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Relocation with children amid shifting life circumstances

MODERN FAMILY

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In numerous ways, the COVID-19 pandemic has transformed where and how millions of Americans work, learn and live. While these changes have kept many of us homebound and away from the physical office, they have also allowed our personal and professional lives to become more flexible and mobile.

During this period, marquee entities such as Goldman Sachs, Oracle, Hewlett Packard Enterprise, Charles Schwab Corp. and Tesla are just some of the corporations finding a catalyst for change in the midst of the pandemic, relocating or indicating an intent to relocate to other states. Individuals increasingly are following suit amid reports of dynamic home construction and sales growth in Texas, Florida and other "sunshine" states that feature lower or no state income tax and often more reasonable cost-of-living metrics.

Even where a person may elect not to leave the Prairie State, home construction and sales growth in Cook's collar counties indicates an additional and interesting trend on many levels. However, for the entrepreneur or employee who is facing a newly found ability (or requirement) to work and live elsewhere, the professional relocation can become personally problematic where there are minor children involved and the professional is subject to an allocation judgment and parenting plan.

Fortunately, in 2016, the Illinois General Assembly amended the Illinois Marriage and Dissolution of Marriage Act relative to the relocation of children. Critically, in appreciating the already increasing mobility of Illinois parents, the amendments shifted the focus of the trial courts away from the "removal" of a child from Illinois to the "relocation" of a child both inside and outside of the state. A brief review of the salient features of the statute follows:

Section 600(g) of the IMDMA now defines a relocation as a change in residence from the child's current primary residence to a residence in Illinois that is either: (a) more than 25 miles from the current home (for children residing in Cook, DuPage, Kane, Lake, McHenry or Will counties) or (b) more than 50 miles from the current home (for children in all other counties). Sensibly, and understanding the proximity of many citizens to our sister states, for relocations outside of Illinois' borders, the General Assembly permits a relocation, without necessity of a petition, to a home located in another state, provided it is no more than 25 miles from the current residence.

In addition, Section 609.2(b) clarified who may petition the court for relocation. The General Assembly determined that "[a] parent who has been allocated a majority of parenting time or either parent who has been allocated equal parenting time may seek to relocate with a child." The legislature also codified specific advance "notice" requirements for intended relocations in Section 609.2(c) and (d).

Substantively, Section 609.2(g) of the act now provides that the court shall, consistent with the child's best interests, consider the following factors in determining the propriety of relocation: (1) circumstances and reasons for the relocation; (2) reasons why nonrelocating parent objects; (3) history and quality of the parents' relationship with the child and whether a parent has failed or refused to exercise parental responsibilities under a parenting plan or judgment; (4) educational opportunities for the child in the present and proposed locations; (5) presence or absence of extended family in the present and proposed locations; (6) anticipated impact of the relocation on the child; (7) whether a reasonable allocation of parental responsibilities can be fashioned if relocation occurs; (8) the wishes of the child, taking into account maturity and the ability to express reasoned and independent preferences; (9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources, circumstances, and the developmental level of the child; (10) minimization of impairment to the parent-child relationship caused by relocation and (11) any other relevant factor bearing on the child's best interests.

These 11 factors represented an expansion consistent with prior law relative to relocation. Between 1988 and 2016, the decisions of the Supreme Court of Illinois in *In re Marriage of Eckert,*

119 Ill.2d 316, 116 Ill.Dec. 220, 518 N.E.2d 1041(1988), and *In re Marriage of Collingbourne,* 204 Ill.2d 498, 274 Ill.Dec. 440, 791 N.E.2d 532 (2003), provided the appropriate factors for a trial court to consider in adjudicating a requested relocation with a minor child. Since enactment of the revised statute, the Appellate Court has addressed one factor that was established in *Eckert* and *Collingbourne*, but is not found explicitly in the amended Section 609.2 of the IMDMA. In *Eckert*, *Collingbourne* and the line of cases following from them, the court consistently held that improvements in the parent's life and the child's life (even indirect improvements) were relevant factors to consider. However, in 2017 the Appellate Court, in *In re P.D.*, 417 Ill.Dec. 288, 87 N.E.3d 1040 (App. Ct. 2d Dist. 2017), held that the omission of this factor was an intentional elimination of such considerations by the trial court in relocation cases. The same appellate district of the court, in a case this author litigated at trial, *In re Marriage of Kavchak,* 423 Ill.Dec 916, 107 N.E.3d 287 (App. Ct. 2d Dist. 2018), distinguished P.D. and clarified that such considerations were proper provided that a nexus between them and the child's best interests could be shown. As such, the so-called "trickle down" of benefits from a parent to a child remain wholly appropriate for a trial court to consider.

Of particular practical importance for parents and practitioners alike is the specific statutory language contained in Article VI of the act, both in Section 600 and Section 609.2. In both sections, the relocation is referred to as a "modification" of, or an act "modify(ing)," the parenting plan or allocation judgment no less than four times. Indeed, the relocation analysis itself specifically envisions that the court "shall modify the parenting plan or allocation judgment" after consideration of the relevant factors. In section 600, an allocation judgment is defined as "a judgment allocating parental responsibilities"; and, a parenting plan is defined as "a written agreement that allocates significant decision-making responsibilities, parenting time, or both."

Given this plain language, in conjunction with the prerequisite pleading requirements of Section 609.2(b) discussed above, any parent not yet operating with at least 50% parenting time under a parenting plan or allocation judgment should be cognizant of the limitations upon her or his ability to even request the right to relocate with a child. In many instances, one party to a newly filed dissolution of marriage or parentage action will desire the right to relocate during or at the conclusion of the case. These provisions above have a material impact upon the timing and ability of such a party to do so.

The COVID-19 pandemic already has changed the landscape of work and life in innumerable ways. For persons either contemplating an intended move or seeking to prevent it, an advance understanding of the amended act provisions regarding relocation is more critical than ever.