

Can My Ex-Wife Relocate Our Children To Florida?

June 20, 2012 | by Matheu Nunn

Dear Ask the Attorney:

My ex-wife has family in Florida. Now, she wants to move down there from New Jersey with our kids because she wants them to be closer to her parents (their grandparents) because she says she can get a job in her field more easily down there than here and free babysitting services by her parents. In our parenting agreement, I am specifically entitled to 100 overnights per year. Obviously, I want to be near our kids but my job is up here. Can she relocate down there without my permission?

M.J.

Our guest blogger is Matheu D. Nunn, Esq., an associate with the firm of Einhorn, Barbarito, Frost & Botwinick, PC. He is also the current Morris Township Prosecutor.

Dear M.J.

You asked me to answer one of the toughest and most emotionally-driven questions a judge (*emphasis on “judge”*) can answer.

The answer is your wife **may** be able to move your children to Florida. In your email, you indicated that your wife wants to move near her parents where the “job market is better.” You also mentioned that under your settlement agreement you will have 100 overnights per year. These facts, unfortunately, may be helpful to your former wife’s desired move. However in order to get a definitive answer, more facts may be needed.

New Jersey law provides that a child who was born in New Jersey or who has resided within its limits for five years may not be relocated by a parent from the State of New Jersey, absent the consent of both parents or an order from the court finding sufficient reason to permit such a move. If that statute applies, the court then determines the existing status of custody of the parties' children. If the situation is of such an arrangement that one parent serves as the primary caretaker, then that custodial parent's request to relocate the children is governed by a two-part test

(1) there is a good faith reason for the move and

(2) that the move will not be contrary to children's best interests.

On the other hand, if a "shared parenting" arrangement exists (each parent essentially performs an equal caretaking role), then the application will be analyzed under the stricter change-of-custody test. This decision hinges solely upon an analysis of the best interests of the children, regardless of the parent's good faith motivation to relocate. In such instances, "the party seeking the change in the custodial relationship must demonstrate that the best interests of the child[ren] would be better served by residential custody being vested primarily with the relocating parent."

If this issue arises in your case – and it sounds like it may – the court will likely conduct a plenary hearing (a hearing with testimony) to determine "the best interests of the children." The judge may also interview your children in chambers (note: you can propose questions for the judge to ask) and take expert testimony from individuals who may offer helpful insights about the likely impact of a move upon your children, and about the prospects that a visitation plan will guarantee regular communication and contact of a nature and quality to sustain relationships with you (the non-custodial parent).

Ultimately, you must come forward with evidence not just that visitation will change after the relocation, but that this will negatively affect the children. You can ask the court to consider the school system the children will be enrolled in; the relationship, if any, that you have with your wife's family members, your wife's motivation(s), and, whether the proposed parenting schedule created by your wife (assuming she does this) is one that will help foster a relationship with you.

At the risk of being the bearer of potentially bad news, the custodial parent's chance of succeeding in a relocation request is not as low as you might hope. As one court put it "changes in visitation alone cannot serve as an 'independent basis' for denying removal." However, without knowing all of the facts that would be germane to this case, I can give you a definitive answer. Be ready for a battle and make sure you have a good matrimonial/family lawyer who can help you with this.

Good luck.

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