

Change of Domicile in Divorce: What is in the Child's Best Interest?

By

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We know that children adjust best following divorce when parents resolve their conflicts and are able to work together in the best interests of the children. Parental interests often conflict, however, when a custodial parent seeks to move and attempts to take the child with him/her. When a move occurs, it is bound to affect the relationship between the child and each parent, albeit in different ways.

In circumstances where the move will benefit the custodial parent, for example, by enabling the parent to obtain better employment or additional education, there may be reason to believe the move will also hold some benefit for the child. At the same time, the move is bound to affect the non-custodial parent's ability to maintain a close, nurturing, active involvement with the child. For example, consider a situation where a non-custodial parent has formal parenting time one night every week, and on alternating weekends and holidays. Additionally, assume that the parent takes the child to sports practices and games, coaches some of these activities, maintains contact with the child's teacher, and participates in the child's religious education.

A child in this circumstance is likely to have a strong attachment to the non-custodial parent and this attachment may be significantly affected if the parent-child relationship is substantially altered. If the child moves a long distance from the non-custodial parent, physical contact will likely be reduced to a week during each school vacation and a few weeks during the summer. In this scenario, the child stands to lose many of the psychological and emotional benefits that are derived from the non-custodial parent's active involvement in his life.

The consequences of granting or denying change of domicile are significant for both parents and the child because of the long-term effects of such a decision. Additionally, there is considerable social science data that informs us regarding the potential effects of different post-divorce custody arrangements. This information is important to consider when making initial custody and parenting time recommendations. Moreover, this information continues to be relevant in change of domicile matters.

The situation factors that supported a specific custody recommendation may be substantially altered in a change of domicile circumstance. For example, consider a situation where both parents have important, but different, parental shortcomings and where custody was granted to the parent who essentially represented the least detrimental alternative for the child. This arrangement may have been in the best interests of the child largely because of other factors that compensated for the custodial parent's weaknesses, such as close relationships with grandparents who regularly cared for the child. The custodial arrangement, in order to benefit the child, may require this outside support in addition to regular contact with the non-custodial parent. If this arrangement is drastically altered, as it is when a long-distance move occurs, it may no longer be in a child's best interest to remain with the custodial parent. Given the

complexity of these decisions and the importance of their impact on a child's life, revisiting the Child Custody Act factors may be a reasonable price to pay in order to protect children in these disputed matters.

All children have a need for continuity, which promotes attachments, as well as a need for stability, which promotes security. Some psychological studies have suggested that a child's need for continuity and stability may even be more critical to long-term adjustment than a stable environment (Heatherington, Bridges, and Insabella, 1998). Research also indicates that a child's age at the time of divorce and parental separation is a major determining factor to post-divorce adjustment (Kelly, 1993). More specifically, the younger the child at the time of divorce, the more disruptive may be its effects on subsequent adjustment.

Children who are exposed to frequent or permanent disruption in the relationship with a parent are vulnerable to develop attachment disorders that interfere with subsequent social and emotional development. Furthermore, infants, toddlers, and young children who are separated from a parent and who have infrequent physical contact with that parent might have greater difficulty developing a stable emotional attachment and internalizing a positive image of that person. Consequently, at the time of visitation, these children are vulnerable to experience greater emotional distress due to being separated from the custodial parent and placed in the care of the non-custodial parent with whom they are relatively unfamiliar. This will result in greater emotional discomfort for the child who might associate his/her distress with the non-custodial parent, making for an unpleasant visitation experience and causing undue interference with the formation of a healthy and stable attachment.

Research indicates that children who maintain positive relationships with both parents following divorce have the best overall adjustment (Garrity and Baris, 1994). In fact, some studies have found that children who maintained close ties with both parents were significantly better adjusted when compared to children who maintained positive relationships with only one parent or with neither parent.

When psychological evaluations are ordered in change of domicile cases, it is critical that examiners' address a number of factors, keeping in mind the research previously noted as well as other relevant research. The central question in this type of evaluation should be "To what extent is the child's best interests being served by granting or denying change of domicile?" Answers to the question, "What is in the child's best interest?" are complex because many factors interact that contribute to a child's adjustment.

When mental health professionals become involved in these cases, either to perform psychological evaluations or to provide therapy, what are some of the factors that require consideration and, moreover, what is their importance? Is there reason to believe, for example, that moving will enable the custodial parent to be a better parent; that he/she will be more responsive to the child's needs, or will be significantly more available, stable, consistent, or nurturing? Alternatively, is there reason to believe that

disrupting the continuity in the child and non-custodial parent's relationship will be unusually detrimental or relatively benign to the child?

Another factor to consider is the nature of the child's emotional attachments to other relatives and significant others. What effect will it have on the child to lose the continuity of these relationships and what opportunity will there be to develop alternative relationships?

Parental reasons for seeking and opposing changes of domicile vary and range from genuinely sincere to malevolent and malicious. Consequently, when a dispute arises, the motives of both parents may be called into question and both parents may be required to demonstrate that their position is truly in the best interests of the child. In this regard, the history of parenting time as well as the willingness of the petitioning parent to facilitate a relationship between the other parent and the child becomes an important factor to consider. Additionally, the credibility of the petitioning parent's motives should be evaluated to ensure that good judgment and adequate common sense are being utilized.

The age and developmental needs of the child are important considerations that also need to be addressed. We need to evaluate, for example, what impact moving away from the non-custodial parent will have on the child's need for stability and continuity; on the child's sense of identity, in general, and on the consolidation of gender identity, in particular. It is also important to consider the child's stage of cognitive development and evaluate how the child is likely to understand separation from the non-custodial parent.

Any change of domicile is going to consist of a mixture of benefits and shortcomings. The relative balance of these cannot be known with absolute certainty ahead of time, although we can assess situations and use our professional knowledge to make certain, limited inferences. In this way mental health professionals can assist the courts to reach determinations in these most difficult matters. As always let us have as our goal to advocate for the best interests of the child.

References:

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