

In Relocation Cases, Consider the Evidence When Deciding What's Best for a Child

By Brenda Shapiro, Esq.

When a parent relocates, it is always difficult to determine what's best for the child. If one parent is "an alternating weekend one night for dinner" parent a relocation request may be a simple formality for the courts. But if the mother and father share equal time and are both deeply involved in the child's life, Florida Statute §61.13001 requires the relocating parent to prove *by the preponderance of the evidence* that it is in the *child's* best interest to move. Such decisions are made in courtrooms where too often, emotions govern, not the statute.

Recently, I represented the father of a 10-year-old girl with attention-deficit hyper-activity disorder (ADHD). Since her birth, he and her mother shared her time equally, 50%/50%. Although the two had never married, they both supported the child emotionally and financially, pursuant to a 2003 temporary access and time-sharing order entered in the paternity case filed by the father. In 2005, a permanent order was entered which incorporated the 2003 access and time-sharing order.

By 2007, when I became involved in the case, each parent was in a happy marriage. However, the mother planned to relocate to California with the child because of her husband's Coast Guard transfer order. The father opposed the relocation, and filed suit to stop the move. The mother's husband then requested and received a four-year extension, and the suit was voluntarily dismissed.

But four years later, the relocation issue resurfaced. After the mother filed a petition in April, asking to move in June, I asked for the appointment of a guardian ad litem to assist the court in its determinations. The guardian wrote an extensive report explaining why relocation would not be in the child's best interest. A mediation session resulted in an impasse, and a trial date was set for July. Three days before the trial, the judge became ill, and the hearing was rescheduled before a substitute judge who was unfamiliar with the case.

At the hearing, the mother presented eight photos of her new house which is 260 square feet larger than the Miami home and testified that she would be a "stay-at-home" mom. I pointed out that the mother had been working for ten years, and the child had thrived with four working parents. I cautioned that the couple's net family income dropped at the same time their living expenses in California would undoubtedly rise and testimony from both parents confirmed that her Miami school is a k-8th grade center and her California school will require her to change schools in a year to attend middle school. Finally, both parents acknowledged that the child's family, with the exception of her mother, step-father and two very young half-siblings all live in Florida including her half-sister, all her grand-parents, aunts, uncles, cousins, a loving family community which includes her step-mother's family and her step-father's family.

Nevertheless, the judge granted the mother's motion for relocation. He ignored the guardian's report, which included a psychologist's opinion that the girl should remain here in a familiar school environment. In his order, he said the mother was the primary caretaker and that the child spent "the vast majority of her

time with her mother” which was contrary to all the testimony, evidence and record of the case.

Needless to say, my client and I were upset with the outcome. The hearing was on August 3rd, I filed my notice of appeal and a motion for an expedited hearing on August 4th, it was denied August 5th “pending the submission of the initial brief” which I filed with a renewed motion for an expedited hearing August 11th. On August 12th, the renewed motion was granted and scheduled for hearing August 18th before the Third District Court of Appeal. Be careful what you ask for. Two of the three judges asked me several questions about the benefit of stay-at-home moms/parents and having a bigger house. No judge asked me about the lack of evidence supporting relocation or the evidence before them of the trial court’s lack of knowledge of the facts given three findings the court made that were contrary to the facts, the evidence presented and the record.

So despite a statute that says the relocating parent must prove *by the preponderance of the evidence* that it is in the *child’s* best interest to relocate, there is still judicial bias on behalf of the mother. But when a child is fortunate to have two good parents, the relocation decision must be based on the facts – not assumptions or traditional beliefs. Discretionary power may give a judge the right to be wrong but it doesn’t confer the right to ignore the evidence or lack thereof.

The judge who wrote the affirming opinion skeptically questioned me, “So counsel, are you proposing we have a forensic psychologist in every relocation case?” “No, your honor, but that might be a very good idea.”

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Attorney Brenda B. Shapiro provides legal counsel to clients on family law matters, including prenuptial and postnuptial agreements, divorce, child custody, access and time-sharing, post-dissolution, domestic violence, and grandparents’ rights. She established the Law Offices of Brenda B. Shapiro, LLC in 1994, where she is managing partner. She is also a founding director of the Collaborative Family Law Institute. For more information, www.bbshapirolaw.com.