

Should I Stay or Can I Go? Current New Jersey Law on Relocating with Children after Divorce

By: Jan L. Bernstein, Esq. and Melody M. Lins, Esq.

The decision of a custodial parent to relocate implicates several important legal issues. This article is a general overview of some of those issues in New Jersey. The effect of a proposed move on the life of the child, as well as his or her relationship with the parent of alternate residence are compelling concerns. In turn, the personal autonomy of the parent of primary residence, and his or her ability to pursue personal or professional opportunities risks being subordinated to the proposed relocation. In general, the factors weighed by New Jersey courts in reconciling contested relocations include:

1. The parents' ability to agree, communicate and cooperate in matters relating to the child;
2. The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse;
3. The interaction and relationship of the child with its parents and siblings;
4. The history of domestic violence, if any;
5. The safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision;
6. The needs of the child;
7. The stability of the home environment offered;
8. The quality and continuity of the child's education;
9. The fitness of the parents;
10. The geographical proximity of the parents' homes;
11. The extent and quality of the time spent with the child prior to or subsequent to the separation;
12. The parents' employment responsibilities; and
13. The age and number of the children.

An ultimate determination under these factors is based on the court's weighing of the factors against the totality of the circumstances of a given case. These factors changed from prior case law when the New Jersey Supreme Court decided Bisbing v. Bisbing in August 2017.

Sills Cummis & Gross P.C.

The views and opinions expressed in this article are those of the authors and do not necessarily reflect those of Sills Cummis & Gross. Copyright © 2018 Sills Cummis & Gross P.C. All rights reserved.



Jan L. Bernstein, Esq.

Ms. Bernstein is a Member of Sills Cummis & Gross and chairs the Firm's Family Law Practice Group. She can be reached at jbernstein@sillscummis.com or (973) 643-5866.

The status of a parent either of the primary or alternate residence is no longer a benefit or a deterrent in relocation issues. Instead, a parent's interest in freedom of movement, the State's interest in protecting the best interest of the child, and the competing and intention of the non-relocating parent all are compelling concerns especially in New Jersey where it is the legislative policy that parents should have equal rights in proceeding involving the custody of their minor child.

Relocation contests are typically resolved by a plenary hearing. However, the holding of a plenary hearing is not an absolute rule. Some applications may be decided without a trial when the proposed move is supported by the evidence already on record, such as in court pleadings where there are no contested issues of material fact.

Regardless of the means by which a court decides on a proposed relocation, due consideration is given to each of the above factors. In cases involving plenary hearings, experts (either appointed by the court or privately hired by the parties) likely will interview both the child and parents. They will consider the impact of the proposed relocation on the child. If necessary, a court may appoint additional professionals to safeguard the rights of the child, whether in the form of a Guardian Ad Litem or law guardian.

An exception to the application of the above factors occurs when the timing of a proposed relocation comes simultaneously with an initial a custody determination, or, in some cases, proximate thereto. When a proposed relocation outside of New Jersey is made with an initial determination of custody (e.g., at the time of divorce), then the court weighs the proposed relocation as a part of its decision in awarding which parent has primary physical custody of the child or children. When an application to relocate is made shortly after the initial custody determination, the court has the ability to revisit the issue of custody if it deems appropriate to do so. The end result being that a higher burden is imposed on the parent seeking the relocation either upon the initial custody determination or, potentially, soon thereafter.

It is important to note that this applies to proposed relocations outside of New Jersey. Accordingly, a custodial parent generally has the ability to relocate within the state even if the move is opposed by the non-custodial parent. For example, a custodial parent may wish to relocate with children from Northern New Jersey to Long Island. This proposed relocation would trigger the balancing test and consideration of the above factors. However, should the proposed relocation be to Southern New Jersey (or a destination within the state significantly farther than the latter to New York), there is no such inquiry to be conducted unless the opposing parent files a court application and successfully establishes that the move presents a "substantial change in circumstance" warranting a modification of the custody and parenting time arrangements.

Any relocation (other than short distance impacts the family) either within New Jersey or to another state. A proactive way to address this issue is to include provisions in agreements between parents regarding each parent's expectations as to where the child or children will reside. The inclusion of issues related to relocation benefits all parties by defining their rights prior to problems that may arise.

Relocating with a child can be a complex undertaking, and this article offers only a general review of some related issues. Consulting with an experienced family law attorney with knowledge of relocation issues should be done to gain an understanding of the specific issues related to a particular case.