

April 13, 2010

Relocation of a Parent Not Always an Option in Child Custody Setting

Relocation of one of the parents often has significant consequences for child custody and timesharing. In fact, it may result in a loss of time-sharing so it is not always an option.

Relocation of a parent outside of New Mexico, or even within New Mexico, can be a very difficult situation for parents who may have to choose between job or family obligations and being close to their child. It can be an even more difficult situation for a child who is faced with leaving their school and their friends and the possibility of seeing one parent much less frequently than they did before the move.

Both the federal and state constitutions protect the right of citizens to travel and move freely about the county, but while a parent has the right to move, they do not necessarily have the right to take their child with them. Where there is an existing parenting plan setting forth custody and timesharing, a parent who wants to move must file a motion for a modification of their parenting plan and timesharing agreement as soon as they know they will be moving.

If the parents have split, but have never established a formal parenting plan, it is a good idea to get a parenting plan entered by the court prior to moving. In cases where there is no parenting plan, the parent who is not relocating would be very wise to file a Motion with a Temporary Domestic Order to prevent the other parent from taking the child out of state and thereby escaping New Mexico jurisdiction over child custody and timesharing.

When a parent must move suddenly, they should still file a motion to modify timesharing before they leave and either travel back for the hearing or ask the court if they can appear at the hearing via telephone. The relocating parent should be prepared for a long and frustrating process. He or she should also understand that the Court may not look favorably on the relocation for purposes of establishing child custody and timesharing no matter what the reason for the move.

As with all custody decisions, the court's primary consideration in evaluating a modification of a parenting plan to accommodate a parent's move is the "best interests" of the child or children involved. If one parent has sole legal and physical custody, then the court will most likely find that it is in the best interest of a child to remain with that parent. In a situation where the parents share custody, but one parent wants to move with the child, the court will have to determine whether it is in the best interests of the child to stay in New Mexico or to leave with the relocating parent.

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That determination rests heavily on the parent's reason for moving and how much of a disruption the move will cause for the child. The court will consider all of the child's circumstances such as family bonds, friendships, schools, sports, extracurricular activities among other issues. Most importantly, the court will look to see how the move will affect the child's relationship with the other parent. The court will almost always deny a parent's request to move with the child if that request is made as a bad faith attempt to prevent contact between the child and the other parent. As with all cases of contested custody and timesharing, if the change in the parenting plan is contested, the case will be referred to family court clinic for a full custody evaluation. This can take months and it rarely moves faster for the convenience of either party.

If a court does grant one parent the right to move with the child, the court will need to devise a new visitation schedule that accommodates the new distance between a child and parents. This can be expensive as parents will now need to pay for travel costs to facilitate visitation and can be very difficult when a child is too young to travel alone. The constraints of time, distance and a child's school schedule are only a few of the factors to be considered when one parent wants to move, which is why it is important that each parent consult an attorney if they are faced with such a potential change to custody and timesharing.

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