

JEFFREY WEINSTEIN

ON HOW CHILD RELOCATION
RAISES NEW CUSTODY ISSUES

Of the many kinds of lawsuits, divorce cases can be some of the most emotional and difficult, especially when children are involved. Too often, kids can become pawns, caught between their warring parents. The scars left by custody battles can have a long-lasting impact not only on the children, but also their parents. Resolution of a custody dispute is not necessarily the end of the story. Custody issues can arise anew if the custodial parent later wants to relocate with the children.

Few lawyers know the ramifications of custody-related battles better than Jeffrey P. Weinstein, founder of Weinstein Lindemann & Weinstein. Weinstein has practiced family law for more than 30 years and seen more than his fair share of custody disputes.

"Custody is probably the most significant issue that any court has to handle because it has such an effect on kids," says Weinstein. "The level of anxiety for everyone involved, including the judge, is very high because of the ramifications of the decision," he explains.

Luckily, most custody disputes are not litigated and instead are resolved in other forums, such as mediation, says Weinstein. Unfortunately, however, even amicable resolution of custody may not close the book on the issue. If the custodial parent wants to move and take the children with him or her, a whole host of new custody issues will arise.

Relocation is not a new issue but it is becoming more common these days, notes Weinstein. Society is "more mobile and the world is smaller," he says. It is easier to move around and to communicate long distance via technology, he adds. Plus, given the current economy, job opportunities are hard to come by, observes Weinstein, so parents may be forced to take a job wherever it may be located.

Weinstein says that relocation is litigated more often than custody because it is typically harder to resolve. In New Jersey, a parent may move out of state with a child only if the other parent consents or the court permits the move, he explains. In evaluating a relocation request, a judge must determine whether the custodial parent has a bona fide

reason for the move and whether relocating will harm the child's interests. Weinstein notes that this standard is low and easy to meet. For example, wanting to relocate because of a job opportunity, to be closer to family, because it is cheaper to live somewhere else and even out of a dislike of New Jersey weather could all be considered bona fide reasons for relocation, he says.

This issue arises only when the custodial parent wants to leave New Jersey. You might think that the further from the state the parent wants to move, the less likely a court is to approve relocation. But Weinstein explains that distance is not "a barometer" of how the court will rule. For example, he handled a case in which the custodial parent wanted to move to New York—less than 50 miles away—but the court denied the request. A mental health professional believed that it would be better for the two small children to stay in the area and had concerns about the amount of traffic near the proposed new home. In contrast, Weinstein got approval from a court for a custodial father to relocate to London.

Relocation to another country raises another issue, notes Weinstein. A court is more likely to approve a move to a foreign country that is a member of the Hague Convention because it will be easier to get the child back from that country if necessary, he explains.

Judges give relocation cases priority, putting them "on the fast track," says Weinstein. For example, to avoid disrupting the school year, courts will try to resolve the relocation issue before the next school term begins, he explains.

In addition, Weinstein says the court will not deny a relocation request simply because a move would interfere with the visitation rights of the non-custodial parent. "Visitation rights can be changed to accommodate the move," he explains, say, by giving the non-custodial parent fewer visits with the child but for longer periods of time, such as school breaks and three-day weekends. Technology, such as Web cameras, can help fill the void between visits, he adds.

For Weinstein, the ultimate goal is to "give the children the best of both parents." And it is critical that no one involved in the process loses sight of that goal.

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