

New York Divorce and Family Law Blog

Child of Divorce Permitted to Relocate from New York to California: Relocation in the Best Interest of the Child

Posted by Daniel Clement on June 08, 2011

Post-divorce relocation cases, where one parent seeks to move with the children of a marriage to a distant locale, present what has been called “some of the knottiest and most disturbing problems that our courts are called on to resolve.”

The relocation pits one parent’s desire to move for familial, economic, romantic or employment reasons against the other parent’s desire to have an unimpeded relationship with the parties’ children.

Recently, the Appellate Division, in *Matter of Alaire K. G. v Anthony P. G.*, was forced to weigh a mother’s desire to move to California to be with her new husband against the father’s desire to have regular and frequent access time with the parties’ son in New York.

As enunciated in leading case *Matter of Tropea v Tropea*, the ultimate question is "what outcome is most likely to serve the best interests of the child."

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Among the factors the court must consider are: (1) "each parent's reasons for seeking or opposing the move," (2) the quality of the child's relationship with each parent, (3) the impact of the move on the child's future contact with the noncustodial parent, (4) the degree to which the move may enhance the custodial parent's and child's life economically, emotionally and educationally, and (5) "the feasibility of preserving the relationship between the noncustodial parent and child through suitable visitation arrangements."

In *Alaire*, the parties were divorced in 2006. The mother was granted custody of the parties' son, then 2 years old. In 2008, she met her new husband, who accepted a job in San Diego. The mother attempted to mediate the terms of the relocation, but the father refused to sign the agreement. According to the opinion, the mother's plan to move became "irreversible" so she left for California without her son. The son lived with the father, in New York, until 2010, when the Family Court approved the mother's application to relocate with the son.

Though the dissenting judges were persuaded that mother put her desire for a romantic partner ahead of her son's welfare by seeking to move the child 3,000 miles away from his father, the majority concluded the move was in the child's best interests.

Among the factors relevant to the majority were:

- The child would be raised with his half-brother, born in 2009, to the mother and her new husband.
- The mother's new husband was employed and had health insurance; the father apparently had been injured and was unemployed.

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- The mother was required to pay for air travel for the child to be with the father for extended weekends and holidays.
- The Court concluded that the schools in California were as good, if not better, than those in New York and, because the wife's new husband was a veteran, the child would be entitled to attend a California state university free of charge.

This unfortunate case highlights the complexity of a relocation case. Each relocation case must be considered on the merits of the relevant facts, with the predominant emphasis being placed on the outcome that is most likely to serve the best interests of the child.