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Child Custody Relocation When the Parents Aren't Moving

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Child custody relocation, once an area of the law dictated primarily by case law, has been codified in 23 Pa. C.S. Section 5337 since 2011 and sets forth the comprehensive procedures and substantive standards for parties and courts to follow when involved in child custody cases dealing with relocation of children. Relocation is defined in the law as “a change in a residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights.” The relocation statute naturally differentiates between the respective procedural duties and evidentiary burdens of the “party proposing relocation” and the “non-relocating party.”

All child custody cases must be decided by courts after a presentation, consideration and a written decision based upon a set of 16 factors that seek to determine what is in the best interest of the child. These factors, which are set forth in 23 Pa.C.S. Section 5328(a), address a host of concerns that examine, among other things, past abuse, the parties' relationships with the child and each other and the need for stability. In



relocation cases, that analysis is expanded by another set of factors as set forth in 23 Pa.C.S. Section 5337(h)(2). The relocation factors touch upon many of the themes found in the 16 factors in Section 5328(a) that address a child's best interest but expand the analysis to examine, most significantly, the impact that a relocation may make on a child's educational and emotional development, and the impact that the relocation may have on the child's quality of life. In a relocation case, both sets of factors must be addressed and set forth in the court order.

Before that, a parent seeking to relocate with a child must serve notice to the nonrelocating party with a host of information about the new residence as well as prepare and serve a counter affidavit for the nonrelocating

party to use to object. If the nonrelocating party doesn't object and it can be shown that they were properly served, the parent seeking relocation can file a petition and proposed order confirming the relocation. If the nonrelocating party objects, the case will go to a hearing on relocation.

The statute, however, while comprehensive, does not specifically address situations where the parents aren't actually relocating to a new residence and the dispute involves parties disagreeing about a child going to live with the other parent in a different jurisdiction or geographic area. This very situation was addressed in the 2014 case, *D.K. v. S.P.K.*, 102 A.3d 467, 468, 2014 PA Super 218 (Pa. Super. Ct. 2014). The Pennsylvania Superior Court found that “a custody case where neither parent is seeking

to relocate ... does not per se trigger 23 Pa.C.S. Section 5337 of the Child Custody Act, 23 Pa.C.S. Section 5321 et seq. Thus, the notice requirement of Section 5337(c) does not apply in such cases.”

This case is important because this particular fact pattern may be commonly confused by attorneys with the type of relocation circumstances that require the notice and procedural requirements of the statute, which aren't necessary when the parents are not moving and there is no active custody litigation before a request by a party to transfer custody of a child. However, while the comprehensive notice and filing requirements aren't applicable in this situation, that doesn't mean that the statute is totally inapplicable.

The court went on to state in D.K. that “in any custody determination where neither parent is moving, but the children stand to move to a significantly distant location, the trial court would still need to consider the age, developmental stage, needs of the child and the likely impact the child's change of residence will have on the child's physical, educational and emotional development (Section 5337(h)(2)), the feasibility of preserving the relationship between the other parent and the child (Section 5337(h)(3)), and whether the change in the child's residence will enhance the general quality of life for the child (Section 5337(h)(7)). Even though these three factors are not directly or implicitly encompassed in Section 5328(a), they are clearly relevant to

the decision of what is in the child's best interest when contemplating a move of significant distance to the other parent's home.”

This holding was followed in a subsequent nonprecedential decision where the Superior Court held, “The trial court's discussions regarding the encompassed Section 5337(h) factors were repetitive of the trial court's analysis of those related factors conducted pursuant to Section 5328(a),” as in *J.B.W. v. J.R.W.*, 2014 Pa. Super. Unpub. LEXIS 2332, *33, 108 A.3d 118 (Pa. Super. Ct. 2014); and also, *A.M.S. v. M.R.C.*, 70 A.3d 830 (Pa. Super. 2013) (“the trial court addressed all of the relocation factors, although the trial court did not always identify those [relocation] factors specifically or address them in any particular order.”)

The lesson here is that even though your client's case may not be a “relocation case” as the statute has been interpreted, an analysis of the relocation factors may still be necessary in cases where the move is to a significantly distant location from where the child is now living. The unresolved question in the law, then, is the case where a party seeks primary physical custody of a child outside the child's current jurisdiction or geographic area and it can be argued that the move is not to a “significantly distant location” and does not “significantly impair” the ability of a nonrelocating party to exercise custodial rights.

These cases may possibly arise when a party seeks primary physical custody and he or she lives across a

state border, say, a move to Cherry Hill, New Jersey, from Philadelphia, a short car or train ride away. The D.K. case seems to force us to first ask whether this move is a significant distance that will significantly impair custody rights of the nonfiling party. It will be interesting to see if the Superior Court will expand its recent interpretations of Section 5337 to identify cases where children are relocating and where the relocation statute does not apply at all. That is a question for another case and another day. •



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