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'Local relocation' in custody cases now bigger problem than distant moves

In family law, we sometimes represent clients who are seeking to relocate from their home in Illinois to another state. In a relocation case, one parent with the majority or equal parenting time wants to move the children and the other parent opposes the children's departure from the state.

The ultimate decision as to whether the parent is permitted to relocate the children from Illinois is a best-interest determination, now framed by statutory factors that the court must consider.

Out-of-state relocation cases have always been challenging. But, what happens if one parent with the majority or equal parenting time simply wants to move from the city to the suburbs or the suburbs to the city?

Arguably, the move could be as risky and difficult as attempting to leave the state.

In 2016, the legislature enacted provisions which seemingly were to aid parents, lawyers and the court in determining whether a parent's intended relocation constituted a substantial change in circumstances, requiring either the staying parent's permission or the review by the court for the best-interest determination.

For Chicago and the surrounding suburbs in Cook, DuPage, Kane, Lake, Will and McHenry Counties, the legislature defined "relocation," formerly called "removal," as moving more than 25 miles from the child's current residence.

With that parameter in place, it initially seemed to offer parents who wanted to move locally and stay within the 25-mile radius of their current residence a sigh of relief and a good measure of knowing their land of opportunity.

However, since its enactment, I have seen the 25-mile parameter implemented with mixed results

in the courtroom. While some judges have agreed with the implicit presumption that moving within 25 miles of the current residence is a custody parent's prerogative, not to be disturbed, other judges have determined that the local, less-than-25-mile move, is a sufficient basis to revamp primary care of the children and transfer the majority of the parenting time to the parent staying put.

The legal rationale is a separate, 2016-implemented provision in the domestic relations statute, not found in the relocation section, but in the parenting time allocation section stating that one of the 17 best interest factors the court is to consider in awarding parenting time to a parent is "the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules and the ability of the parents to cooperate in the arrangement."

This one factor has caused some unpredictable results in the courtroom over the past two years.

I have litigated two separate cases, one where a stay-at-home mother of three school-aged boys

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moved from Chicago to the northern suburbs, 13 miles away from the children's current home and another where a father parenting his two school-aged boys on a 50/50 schedule moved from Chicago to the western suburbs, 23 miles away from the children's home — both with the intended purpose to improve their children's

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daily lives and the children's educational opportunities — and their moves resulted in them losing primary care of their children to the parent who opposed the move.

Strikingly, the rationale stated by the judges in these two cases was that the children would spend too much time in the car getting back and forth to their parents' respective residences and schools in Chicago traffic — the distance

announced a move from the city to a northern suburb, 16 miles away, for some of the very same reasons as to the two other parents, her decision and her move were not examined and snubbed in the same way.

She did not lose primary care of her child. In fact, it was presumed that as long as she stayed within 25 miles of her current residence, her prerogative to move locally was to be legally honored.

These mixed results over the past two years since the changes in the Illinois Marriage and Dissolution of Marriage Act have come into effect leave more uncertainty in the law and particularly in the advice that we are to give to our clients.

Before the statutory changes, it seemed routine and sound for a majority parent to move from the city to the suburbs or from one suburb to another without risk of losing primary or 50/50 care of their children.

Now, the decision to move within the 25 miles might literally come down to whether the move is viewed as being too far, too costly or the drive too taxing on the children. If 13 or 23 miles is too far to move, is it safe to move 10, 5 or 3 miles away from the children's current home without jeopardizing your parenting role? The answer is still evolving and the outcome is unknown.

Before the 2016 statutory changes, we were focused on the cases where the parents wanted to leave the state with their children, causing difficult and heart-breaking parenting battles.

Now, the revised parenting time statute has probably unintentionally opened the floodgates to the "local relocation" battle, and counting miles between residences sometimes seems to weigh more heavily in the outcome than the other 16 best interest factors.