

CUSTODY RELOCATION UPDATE

The Burdens of a Move

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It has been approximately six years since the seminal decision concerning custody relocation, Gruber v. Gruber, 400 Pa. Super. 174, 583 A.2d 437 (1990), was authored by Judge Beck of the Pennsylvania Superior Court. In the intervening years, we have seen an increasing number of custody relocation cases and numerous interpretations and applications of the Gruber criteria.

Contributing to the increase in custody relocation cases is the reality of American geographic mobility. According to statistics,¹ each year approximately one American in five changes residences. Furthermore, according to 1983 rates, a newborn American will probably move about 10.5 times during his or her lifetime, with approximately 3.8 of these moves transcending county boundaries. Also cited as contributing factors to the rise in the number of custody relocation hearings are recent cut backs in the job market and an increasing number of employer initiated job transfers. These factors directly impact the parents of the children at issue, but also affect their new spouses and lovers.

The Pennsylvania Superior Court recently addressed the issue of custody relocation once again in Gancas v. Schultz, supra. In Gancas, the Appellant, Barbara Schultz, appealed from the lower court's Order granting primary physical custody of the parties' daughter, Elizabeth, to Appellee, Robert Gancas, and denying Mother

See Gancas v. Schultz, No. 01052 PITTS. 1995, 1996 WL 499007 (Pa. Super. 8/20/96) at p. 4.

permission to relocate with the parties' daughter to the State of New Jersey. The Pennsylvania Superior Court reversed and remanded the lower court's decision due to the fact that the trial court determined that Mother bore an additional burden which is not included in the Gruber criteria for making a custody relocation decision, and was not in the best interest of the child. The trial court in Gancas concluded:

The mother is moving for a good reason on her part. Her husband has a good permanent job in New Jersey, they both have family there, they've known each other for years prior to their getting married and having their first child.... She isn't making this move to just get away from the father or make it difficult for him.

The lower court in Gancas determined that all things were equal, and since it was Mother who was the moving party, she had to forfeit custody. The lower court did not consider the availability of realistic, substitute visitation arrangements which would adequately foster an ongoing relationship between Elizabeth and her father if the requested move was granted. Since the lower court failed to make this determination, and instead, awarded primary custody to Father based upon the sole fact that Mother was moving, a move which the lower court determined to be in Mother's interest, this case was reversed and remanded for a determination based upon "all factors which legitimately have an affect upon the child's physical, intellectual, moral and spiritual well being" and what, if any, realistic substitute visitation arrangements exist which would adequately foster an ongoing relationship between the child and her father. The Superior Court concluded that such a

determination goes to the ultimate consideration of the Court, "What is in the best interest of the child?"

Gancas confirms the criteria for a relocation determination, and clarifies that there should be no prejudice placed upon the relocating party when all other criteria set forth in Gruber have been satisfied. The Gancas case also demonstrates that the Pennsylvania Superior Court will not hesitate to strike down a lower court's decision which places additional burdens on a moving party when it comes to a custody relocation.

The Pennsylvania Superior Court's Opinion in Gancas illuminates the fact that unless they obtain the consent of their former spouses or lovers, relocating parents are routinely subjected to delays and litigational burdens - burdens that are often greater than those imposed by the criminal law on those who wish to relocate, but are on probation, parole or supervision. The delays and the financial and psychological costs associated with custody relocation hearings, as we currently know them, often lead to the loss of: employment opportunities, new relationships, out of state education opportunities, and family support systems, or in the alternative, a loss of custody.

The lesson to be learned from the Gancas decision is that although a party seeking to relocate out of the jurisdiction with the minor child or children may have the initial burden of showing that the move would enhance his or her quality of life, and derivatively, that of the child or children, the burden stops here. There is no additional burden placed upon the moving party when all

other things are relatively equal. The bottom line is, a court cannot penalize a parent for seeking a relocation unless the parent objecting to the move can substantiate a claim that the move is not in the best interest of the minor child or children.

Despite the fact that the Superior Court continues to give us guidance in trying these cases, packing your bags for a custody relocation is no easy move and often a costly and time consuming endeavor.