

Comment,  
RELOCATION STANDARDS AND  
CONSTITUTIONAL CONSIDERATIONS

The relocation of a custodial parent following a divorce is a hot topic in family law. As in many areas of the law, the law has changed rapidly in this area in the recent years, even months. Also, as in all areas of the law, the standards and requirements are not the same uniformly in jurisdictions across the country.

New Jersey is a leader in this area, adopting standards in 1976 that have been adopted in whole or in part continually since the decision in *D'Onofrio v. D'Onofrio*.<sup>1</sup> The states that deal with the specific issue of relocation of a custodial parent, do so by statute, case law or a combination of the two. There are states that adopted the *D'Onofrio* standards in statutes and states that have adopted the standards in case law.

All of the states start with the general rule that the issue is — what course of action would be in the best interests of the child? Some states leave the analysis there and look at each case on a case by case basis. Other states adopt by statute factors to consider when determining what is in the best interests of the child in regards to allowing the child to be removed from the state or area. Some states adopt in case law factors to consider when answering the question. Still other states rather than articulate a set of specialized factors, simply look to see if the move constitutes a substantial change of circumstances that would effect the existing custody arrangement. A change of residence is a presumed change of circumstances that warrants a review of the custody arrangement in some states.

Regardless of the method of analysis, each jurisdiction ultimately has the best interests of the children involved in mind. As with all other legal issues the states all have common goals, but reach those goals in the manner it deems most appropriate.

There are states that have only as recently as 1997, dealt with the issue. There are also states that do not offer any guidance for trial courts. However, in the near future, it is likely that the lack of guidance will bring a case regarding the issue

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<sup>1</sup> *D'Onofrio v. D'Onofrio*, 365 A.2d 27 (N.J. Super. Ct. Ch. Div. 1976), *aff'd* 144 N.J. Super. 352, (N.J. Super. Ct. App. Div. 1976).

before the courts to determine what to do when given a relocation situation.

In addition to the standards provided for in each jurisdiction, there are also constitutional considerations. They include: the right to travel, right to personhood, right to privacy, right to autonomy, right to home and community, the right to maintain a close association and frequent contact with a child; right of association: family and marriage, equal protection, and discrimination

The first section of this article is a broad overview of the treatment of the issue of relocation by a custodial parent by the jurisdictions in the United States. Generally the standards and factors are aimed at the custodial parent that was previously awarded custody of the children in a divorce or other proceeding. Some states have separate standards for an initial determination of custody and a parent desiring to relocate. The second section is a brief discussion of two relocation cases that were faced with constitutional arguments. Both cases analyze the right to travel and one of the cases also discusses the right to maintain a close association and frequent contact with the child.

## **I. Standards Applied by States**

### *A. D'Onofrio Standards*

In 1976, the New Jersey Supreme Court issued a decision regarding relocation that outlined a set of factors for the court to consider when determining whether to allow a custodial parent to remove a child from the jurisdiction of the state.<sup>2</sup> In *D'Onofrio*, the court interpreted a New Jersey statute which provided:

“When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated, or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order.”<sup>3</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> N.J. Rev. Stat. Ann. § 9:2-2 (1993).

The statute did not provide a standard for “cause shown”. The court held that the custodial parent must first “demonstrate that a real advantage to herself and the children will result from their removing their residence to a place so geographically distant as to render weekly visitation impossible”.<sup>4</sup> The court then identified several factors to be weighed when determining cause shown. The factors included:

“1) the prospective advantages of the move in terms of its likely capacity for improving the general quality of life for both the custodial parent and the child; 2) the integrity of the motives of the custodial parent in seeking the move in order to determine whether the removal is inspired primarily by the desire to defeat or frustrate visitation by the noncustodial parent; 3) integrity of the noncustodial parent’s motives in resisting the removal and consider the extent to which, if at all, the opposition is intended to secure a financial advantage in respect of continuing support obligations; and 4) there will be a realistic opportunity for visitation in lieu of the weekly pattern which can provide an adequate basis for preserving and fostering the parental relationship with the noncustodial parent if removal is allowed”.<sup>5</sup>

Even though New Jersey has expanded its test,<sup>6</sup> these factors are still known today as the *D’Onofrio* factors and are still regularly cited in other jurisdictions when deciding relocation cases.<sup>7</sup> Some states incorporate all of the *D’Onofrio* standards in addi-

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<sup>4</sup> *D’Onofrio*, *supra* note 1 at 30.

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

<sup>6</sup> In 1984, the New Jersey Supreme Court expanded the test in *Cooper v. Cooper*, 491 A.2d 606 (N.J. 1984). The court held that to establish sufficient cause for removal, the custodial parent must first show a real advantage for the move and that the move is not inimical to the best interests of the child. To prove the move is not inimical to the best interests of the child, the custodial parent must show no detriment to the child will result from the move. Once these requirements have been met, then the court may consider the *D’Onofrio* standards.

New Jersey again modified the test in 1988 in *Holder v. Polanski*, 544 A.2d 852 (N.J. 1988). The New Jersey Supreme Court modified the real advantage test and held that any sincere, good-faith reason will suffice. The court must then determine whether the move will substantially alter the visitation rights of the non-custodial parent. If the move will not substantially alter the visitation rights, then the court must determine whether the move would be inimical to the best interests of the child.

<sup>7</sup> See *e.g.* *Shaw v. Shaw*, 951 S.W.2d 746 (Mo.App.W.D. 1997); *Gruber v. Gruber*, 583 A.2d 434 (Pa. 1990); *Stout v. Stout*, 560 N.W.2d 903 (N.D. 1997); *Staab v. Hurst*, 868 S.W.2d 517 (Ark. App. 1994); *Henry v. Henry*, 326 N.W.2d 497 (Mich. 1992); *Ramirez-Barker v. Barker*, 418 S.E.2d 675 (N.C. 1992).

tion to other factors and some states adopt only a portion of the D'Onofrio standards alone or in addition to other factors.

Additional factors have included the possible adverse effect on the relationship with the noncustodial parent; the extent to which moving or not moving will affect the emotional, physical, or developmental needs of the child; the extent to which visitation rights have been allowed and exercised in the past; whether the primary residential parent, after leaving the jurisdiction will be likely to comply with visitation arrangements; whether the parties can afford to transport the child for visitation; a healthy and close relationship with both parents, as well as other family members; the child's preference (taking into consideration the age and maturity of the child); whether there is an established pattern of conduct of the parent seeking to relocate, either to promote or thwart the relationship of the child and the non-relocating party; how the children have fared under the original custody and visitation arrangement; and statutory or "other" factors affecting the best interests of the child.<sup>8</sup> Some states even though have not explicitly adopted the D'Onofrio standards, have cited the standards with approval.<sup>9</sup>

#### B. *Best Interests of the Child*

Even though several jurisdictions have adopted the *D'Onofrio* standards, or a similar version,<sup>10</sup> there are jurisdictions that do not have a separate list of standards for analyzing a

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<sup>8</sup> See *e.g.* *Yannas v. Frondistou-Yannas*, 481 N.E.2d 1153 (Mass. 1985); FLA. STAT. ch. 61.13 (1998); ARIZ. REV. STAT. 25-408 (West Supp. 1998); *In re Marriage of Eckert*, 518 N.E.2d 1041 (Ill. 1988); *In re Marriage of Wycoff*, 639 N.E.2d 897 (Ill.Ct.App. 1994) (Permission to move to another location *within* the state not required.); LA. REV. STAT. ANN. § 9:355.12 (West Supp. 1998); *In re marriage of Murphy*, 834 P.2d 1287 (Colo.Ct.App. 1992); *Schwartz v. Schwartz*, 812 P.2d 1268 (Nev. 1991); *Taylor v. Taylor*, 849 S.W.2d 319 (Tenn. 1993); TENN. CODE ANN. § 36-6-108 (1998); *Love v. Love*, 851 P.2d 1283 (Wyo. 1993).

<sup>9</sup> See *e.g.* *Fortin v. Fortin*, 500 N.W.2d 229 (S.D. 1992); *Tropea v. Tropea*, 665 N.E.2d 145 (N.Y. 1996); (While some of the factors are similar to D'Onofrio standards, the New York Court of Appeals does not indicate the standards are derived from D'Onofrio.); *Ireland v. Ireland*, 717 A.2d 676 (Conn. 1998) (adopting Tropea factors while stating that "each of the factors set forth in D'Onofrio is essentially included in the Tropea list").

<sup>10</sup> See *supra* text at notes 7-8.

relocation case. When making either an initial or modification of a custody determination, it is uniformly accepted that the primary concern for the courts are the best interests of the child. Several jurisdictions simply analyze a request to relocate by a custodial parent under the best interests of the child standard.

Tennessee requires the moving party (the custodial parent if he/she filed for permission to relocate with the child or the non-custodial parent if he/she filed a motion opposing an intended relocation) to bear the burden of proving whether the move is in or adverse to the child's best interest.<sup>11</sup>

In Alabama, the standard is also the best interests of the child. The parent seeking modification of a previous order granting custody bears the burden of proving that a change in custody will materially promote the child's best interests and that parent must also show that such a change in custody will more than offset the inherently disruptive effect caused by uprooting the child".<sup>12</sup>

In California, statutory law provides that a custodial parent has a 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>13</sup> In *Burgess v. Burgess*<sup>14</sup> the court held that based on the language of the statute, "in considering all the circumstances affecting the 'best interest' of minor children, it may consider any effects of such relocation on their rights or welfare".

The court reviewed the trial court's decision in regard to the effects of the relocation on the minor children's welfare. The mother was the primary caretaker and the court cited some of its earlier decisions that held that there was a "paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care

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<sup>11</sup> *Smith v. Kelley*, No. 01A01-9711-CH-00657, 1998 WL 743731 (Tenn.Ct.App. Oct. 27, 1998) citing *Taylor v. Taylor*, 849 S.W.2d 319, 332 (Tenn. 1993). See also *Pitt v. Olds*, No. 24880, 1999 WL 21489 \*2 (S.C.Sup.Ct. Jan. 18, 1999.) (The Supreme Court held that there were no findings by the Court of Appeals that a move to Arizona would be in the child's best interest.); *Garrison v. Mulcahy*, 636 A.2d 732 (R.I. 1993) (Court denied relocation because mother did not establish that moving to Indiana would be in child's best interests.).

<sup>12</sup> *Ex parte McLendon*, 455 So.2d 863 (Ala. 1984).

<sup>13</sup> CAL.FAM.CODE § 7501 (1994).

<sup>14</sup> 913 P.2d 473 (Cal. 1996).

and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining ongoing custody arrangements”.<sup>15</sup> The mother had temporary custody of the minor children and had been making a 40 mile commute to work. She petitioned the court to allow her to relocate with the children, only 40 miles away.

The court found that the distance between the children and their mother during the workday would benefit the children. The shorter commute to work would permit “increased and more leisurely daily contact between the children and their primary caretaker”.<sup>16</sup> The closer distance between the children and their mother would facilitate the children’s participation with the mother in extracurricular activities. The court also found that in the event of illness or emergency, the mother could get to the children more quickly. Based on all of these reasons, the court held that the relocation of mother and the minor children would be in the best interests of the children.

In New Mexico, if the parties share joint custody, the court determines whether to alter an existing custody arrangement in accordance with the best interests of the child, and also considers the respective interests of the parents.<sup>17</sup> There is not a presumption in favor of either party. However, the interests of the child take precedence over any conflicting interests of either parent.<sup>18</sup>

In a sole custody situation, New Mexico does however, have a presumption that a proposed move by the custodial parent is in the best interests of the child.<sup>19</sup> The presumption places a burden on the noncustodial parent to show that the move is not in the best interests of the child or that the move is motivated by bad faith on behalf of the custodial parent.<sup>20</sup>

Minnesota also has a variation of the best interests of the child standard. In Minnesota, in 1993 the Supreme Court interpreted a statute that stated that

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<sup>15</sup> *Id.* at 478.

<sup>16</sup> *Id.*

<sup>17</sup> *Jaramillo v. Jaramillo*, 823 P.2d 299, 307 (N.M. 1992). *See* discussion *infra* text at notes 44 -51 regarding the court’s discussion of the parties’ constitutional rights.

<sup>18</sup> *Id.*

<sup>19</sup> *Newhouse v. Chavez*, 772 P.2d 353 (N.M.Ct.App. 1988) *cert. denied* 769 P.2d 731 (1989).

<sup>20</sup> *Id.* at 356-57.

“in modification proceedings, the court shall retain the custodian established by the prior order unless: . . . (iii) The child’s present environment endangers his physical or emotional health or impairs his emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.”<sup>21</sup>

In *Auge v. Auge*<sup>22</sup> the court held that “this statute should be construed as establishing an implicit presumption that removal will be permitted, subject to the noncustodial parent’s ability to establish that removal is not in the best interests of the child”.

The Minnesota Supreme Court later held that this presumption could be overcome by offering evidence that would show that the removal is not in the best interests of the child and would endanger the child’s health and well-being.<sup>23</sup>

### C. Change of Circumstances

Several jurisdictions do not treat a relocation dispute any different than a motion to modify a divorce decree. The standard that these jurisdictions use when determining whether to modify a divorce decree, is whether there has been a substantial change in circumstances or a substantial and continuing change of circumstances with the custodial parent.<sup>24</sup>

In Indiana in *Swonder v. Swonder*,<sup>25</sup> the Court of Appeals held that the notice of intent to relocate statute must be construed in conjunction with the child custody modification statute. The child custody modification statute provides that the court may not modify custody unless it is in the best interests of the child and there is a substantial change in one or more of the stat-

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<sup>21</sup> MINN. STAT. § 518.18(d) (1982).

<sup>22</sup> 334 N.W.2d 393, 396 (Minn. 1993).

<sup>23</sup> *Sefkow v. Sefkow*, 427 N.W.2d 203, 214 (Minn. 1988); MINN. STAT. § 518.18(d)(iii) (West Supp. 1998); *See also* *Silbaugh v. Silbaugh*, 543 N.W.2d 639 (Minn.1996). (Any geographic change inevitably creates some anxiety for children, but evidence of the disruption typically associated with such a move is not sufficient to overcome the *Auge* presumption.)

<sup>24</sup> *Rowland v. Kingman*, 692 A.2d 939 (Maine 1997); *Wilson v. Messinger*, 840 S.W.2d 203 (Ken. 1992). (A relocation does not necessitate a change of physical custody, but more likely a modification reflecting the new circumstances.)

<sup>25</sup> 642 N.E.2d 1376 (Ind. Ct. App. 1994).

utory best interest of the child factors. The court further stated that “an out-of-state move is not, by itself, a substantial change of circumstances such as to make that parent’s continued custody unreasonable”.<sup>26</sup>

In other jurisdictions a decision to relocate has also been held to be a substantial change in circumstances that entitles the non-custodial parent to a hearing to determine whether the best interests of the child require a change in the existing custody or visitation order.<sup>27</sup> In Vermont the law is similar to that of Indiana. To modify a custody determination, a moving party must make “a showing of real, substantial and unanticipated change of circumstances”.<sup>28</sup> Once that threshold is met, the moving party must then show that “annulling, varying or modifying a prior parental rights and responsibilities determination is in the best interests of the child”.<sup>29</sup> Based on the language of the modification statute, relocation alone has been found not to be a per se substantial change of circumstances as to allow modification of custody.<sup>30</sup>

In Montana, if a request for a change of custody will substantially alter the primary residence of the children, the court must first determine whether a change has occurred in the cir-

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<sup>26</sup> *Id.* at 1380. *See also* Watt v. Watt, No. 96-322,1999 WL 16278 \*5 (Wyo. Sup. Ct. Jan. 19, 1999); Jaramillo v. Jaramillo, 823 P.2d 299 (N.M. 1991)(In almost every case in which the change in circumstances is occasioned by one parent’s proposed relocation, the proposed move will establish the substantially and materiality of the change.) Matter of Marriage of Duckett, 905 P.2d 1170, 1172 (Or.Ct.App. 1995); Fossum v. Fossum, 545 N.W.2d 828 (S.D. 1996).

<sup>27</sup> House v. House, 779 P.2d 1204 (Alaska 1989). *See also*, Osteraas v. Osteraas, 859 P.2d 948 (Idaho 1993). (A geographical relocation of minor children, such that the custody decree cannot be followed as previously entered, constitutes a substantial change of circumstances sufficient for the party seeking modification to be granted a hearing. However, such a move does not necessitate a change of physical custody, but more likely a modification reflecting the new circumstances.); MO. REV. STAT. § 452.411 (1997) (If either parent of a child changes his residence to another state, such change of residence of the parent shall be deemed a change of circumstances under section 452.410, allowing the court to modify a prior visitation or custody decree.)

<sup>28</sup> VT. STAT. ANN. tit. 15, § 668.

<sup>29</sup> *Id.*

<sup>30</sup> DeBeaumont v. Goodrich, 644 A.2d 843 (Ver. 1994). (Non-custodial parent must show a real, substantial and unanticipated change of circumstances to determine whether custody determination could be modified. Custodial parent has a right to determine child’s residence.);



cumstances of the child or the child's custodian, and whether the custodial parent and the child have moved or are going to move from one location to another (whether within the state or outside the state) and whether the move will hinder the effectiveness of the existing custody arrangement.<sup>31</sup> If the court finds these requirements have been met it may then proceed to modify the custody arrangement according to the best interest criteria set out in the state's statute.<sup>32</sup>

## II. Constitutional Considerations

The constitutions of both our country and respective states govern several areas of the law. One exception however, is family law. As Professor Arthur B. LaFrance points out in his article, *Child Custody and Relocation: A Constitutional Perspective*<sup>33</sup> constitutional rights are rarely discussed in relocation cases. "It may simply be that the divisions within the Bar and Bench by specialty are such that family law practitioners and family judges are, by and large, unacquainted with constitutional case law and analysis."<sup>34</sup>

In his article, Professor LaFrance identifies several constitutional considerations that could affect an argument either for or against relocation. He discusses the right to travel, right to personhood, right to privacy, right to autonomy, right to home and community, right of association that includes family and marriage, equal protection and discrimination.<sup>35</sup> The right to travel is the most common constitutional argument found in relocation cases, when a constitutional consideration is addressed.

A very recent Supreme Court decision in Wyoming, *Watt v. Watt*,<sup>36</sup> examines some constitutional considerations relating to relocation. In *Watt*, the parties were divorced in 1995 and Mrs. Watt was granted primary custody of the parties' minor children. The divorce decree allowed for an automatic transfer of custody to Mr. Watt in the event that Mrs. Watt moved more than 50 miles from the parties' hometown.

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<sup>31</sup> In re the Marriage of Siverson, 931 P.2d 691, 702 (Mont. 1996).

<sup>32</sup> *Id.*

<sup>33</sup> 34 U. Louisville J. Fam. L. 1, 77 (1995-96).

<sup>34</sup> *Id.*

<sup>35</sup> LaFrance, *supra* note 33 at 66-129.

<sup>36</sup> No. 96-322, 1999 WL 16278 (Wyo.Sup.Ct. Jan. 19, 1999).

Mr. Watt continued a close relationship with the minor children following the divorce. He had frequent visitation with the minor children and actively participated in their activities. In an effort to better her life and that of her minor children, Mrs. Watt applied and was accepted to the pharmacy program at the University of Wyoming at Laramie (more than 50 miles from the parties' hometown).

When Mrs. Watt sought to modify the divorce decree to allow her to relocate with the children without transferring custody to Mr. Watt, Mr. Watt objected and sought the transfer of custody. The trial court held that it had erred in including the automatic transfer of custody provision, however it did transfer custody of the minor children to Mr. Watt.<sup>37</sup>

In reversing the decision of the trial court, the Wyoming Supreme Court based its decision on the right to travel. It began with an analysis of the United States Supreme Court's decision in *Shapiro v. Thompson*.<sup>38</sup>

"Even before the ratification of the Constitution of the United States, the Articles of Confederation provided that 'the people of each State shall have free ingress and egress to and from any other state. . . .' This principle encompasses the right of individuals 'to migrate, resettle, find a new job, and start a new life. . . .'"<sup>39</sup>

The Wyoming Supreme Court went on to explain that the source of the right to travel has never been identified. The court suggested possible origins including the commerce clause, the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution, the privileges and immunities clause of Article IV of the United States Constitution and the due process clause.<sup>40</sup> It ultimately decided that there was no source for the right, that both the United States Constitution as well as Wyoming's Constitution does not specify any right of citizens to travel freely throughout the state. However, the court found that Article 1 § 36 of the Constitution of the State of Wyo-

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<sup>37</sup> *Id.* at \*3.

<sup>38</sup> 394 U.S. 618 (1969).

<sup>39</sup> Watt *supra* note 36 at \*6 quoting Shapiro, 394 U.S. at 629 citing Articles of Confederation, Art. IV, § 1 (1777).

<sup>40</sup> *Id.*

ming<sup>41</sup> stands as “an acknowledgment that fundamental personal rights, not specifically enumerated in the constitution, still are protected from governmental infringement”.<sup>42</sup> The court went on to say that a citizen has the right to travel that includes the right of a custodial parent to have the children move with that parent.<sup>43</sup> Mrs. Watt was therefore allowed to have her minor children join her in her new community.

Another major case that deals with constitutional considerations is *Jaramillo v. Jaramillo*.<sup>44</sup> In this case, the parties were granted joint legal custody of their minor child and the mother was granted physical custody. Approximately one year after they were divorced, the mother informed the father that she planned to move from New Mexico to New Hampshire to be closer to her parents and to seek better employment. The father petitioned the court to prevent the relocation; to grant a transfer of physical custody to himself; and to allow him to move to another city within the state. The trial court did not alter the custody arrangement. The court of appeals reversed the trial court and remanded the case for a new determination of what was in the child’s best interest. The Supreme Court of New Mexico reversed the court of appeals and remanded the case to the trial court for reinstatement of its order.

The primary legal issue in the *Jaramillo* case was which party should bear the burden of proof. The mother argued that placing the burden on the relocating parent to show that the relocation is in the best interests of the child impairs the relocating parent’s right to travel.<sup>45</sup> The New Mexico Supreme Court agreed with her. It also cited *Shapiro v. Thompson*<sup>46</sup> as a basis for its decision.

The New Mexico Supreme Court explored a second constitutional consideration—one that favors the party resisting the relocation. The right is the right to maintain a close association

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<sup>41</sup> “The enumeration in this constitution, of certain rights shall not be construed to deny, impair, or disparage others retained by the people.”

<sup>42</sup> Watt *supra* note 36 at \*8.

<sup>43</sup> *Id.*

<sup>44</sup> 823 P.2d 299 (N.M.1992).

<sup>45</sup> *Id.* at 304.

<sup>46</sup> 394 U.S. 618 (1969).

and frequent contact with the child.<sup>47</sup> Citing *Santosky v. Kramer*<sup>48</sup> the court stated that the “freedom of personal choice in matters of family life is a fundamental liberty interest”. The court went on to state that “[t]his freedom of personal choice includes ‘the freedom of parent and child to maintain, cultivate, and mold their ongoing relationship’”.<sup>49</sup> After weighing both of these constitutional rights, the court determined that a presumption in favor of either party thereby placing the burden on the other parent, would not implement the best interests of the child standard.

The court adopted a procedure that provides that both parties must attempt to persuade the court that the new custody plan proposed by him or her should be adopted. A party’s failure to meet their burden merely allows the court free to adopt a plan that it determines is in the child’s best interests.<sup>50</sup>

The court found that the trial court applied an erroneous conclusion of law—that the relocating party that shared joint custody was entitled to the presumption that the child should be allowed to relocate with the parent. However, the court felt that the erroneous conclusion was not applied in a manner prejudicial to the father rights.<sup>51</sup> The court ordered the case remanded to the trial court to reinstate its order allowing mother to relocate and to take the minor child with her.

## Conclusion

Relocation of a custodial parent following a divorce, is a very emotional issue which makes it very controversial. With the mobility of society today, it happens more and more each year. In a majority of the cases, there is going to be “loser” regardless of the outcome. The parent that is not relocating will lose out on a significant portion of his or her child’s life.

The parent intending to relocate is generally doing so to move closer to family, take a new job, obtain higher education or join a new spouse. These are all positive reasons that have po-

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<sup>47</sup> Jaramillo *supra* note 44 at 305.

<sup>48</sup> 455 U.S. 745, 753 (1982).

<sup>49</sup> Jaramillo *supra* note 44 at 305, *citing* Franz v. United States 707 F.2d 582, 595 (D.C.Cir.1983).

<sup>50</sup> *Id.* at 308.

<sup>51</sup> *Id.* at 309.

tential positive benefits for the minor children involved. When the party intending to relocate is faced with the choice of giving up a child or giving up one of the aforementioned opportunities, he or she becomes the “loser”.

As it has been demonstrated in this article, it is the ultimate goal of every court to determine what are the best interests of the child. There are several approaches to this outcome. Some jurisdictions simply label it “the best interests of the child”. Other jurisdictions have enumerated factors to consider when making the determination. Then there are some jurisdictions who have not yet faced the issue at the appellate level and therefore have not outlined any applicable standards.

These issues as any issues in the law, as we briefly discussed above, are mandated by the constitutions of both the United States as well as the applicable home state. However, constitutional arguments are very rarely raised in these cases. Because the relocation issue is relatively new in the area of family law, we may soon see more of the constitutional arguments identified by Professor LaFrance raised in these cases.

Below is a table that reflects the standards, if any, utilized by the states in making a determination as to relocation. The table also reflects whether the particular state has in effect a statute that in some manner addresses the relocation issue.

Tabitha Sample  
and Teresa Reiger

State	Statute addressing relocation	D'Onofrio	Variation of D'Onofrio	Best Interests of the Child	Change of Circumstances	No clear standards
Alabama				*		
Alaska				*	*	
Arizona	*		*			
Arkansas		*				
California				*		
Colorado			*			
Connecticut			*	*		
Delaware						*
Florida	*		*			
Georgia				*		
Hawaii				*		
Idaho					*	
Illinois	*		*			
Indiana	*			*		
Iowa					*	
Kansas	*					*
Kentucky					*	
Louisiana	*			*		
Maine				*	*	
Maryland	*					
Massachusetts	*	*				
Michigan		*				
Minnesota	*			*		
Mississippi						
Missouri	*	*		*		
Montana	*					
Nebraska				*		
Nevada	*					
New Hampshire	*					
New Jersey	*					
New Mexico					*	
New York				*		
North Carolina	*	*				
North Dakota	*	*				
Ohio				*	*	
Oklahoma	*					
Oregon				*		
Pennsylvania	*	*				
Rhode Island				*		*
South Carolina				*	*	*



South Dakota	*			*		
Tennessee	*					
Texas						*
Utah	*					*
Vermont				*	*	
Virginia	*			*		
Washington				*		
West Virginia						*
Wisconsin	*			*		
Wyoming				*		

