request. However, to this day, neither judges nor custody evaluators are allowed to ask such questions of the moving or remaining parent in California. In fact, the asking of this question has been used as a basis for disregarding a custody evaluation.

The California courts also affirmed an international move from California to Australia in *In re Marriage of Condon*.<sup>20</sup> This case not only added to the discussion about sole versus joint cus-

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<sup>16</sup> *Id.* at 483 n.12.

<sup>17</sup> *Cassady*, 49 Cal. App. 4th 55.

<sup>18</sup> *See e.g. Bryant*, 110 Cal. Rptr. 2d at 797 (weighing parenting time in a relocation case to determine the labels of custodial versus non-custodial parent).

<sup>19</sup> 78 Cal. Rptr. 2d 671 (Cal. Ct. App. 1998).

<sup>20</sup> 62 Cal. App. 4th 533.

tody but also authorized courts to impose restrictions associated with international moves, including the ordering of bonds to help ensure that funds are available in the event that the orders for access are not followed. This case provides guidance for evaluators in California who are involved in international relocations. In fact, California evaluators whose work products and recommendations are ignorant of *Condon* frequently find themselves in the unenviable position of having to explain to the court why their evaluations should not be thrown out.

In 2001, *In re Marriage of LaMusga*<sup>21</sup> began, as Ms. Navarro, the mother in this case, requested a move from California to Ohio.<sup>22</sup> At trial, there was testimony that the move might increase harm to the children's relationship with their father. Citing the decision by the California Supreme Court, the trial court, which denied the move for at least one year to give time to help improve the children's relationship with the father, stated:

The issue is not whether either of these parents is competent and qualified to be custodial parents, I think the evidence indicates that they are. That is not the question. The question is whether there is sufficient evidence at this point to determine, one, that the best interests of the children is served by relocating with Mother to Ohio, or whether the best interests are served by a change of physical custody if [the mother] is to relocate.<sup>23</sup>

The mother appealed that decision, and the appellate court reversed the judgment, citing *Burgess* and concluding, "although the [superior] court referred several times during the hearing to 'best interest' as the applicable standard, its order was not truly based on that criterion as it applies in the context of this custodial parent's relocation." The court of appeals concluded that:

Neither proceeded from the presumption that Mother had a right to change the residence of the children, nor took into account this paramount need for stability and continuity in the existing custodial arrangement. Instead, it placed undue emphasis on the detriment that would be caused to the children's relationship with Father if they moved.<sup>24</sup>

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<sup>21</sup> 88 P.3d 81.

<sup>22</sup> Earlier, in 1994, Ms. Navarro requested a move to Ohio with the boys when they were much younger and agreed to wait until they were older to make the request again.

<sup>23</sup> *LaMusga*, 88 P.3d at 89.

<sup>24</sup> *Id.*

Subsequent to that decision, the father appealed to the California Supreme Court, and the court held hearings and received seven amicus briefs in 2002 and 2003. Ultimately, the California Supreme Court overturned the appellate court's decision.

In overturning the appellate court's decision, the Supreme Court stated a number of critical things. It noted

The Court of Appeal in the present case held that the superior court abused its discretion in ordering that primary physical custody of the children would be transferred to the father if the mother moved to Ohio. The Court of Appeal concluded that the superior court "neither proceeded from the presumption that Mother had a right to change the residence of the children, nor took into account this paramount need for stability and continuity in the existing custodial arrangement. Instead, it placed undue emphasis on the detriment that would be caused to the children's relationship with Father if they moved. We disagree."<sup>25</sup>

It reaffirmed *Burgess* that the paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining ongoing custody arrangements. However, the Supreme Court stated that the superior court did not place "undue emphasis" on the detriment to the children's relationship with their father that would be caused by the proposed move, adding, "[t]he weight to be accorded to such factors must be left to the court's sound discretion. The Court of Appeal erred in substituting its judgment for that of the superior court."<sup>26</sup> In its decision, the Court pointed out that both the trial court and the appellate court were correct in considering detriment in *Edlund v. Hales*. The Supreme Court reiterated in *LaMusga* that the "noncustodial parent has the burden of showing that the planned move will cause detriment to the child in order for the court to reevaluate an existing custody order."<sup>27</sup> Thus, the Supreme Court reaffirmed that, according to California law, the noncustodial parent has the initial burden of showing that there is detriment in the proposed move. This is one of the more salient findings in the *LaMusga* decision.

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<sup>25</sup> *Id.* at 94.

<sup>26</sup> *Id.* at 94-95.

<sup>27</sup> *Id.* at 97.

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Another focus of the decision that is important is the discussion on good-faith versus bad-faith motives. The court reminded that, in the *Burgess* decision, the court had previously stated that a finding that the proposed move constitutes bad faith “may be relevant” in determining custody arrangements.<sup>28</sup> Essentially, the court in *LaMusga* described that these are not discrete issues.<sup>29</sup>

Ultimately, in a compelling part of the decision, the court refined *Burgess* by stating

[W]e conclude that just as a custodial parent does not have to establish that a planned move is “necessary,” neither does the noncustodial parent have to establish that a change of custody is “essential” to prevent detriment to the children from the planned move. Rather, the noncustodial parent bears the initial burden of showing that the proposed relocation of the children’s residence would cause detriment to the children, requiring a reevaluation of the children’s custody. The likely impact of the proposed move on the noncustodial parent’s relationship with the children is a relevant factor in determining whether the move would cause detriment to the children and, when considered in light of all of the relevant factors, may be sufficient to justify a change in custody. If the noncustodial parent makes such an initial showing of detriment, the court must perform the delicate and difficult task of determining whether a change in custody is in the best interests of the children.<sup>30</sup>

This substantial change in California case law created a two-part test: The noncustodial parent must first show detriment associated with the move of the child. Then, if that showing is accomplished, the court needs to determine whether a change of custody is in the best interests of the child. This two-part test has been a key in court decisions after *LaMusga*.<sup>31</sup>

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<sup>28</sup> *Burgess*, 13 Cal. 4th at 36 n.6.

<sup>29</sup> The Court held that , “[a]bsolute concepts of good faith versus bad faith often are difficult to apply because human beings may act for a complex variety of sometimes conflicting motives . . . . Even if the custodial parent has legitimate reasons for the proposed change in the child’s residence and is not acting simply to frustrate the noncustodial parent’s contact with the child, the court still may consider whether one reason for the move is to lessen the child’s contact with the noncustodial parent and whether that indicates, when considered in light of all the relevant factors, that a change in custody would be in the child’s best interests.” *LaMusga*, 88 P.3d at 99.

<sup>30</sup> *Id.* at 1078.

<sup>31</sup> See *Mark T. v. Jamie Z.*, 194 Cal. App. 4th 1115 (Cal. Ct. App. 2011); *Jacob A. v. C.H.*, 196 Cal. App. 4th 1591 (Cal. Ct. App. 2011); *F.T. v. L.J.*, 194 Cal. App. 4th 1 (Cal. Ct. App. 2011).

The other key finding in *LaMusga*, is that relocation law is not amenable to inflexible rules and that the trial court needs to consider a variety of factors before deciding whether to modify a custody order in light of the custodial parent's proposal to change the residence of the child. According to the court:

Among the factors that the court ordinarily should 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 in the custodial arrangement; the distance of the move; the age of the children; the children's relationship 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 currently are sharing custody.<sup>32</sup>

Since *LaMusga*, California courts of appeal have heard many cases and have refined things even further. They have explicitly stated that when a parent proposes to move with the children to another location, the trial court must make any determination of what parenting plan is in the child's best interests *with the explicit assumption that the move is going to take place*.<sup>33</sup> In other words, trial courts cannot deny a move simply because it is presumed best for children to be raised by both parents in closer proximity to one another. By looking at the relevant factors identified in *LaMusga*, and any other relevant factors being considered, trial courts must determine whether or not the child should move with the moving parent or remain with the non-moving parent, and then determine what parenting plan is in children's best interests as it relates to access between the children and the distant parent.

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<sup>32</sup> *LaMusga*, 88 P.3d at 100.

<sup>33</sup> See Mark T, 194 Cal. App. 4th at 1115; Jacob A., 196 Cal. App. 4th at 1591; F.T., 194 Cal. App. 4th at 1.

## B. *Statutory Law*

In addition to case law, many states have statutes that define relocation issues.<sup>34</sup> Using Arizona's statutory law to help define how relocation cases are addressed, I will again identify critical factors to be considered as it relates to best interests and relocation.<sup>35</sup> Both Arizona Revised Statutes section 25-403 (regarding best interests) and Arizona Revised Statutes section 25-408 identify critical factors determined by the legislature to be important for courts to consider.

The most relevant best interest factors in Arizona Revised Statutes section 25-403 include the following:

A. The court shall determine legal decision-making and parenting time, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all factors that are relevant to the child's physical and emotional well-being, including:

1. The past, present and potential future relationship between the parent and the child.
2. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
3. The child's adjustment to home, school and community.
4. If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.
5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.

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<sup>34</sup> See Linda Elrod, *A Move in the Right Direction? Best Interests of the Child Emerging as the Standard for Relocation Cases*, 3 J. CHILD CUSTODY 29 (2006).

<sup>35</sup> ARIZ. REV. STAT. § 25-403 (2012) (best interests) and ARIZ. REV. STAT. § 25-408 (2012) (relocation) were amended in 2012 and the new definitions identified here go into effect on Dec. 31, 2012.

7. Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent.

8. Whether there has been domestic violence or child abuse pursuant to section 25-403.<sup>36</sup>

The critical section 25-408 relocation factors include:

1. The factors prescribed under section 25-403
2. 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
3. The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child
4. The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders
5. Whether the relocation will allow a realistic opportunity for parenting time with each parent
6. The extent to which moving or not moving will affect the emotional, physical, or developmental needs of the child
7. 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
8. The potential effect of relocation on the child's stability.<sup>37</sup>

While other states have factors that are relevant to issues of custody and relocation,<sup>38</sup> it is my opinion that the Arizona statute is comprehensive and identifies most of the key factors that are salient in these matters.

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<sup>36</sup> ARIZ. REV. STAT. § 25-403 (effective December 31, 2012).

<sup>37</sup> ARIZ. REV. STAT. § 25-408 (2012).

<sup>38</sup> For an in-depth look at 36 factors that are identified in various statutory and case law decisions across the country, see Duggan, *supra* note 9.

### III. The Psychological Literature Related to Relocation

There has been a limited but growing psychological literature associated with relocation since the mid-1990s. Early writings focused on the benefit to children of moving with their custodial parent<sup>39</sup> or on relevant factors to consider<sup>40</sup> in relocation matters. Richard Warshak<sup>41</sup> challenged Judith Wallerstein and Tony Tanke's conclusions that children benefit from moving with a custodial parent by identifying other literature about how children benefit from both parents' active involvement in children's lives. After this, most of the literature has focused more extensively on relevant factors and the recognition that these cases warrant a risk-benefit analysis of the potential benefits and harm to children associated with the potential relocation.<sup>42</sup> Over time, however, these articles have evolved to identify the various factors that are psychological in nature and that would contribute to a child benefiting from or being harmed by the relocation.<sup>43</sup>

As noted above, in the only study focusing on the impact of long-distance between parents,<sup>44</sup> the authors surveyed university students to discover whether they had experienced either of their parents moving more than one hundred miles away from the other parent. They reported that these students reported a preponderance of negative effects associated with parental moves by the mother or the father, with or without the child, as compared with divorced families in which neither parent moved away. These negative effects included, among other things: a) receiving less financial support; b) worrying more about that support; c)

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<sup>39</sup> Judith S. Wallerstein & Tony J. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 *FAM. L.Q.* 305 (1996).

<sup>40</sup> See, e.g., J. Berkow, "50 Ways to Leave Your Lover" or "Move-Away" Cases Circa March 1996, 9 *CONTRA COSTA LAW.* 18 (May 2006); Stahl, *supra* note 10.

<sup>41</sup> Warshak, *supra* note 7, at 109.

<sup>42</sup> See *Austin Part II*, *supra* note 10, at 360.

<sup>43</sup> See PHILIP M. STAHL, *CONDUCTING CHILD CUSTODY EVALUATIONS: FROM BASIC TO COMPLEX ISSUES* (Sage Publications 2010); Joan B. Kelly & Michael E. Lamb, *Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?*, 17 *J. FAM. PSYCHOL.* 193 (2003).

<sup>44</sup> Braver et al., *supra* note 12.

feeling more hostility in their interpersonal relationships; d) suffering more distress from parents' divorce; e) perceiving parents less favorably as sources of emotional support and as role models; f) believing the quality of their parents' relationships with each other to be worse; and g) rating themselves less favorably on general physical health, life satisfaction, and personal and emotional adjustment.

While Braver et al. recognized that their data could not establish with certainty that moves cause children harm, they concluded 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. In spite of acknowledging some disadvantages, they recommended that courts be allowed to consider the strategic use of conditional change-of-custody orders when a parent wishes to relocate, though they added that no court should issue a conditional change-of-custody order if it believes that any custodial change would yield important disadvantages for the child<sup>45</sup>. At the very least, they suggested that courts and legislatures should discourage 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.

#### **IV. International Research Associated with Relocation**

##### *A. Recent Research Moves Away from Polarized Conclusions*

In contrast to the United States, in New Zealand, Australia, and the United Kingdom, research is ongoing that is focused on actually understanding the families as they are in the midst of relocation.<sup>46</sup> Like many jurisdictions in the United States, New Zealand and Australia laws support the active involvement of both parents, while simultaneously struggling with balancing relocation decisions. Findings from that research suggest that moving parents typically had more than one reason for wanting to move, and those reasons typically included: a) returning home

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<sup>45</sup> *Id.*

<sup>46</sup> See Parkinson et al., *supra* note 13; Taylor & Freeman, *supra* note 13.

for family and emotional and financial support; b) moving to be with a new partner; c) moving to start fresh in a new place; d) moving for a better lifestyle; and e) moving to escape violence and control.<sup>47</sup> In their research, nearly two-thirds of parents moved with the child; in some of those families, the other parent followed; in some of those families, the parent moved without the children; and in some families, the parent wanting to move did not move, either because the court did not allow taking the child out of the jurisdiction or because the parent abandoned the wish to move. Along with this, the research showed that conflict remained an issue for many of these families and mediation was frequently needed to assist in ongoing access between parents and children. For the parents, the most salient finding was that, whether courts allowed or denied the move, one parent was emotionally devastated. At the same time, regardless of this emotional devastation, when both parents remained child-focused and supported the relationship between the parent and the other child, relocation was either not harmful, or, in some instances, was a positive experience for the child.<sup>48</sup>

This research also showed that there were certain burdens that fell on the children. This largest burden was the burden of travel, usually by car, rail, or plane. Adding to this is the expense to families, especially when a parent had to accompany the child on flights. The other primary burden was the burden associated with lesser contact with the other parent, as many distant parents had difficulty managing contact, and most children found electronic access, via Skype, email, phone, etc., to be less than satisfactory. At the same time, many children wanted more contact than was possible with their distant parent, while also wanting a say in the outcome of the relocation.

In a recent study from New Zealand,<sup>49</sup> children voiced a significant desire to express their feelings about the relocation. They experienced tremendous frustration when they believed that their attorney misrepresented what they said or did not listen to

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<sup>47</sup> See Taylor & Freeman, *supra* note 13.

<sup>48</sup> *Id.*

<sup>49</sup> Megan Gollop & Nicola J. Taylor, *New Zealand Children and Young People's Perspectives on Relocation Following Parental Separation*, in 14 *LAW AND CHILDHOOD STUDIES: CURRENT LEGAL ISSUES* 219 (Michael Freeman ed., 2012).

them (in New Zealand, it is not uncommon for children to have an attorney appointed to hear their voice). However, except for this issue, many of the children interviewed seemed to have adjusted well to their move, and the factors that helped the most were when they moved closer to extended family and they were able to maintain their friendships – albeit friendships in both locations.

Ultimately, these authors have determined that polarized views, i.e., that children are harmed by moves, or that moving with a primary parent is always good for children, are not based on conclusive research and are not helpful in making relocation decisions in a given case. In another study, Taylor and Freeman<sup>50</sup> identified that many children are at risk when relocation occurs but whether or not a particular relocation is harmful for an individual child depends on both risk and protective factors that may be present in that case. Like Austin, they identified that relocation needs to be thought of within a risk context and within each case, certain familial, residential, and mobility factors ameliorate or elevate risk and resiliency for a particular child.

Finally, Parkinson et al., in their article, said, “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 experiences.”<sup>51</sup> From my perspective, that means that courts and custody evaluators need to be open to the particular facts within each family that will help determine the risk and protective factors that exist, rather than look to bright-line rules in solving these cases.

#### *B. Special Issues in International Relocation*

In addition to the many factors associated with relocation generally, a crucial factor to consider when a parent proposes an international move is whether the country to which the moving parent wants to take the child is a partner with the United States on the international Hague Convention on Private International Law.<sup>52</sup> There is a clear divide, in that most North, Central, and

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<sup>50</sup> Taylor & Freeman, *supra* note 13.

<sup>51</sup> Parkinson et al., *supra* note 13.

<sup>52</sup> Hague Conference on Private International Law, *Convention on the Civil Aspects of International Child Abduction*, Oct. 25, 1980.

South American countries, most of Europe, and South Africa, Australia, and New Zealand are all partners, while most of Africa, the Middle East, and Asia are not partners to the Hague Convention. The Hague Convention is designed to help host countries obtain the return of children who have been removed to another Hague Convention country, but non-signing countries will not typically participate in that. In addition, if a child is moved legally to a Hague Convention country, it is anticipated that the country to which the child has moved will support court orders and enforce access promised in those orders from the original home country.

Unfortunately, not all Hague Convention countries are alike, and several are seen as very compliant while others are seen as generally noncompliant—for example, Brazil, Germany, Greece, and Mexico, to name a few.<sup>53</sup> A specific concern is found in Japan, a country that, at the time this article was written, is not a party to the Hague Convention and where Japanese civil law stresses that in cases where custody cannot be reached by agreement between the parents, the Japanese court will not resolve issues based on the best interests of the child. According to the U.S. State Department website, compliance with family court rulings is voluntary in Japan, which renders any ruling unenforceable by the family court. According to this website, foreign parents are greatly disadvantaged in Japanese courts, even in getting enforceable access. According to the website, the Department of State is not aware of any case in which children removed from the United States to Japan have been ordered returned to the United States by the Japanese courts, even when the left-behind parent has a U.S. custody decree. Such specialized knowledge can generally be gained by consulting with an international relocation expert and going to the State Department website.

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<sup>53</sup> See, e.g., Morley, 2009, Presentation at New York State council on Divorce Mediation; U.S. Department of State. (2009). U.S. State Dep't, *Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction*, Apr. 2012, <http://travel.state.gov/pdf/2012HagueComplianceReport.pdf>.

## V. Practical Advice for Contested Relocation Matters

### A. *Avoiding Bias in Relocation Cases*

As I've thought about and considered the issues in relocation cases, I have often noticed that attorneys, judges, and child custody evaluators are at risk of being biased, either for or against a move, because of their beliefs about children's best interests.<sup>54</sup> Those who generally support moves include those who believe that, if a custodial parent is happy, the children will be happy, regardless of where each of the parents live. This was the position taken by Wallerstein and Tanke<sup>55</sup> when they filed an amicus brief in the well-known California *Burgess* case.<sup>56</sup> Those who typically resist moves include those who generally believe that it is essential for both parents to be regularly involved in the child's life.<sup>57</sup> In my article, I took the position that anyone working to make recommendations or decisions in relocation matters must be aware of their own position on these issues and take concrete and demonstrable steps to reduce the bias inherently associated with expert opinions in relocation.

### B. *Putting the Case Together*

In pulling a relocation case together, it is critical to address the relevant factors that apply to the specific case. First, it is most important to understand the reasons for the proposed move and the reasons for opposing the proposed move. Without a good reason for moving or opposing the move, it is likely that the side with the poor reasoning or bad faith will lose.

Always pay attention to the custodial history, the attachment and relationship of the child with each parent, the psychological adjustment of the child, the psychological adjustment of each parent, relevant developmental issues related to the age of the child involved, and, as children get older, the child's wishes. If you represent the parent wanting to move, help your client be prepared to present a parenting plan that supports access with

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<sup>54</sup> Stahl, *supra* note 10.

<sup>55</sup> Wallerstein & Tanke, *supra* note 39, at 309-10.

<sup>56</sup> *Burgess*, 913 P.2d at 473.

<sup>57</sup> See, e.g., Warshak, *supra* note 7 at 83 (arguing against a presumption favoring relocation and encouraging both parents to remain near the child).

the other parent. You'll also want to pay attention to the likely other relevant factors, which would definitely include the question of social capital in each location, a description of gatekeeping,<sup>58</sup> some understanding of logistics and how the parent(s) and the child are likely to be able to travel between locations, and any other important factors from the listing above.

William Austin suggests that relocation is always a risk factor for children, except in domestic violence cases.<sup>59</sup> He then highlighted those factors that, depending on the findings associated with those factors, either increase that risk or provide protection against the risk of relocation. He summarized those factors as:<sup>60</sup>

### 1. *The Age of Child*

In a real general way, relocation is a greater risk factor for those children under age five and for teenagers and is seen as less of a risk factor for school-aged children. The younger child is at risk because of the difficulty holding onto and maintaining a close parental relationship with the distant parent. This younger child is less able to use other means, such as Skype, phone calls, etc., to meaningfully interact with the distant parent. The younger child is also at risk if there is a considerable change of custodial arrangement, i.e., if custody is changed from one parent to the other. It is always difficult to manage these risks in the very young child. At the other end of the spectrum, the older child is at risk when relocated if the child is very active in his/her community, entrenched in friendships, and involved in school activities. Additionally, as noted above, the older child is at risk if the child's voice is not heard and if the child is moved, or denied being moved, without having a voice, the child will likely feel disenfranchised.

### 2. *The Distance of the Move*

Longer moves make it more difficult to arrange frequent access with the other parent and international moves add a risk

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<sup>58</sup> See *infra* Part V.B.10.

<sup>59</sup> See generally Austin, *Part I*, *supra* note 10, at 145-46 (noting that good moves exist in relocation cases in certain individualized circumstances); Austin, *Part II*, *supra* note 10, at 358.

<sup>60</sup> Austin *Part II*, *supra* note 10, at 351-60.

associated with abduction and whether the foreign country is a signor to the Hague Convention. It is always important to understand how your clients plan to handle the logistics of maintaining the child's relationship with both parents across the distances involved. Will it take a two hour drive to see the other parent? Will it take a five hour flight to see the other parent? Can the child travel as an unaccompanied minor on the airlines or must an adult accompany the child? What frequency of access makes the most sense? Can the distant parent travel to where the child lives and have some of his/her parenting time in the child's home community? These logistical issues are important to fully understand in your relocation case.

### *3. The Child's Psychological Functioning, Including Strengths and Vulnerabilities*

Some children are more adaptable and are less likely to have difficulty moving, changing schools, and making new friends. Other children may have special needs that may make it tougher to make such changes. Specific school- and medical-related special needs issues may also be more effectively treated and dealt with in one location or the other. Hearing from your client about the child's temperament and expected ability to adapt to the changes associated with the proposed relocation is very important.

### *4. The Degree of Nonresidential Parental Involvement*

Obviously, the less that the child has previously seen the other parent, the less risk in moving further away from that parent. Conversely, when there is a very active relationship with the other parent, the risk is greater, especially as it relates to young children who won't be able to see that parent as frequently. Hearing from your client how these issues will be managed is critical in your relocation case.

### *5. The Strengths, Resources, and Vulnerabilities of the Moving Parent*

This refers to the psychological functioning of the moving parent and the child's relationship with that parent. It is important to understand how your client is functioning and how the move might help improve that functioning or how the move

might negatively impact the parent's functioning. Austin has suggested that the main protective factor in relocation is the child's positive relationship with a healthy relocating parent in the event of relocation.<sup>61</sup> With a healthy moving parent who has a good relationship with the child, this may be the most important factor in favor of the move.

On the other hand, when one parent has significant emotional and/or psychological problems, maintaining regular and frequent contact with the other parent serves as a critical buffering factor in supporting the child's functioning and reduces the risks associated with being raised by the parent with emotional and/or psychological problems.<sup>62</sup> In those circumstances, this may be the most important factor in suggesting against the move.

#### 6. *Parenting Effectiveness of Both Parents*

I refer to the quality of each parent's parenting as the "vertical" relationship. This vertical relationship of parenting is critically important. Authoritative parenting, in which a parent is sensitive to the child's emotions while also providing guidance, structure, and rules for the child, is seen as the healthiest. Authoritarian parenting, in which the parent is too rigid and strict, and overly permissive parenting, in which the parent is overly focused on the child's feelings and/or emotionally enmeshed with the child, are seen as less healthy. Understanding this factor will be a critical and helpful task in determining which parent should be the primary parent following the move.<sup>63</sup>

#### 7. *The History, Nature, and Degree of Parental Conflict*

I refer to the nature of the relationship between the parents as the "horizontal relationship." It is important to understand if the present level of conflict is different in order to help support the need for a move. At the same time, it is important to understand how the conflict between the parents is affecting the child. This becomes an important issue when thinking about the child's potential adjustment to the proposed move. If the conflict

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<sup>61</sup> Austin, *Part II*, *supra* note 10, at 348.

<sup>62</sup> See, e.g., E. MAVIS HETHERINGTON & JOHN KELLY, FOR BETTER OR WORSE: DIVORCE RECONSIDERED (2002).

<sup>63</sup> See e.g., Joan Kelly & Robert Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 *FAM. REL.*, 352, 352-62 (2003).

reduces the moving parent's ability to support the child's relationship with the other parent, this will not be beneficial for the child. At the same time, if the child is regularly exposed to the parental conflict, it may be that a move might reduce the extent to which the child is exposed to the day-to-day conflict of the parents, which would be a positive thing for the child.

#### 8. *The History of Any Domestic Violence*

It is important to recognize that, with domestic violence, just like with relocation, one size does not fit all. The majority of couples who experience family violence engage in limited outbursts that have the following characteristics: a) usually associated with poor impulse control by one or both partners; b) no evidence of power or control issues; c) neither partner is in fear of the other partner; d) may include allegations of infidelity, regardless of veracity; e) may include associated substance abuse issues, and f) both partners acknowledge and accept responsibility for their actions, as well. This type of violence is newly identified in the literature as Situational Couples Violence (SCV).<sup>64</sup>

Another significant form of partner violence is known as Separation Instigated Violence (SIV).<sup>65</sup> SIV characteristics include: a) no prior history of violence in the relationship; b) one or two incidents around the time of separation; and c) both partners acknowledge and accept responsibility for their actions, often with considerable shame and remorse. Two important characteristics about SCV and SIV are that: a) the violence usually stops after separation and b) these types of violence are generally gender neutral, being equally likely to be initiated by both men and women in the relationship. For families in which violence is an issue, and the family exhibits these types of violence, this may be a lesser factor in considering the relocation matter.

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<sup>64</sup> See, e.g., Peter G. Jaffe, et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward A Differentiated Approach to Parenting Plans*, 46 FAM. CT. REV. 500 (2008); Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV 476 (2008); Nancy Ver Steegh & Clare Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV 454 (2008).

<sup>65</sup> See Kelly & Johnson, *supra* note 64, at 479-80.

On the other hand, if the family experience is one of Coercive Controlling Violence (CCV)<sup>66</sup> it is a different story. Characteristics of CCV include: a) primarily initiated by males in a heterosexual relationship; b) features of power, coercion, and control are paramount and often take many forms, including physical abuse, economic abuse, emotional abuse, and sexual abuse. The actual physical abuse may be limited to times when other forms of abuse are not sufficient to maintain the power and coercion; c) the victim and the children are typically very fearful of the perpetrator of the violence; d) the stories about the family violence given by the victim and the perpetrator are very different and the perpetrator, if acknowledging any violence, blames the victim for it; and e) is a risk factor that typically increases after the separation, and will often include evidence of stalking. When such coercive controlling violence exists, it is likely that a move away from the violent parent will yield less risk associated with the relocation (though risk associated with the violence will remain).

#### *9. Social Capital in Each Location*

Aside from the parents themselves, children benefit from relationships with other significant adults, peers, and teachers. This often includes grandparents, aunts, uncles, cousins, and other people close to the child. It is important to consider the social capital in each location when considering a request for or against relocation.

#### *10. Each Parent's Ability To Be a Responsible Gatekeeper and Support the Child's Relationship with the Other Parent*

Gatekeeping has been described as a very important factor that will increase or reduce the risk in relocation cases. Gatekeeping has three components: 1) Responsible or Facilitative Gatekeeping, in which a parent does a very good job supporting the child's relationships with the other parent. In a long-distance situation, this can occur with the use of email, Skype, regular sharing of information about the child, and ensuring regular and frequent contact with the other parent in a way that is

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<sup>66</sup> *Id.*

developmentally and logistically feasible; 2) Restrictive Gatekeeping, in which a parent engages in a variety of behaviors to marginalize or interfere with the other parent's relationship with the child. The actual restrictive *behaviors* are seen as much more important as a risk factor than restrictive *attitudes*, as long as the attitudes have not led to behavioral interference; and 3) Protective Gatekeeping, in which the parent who engages in restrictive behaviors has legitimate reasons for attempting to limit the other parent's involvement with the child. Such legitimate reasons can include abuse, substance abuse, toxic or overly rigid and authoritarian parenting, and other behaviors on the part of the other parent that can cause harm for the child. As noted, Facilitative Gatekeeping is seen as a protective factor in relocation while Restrictive Gatekeeping is seen as a risk factor in relocation. When Protective Gatekeeping is alleged, this needs to be fully understood to see whether or not the risks that the child is being protected from are real and the extent to which these risks are likely to create harm to the child.

#### 11. *The Recency of the Separation and Divorce*

Austin has posited that a move that occurs close to the separation will result in greater risk to the child, since the child will then have to adjust to two things at once, i.e., the separation and the move.<sup>67</sup> At the same time, if a child has made a successful adjustment to the separation of the parents, it may very well be a protective factor in a relocation matter.

As previously described, I would like once again to emphasize that all of this psychological literature is derived from an extrapolation of divorce research identifying risk factors in children's adjustment to divorce in which relocation was not at issue, in combination with research on relocation not associated with divorce. The relocation research identifies that, at least in the short term, relocation is a risk factor in children's adjustment, and since divorce is a risk factor in children's adjustment, many people believe that relocation following divorce is a bigger risk factor.

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<sup>67</sup> Austin *Part I*, *supra* note 10, at 140-43.

## **VI. Conclusions**

Relocation cases are each unique. There should be no bright line rules that make it easier or harder for one parent to move with the children. In each case, it is important for all concerned to consider the relevant factors, both those in statutory or case law and those in the psychological literature, to help gather evidence regarding the risks and benefits of moving. It is also important to consider all of the latest research in identifying which factors are risk factors and which factors are protective factors in your particular case.

If you represent the parent wanting to move, be sure that your client's reasoning for wanting to move makes sense. Ensure that your client will be a facilitative gatekeeper and continue to encourage and support the children's relationships with the other parent. Develop a plan with your client in which your client will continue to communicate with the other parent about the children and keep the distant parent's relationship alive and well with the children. If your case goes to trial, highlight the protective factors in your case, such as your client's excellent parenting (vertical relationship with the child), your client's efforts to support healthy coparenting (horizontal relationship with the other parent), and the child's healthy relationship with your client. Additionally, identify the risk factors in your case and how your client intends to ameliorate those risks in the event that the court allows the move to take place. All of these steps can help you win your case and get an order to allow your parent to move with the child to the new location.

If you represent the parent opposing the move, ensure that your client is prepared to be the primary custodial parent in the event that the other parent moves and the court does not allow the child to be moved. You will want to highlight the risk factors associated with the relocation and how custody with your client will help to ameliorate those factors.

Regardless of your attorney role and which parent you represent, try to mediate and settle the matter first. If that does not work early in the case, consider using a psychological consultant who can help you learn the psychological research and literature and identify which risk and protective factors are likely to apply in your case. Such a consultant can assist you in determining the good and bad facts of your case and can hopefully assist you and

your opposing counsel settle the relocation without litigation. If the case must be litigated, your consultant can assist you in arguments to the court. If your case goes to trial, you might also want an expert witness to testify about relevant factors to the court. As noted above, recognize that recent research suggests that children adjust to moves most easily when both parents are supportive of the outcome and remain child focused after the move. As such, always encourage your client to stay child focused and work with the other parent even after your case has been litigated.

Finally, an unfortunate end result, especially in some jurisdictions, is an endless array of appeals following judicial determinations in relocation cases. I am in agreement with Mark Henaghan who said,

A responsible legal system would not encourage numerous appeals in relocation cases, particularly where judges are putting weight on different facts in the same case . . . Once considered and applied, the matter has been decided, and people should move on with their lives, rather than suspend them waiting for an appeal and spending precious resources on litigation that could much better be used for the child. The earlier adjustment to a decision is made, the more likely healing will occur and conflict dissipate . . . There is no getting away from the reality that there will always be an element of judging the person when making decisions about who to place children with. How a person comes across and how the Court perceives them will play a major part in the outcome.<sup>68</sup>

Henaghan also said, “judges have to do the best they can [in relocation matters] with limited guidance.”<sup>69</sup> It is my hope that the guidance will come from a careful analysis of all relevant risk and protective factors in the given case, and that with such guidance, the court can hope to avoid the potential bias inherent in these cases and make a determination of the best interests of the particular child in that case.

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<sup>68</sup> Mark Henaghan, *Relocation Cases: The Rhetoric and the Reality of a Child's Best Interests: A View from the Bottom of the World*, 23 CHILD & FAM. L.Q. 226 (2011).

<sup>69</sup> *Id.* at 249.

