

Moving Forward With Relocation

Statute Makes Progress in Custody Relocation Disputes, But Language Can Be Subject to Interpretation

Even if you don't actively practice family law, you probably know of someone involved in a custody dispute. Frequently, one of the parties involved in such a dispute desires to relocate with the children. How do you advise the relocating party? Are they allowed to move without court permission if there is no custody order in place? Do they need to give some type of notice to the other side? Does the matter have to be litigated? And if so, is there a test that the court utilizes in making a decision?

As of Jan. 24, 2011, our law with respect to this issue of relocation has changed. It has been codified by statute whereas before it was based on caselaw only. Prior to the new statute, the seminal case on this issue was *Gruber v. Gruber*, 400 Pa. Super. 174 (1990). *Gruber* included a three-prong test that one had to meet prior to being permitted to relocate with children. Specifically, *Gruber* provided that a "custodial parent" was not permitted to relocate a "geographical distance" from a "non-custodial parent" without the court considering the advantages of the move and whether it would improve both the life of the custodial parent seeking the move as well as the child. Additionally, the court looked at the integrity of the move – was the move contemplated for a legitimate purpose or just to impede or interfere with the other party's relationship with the child. Finally, the court considered whether the lost time could be recouped or reconfigured, so that the child's relationship with the non-relocating party could be maintained.

The new law regarding relocation found at 23 Pa. C.S. Section 5337 incorporates the three-prong test found in *Gruber* but has additional factors and additional hurdles to overcome before relocation is allowed. There



are both procedural and substantive legal elements that a party must fulfill before relocating. In fact, relocation is prohibited before all interested parties in a custody matter either give their consent to same or the court enters an order. Under the former law, before there was a custody order in place, a party would sometimes relocate first, only having to deal with the consequences of their move once it already happened and oftentimes after children were acclimating to a new location.

Relocation now is specifically defined in 23 Pa. C.S. Section 5322 as "a change in residence of the child that significantly impairs the ability of a non-relocating party to exercise custodial rights." What is interesting about this definition is that

it does not give specific parameters as to what is relocation and what is not. For example, if parties share custody equally and one party wants to relocate from Philadelphia to West Chester, that move, although minimal in terms of mileage, would certainly impair the ability of the non-relocating party to exercise his or her custodial rights. However, consider the same move for a non-relocating party who only has partial custody of the child on alternate weekends. It may not constitute relocation under the new definition. The definition is troubling because it is so amorphous. How does one know whether to follow the notice provisions of the statute if they are uncertain as to whether their planned move constitutes relocation or not?

Erring on the side of caution is probably best because if the notice provisions are not followed, the court can draw a negative inference from same and even prohibit the relocation, and/or award counsel fees to the non-relocating party.

In order to relocate, the relocating party must give 60-day advance notice of the proposed relocation (or within 10 days of when the party knows of the relocation) to “every individual who has custody rights to the child.” Thus this notice provision can be interpreted as going beyond the biological parents, especially in those circumstances where the child is temporarily residing with a grandparent or other third party who may have established “custody rights” to the child. The notice for the relocation must be sent by certified mail, return receipt requested. The non-relocating party must file an objection to the relocation and/or to any proposed modification of any custody order as a result of the relocation within 30 days of receiving notice of same, or their ability to object to the proposed relocation may be waived.

Once the procedural aspects of the proposed relocation are met, there are additional hurdles for the relocating party to overcome. In fact, the statute contains about 10 elements (some with sub-parts) that must be met before the court will allow the relocation. The factors regarding safety, such as previous harm or past abuse of the child, are given more weight than other factors. The factors incorporate the *Gruber* test such that the relocating party must prove the move is beneficial both for the relocating party and the child, although these are now separate factors. Also, the relocating party must show how the non-relocating party will be able to preserve their existing relationship with the child despite the relocation. The child’s preference is also considered as well as either party’s established patterns in promoting or thwarting the relationship of the other party and the child.

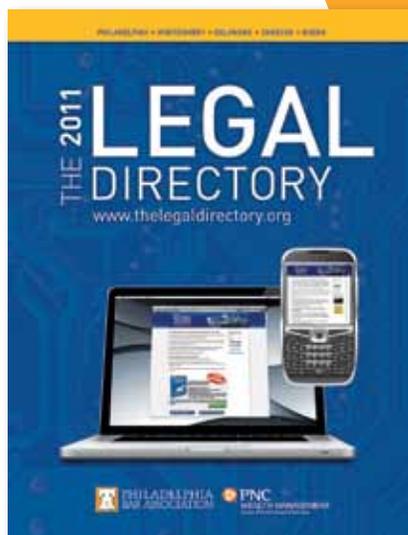
It remains to be seen whether this new law will make it easier or more difficult for parties to relocate. While much of the language of the statute can be subject to interpretation, the fact that the law has been codified is a major step forward. ■

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