

RELOCATION

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Often times during the pendency of a divorce action, or at some point post divorce, a custodial parent will seek to move from New Jersey. Under our law, a parent cannot remove a child from New Jersey without the other parent's prior written consent or a Court Order.

More often than not, the non-relocating parent does not consent to the relocation and the Court is forced to make the decision on whether or not the relocating parent can leave New Jersey with the children.

In 2001, the New Jersey Supreme Court decided *Baures v. Lewis*, which is the controlling authority on the issue of relocation. The Court held that the custodial parent seeking removal must prove good faith in his or her request to move and that the move will not be inimical to the children's interests. Further, the Court held that parenting time is not an independent prong of the removal standard, but an important element of proof on the ultimate issue of whether a child's interest will suffer from the move.

The Court provided the following 12 factors that must be assessed when considering a custodial parent's application to remove a child from New Jersey over a non-custodial parent's objection:

1. Reasons given for move;
2. Reasons given for opposition;
3. Past history of dealings between parties insofar as it bears on reasons advanced by both parties for supporting and opposing move;
4. Whether child will receive educational, health, and leisure opportunities at least equal to what is available here;
5. Any special needs or talents of child that require accommodation and whether such accommodation or its equivalent is available in new location;
6. Whether a visitation and communication schedule can be developed that will allow non-custodial parent to maintain a full and continuous relationship with child;
7. Likelihood that custodial parent will continue to foster child's relationship with non-custodial parent if move is allowed;
8. Effect of move on extended family relationships here and in new location;
9. If child is of age, his or her preference;
10. Whether child is entering his or her senior year in high school, at which point he or she should generally not be moved until graduation without his or her consent;
11. Whether non-custodial parent has ability to relocate; and
12. Any other factor bearing on child's interest.

As mentioned, it is the custodial parent's burden to show good faith and that the move will not be contrary to the child's best interest. Once this burden has been met, the burden then shifts to the non-custodial parent to provide evidence opposing the move as either not in good faith or inimical to the child's best interest.

Removal cases are very difficult and emotional cases because, often times, there are good reasons for the custodial parent to move, but the effects of such move have a long lasting and sometimes devastating impact on the continuity and stability of the parenting time enjoyed between the children and the non-custodial parent. As such, it is important to consult with an attorney to learn of your rights and obligations in this situation.

Jeralyn Lawrence, a member of the Norris McLaughlin & Marcus Matrimonial Law Group, was recently honored as an Outstanding Woman in Somerset County for 2008 by the Somerset County Commission On the Status Of Women. She has been selected as one of the Top 50 Female New Jersey Super Lawyers® 2008 and is included in the Family Law section of Super Lawyers. Jeralyn has been selected by her peers as one of New Jersey's Top 10 matrimonial lawyers under the age of 40 and has been recognized by the New Jersey Law Journal as one of 40 accomplished and promising attorneys in the State of New Jersey under the age of 40. Jeralyn is a frequent speaker at matrimonial law programs and seminars. jllawrence@nmmlaw.com.