

Divorce: What happens when one parent wants to move away?

The complications of custody

BY STEPHANIE BLUM



Divorce in a family can change everything, for both the parties and their children. Sometimes, it requires a reexamination of one's life. And that often includes a reevaluation of location.

Perhaps the parties were only living in Los Angeles because one spouse took a job here. When couples get divorced, they have to consider their income potential in a new light, to contribute to their own support or the support of their children. They may also consider what they need to sustain life as a single parent.

Divorcing spouses may consider moving back to their hometown, where it may be more affordable to live — and be closer to family members. But can a parent move out of state with the children? That can be one of the most difficult questions presented to a family law judge because of course, if one parent wants to move away and one parent wants to stay, the children will be separated from one parent for significant periods of time.

The California Family Code says that a parent entitled to the custody of a child 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. This question has been examined by the courts. In a case called *In re Marriage of La Musga*, the California Supreme Court has set out the factors that a court is supposed to consider when adjudicating a move away request. The court will want to know the reasons for the proposed move and the extent to which the parents are currently sharing custody.

Specifically, the court needs to look at the children's interests in the 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 court also seeks to understand the wishes of the children, if they are mature enough for such an inquiry to be appropriate.

A custodial parent does not have to establish that a planned move is necessary. 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 custody.

In light of the law that applies to move away cases, it is important to understand at the time that parties are negotiating their divorce that the decisions they make about how custody will be shared between the parents can impact their options, including their future ability to relocate out of state. If the parties share custody of the children equally, a different standard would be applied than if one parent has custody of the child or children, for example, 80% of the time. Similarly, the way the parents get along with each other as well as the quality of the children's relationship with both parents are factors the court is asked to examine in connection with a move away.

If you or a loved one is going through a divorce, there are children involved, and it is possible that a relocation may be on the horizon, it would be wise to raise this issue with your counsel so that decisions can be made mindfully and in a way that can ultimately assist you in accomplishing your long-term goals.

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