

Divorced Parents Contemplating Leaving New York During COVID

CNN, USA Today, the New York Post and several other news sources have recently published articles discussing the potential mass exodus from urban centers following the COVID pandemic. In addition to job loss and high living expenses – the old standards for leaving a city – a new reason has emerged: virus avoidance. As death and illness spread around us, many people in quarantine find themselves asking: “Can I provide a better life for my family somewhere else?” Less densely populated areas such as suburbs, where the single family home dominates the landscape, have appeal at a time when people are seeking to reduce their interactions with the public. Children do not have to go to a public park in order to play outside. There are no elevators to have to share with a mask-less stranger. Whole rooms may be dedicated to work space, instead of just the dining room table.

Moving a family is always complicated, but it is exponentially more so for divorced parents. Relocating not only upends existing parental access schedules, but also requires that major decisions be made involving the children, such as the choice of the child’s new school and new doctors. These decisions must often be made jointly by the parents. A decision to relocate cannot be made unilaterally by one parent, and is an acute example of how parents remain tied together and must answer to each other long past their divorce. Many emotional, financial and legal consequences flow from a decision to relocate, and it should not be, and cannot be, entered into lightly.

A court, in deciding whether to change an existing custody arrangement and permit a parent to relocate with a child, must determine that it will be in the child’s best interests to do so. There is a presumption that it is in the child’s best interests to regularly see both parents, and a presumption that the status quo should not be upset without good reason for the court to believe it will benefit the child and not just the relocating parent. A party asking a court to permit relocation must bring more than a bag of dreams about lower tax rates and more living space in order to overcome these presumptions. He or she must show what life in the new destination will actually be like for the child: particular job prospects should be identified, specific housing should be selected, and social and educational advantages should be identified. The parent seeking relocation must also demonstrate to the court that the move will be permanent (for example, by pointing to extended family in the new destination). In short, seeking a court order permitting relocation is an uphill battle. Moreover, courts take time to make decisions and, due to COVID, are not even open to hearing relocation petitions (barring a genuine emergency), as of the writing of this article. Court is not an option if an immediate, though non-emergent move is necessary.

However painful and difficult it may be, obtaining consent to relocate from the remaining parent is often easier than going to court. To get that consent, a relocating parent may have to make considerable concessions. If the new destination is far away, making it impossible for the remaining parent to have regular access time with the child, then the relocating parent may have to give the remaining parent a majority of the holiday and summer time with the child. A relocating parent might consider agreeing to cover the cost for transportation between the relocating parent and the remaining parent. If a child's food, shelter and clothing expenses are going to be less in the new destination, child support for the relocating parent may be reduced as well.

All that said, the COVID pandemic has created many novel parental access issues, relocation among them, and it will be interesting to see what shifts in the law result from it. Future courts will likely give public health risk more weight in its "best interests" analysis than under current law, and potentially make it easier to relocate. Cases involving children with special needs who cannot be taught social distancing practices, or cases involving parents with underlying conditions, certainly create exigent circumstances that a court should consider. An experienced lawyer can help navigate the complicated web of relocation issues to yield the best result for both parents and children alike.