

Parent/Child Relocation

New Jersey Divorce Attorneys Experienced with Parent/Child Relocation

Relocation of children from New Jersey is often the most hotly-contested issue facing divorced (and divorcing) spouses. In the absence of consent between former spouses, relocation disputes are guided by Bisbing v. Bisbing, 230 N.J. 309 (2017), a New Jersey Supreme Court decision in which Einhorn Barbarito Partner Matheu D. Nunn prevailed on behalf of a New Jersey resident who opposed relocation. Under Bisbing, a parent seeking to relocate from New Jersey must establish that the proposed relocation is in the child's best interests. The Bisbing Court held that "best interests" can be established by weighing the factors set forth in N.J.S.A. 9:2-4, as well as other relevant considerations. Pursuant to N.J.S.A. 9:2-4(c), a court should consider the following, non-exhaustive factors:

- the parents' ability to agree to communicate and cooperate in matters relating to the child;
- the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse;
- the interaction and relationship of the child with its parents and siblings;
- the history of domestic violence, if any;
- the safety of the child and the safety of either parent from physical abuse by the other parent;
- the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision;
- the needs of the child;
- the stability of the home environment offered;
- the quality and continuity of the child's education;
- the fitness of the parents;
- the geographical proximity of the parents' homes;
- the extent and quality of the time spent with the child prior to or subsequent to the separation;
- the parents' employment responsibilities; and
- the age and number of the children.

The Supreme Court's decision in Bisbing represents a departure from the decades-old approach to relocation disputes that the Supreme Court adopted in Baures v. Lewis, 167 N.J. 91 (2001). In Baures, the Court emphasized “the identity of the interests of the custodial parent and child” and opined that “social science research links a positive outcome for children of divorce with the welfare of the primary custodian and the stability and happiness within that newly formed post-divorce household.” Baures, 167 N.J. at 106 (citing Judith S. Wallerstein & Tony J. Tanke, To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce, 30 Fam. L. Q. 305, 311-12 (1996)) (emphasis added). Based on that logic, prior to Bisbing, a primary custodial parent could relocate if he or she established that the proposed move was being made in “good faith”, for example, to pursue greater employment responsibilities or move closer to a family; and that the proposed move would not be harmful to the child. That is, unlike the approach adopted in Bisbing, the Baures decision did not require a litigant to establish “good cause” through the “best interests” factors set forth in N.J.S.A. 9:2-4(c).

Through the new approach adopted in Bisbing, trial courts must conduct a full investigation into all family circumstances that bear on the potential benefits versus potential costs of moving the child a substantial distance from the other parent. As with almost any custody dispute, a child's best interests could be buttressed with documents, testimony from fact witnesses, and expert proofs from psychologists and other professionals that help illuminate the child's best interests. However, “because the primary risk to a child's best interests in a relocation case is the harm to the child's relationship with the non-moving parent and concomitant losses associated with a diminished relationship, it is essential for courts — and, in turn, the attorneys and litigants — to evaluate whether any perceived gains from the move will offset or compensate for the losses.” See **Richard A. Warshak and Matheu D. Nunn**, ‘Bisbing’ Evens the Playing Field in Child Relocation Cases, 223 N.J.L.J. 58 (September 25, 2017).

Although the Bisbing Court did not provide additional factors for consideration, it did highlight that a “parent of primary residence may have important insights about the arrangement that will most effectively serve the child. The parent of alternate residence may similarly offer significant information about the child. The views of other adults with close relationships with the child may also inform the court's decision.” As noted in ‘Bisbing’ Evens the Playing Field in Child Relocation Cases, supra, a court

might find that evidence about a child with special needs is relevant “if those needs will be best accommodated by relocation—so long as any other emotional or physical issues of the child are not substantially exacerbated by the separation from the non-custodial parent.” Moreover, “a reviewing court may also be moved by evidence that the non-relocating parent has little or no relationship with the child, thus, raising a fair inference that the objection to the move is done merely to frustrate the relocating parent without regard for the child’s best interests.” Ibid. While the types of relevant proofs may vary from case-to-case depending on the children’s circumstances, Bisbing requires an analysis that focuses on the children’s best interests in light of risk factors that exist by virtue of an out-of-state relocation. In doing so, the Bisbing Court ushered in an approach that is in line with the broad consensus of social scientists, who remain in agreement that a child’s best interests is inexorably linked to the child’s stable and continued relationship with both parents. See Richard A. Warshak, Social Science and Parenting Plans for Young Children: A Consensus Report, 20 Psychol., Pub. Pol’y & L. 46 (2014); see also Sanford L. Braver, et al., Relocation of Children After Divorce and Children’s Best Interests: New Evidence and Legal Considerations, 17 J. Fam. Psychol. 206, 210 (2003).

Given the complexities of child relocation and divorce in New Jersey, we advise you to contact one of our experienced Morris County divorce lawyers or family law attorneys at [973-627-7300](tel:973-627-7300) at Einhorn Barbarito today. We handle relocation and child custody issues throughout New Jersey.