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With a child involved, relocation not as easy as calling moving van

There was a time when a couple married, purchased a home, worked and raised their children all in the same town. People proudly declared “born and raised” as a badge of honor when questioned about their hometown.

Yet, times are changing and it has become increasingly common to hear “I was born in ... but raised in ...” as we are becoming more of a global society with parents accepting job offers around the world. While these new and exciting opportunities may seem as a no-brainer to accept, doing so for many families in Illinois requires more considerations than just whether the new location has better weather, better restaurants and better traffic.

Relocation is commonly referred to as the act of moving to a new place and establishing one’s home and business. Illinois law regarding relocating with a child is governed by Section 5/609.2 of the Illinois Marriage and Dissolution of Marriage Act.

The section outlines when a parent seeking to move with a child must seek court approval and when this approval is not required. Under Illinois law, a parent is relocating if (a) the move is more than 25 miles from the child’s original home if it is in Cook, DuPage, McHenry, Kane, Lake or Will Counties or the new home is out of state; or (b) the move is more than

50 miles away from the original home within Illinois if it is not in those counties.

When there is not an agreement relative to the child’s relocation, the requesting parent must follow specific procedures in order to obtain the right and permission to relocate the child to a new residence. Failure to do so may subject a child to being returned to the original home.

Prior to 2016, Section 609 of the marriage and dissolution of marriage act allowed a court to grant a custodial parent permission to remove a minor child from Illinois when it is in the child’s best interest. The parent seeking removal had the burden of proving, by the preponderance of the evidence, that removal would be in the child’s best interest.

In applying Section 609, the Illinois Supreme Court stated, “[a] determination of the best interests of the child cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent upon the circumstances of each case.” *In re Marriage of Eckert*, 119 Ill.2d 316, 326 (1988).

The *Eckert* court identified certain factors that might aid the trial court in determining the best interests of the child, including (1) the likelihood that the proposed move will enhance the general quality of life for both the custodial



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parent and the child; (2) the custodial parent’s motives for seeking removal, to determine whether the proposed move is a ruse designed to frustrate or defeat the noncustodial parent’s visitation; (3) the noncustodial parent’s motives in resisting removal; (4) the effect removal will have on the noncustodial parent’s visitation rights, because it is in the best interests of a child to have a healthy and close relationship with both parents as well as other family members; and (5) whether a

reasonable parenting schedule can be worked out.

This case expressed the standards that were followed for more than 28 years. However, in 2016, the legislature repealed Section 609 and replaced it with Section 609.2 (750 ILCS 5/609.2 (West Supp. 2016)). Under the current Section 609.2, the court must consider, again, the child’s best interest if a parent seeks to “relocate” a child. Among the considerations are:

- 1) The circumstances and reasons for the intended relocation;
- 2) The reasons, if any, why a parent is objecting to the intended relocation;
- 3) The history and quality of each parent’s relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
- 4) The educational opportunities for the child at the existing location and at the proposed new location;
- 5) The presence or absence of extended family at the existing location and at the proposed new location;
- 6) The anticipated impact of the relocation of the child;
- 7) Whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;
- 8) The wishes of the child,

taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

9) Possible arrangements for the exercise of parental responsibilities appropriate to the parent's resources and circumstances and the developmental level of the child;

10) Minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

11) Any other relevant factors bearing on the child's interests.

(750 ILCS 5/609.2(g) (West Supp. 2016)).

Under the 2016 revisions, the court must consider the enumerated 11 factors in determining a child's best interest relative to a relocation. However, parents should be aware that the current statute does not include the explicit factor of considering the benefits of the intended move to the parent seeking relocation that was included in the *Eckert* decision.

By doing so, the emphasis is placed on the child's direct best interest over those of the custodial parent, making any evidence demonstrating an

improved quality of life to the parent seeking relocation generally unhelpful and irrelevant if it does not have a bearing on the best interests of the child. See, *In re Marriage of Kavchak*, 2018 Ill.App. (2d) 170853.

This would include any "trickle down benefits" to the children as any benefit is speculative and places the focus on the improved quality of life of the parent seeking relocation and not necessarily the child. See, *In re P.D.*, 2017 Ill.App. (2d) 170355 ("given the new statutory directives, we find the reasoning of *Eckert* and *Collingbourne* and [p]rogeny, to the extent it requires weighing the likelihood that the move will enhance the custodial parent's quality of life, is unhelpful in evaluating the trial court's best interest determination in the case before us.").

In other words, accepting a new job opportunity or relocating to be closer to one's family may be a real benefit to a parent, yet the court may have a differing opinion if there is no direct correlation to the best interest of the child.

The court will also look at the continuity and stability of

parenting arrangements and the potential disruption caused by relocation. For those who are considering relocation or have reached an agreement or obtained a court order relative to relocation, ensuring that the ongoing relationship and communication between the child and the other parent is maintained is certainly much easier now more than ever with the advances in technology.

With most preschoolers being better equipped to handle mobile devices better than most adults, the use of video conferencing applications such as FaceTime, Skype, WhatsApp and Google Duo provides for real time interaction and communication regardless of distance between a parent and child.

Interactive games, message boards, email, text messaging and social media platforms also provide a framework for interactions between parent and child. Schools, medical providers and most extracurricular activities or organizations also provide portals or other online access to student records, grades, calendars and other information so that parents have readily available access to information

related to their child irrespective of whether they reside within the same city or not.

While all is not lost for parents seeking to relocate a child, a parent should be aware of the challenge he or she may face in the event there is no agreement relative to relocation of the child.

Additional considerations to be made relative to relocation include child support and child-related costs including, but not limited to, consideration of travel costs associated with transporting the child between the child's residence especially in situations where both parents no longer reside within the same state or even country.

In considering relocation, the financial toll of effectuating a parenting schedule is not just for consideration by the court, but a reality which impacts both parents and children. So while we are becoming a global society, it is important to note that the "road to relocation" is not necessarily a smooth one because there are serious considerations that the court and a family must make, which may cause detours or delay, along the way.