Relocation, Research, and Child Custody Disputes

WILLIAM G. AUSTIN

Relocation disputes are one of the most complex types of cases that family courts encounter. These cases involve one parent requesting to remove the child a substantial geographic distance away from the home community of the child and other parent, either at the time of divorce or subsequent to it. Relocation creates both a psychological and physical separation between the child and non-moving parent. Since the United States has always been a highly mobile society, it is to be expected that following separation and divorce parents frequently will want to relocate for a variety of reasons. Divorcing and divorced parents are about the most mobile of all identifiable types of family groups (U.S. Census Bureau, 2009). Litigation is common in relocation cases; such disputes are almost impossible to mediate and settle because there usually is no middle ground to find a compromise on the core issue of moving. Frequent moves of a non-residential parent typically do not trigger litigation on the relocation issue but will require modification to determine how to implement a long-distance parenting time arrangement.

In the 1990s, relocation of divorced or divorcing parents began to receive increased attention from state appellate courts. States began to develop and clarify relocation law via state Supreme Court case law and with the passage of statutes. Researchers and child custody scholars have been called upon to help courts forge law on this difficult topic by presenting amici briefs in hotly contested, high-profile relocation cases that analyzed the relocation dilemma against the background of the scientific research on children and divorce (Shear et al., 2004; Warshak et al., 2004; see also Wallerstein et al., 2004). This chapter will address U.S. relocation law and research findings on the psychological and behavioral effects of relocation on children of divorce. Social policy issues involved in relocation disputes are discussed in light of the extensive research literature on the contribution of non-residential parents to the healthy adjustment of children of divorce and the impact of relocation on these relationships. Theory and research on parental gatekeeping is discussed as particularly important in relocation and long-distance parenting arrangements. The organizing concept of social capital is presented as an explanation for why some children of divorce who relocate will likely fare better while others will be at risk for adjustment problems.
Relocation law in the United States follows the different standards and procedures adopted by the 50 states and the District of Columbia. Atkinson (2010) provides a comprehensive description of the various approaches to relocation found in state law. Relocation law has shown a clear pattern of evolution over the past several decades and reflects changing family roles and responsibilities, where fathers are now much more involved in child rearing (Lamb, 2004). Relocation law is governed both by statute (37 states) and case law. There are variations across states in both the legal standards and civil procedures that govern child custody litigation for relocation cases.

In the 1970s there generally was a presumption that the custodial parent (usually the mother) could relocate with the child, and in the vast majority of custody decisions the mother was granted primary or sole custody. One prominent case was influential, and it proposed a list of factors for courts to consider (D’Onofrio v. D’Onofrio, 1976). Because of social change towards gender equality in many areas of society and the law, as reflected in greater frequency of joint custody, father custody, and the requirement for gender-neutral custody laws, the legal standard for relocation was reexamined with considerable frequency in most states.

Several prominent cases in the 1990s addressed relocation, especially in California (In re Marriage of Burgess, 1996) and New York (Tropea v. Tropea, 1996), and they garnered the attention of other states. The trend in state high court decisions in the past decade (see Atkinson, 2010) has been to avoid the use of legal presumptions on relocation, either for or against, in favor of a “best interests of the child” standard and for the court to consider a list of “relocation factors” in each case. The opinions in the more recent state high court decisions were based on a review of the evolution of relocation law and a search for trends and consensus (Dupre v. Dupre, 2004; Goldfarb v. Goldfarb, 2004; In re Marriage of LaMusga, 2004). These cases embody the contemporary approach, which is one of a best interest of the child plus consideration of specific legal factors to consider as the legal standard. The clear trend also emphasizes the importance of basing the judicial determination on the facts (Atkinson, 2010), or individualized determination, even when there may be a legal presumption as the legal standard (In re Marriage of Burgess, 1996; In re Marriage of Francis, 1996).

Courts and custody evaluators generally need to assess both the statutory best-interest factors (if the state has a list of factors) and any relocation factors that are identified in the statute and controlling case law. For example, Colorado requires the court to explicitly address all of the 11 best-interest factors and 9 relocation factors (In re Marriage of Ciesluk, 2005). Relocation factors that are typically found in state law include the stated reasons for relocation by the moving parent; reasons for opposing relocation by the non-moving parent; how the move will enhance the quality of life for the moving parent and child; the impact of the move on the relationship between the non-moving parent and child; and any past history of domestic violence.

Relocation statutes and case law generally address the situation of a post-divorce modification of an existing parenting plan where one parent wishes to relocate with the child so that parenting plan would need to be changed. The moving parent generally will be the residential or majority-time parent, though there will be post-decree
cases where there is shared custody. When the relocation issue coincides with the parental dissolution of marriage, for example, a pre-decree case, then a different legal standard may apply, and the relocation statute and case law may not be controlling. Typically the case would not be distinguishable legally from other custody disputes at the time of divorce except for the issue of geographic location of the parents' intended residences. Case law in one state explicitly requires the court to assume each parent will be living in the geographic location where he or she intends to live and decide on a residential parent accordingly (Spahmer v. Gullette, 2005).

Atkinson's review of relocation law concerning legal standards and procedural requirements shows the following:

- Four states have a presumption in favor of relocation by a residential parent and one state a presumption against relocation.
- A presumption for relocation may be dependent on the parent's status as a primary residential parent; there may be no presumption if there has been equal parenting time.
- The burden of proof is assigned to the moving party in 10 states and to the opposing party in four states.
- The burden of proof is split in eight states, where it initially is assigned to the moving party but shifts to the opposing party if a prima facie case is sufficiently established by the moving party.

RELOCATION AND SOCIAL POLICY

Many states in the United States have social policy embedded in their statutes on the importance and inherent value of both parents having the opportunity for continuing involvement with their children following separation and divorce. It is represented in legislative declarations, such as the following passage from Colorado legislation:

The general assembly finds and declares that it is in the best interests of all parties to encourage frequent and continuing contact between each parent and the minor children of the marriage after the parents have separated or dissolved their marriage. In order to effectuate this goal, the general assembly urges parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents. (Colorado Revised Statutes, 2010, 14-10-124(1))

Research strongly supports this type of goal and declaration. Children of divorce show the best long-term adjustment when they enjoy quality relationships with both parents, especially if the level of parent conflict is low (Amato & Sobolewski, 2001). The legal context and practical realities in a relocation dispute make it more difficult to achieve continuing contact and to sustain a high-quality and meaningful relationship between a child and the non-moving parent. In addition, there are the competing constitutional rights of the litigating parents on the right to travel and the right to exercise care and control over one's child, as noted in the introduction. The mother holds a constitutional right to travel (Shapiro v. Thompson, 1969), and the father
asserts a constitutional right to have care and control over his child—for example, reasonable access (Prince v. Massachusetts, 1944; Santosky v. Kramer, 1982; Troxel v. Granville, 2000). These rights translate into competing social policies (e.g., not impeding a parent’s wish to pursue opportunities and encouraging strong parent-child relationships). The court in a New Jersey decision that helped shape relocation law in many states reflected on the judicial dilemma in relocation cases: “The court is keenly aware that of all adjudicatory proceedings none require greater judicial thoughtfulness” (D’Onofrio v. D’Onofrio, 1976, p. 28).

In summary:

- Relocation disputes occur in a psycho-legal context of social policy considerations for courts and custody evaluators.
- Relocation law recognizes the countervailing parental constitutional rights to travel versus to have access to and control over one’s child.
- State laws promulgate the social policy to encourage the continuing involvement of both parents with children following divorce.
- The challenge for courts and evaluators is to craft suitable long-distance parenting plans when relocation is allowed so both parents can enjoy meaningful relationships with the child.

THE MAIN RELOCATION ISSUE

Non-residential Parent–Child Relationship Harm

When a parent wants to relocate with a child following separation and divorce, the main issues in the legal dispute concern potential harm to the non-moving parent-child relationship and how to keep the parent meaningfully involved with the child. It is assumed that this “relationship harm” will translate to developmental harm to the child because of the non-residential parent’s diminished involvement in the life of the child. This view is equivalent to a social capital perspective; for example, with a very long-distance move and a very young child, the psychological resources from the distant parent will largely be unavailable to the child. Courts recognize that there is a certain degree of expectable distress for the child associated with relocation (In re Marriage of Littlefield, 1997). Courts have pointed out that if the sole criterion to deny relocation was to show some degree of relationship harm, then no relocation petition would ever succeed (Goldfarb v. Goldfarb, 2004; In re Marriage of LaMusga, 2004). Austin (2000) argued that there is a hypothetical threshold of harm in relocation cases to be determined by the court where the degree of predicted harm is sufficient to deny the relocation (In re Marriage of LaMusga, 2004).

Crafting Long-Distance Parenting Plans to Mitigate Harm

A common relocation factor in state statutes is whether a suitable alternative parenting time schedule can be established. The court’s legal calculus in any given relocation dispute addresses the question of how to keep the non-moving parent involved
through a new parenting plan and time-sharing schedule. The proposed new plan is
the chief vehicle to manage the risk of relationship and developmental harm. The
focus of the plan is to facilitate parent involvement by the non-moving parent.

Relocation usually results in less time with the non-residential parent, typically
the father. When these cases reach state appellate courts, gender politics may surface
since it still is the statistical reality that usually it is a custodial parent/mother who is
requesting to relocate with the child (Bruch & Bowermaster, 1996; see also Wallerstein
& Tanke, 1996 for the feminist position on relocation). Most children want ready
access to both of their parents after divorce. Fabricius and Hall (2000) found the
majority of college students whose parents had divorced wished they could have
spent more time with their father or even equal time.

In summary:

- Relocation creates a risk of harm to the nonresidential parent–child
  relationship.
- The courts expect a certain degree of distress and adjustment issues for the
  child who relocates.
- It is useful for evaluators and the courts to conduct a social capital or
  resource availability analysis in anticipating a child’s adjustment to
  relocation.
- Parenting plans and access schedules try to manage the risk of relocation-
  associated harm for the child.
- Relocation as an issue has yielded a gender-based social policy
discourse.

MOBILITY STATISTICS

Scholars have long observed how mobile the United States has been as a society
(Triandis, 1995; Turner, 1921), and analyses of census data demonstrate the impres-
sive frequency with which Americans move (U.S. Census Bureau, 2009). Exploration
and the pioneering spirit has been a vital part of American history, and mobility has
been associated with seeking new opportunities since early in the development of the
United States (Toqueville, 1835/2003). Many other Western, industrialized countries
show high mobility rates, such as Canada (Statistics Canada, 2006) and England
(Office for National Statistics, 2009).

Frequency of Residential Mobility

During a one-year period (2002–2003) in the United States, 14% of the U.S. popula-
tion moved. The most mobile groups were people in the age ranges of 20 to 24, 25 to
29, and 30 to 34, with respective moving rates of 30.1%, 28.1%, and 19.8% (Schacter,
2004). The group that moves most frequently is adults in the 20- to 34-year-old range,
and this is the group most likely to have young children (Schacter, 2004). Demographic
data from 2002–2003 showed high moving rates for children: 21.4% for ages 1 to 4;
15.9% for ages 5 to 9; and 13.2% for ages 10 to 14. In examining the distance of
moves, the data for these years showed “the median distance was 160 miles for an
inter-county move, while the mean (average) move was a much longer 400 miles”
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Schacter, 2004, p. 10). U.S. Census data (Schacter, 2001) show that moves in 1999 were made for housing reasons (21.5 million), family-related matters (11 million), and work-related reasons (6.7 million). Eleven percent of divorced/separated parents moved. These data indicate that a high percentage of parents who move will be divorced, will have young children, and will move a substantial distance.

Post-Divorce Mobility

The destabilizing effect of divorce accentuates residential mobility. Marital separation usually means one parent is going to move to a new physical residence—and often both parents. These moves often are temporary and may be followed by subsequent moves, including out-of-county and interstate moves. The statistics on residential mobility for the population of families following divorce are quite staggering. In Arizona, 30% of custodial parents in one community moved out of the area within the first 2 years after separation (Braver, Ellman, & Fabricius, 2003). Results from a 40-year longitudinal study of a large Virginia sample, 10 years after divorce, found that the average distance between the parents’ residences was 400 miles (Hetherington & Kelly, 2002).

In summary:

- The United States historically has been a highly mobile society.
- The most mobile family group consists of younger, divorced parents with young children.
- Longitudinal research shows long-distance parent–child relationships are very common 10 years after divorce.

RELOCATION AND PSYCHOLOGICAL ADJUSTMENT

Table 18.1 summarizes research on the effects of residential mobility on children of divorce.

Relocation and Risk to Children of Divorce

The relocation paradox is that residential mobility is a general risk factor for children of divorce both during their growing-up years (McLanahan & Sandefur, 1994; Tucker, Marx, & Long, 1998) and into adulthood (Dong, Anda, Felitti, Williamson et al., 2005), but it is something that occurs with great frequency. One state high court remarked that something that occurs with such regularity (in light of U.S. Census data) cannot be assumed to be too harmful (In Re Marriage of Ciesluk, 2005). This general statement is incorrect based on the scientific research (McLanahan & Sandefur, 1994; South, Haynie, & Bose, 2005; Wood, Halton, Scarlata, Newacheck, & Nessim, 1993), but most children who relocate will probably show a reasonable level of adjustment, just as with the case of children who experience divorce (Emery, 1998).

Austin (2008a) reviewed the extensive research literature in sociology and demography on residential mobility and children’s adjustment following divorce compared
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<th>Source</th>
<th>Participants</th>
<th>Procedures</th>
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<tr>
<td>Tucker, Marx, &amp; Long (1998)</td>
<td>17,000 parents interviewed on children, aged 7–12. Family types grouped as both biological parents; biological mother only; stepfamilies; other family types—father only or other relatives</td>
<td>1988 National Health Survey. Effects of age, race, socioeconomic status, family type, and frequency of residential mobility on school achievement &amp; behavior problems.</td>
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<td>Braver, Ellman, &amp; Fabricius (2003)</td>
<td>602 university students in introductory psychology class whose parents divorced</td>
<td>Questionnaire, retrospective reports. Measures of general health, hostility, depression, distress, life satisfaction, parent contribution to tuition, &amp; perceived parent support.</td>
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<td>South, Haynie, &amp; Bose (2005)</td>
<td>5,000 adolescents</td>
<td>Longitudinal survey measuring residential mobility &amp; onset of adolescent sexual intercourse</td>
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<td>Wood et al. (1993)</td>
<td>9,915 children who were 6–18 years old</td>
<td>National, representative survey with stratified cluster sampling by U.S. Census Bureau. Face-to-face interviews with parents. Predictor variables: number of residential moves, poverty status, family structure, employment, education. Achenbach Behavior Check List to measure child behavior problems. Risk categories created.</td>
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<td>Simpson &amp; Fowler (1994)</td>
<td>10,362 school-age children; grades 1–12</td>
<td>National, representative survey with stratified cluster sampling by U.S. Census Bureau on child health; measures of frequency of residential mobility.</td>
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<td>Findings</td>
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<td>Academic-behavioral problems: 16.7% in families with both biological parents; 29.5% mother only custody; 27% stepfamilies; 28% other family types. Median no. moves: 1.14 in families with two biological parents; 2.6 mother only; 3.36 stepfamilies.</td>
<td>Large, national, representative survey. Number of moves measured. Children in a particular age range studied. The age range is the one where children are more likely to adjust well with relocation. It is a less mobile age range group. Family structure examined. SES &amp; race controlled. Results explained by greater social capital in intact family structure.</td>
<td>Parent interview data only; no observational data; teachers not interviewed; school records not reviewed</td>
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<td>Relocation effect associated with either parent moving; effect on parent contribution to college; perceived parent support; parents as good role models; parent conflict; non-significant or marginal differences on health, satisfaction, and adjustment</td>
<td>Adult-child self-report data; data on moving by either parent</td>
<td>College sample expected to be higher functioning, higher IQ, so more resilient. Significant effects not found on measures of mental health and social functioning.</td>
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<td>Recent moving adolescents one-third more likely to experience first premarital intercourse; higher delinquency; poor academic performance. Type of family structure creates different level of stability in life of young children and significantly related to cognitive and psychological outcomes. Children with cohabitating parents score lower on cognitive tests compared to children from two biological, married parent families. Stability due to number of parent relationship changes and number of residences. In families with more frequent moves children showed more behavior problems and failing a grade in school.</td>
<td>Large representative sample; study of adolescence and effect of relocation; explanation using social networks &amp; fitting in with positive peer group influence; social capital. Studied cohabitating parents. Study of young age group population. Large sample. Conceptual analysis of relocation as part of family stability.</td>
<td>Limits from survey approach</td>
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<td>In families with more frequent moves children showed more behavior problems and failing a grade in school.</td>
<td>Large sample with control for confounding variables such as poverty. Discussion of reasons due to disruption in relationships, schools, etc. associated with moves, even for short distance. Social capital explanation.</td>
<td>Authors did not report different relocation effects for divorced vs. intact families.</td>
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<td>24% never moved; 35% 1 or 2 times; 39% 3 or more in lifetime. Children who moved 3 or more times: 2 times more likely behavioral/emotional problems, receive mental health treatment, repeated a grade &amp; suspended or expelled from school.</td>
<td>Control for demographic variables; wide range of child outcome measures; frequency of residential mobility data</td>
<td>Inherent limitations with survey approach and lack of corroborative data. Results not differentiated by type of family structure or age group.</td>
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moving, residential parent. Important factors for the parent and child adjustment to relocation include how well the moving parent adjusts to the move, copes with the stress involved with relocation (i.e., new housing, job, finding a school), and opens up new sources of social capital for herself and the child. How supportive the moving parent is of the non-moving parent’s relationship with the child can have a protective function as the child tries to adjust to the extended separation from the other parent. The hypothesis is that how well the social capital from the distant parent makes its way to the child depends not just on the efforts of the non-moving parent to stay involved despite the geographic barrier, but also on the efforts of the residential parent to facilitate the other parent’s involvement. Future research needs to be designed to investigate these hypotheses.

Role of Non-residential Parents and Fathers on Children’s Adjustment

Research findings indicate that a main protective factor for children of divorce is to have at least one consistent relationship with a stable, competent caregiver if the caregiver provides warmth and an effective parenting style (Kelly & Emery, 2003). Custodial mothers tend to be this main protective factor following divorce (Hetherington, Bridges, & Insabella, 1998; Kelly & Emery, 2003). The importance and unique contributions of fathers have also been empirically established (Amato & Sobolewski, 2004; Flouri, 2005; Lamb, 2004). However, research is robust in showing that the best outcomes for children of divorce are associated with competent involvement and quality relationships with both parents (Ahrons, 1994; Hetherington & Kelly, 2002). In a prominent California case (In re Marriage of LaMusga, 2004), numerous amici briefs were submitted to the Supreme Court by prominent divorce researchers and child custody scholars on the issue of the contributions of both parents for children of divorce. The court accepted the view of the researchers that quality relationships with both parents were important in the relocation context. The fact pattern in the LaMusga case involved allegations of restrictive gatekeeping, or possible attempts by the mother to alienate the children from the father.

Parental Gatekeeping

Support for the other parent–child relationship (or SOPCR) is a common statutory best-interest factor. It is also the second part of the legislative declaration described above. It often becomes the focus of a relocation dispute. For example, in Michigan the statutory factor is worded as “The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents” (M.C.L.A., Child Custody Act of 1970, §722.23(j)).

The concept of parental gatekeeping encompasses the SOPCR statutory factor. Gatekeeping emerged from the literature on co-parenting (Pleck, 1985) and father involvement (Lamb, 1981), and family studies research followed in the investigation of maternal gatekeeping (Allen & Hawkins, 1999; De Luccie, 2001; Fagan & Barnett, 2003; McBride, Brown, Bost, Shin et al., 2005). One definition of gatekeeping was “mother’s preferences and attempts to restrict and exclude fathers from child care
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and involvement with children” (Fagan & Barnett, 2003, p. 1021). Research was almost exclusively on maternal gatekeeping in intact families. Allen and Hawkins (1999) proposed that gatekeeping could vary on a continuum, or there were different types of gatekeeping: restrictive, intermediate, and cooperative co-parenting. They found that 21% of mothers were restrictive in intact families.

Co-parenting theorists and gatekeeping researchers have focused on the outcome measure of father involvement because of the belief that the mother’s support for the father’s involvement was a key determinant of how involved fathers became in parenting. Further, it was assumed that the father’s involvement was important for the children’s adjustment and healthy development (Pruett, 2000). Researchers have documented how the mother’s support for the father’s involvement and the father’s perception of the mother’s support is associated with the father’s actual involvement in parenting (Beitel & Parke, 1998; McBride et al., 2005; Schoppe-Sullivan, Brown, Cannon, & Mangelsdorf, 2008).

Theorists have recently proposed that gatekeeping can apply to mothers and fathers and that gatekeeping conflict may occur in the context of divorce and custody disputes (Adamson, 2010; Pruett, Arthur, & Ebling, 2007; Trinder, 2008). One could argue that a custody dispute is by definition focused on gatekeeping, or the amount and pattern of access to the child. Disputes concern foremost issues surrounding parental involvement. Research has found that restrictive or inhibitory gatekeeping indeed is more common among divorced parents (Fagan & Barnett, 2003; Pruett, Williams, Insabella, & Little, 2003; Trinder, 2008).

The gatekeeping continuum among divorced parents has been described as ranging from facilitative to restrictive or inhibitory (Austin, Eidman, Gould, & Kirkpatrick, 2006; Austin, Flens, & Kirkpatrick, 2010; Trinder, 2008). The facilitative gatekeeper is proactive, cooperative, and inclusive of the other parent’s involvement. The very restrictive gatekeeper may make access difficult, derogates the other parent to the child, and attempts to undermine the child’s relationship with the other parent. Extreme examples of restrictive gatekeeping would be severe alienation and child abduction. Most divorced parents who are engaging in the co-parenting process will fall somewhere along the continuum, with most in the middle, meaning they are mostly cooperative but in an emotionally disengaged way (Maccoby & Mnookin, 1992).

The limited research on gatekeeping with divorced or divorcing parents has described the gate opening and gate closing behaviors of custodial parents (Trinder, 2008). A study involving children ages 0 to 6 found that children showed better adjustment when fathers were involved, even if the mother described negative gatekeeping attitudes (Pruett et al., 2003). The qualitative data in this same study found that mothers and fathers both reported a high level of supportive behaviors by the mother towards the father, but fathers naturally reported a lower level of gate-opening behaviors and a higher level of gate-closing behaviors compared to mothers’ perceptions.

In relocation disputes, gatekeeping takes on even more significance, as it usually will be a point of emphasis by both parents. If the court believes the moving parent will be a restrictive gatekeeper, then it greatly increases the likelihood the relocation will not be allowed because the court will anticipate that any long-distance parenting plan will not accomplish the goal of facilitating sufficient involvement by the non-moving parent. The divorce context points to the need to examine gatekeeping by
both parents (Adamsons, 2010; Austin et al., 2010), but researchers have not yet studied fathers' gatekeeping behaviors either in intact or divorced family systems. In summary:

- Research shows that a mother’s support for a father and her view of his competency influences his actual involvement in parenting in intact families.
- Gatekeeping captures mothers' attitudes and behaviors about fathers' involvement in parenting.
- Gatekeeping varies on a continuum from proactive/facilitative to restrictive/inhibitory.
- Research shows that gatekeeping is more likely to be restrictive following divorce.
- Both parents engage in gate-closing and gate-opening behaviors following divorce.
- Following divorce, children show better adjustment when they have high-quality relationships with both parents.
- Gatekeeping is the prominent issue in child custody disputes and may be accentuated in relocation cases.
- Facilitative gatekeeping is the key to a successful relocation by the child.

SUMMARY

Child custody relocation disputes pose unique dilemmas for family law courts and custody evaluators. There are competing constitutional rights and social policy considerations that are unique to such cases. It is an area of family law where research clearly has direct application for the interpretation of evidence and data and can help guide the court in making judicial predictions about children’s outcomes associated with relocation.

The United States and other Western, industrialized countries are highly mobile societies. Families that experience divorce have a high rate of residential mobility. Research has established that relocation, or residential mobility, is a general risk factor for children of divorce in terms of their psychological adjustment and well-being, but children in all types of family structures move substantial distances with considerable frequency. With the proper social supports or social capital in place, most children who relocate with a parent will likely show an adequate long-term adjustment. The same conclusion might be drawn concerning children when a parent moves a substantial distance, the children remain in the home community with the non-moving parent, and there is a long-distance parenting arrangement in place. Relocation cases are highly individualized and dependent on the facts in the case, but research hypotheses can be helpful to the decision-maker and child custody evaluator. However, further research is needed to investigate these hypotheses.4

Relocation law in the United States varies considerably among the 50 states, but there has been a clear trend in state case law and statutes towards a legal standard of the best interests of the child and requirement that courts consider a list of relocation factors. Such factors include the child's anticipated adjustment to relocation; impact of the move on the relationship between the child and the non-moving parent;
presence of extended family members in the two communities; and a history of domestic violence. Relocation law emphasizes the fact-driven nature of relocation disputes. States vary in the procedural aspects surrounding relocation, including requirements to give notice to the other parent about the proposed relocation, listing the reasons for the move, and which parent has the burden to prove (or disprove) that the move will be in the child’s best interests.

The concept and research surrounding parental gatekeeping is highly relevant to relocation disputes. How well the moving parent will support the relationship between the child and the non-moving parent may be the key to a child having a successful adjustment to the move. A past pattern of restrictive or inhibitory gatekeeping by the moving parent makes it more likely that the other parent will have difficulty sustaining a quality relationship with the child in a long-distance parenting arrangement.

GUIDELINES: CONSIDERATIONS AND CAUTIONS

- **Social Policy and Judicial Dilemmas**: When courts and custody evaluators apply research to relocation disputes, they do so in the legal context that encourages the continuing involvement of both parents while recognizing the important social policy of not interfering with a parent’s right to relocate with a child. The legal and psychological analysis requires a comparative analysis on the relative advantages and disadvantages to the child associated with living primarily with each parent in different communities and experiencing life in a long-distance parenting arrangement.

- **Relocation Law**: There is considerable variation to relocation disputes among the 50 states in the United States. The trend is avoidance of legal presumptions for or against relocation of a child with the moving parent; emphasis on the facts and family context of the case; and a legal standard of the best interests of the child, with a list of specific relocation factors to consider.

- **Research on Residential Mobility and Effects on Children of Divorce**: A very large research literature shows that relocation is a general risk factor for children of divorce compared to those in intact families with two legal parents, as measured on a variety of measures of long-term child outcomes. Research shows a large number of post-divorce moves creates a higher risk for adjustment and developmental problems.

- **Research on Contributions of Non-residential Parents/Fathers**: A substantial research literature has found that children of divorce show the best short- and long-term adjustment when they enjoy high-quality relationships with both parents, especially under conditions of low parent conflict. While research shows that the main protective factor for children’s adjustment lies in having a consistent relationship with a custodial mother who shows warmth and uses an authoritative parenting style, research also convincingly demonstrates the important contributions of fathers to
children's development, both in intact and divorced families. Even when there is substantial parent conflict, children show better adjustment when fathers remain highly involved, especially if they are competent in their parenting skills and show warmth to the child. The implications of these research literatures for children's adjustment following relocation are straightforward.

**Rates of Residential Mobility:** Younger parents with young children have some of the highest rates of mobility, according to U.S. Census data and regional samples gathered by divorce researchers. A significant proportion of the moves by divorced parents and children will be inter-county and interstate. Research on the median and average distance for moves is impressive, and the figures correspond to longitudinal research on the geographic separation between parents 10 years after divorce. There are social policy implications of these mobility data in light of the research on the risk of harm to children of divorce associated with residential mobility. The clear conclusion is that courts and custody evaluators must develop risk-management and harm-mitigation strategies in each contested relocation case. The most effective risk-management intervention will be to create a long-distance parenting plan that facilitates continuing involvement by the non-moving parent with the child despite the logistical obstacles created by the geographic distance.

**Explanations for Effects of Relocation:** Divorce researchers and forensic child custody scholars have proposed the concept of social capital as an efficient explanation for why children in intact families show better overall adjustment compared to children of divorce. Researchers have also explained better adjustment for some children of divorce in terms of the greater degree of social capital available in the child's post-divorce environment. Exposure to ongoing parent conflict, perhaps exacerbated by a parent moving away with the child, may also explain a particular child's poor adjustment. Parent conflict would be an example of "negative social capital," or aversive environmental influences on the child.

**Parental Gatekeeping and Relocation:** This concept refers to attitudes and behaviors by parents that are intended to limit the involvement with the other parent and the influence of the other parent over the child. Theorists propose that facilitative/proactive gatekeeping will increase the child's social capital and lower the risk to the child associated with relocation. It will be a key factor for courts and evaluators to consider in the individual assessment in a relocation dispute. Research provides support for this hypothesis, though it is preliminary in nature.

**Cautions on Using Research Hypotheses in a Forensic Setting:** Research on relocation provides a basis for hypotheses on children's adjustment associated with relocation and the role of specific risk and protective factors. These hypotheses will be based on aggregate data or group averages. Courts and evaluators need to treat research hypotheses and forensic frameworks developed on the basis of research as just a first step in considering factors and data for individual cases. State case law also often reminds courts to keep the facts foremost in mind in resolving relocation disputes.
• **Need for Research on Effects of Relocation:** Research on residential mobility shows correlations between children of divorce moving and their post-divorce adjustment. When courts and evaluators make predictions about children's outcomes associated with proposed relocation by a parent and child, it requires extrapolation from research on divorce to how children (and parents) will cope with residential mobility following litigation. Research is needed that will consist of substantial sample sizes and quantitative as well as qualitative measures, especially child outcome data.

NOTES

1 A *prima facie* case is made for relocation when the court determines the moving parent has presented sufficient evidence based on the pleadings or at a temporary hearing until this initial offer of proof is sufficiently disproven by later evidence from the other parent.

2 Social capital is defined as the psychological, emotional, and social contributions that are provided to the child by parents, siblings, extended family, peers, etc., and also by organizations and groups (Coleman, 1990). Researchers have applied social capital to explanations for children's adjustment to divorce (Amato & Sobolewski, 2004; Hetherington, 1999). The application of a social capital analysis to child custody disputes allows for a comparative analysis of the expected types and degrees of social capital or human resources that will be available to the child in the two alternative residential living arrangements and with competing parenting time arrangements.

3 While research shows that a move of an hour away by either parent (Braver et al., 2003) or a geographical separation of 75 miles or more (Hetherington & Kelly, 2002) can have long-term negative effects on children of divorce and father involvement, there are qualitatively different types of residential moves with predictable effects on the child's access to social capital.

4 Preliminary qualitative, longitudinal research on how families experience the resolution of legal relocation disputes and the resultant long-distance parenting arrangements is being conducted in Australia, England, and New Zealand (see Parkinson, Cashmore, & Single, 2010; Taylor & Freeman, 2010).

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Relocation, Research, and Child Custody Disputes


