



Family matters

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Relocation

Can I Go or Must I Stay?

Relocation is what the court calls the act by one parent to alter a child's living arrangements which involves a significant geographical separation from the other parent. That is, allowing one parent to move a child some distance away from the other parent.

It is considered one of the most difficult and controversial issues in family law.

Amendments to the *Family Law Act* require parents to consult and endeavor to agree where there is shared parental responsibility about the major, long term issues affecting a child. This includes changes to living arrangements that make it significantly more difficult for the child to spend time with a parent.

A common example is where one parent meets a new partner who resides elsewhere and they wish to marry. As a result, the parent wishes to relocate with the child a significant distance away from the other parent.

The parent has a responsibility to consult with the other and seek consent to move. If the parent is agreeable, arrangements can be made for the child to see that parent as agreed between them. If the parent does not consent, relocation with the child cannot occur. An order must be sought from court permitting a move.

When Will a Court Allow a Parent to Move Away With a Child?

The intention of the legislation is for both parents to have an ongoing, meaningful relationship with the child and to make an order that is in the child's best interests. The legislation encourages maximum involvement from both parents.

These cases are difficult because the courts realize the importance of allowing both parents to have an active role in raising of the child, but acknowledge parents should have freedom to move around and get on with their lives either to form new families or take up lucrative job opportunities.

A judge will consider the following:

- The current relationship the child has with each parent. Presuming the child has a loving, close relationship with both parents; to alter those arrangements and allow the child to move away will significantly affect the ability of the parent with whom the child does not live to maintain the relationship.
- The likely affect of any changes in the child's circumstances.
- How far away is the proposed relocation? Is it a couple of hours by car or a lengthy plane flight?
- The amount of time the child will be able to spend with the other parent by way of weekend contact, holiday periods etc.
- The means of communication in between personal contact and the use of webcams, email and telephone calls.
- The financial circumstances of each party and their ability to afford extensive travel and/or the requirement for a young child to be accompanied in travel;
- The sort of burden any type of travel will have on the child.
- The relationship of the child with siblings, a parent's new children etc.
- Does the parent have the capacity, ability and willingness to facilitate the ongoing relationship between the child and the other parent.
- All of the available proposals. The court will consider whether the other parent can relocate to the new location, or alternatively, can the new partner move to where the child currently lives. The court has a duty to weigh up all possible scenarios. However, it is not bound by any of the proposals.

Discuss any possible move with your previous partner. If they agree, ensure they are able to maintain a significant role in the child's life and get the agreement formalized by way of Consent Order.

If no agreement, you cannot make a unilateral decision to move and should seek legal advice. Regardless of any principles the court might apply, each case will be determined on its individual facts.