

## New York Child Custody Relocation

One of the most frequently asked questions concerning custody are whether or not, subsequent to a separation or a divorce proceeding, can the custodial parent relocate with the parties' children out of the state and away from the non-custodial parent? New York's highest Court, the Court of Appeals, in Tropea v. Tropea, 87 N.Y.2d 727 (1996), held that the right of a custodial parent to relocate out of the "restricted area" is determined based upon a "best interest of the child" approach. This approach has proven itself enormously worthwhile in so many other arenas involving custody. Accordingly, each relocation request must be considered on its own, with consideration of all the relevant facts and circumstances and with predominant emphasis on what outcome is most likely to serve the best interests of the child. While the rights of the parents are significant factors that must be considered, the rights and needs of the children must be accorded the greatest weight. The relationship between parent and child is different after a divorce and the Court of Appeals has stated "...it may be unrealistic in some cases to try to preserve the non-custodial parent's accustomed close involvement in the children's everyday life at the expense of the custodial parent's efforts to start a new life or to form a new family unit." In some cases, the interests of the child might be better served if the Court grants visitation which maximizes "... the non-custodial parent's opportunity to maintain a positive nurturing relationship while enabling the custodial parent ... to go forward with his or her life.

The factors the court will consider include, but are not limited to:

- each parent's reasons for seeking or opposing the move;
  - the quality of the relationships between the child and the custodial and non-custodial parent;
  - the impact of the move on the quantity and quality of the child's future contact with the non-custodial parent;
  - the degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move; and the feasibility of preserving the relationship between the non-custodial parent and the child through suitable visitation arrangements. Even where the move would leave the non-custodial parent without what may be considered "meaningful access," relocation may still be allowed by weighing the effect of the quantitative and qualitative losses that will result against such factors as the custodial parent's reasons for wanting to relocate and the benefits that the child may enjoy or the harm that may ensue if the move is or is not permitted. While economic or health reasons continue to provide a basis for permitting the relocation, a second marriage of the custodial parent or opportunity to improve her or his economic situation, is now also a valid reason for permitting the relocation if the overall impact on the child would be beneficial. The custodial spouse's remarriage or wish for a "fresh start" **may** suffice to justify a distant move because of the value to the children that strengthening and stabilizing the new, post-divorce family unit can have. The Court of Appeals suggested that where the non-custodial parent is interested in securing custody, and a child's ties to the non-custodial parent and to the community are so strong as to make a long-distance move undesirable, the availability of a transfer of custody, as an alternative to forcing the custodial parent to remain "may have a significant impact on the outcome." Other factors enumerated by the Court of Appeals, which appear to have been systematically developed with a view toward minimizing the parents' discomfort and maximizing the child's prospects of a stable, comfortable and happy life are:
1. the good faith of the parents in requesting or opposing the move;
  2. the child's respective attachments to the custodial and non-custodial parent;
  3. the possibility of devising a visitation schedule that will enable the non-custodial parent to maintain a meaningful parent-child relationship;
  4. the quality of the lifestyle that the child would have if the proposed move were permitted or denied;

5. the negative impact, if any, from continued or exacerbated hostility between the custodial and non-custodial parents;
6. the effect that the move may have on any extended-family relationships; and
7. any other facts or circumstances that have a bearing on the parties' situation. Remember, although the divorce process is difficult, emotional and more often than not adversarial, parents should always consider the "best interests" of their child or children when making such important decisions.

**Meyers & Chisolm, PLLC**  
**Attorneys and Counselors at Law**  
**55 Elm Street**  
**Huntington, NY 11743**  
**Phone: (631) 784-7722 • Fax: (631) 784-5154**

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