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When it comes to removal, is the threshold shifting in Illinois?

While married parents are free to move wherever they want with their children, the same freedom is not available to divorced custodial parents.

In fact, absent agreement of both parents, a custodial parent who is divorced or going through a divorce must get the court's permission to move out of state with their children, commonly referred to as "removal."

Section 609 of the Illinois Marriage and Dissolution of Marriage Act addresses this issue, in relevant part, as follows:

"A court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal" (750 ILCS 5/609(a)).

In both initial custody and post-divorce removal cases, the compelling factor that the court must consider is the best interest and welfare of a child. A court's determination concerning removal and best interests will only be reversed if it is determined that the decision is contrary to the manifest weight of the evidence. *In re Marriage of Eckert*, 119 Ill. 2d 316, 518 N.E.2d 1041 (1998).

In practice, however, getting permission to move out of state with the child/children can often be more challenging than obtaining custody was in the first place.

In *Eckert*, the Illinois Supreme Court delineated the following factors the court should consider and balance when hearing relevant evidence about removal:

- Whether the proposed move will enhance the general quality of life for both the custodial parent and the child/children.
- The motives of the custodial parent in seeking the move to determine whether the move is merely a ruse intended to defeat or frustrate visitation.
- The motives of the non-custodial parent in resisting removal.
- The visitation rights of the non-custodial parent, including the relationship of each parent and other family members.
- Whether a realistic and reasonable visitation schedule can be reached if the move is allowed.

In reviewing the evidence presented in removal cases over time, there does not appear to be any general trend. Rather, the analysis is intensely fact-specific. Some prevalent facts and factors that the courts have considered include inquiry into the following areas:

- Is one parent's desire to move because they are engaged or remarried to someone in another state enough? (see *In re Marriage of Eaton*, 269 Ill.App.3d 43, 655 N.E.2d 11137 (1995))

Perhaps the court's decision in Rogan *is indication of the Illinois courts taking a more liberalizing approach toward removal issues.*

- Will the moving parent be able and willing to foster and facilitate a meaningful connection between the child and the parent back home? (see *IRMO D.S.W.*, 2011 IL App (1st) 111225, 964 N.E.2d 973 (2011))
- Should a job opportunity in another state be reason enough to allow a move? (see *IRMO Demaret*, 2012 IL App (1st) 111916, 964 N.E.2d 956 (2012))
- Has the parent requesting the move exhausted all job possibilities at home before seeking an out of state job opportunity? (see *IRMO Demaret*, 2012 IL App (1st) 111916, 964 N.E.2d 956 (2012))
- Should a parent be allowed to move near his or her extended family, even if it is away from the non-custodial parent, so the moving parent and their child/children can benefit from having extended family nearby? (see *IRMO Demaret*, 2012 IL App (1st) 111916, 964 N.E.2d 956 (2012))
- Are the schools and/or neighborhoods better in the newly selected place, or will a child/children's education and/or living accommodations be shortchanged? (see I*RMO Kincaid*, 2012 IL App (3rd) 110511, 972 N.E.2d 1218(2010))
- Is the custodial parent truly moving to obtain gainful employment with room for potential professional growth or is the move designed to prevent the child/children from having a meaningful relationship with their non-custodial parent? (see *In re R.M.F.*, 275 Ill.App.3d 43, 655 N.E.2d 1137 (1995))
- Can a meaningful visitation schedule be implemented which allows the child/children and their non-custodial parent to spend quality time together? (see *IRMO Kincaid*, 2012 IL App (3rd) 110511, 972 N.E.2d 1218(2010))
- Is the moving parent's ability to spend more time with the child/children in the new place sufficient justification? (see *IRMO D.S.W.*, 2011 IL App (1st) 111225, 964 N.E.2d 973 (2011))
- Is there a nexus between the well-being of the custodial parent and the child/children who is in the parent's care? (see *IRMO Collingbourne*, 204 Ill.2d 498, 791 N.E.2d 532 (2003))

In reaching a change of custody determination, the proof required is clear and convincing evidence. In removal, the IMDMA does not specifically set forth a quantum of proof for removal petitions.

In a recent Illinois case, the trial court applied the clear and convincing evidence standard and the appellate court reversed, finding that the trial court erred in applying the more stringent clear and convincing standard since the preponderance standard applies in removal cases. See *In re Parentage of Rogan*, 2014 Ill.App. (1st) 141214.

In the wake of the Supreme Court decision in *Collingbourne*, perhaps the court's decision in *Rogan* is indication of the Illinois courts taking a more liberalizing approach toward removal issues.

As the specific facts and details of each situation continue to be scrutinized, time will tell if any trends start to emerge.

MODERN FAMILY

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