

# A Review of Social Science Research on Post Divorce Relocation

By  
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## I. Competing Interests in the Courts

Relocation is one of the more agonizing child-related issues in divorce and post-divorce litigation, in part because relocation appears to be, and often is, a win/lose situation for the parents. Much can be at stake for both. For the parent proposing the move, it might include a new romantic relationship, even a marriage, a wonderful career opportunity, a chance to get out of a town never liked, a means by which to ease the shame of a marriage gone bad, or an opportunity to move nearer to extended family. For the parent contesting the move, it might mean the loss of day-to-day participation in the child's life,<sup>1</sup> opportunities to attend school functions, dance recitals, seeing the first date and other significant milestones, and ultimately, the loss of the relationship with the child. In the dispute, both parties are likely to become angry antagonists. The parent proposing the move might be angered that the connection to the former spouse could still wield so much controlling influence on his or her life. The parent who is threatened with the move might be angered that the other party might wield enough power to move away with the child. Parties might begin to see the issue as one of justice (e.g. "You are the one who wants to move. You leave the child."). Parents might become frightened about the potential effects of

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<sup>1</sup> For simplicity, I will refer to the singular "child" throughout this article, although in any individual case there might be plural "children."

the move on their relationship with their child or about the financial implications of the move. A family that has settled into a post-divorce pattern can be so disrupted by a proposed relocation that the conflicts of the divorce might be resurrected and an otherwise good coparenting relationship might be disrupted. The mother's interests compete directly with the father's interests and skilled rhetoric allows each of them to define the child's interests as aligning with that parent's interests.

The litigation process can fuel these fires. To win a relocation case can appear to require minimizing the importance of the other parent, exaggerating weaknesses and mistakes in the parties, and dragging up the muck, so to speak. Courts sometimes find themselves on the horn of a dilemma in which either allowing or prohibiting relocation in a specific case appears to do more harm than good. The author was an expert specific to the social science research recently in a case in which the mother had announced that if the court did not allow her to move with the child, she would not move, in spite of what appeared to be legitimate reasons. On the other side of the issue was a father who had made it known that if the court allowed the relocation, he would move to be near his son. In this case, the court was faced with the odd decision of whether to allow the relocation, knowing that in either case, the parents would live in the same geographic location. On what, then, can a court rely as to the *best interests of the child*?

The ambivalence of the courts and legislatures on this issue is well documented. Several authors have noted the flip-flopping of the courts across states and across time on this issue.<sup>2</sup> A good example of the dilemma within one jurisdiction is the work of Elizabeth Green Lindsey, who examined the ongoing problems with changing custodial trends and relocation case law in Georgia.<sup>3</sup> In summary, courts in a state will lean in the direction of

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<sup>2</sup> See, e.g., Paula Raines, *Joint Custody and the Right to Travel: Legal and Psychological Implications*, 24 J. FAM. L. 625 (1985-1986); N.L. Trush, *After the Divorce*, Paper presented to the ABA/APA conference on Children and Divorce (1997).

<sup>3</sup> Elizabeth Green Lindsey, *Relocation After Lewis and Scott: New Challenges for Trial Courts*, paper presented at the 2003 Annual Summer Seminar for Superior Court Judges in Georgia, available at <http://www.dmqlaw.com/CM/Articles/Articles95.asp>.

supporting a parent's rights to relocate with the children and then reverse themselves and make relocation more difficult for the parent wishing to move with the children. In one famous case in Oregon, the court made a decision to allow relocation of a mother and her children, only to reverse that decision a year later. A recent illustration of this ambivalence occurred in California. In *In Re Marriage of Burgess*,<sup>4</sup> about nine years ago, with the assistance of psychologist Judy Wallerstein who wrote an amica curiae brief,<sup>5</sup> the California Supreme Court ruled that the primary custodial parent had a "presumptive right" to relocate, unless it was detrimental to the child or if the move was made in bad faith. These are high hurdles of proof for the opposing parent. In a recent case, *In re the Marriage of LaMusga*,<sup>6</sup> the Supreme Court of California essentially reversed *Burgess*, removing the presumptive right of the primary custodial parent to move. In *LaMusga* the Supreme Court ruled that the lower court could consider the impact of the move on the children and make a decision based on the best interests of the child standard rather than proving detriment. This was a hotly contested case with input from several advocacy groups and with attorneys and mental health professionals submitting extensive briefs on both sides of the issue.

This ambivalence in the courts reflects society's general ambivalence in divorce as to the rights of the parents versus the best interests of the child, and, to a lesser extent, gender disputes occurring in the family courts.<sup>7</sup> This ambivalence crystallizes on the issue of relocation because few issues in the courts better exemplify the win-lose outcome, in which the rights of parents, typically of mothers, to make choices unencumbered by the former

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<sup>4</sup> *In Re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996).

<sup>5</sup> She adapted an article from the brief. See 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 (1998).

<sup>6</sup> *In Re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004).

<sup>7</sup> Relocation has been addressed in the literature as a gender issue because proposed relocations are dominated by mothers and accompanied by fathers' resistance to the moves. A recent research study on relocation was viciously attacked on gender based websites as a deliberate pro-father ruse. See 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 (2003), criticized at [www.thelizlibrary.org](http://www.thelizlibrary.org).

spouse, and the rights of parents, typically fathers, to be or remain actively involved with their children come to a head.<sup>8</sup>

The purpose of this article is to examine this difficult problem from a child-focused perspective and to look at the potential impact of both possibilities, i.e., allowing or defeating the proposed relocation. This information is intended to be useful and informative to both parties, identifying relevant factors and assisting them to reach a *child-friendly* settlement or, failing that, to provide child-focused information to the court, through the attorneys and/or experts. Thus, while the article examines relevant factors that either support or contraindicate relocation, it also offers information, in the form of points made under the heading of *Cooperative Strategy*, on mitigating the potential harm of a decision that is adverse to the interests of the child. While to some extent this is playing both sides of the issue, the goal of this article is to minimize harm to children, independent of the outcome of the dispute.

This article is organized in a sequential format. The factors that have been found relevant in social science research are listed individually. Each finding reported offers an argument for or against relocation, or is neutral on the topic. Each factor is included because a particular factor might be relevant in a specific fact situation. Following each finding, information is provided on how to mitigate that finding if one is arguing the opposite position. For example, following a finding that suggests that relocation is likely to be risky to the child's best interests, an argument is offered to look at this from the opposite position, if one were representing a party who wanted to relocate. These arguments will not be in the form of impugning the research findings but rather will offer an approach to mitigating the negative impact of that factor by demonstrating an awareness of it on the part of the client, indicating knowledge of the risk posed and a specific plan for minimizing that risk. In other words, the *contrary* arguments are plans that place the best interests of the child at the fore and support a child-focused cooperative strategy. Although these factors are listed sequentially, the facts of a specific case almost

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<sup>8</sup> The American Academy of Matrimonial Lawyers devoted an entire journal to the complexities of relocation, including proposed model statutory guidelines. See American Academy of Matrimonial Lawyers, *Proposed Model Relocation Act*, 15 J. AM. ACAD. MATRIM. LAW. 1 (1998).

always must weigh at least several of the factors together. That is, although isolated here, these factors form a congruent whole that might include contradictory findings, which must be balanced to produce a coherent argument for or against a proposed relocation.

## II. Overview of Social Science Research on Relocation

### A. Absence of Attention to Outcomes and Shared Custody Situations

Little systematic research looks at actual outcomes in relocation cases. Most of the work that has been done on this topic has been extrapolated from other research. It is also a somewhat controversial area of study. The two sides in the debate might probably best be represented on the one hand by the work of Wallerstein in her *amica curiae* brief submitted in the *In Re Marriage of Burgess* case in California and the work of Warshak, published in various journals,<sup>9</sup> on the other. In their briefs submitted in *In Re Marriage of LaMusga*, Wallerstein and Warshak expanded upon this debate. I have reviewed both bodies of research in preparing this article and have spoken with people knowledgeable on this topic. In this article, I present the basic findings from over seventy studies and literature reviews. The bulk of these findings contraindicate relocation in most cases.

A second factor should be addressed when looking at relocation. Much of the debate has centered on fact situations in which one parent is the primary custodian of the children and the objecting parent is the non-custodial parent.<sup>10</sup> There appears to be very little debate on the issue of shared or equal custody cases, and this issue apparently has not yet been dealt with at the

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<sup>9</sup> Warshak's publications include a specific critique of Wallerstein's *Burgess* Brief. See Richard A. Warshak, *Social Science and Children's Best Interests in Relocation Cases: Burgess Revisited*, 34 FAM. L.Q. 83, 84-108 (2000). See also *Amici Curiae* Brief of Richard A. Warshak et al. on behalf of LaMusga Children, *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004) (No. S107355), available at [http://www.atybriefcase.com/volexports-/lamusga/warshak\\_brief.pdf](http://www.atybriefcase.com/volexports-/lamusga/warshak_brief.pdf).

<sup>10</sup> An exception is *In Re Marriage of LaMusga*, 88P.3d at 85-88. While the mother in this case was the designated primary physical custody parent, the children in fact were spending substantially shared time with both parents.

appellate court level. In her brief in the *Burgess* case and later in published articles, Judy Wallerstein clearly states that her opinions do not apply to families in which the children are in a substantially equal custodial residential arrangement, families in which maintaining the stability of the family includes maintaining geographic proximity.<sup>11</sup> The debate on relocation, therefore, appears to center on cases in which there is a primary custodial parent and the opposing non-custodial parent is already, to some extent, more on the periphery of the child's life. As one might infer, the degree of involvement of a non-custodial parent can vary enormously. One non-custodial parent might have physical placement of the child four to five days every two weeks, might attend sporting and school events, might be actively involved with teachers, counselors, and the child's peers and so on. Another non-custodial parent might passively have the children two to four days each month and have little participation in the child's life outside of the home. These are very different fact situations.

#### B. *Cautions in Assessing Social Science Findings*

The reader of research findings presented in this review should remain mindful of the overriding weakness in social science research on this topic noted above. Little systematic research has been done to examine actual outcomes in relocation cases. There are inherent dangers in extrapolating from one set of research findings in one type of problem and applying those findings in a logical and sequential manner to other problems. As one example, no actual research exists that compares non-custodial parent involvement in the following two scenarios: one in which parents live near one another and the non-custodial parent has three to four days every two weeks and attends many of the child's events outside of the home versus one in which parents live far apart and the non-custodial parent not only attends but is the major organizer of events during the summer and has large blocks of uninterrupted time of being primarily responsible for the child. Extrapolations might lead toward a conclusion in

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<sup>11</sup> E.g., 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 (1996).

one direction on this comparison, while actual research, if it were conducted, might lead in a different direction.

A second caution is offered regarding the danger of relying too heavily on social science research whose findings are correlative. For example, we can reliably say that 25% of children of divorce are likely to have substantial adjustment problems, whereas only 10% of children from intact marriages are likely to have those same major adjustment problems.<sup>12</sup> We can correctly assert, therefore, that children of divorce are two and a half times as likely to develop substantial adjustment problems. However, these findings are correlative in that one cannot conclude that a causal relationship exists between divorce and adjustment problems. In fact, there is good research to suggest that divorce is not the cause of these adjustment problems. The causal factors for adjustment problems in children, whether in a family with an intact marriage or with divorced parents, are mental health problems in parents, the level of conflict in the family, socio-economic status to some extent, temperament of the child, and quality of parenting. These are the family based causes of adjustment problems in children and the presence of these factors also appears to cause higher divorce rates. In a sense, we might cautiously conclude that both divorce and adjustment problems in children are the parallel results of other problems in the parents.

The parallel argument implied here is that while a specific proposed relocation might have associated risks, it might not be causative. It might be, for example, that the rates of poor outcomes are higher with relocation, but that this outcome might be skewed by highly unstable parties who relocate repeatedly. It might be that having a highly unstable parent is the problem and that the move is not. In an individual case, the parent might be generally stable and only making this one relocation.

A third caution is implied in the paragraph above. The manner in which research findings are worded can greatly affect their

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<sup>12</sup> These are actual findings of a major longitudinal study conducted by E. Mavis Heatherington and colleagues and published in numerous articles. See, e.g., E. Mavis Heatherington, et al., *What Matters? What Does Not? Five Perspectives on the Association between Marital Transitions and Children's Adjustment*, 53 AM. PSYCHOL. 167 (1998); Mavis Heatherington et. al., *Long-Term Effects of Divorce and Remarriage on the Adjustment of Children*, 24 J. AMER. ACAD. CHILD PSYCHOL. 518 (1985).

impact. Returning to the example in the previous paragraph, an expert might report that children of divorce are two-and-a-half times more likely to have serious problems relative to children with parents in intact marriages, making divorce sound quite harmful. However, the expert could also accurately assert that children of divorce were about as likely to do moderately-to-very-well as children in intact marriage families (i.e., 75% compared to 90%), making divorce sound innocuous. The same factual research findings can acquire a good deal of “spin” depending on whether the authors or others have personal leanings or an agenda.

### C. *Cooperative Strategy*

The final caution offered here related to relying on social science research is that findings are predictive in probability only.<sup>13</sup> What this means is that while research may indicate that 50% of children are likely to have a poor outcome if a certain action were taken, it cannot be said if the child in a particular case will have that outcome. If a certain action, such as relocation, does not adversely affect all children, the key in a particular case is discovering which children are most or least likely to be affected.<sup>14</sup> Then, quite obviously, the next step would be to argue that your client’s child fits into one or the other category, depending on the position you are taking. However, to do this well, if you represent the client who wants to relocate, you must be able to show that your client is willing to take the steps necessary to assist the child to be one of those children who is least likely to be affected. One important factor in determining the effect of relocation is that the relocating parent values the active involvement of the other parent and is willing to make a substantial effort to keep the other parent informed and involved.<sup>15</sup> Arguing that the other parent is valueless is likely to be counterproductive. In fact, one of the strongest arguments for

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<sup>13</sup> Of course, this is true of all argumentation associated with the future, because there is no certainty in the future.

<sup>14</sup> We do not yet have this research.

<sup>15</sup> This is consistent with findings that show better adjustment in children when they have the active involvement of both parents in their lives. See, e.g., Paul Amato & Bruce Keith, *Parental Divorce and the Well-Being of Children: A Meta-analysis*, 110 *PSYCHOL. BULL.* 26 (1991).



relocation is one in which the role of the non-custodial parent, who hitherto has played a minimal role in the child's life, is described as increasing in depth and breadth. It might be a positive strategy to demonstrate that your client sees that other parent as potentially valuable to the child and that blocks of time might greatly increase a positive bond and level of interest and involvement relative to the current situation. Not only might this be a good argument in favor of allowing the relocation, it is also true that it would likely be in the best interests of the child.

### III. The Short Term Impact of Relocation

#### A. *Instability Accompanying the Divorce Itself*

The literature clearly indicates that a divorce has a disruptive, even sometimes traumatic, effect on children, at least in the short term.<sup>16</sup> A divorce disrupts the family structure and the patterns of care in the family; it also might disrupt the child's relationships with extended family, neighbors and friends, and possibly even necessitate major changes such as the school the child attends. Children are therefore vulnerable to additional disruption, especially around the time of a divorce and most professionals agree that adding to those major disruptions creates risks to the child's adjustment to the separation.<sup>17</sup> Even Wallerstein cautions against increasing the disruptive experience of children close to the time of the divorce with a major relocation.<sup>18</sup> Other authors have noted that the fact of a parental separation itself is relocation, changing the patterns of relationships that have existed in the family.<sup>19</sup> The short-term disruption and eventual physical distance of the initial separation has a more quantitative than a qualitative effect on the relationships in the family.

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<sup>16</sup> For a summary of this research, see WILLIAM F. HODGES, *INTERVENTIONS FOR CHILDREN OF DIVORCE: CUSTODY, ACCESS, AND PSYCHOTHERAPY* (1991). See also, JUDITH WALLERSTEIN & SANDRA BLAKESLEE, *SECOND CHANCES: MEN, WOMEN AND CHILDREN A DECADE AFTER DIVORCE* (1989).

<sup>17</sup> See e.g., Barbara J. Jameson, et al., *Psychologists Ratings of the Best Interests of the Child Custody and Access Criterion: A Family Systems Assessment Model*, 28 PROF. PSYCH. RES. & PRAC. 253 (1997).

<sup>18</sup> Wallerstein & Tanke, *supra* note 11, at 311.

<sup>19</sup> See e.g., Marion Gindes, *The Psychological Effects of Relocation for Children of Divorce*. 10 J. AM. ACAD. MATRIM. LAW. 119, 122-23 (1998).

Long distance relocation changes the quality of the relationships that the child has with both parents.

A child can experience mental health problems as a result of excessive instability or too many disruptions occurring simultaneously (e.g., “cumulative stress syndrome” described by William Hodges<sup>20</sup>), including changing residences, after a divorce. Others have found that these detrimental effects of relocation appear to be more pronounced in children with separated parents than children from intact families, presumably because of the already existing stress factors in the family to which the child must adapt.<sup>21</sup> The very act of a major relocation following a parental separation is risky both to the short-term and the long-term adjustment of the child. If the loss that the child experiences in the parental separation is compounded by the loss of one of the two parents, the child might experience ongoing anticipation of loss that interferes with later adult relationships.

#### B. *Cooperative Strategy*

The interval since the parental separation needs to be examined. If the time of the separation is close to the time of the proposed move, the argument for relocation is weak. It is important to view the event from a child’s perspective. The significant event is the parental separation, not the legal divorce. If the separation occurred a year before the divorce, therefore, one might make a more compelling argument that the child has had an opportunity to adjust to the separation and might be better able to cope with the added stress of the proposed relocation. Another reasonable position might be to argue that relocation at that time could be positive, if it is known that relocation is likely to take place eventually. For a given child, it might be propitious to have the instability resolved as soon as possible, so that the child can settle into a stable post-divorce setting and pattern as soon as possible. This is, however, a rhetorical argument and might not accurately reflect the best interests of the child.

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<sup>20</sup> William F. Hodges, et al., *The Cumulative Effect of Stress on Preschool Children of Divorced and Intact Families*, 46 J. MARRIAGE & FAM. 611 (1984).

<sup>21</sup> Arnold L. Stolberg & James Anker, *Individual, Familial and Environmental Determinants of Children’s Post-Divorce Adjustment and Maladjustment*, 11 J. DIVORCE 51 (1987).

Another risk that ought to be addressed in a move proposed to take place shortly after the parental separation is the motivation behind the proposal. The motive might be reflexive and impulsive. A separating parent might be frightened and have an impulse to retreat to the safety of extended family or might feel ashamed and want to run away from the area so as to avoid confronting feelings of shame. If motives, in part or wholly, for a proposed relocation are reflexive or impulsive, there is a high risk that a second relocation might follow, once the emotions of the divorce have receded. If relocation truly is a sound idea one month after the separation, it will still be sound six months later. If it is reflexive and impulsive, six months later the relocation might not seem so wise.

Assuming one of the parties wants to relocate close to the time of the divorce, because the divorce is a major disruption for all of the parties, consideration can be given to a proposal that all of the parties make the move simultaneously. Enticements to the other parent, for example, to also relocate, in terms of a favorable residential schedule or perhaps even to provide some economic benefit can be considered. If a proposed move is to a geographic location where there is a more extensive support system for the parent proposing the move, making that support system available to the other parent might be an incentive. For example, if grandma, can provide childcare while the one parent works, perhaps she could also watch the child while the other parent works. The benefits of a stable support system, rather than looking at unstable and expensive daycare options, might be compelling. The major advantage to this approach is that it truly might be best for the child. Both parents living in the same location, making use of the advantages that a specific relocation promises could well be best for the long-term interests of the child. The availability of support systems for children and for parents, for example, has been found to correlate positively with post-divorce child adjustment.

The author was involved in mediating a relocation case in which the mother was offered a compelling career improvement, including about a 150% increase in income. Although the parties initially dismissed out of hand the possibility of the father moving, I convinced them that because they appeared to be at impasse and would no doubt be litigating the issue, spending some

time really exploring the possibility that they would both relocate could do no harm. We spent a fair amount of time developing a vision of both relocating, what it would take for this to be a *win-win* solution, and what each would be willing to do to accomplish this vision. They resolved the dispute by developing a plan that included the mother paying for an apartment in the old location for the father so that he could return regularly to spend time with friends and continue to conduct his business.<sup>22</sup> The father attained a residential placement schedule that he would not likely have achieved without agreement, the mother was allowed to take the position, knowing that the father was a great support system for the child while she pursued for her new busy career, and her out of pocket expense was insubstantial relative to her increased income. The children won because they had both parents in the same location, with neither parent regretting or resenting that fact.

#### **IV. Case Specific Impact of Relocation**

##### *A. Age of the Child*

In addition to the obvious disruptions in the child's schooling, peer system, relationships with other adults (such as coaches, dance teachers, and grandparents) and even the child's familiarity of the physical layout of the community, relocation disrupts the relationships that the child has with each parent. Moving to blocks of time rather than frequent and regular contact with each parent changes the character of those relationships. There might also be a qualitative change in the involvement of the parents in the child's life. After relocation, for example, the help with homework that a child regularly received from one parent prior to the move might no longer occur. All of these types of changes have a different impact on children at different ages. This section examines some of the basic differences.

##### *1. Under 6 Years Old*

###### *a. Parent-child bonds*

With a young child, the loss of support systems outside of the immediate family is less disruptive than it would be with an

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<sup>22</sup> His work required very little on site presence.

older child who might have established friendships, coaches, a familiar school and social system, and so on. The disruption of the parent/child relationships, and possibly the relationships with other important caregivers and attachment figures (e.g., a step parent, a grandparent, and step-siblings) which relocation imposes on the young child is life-long and probably impossible to correct with any form of residential placement schedule. In fact, any form of residential placement schedule that attempts to support the relationship with the non-custodial parent is likely to do even more harm to the child.

The issue for young children is the very nature of the parent/child bonds relative to the developmental capacity of the child. A young child develops the primary parent/child bonds from birth to about three years old. Because of intellectual and psychological capacity factors, those bonds remain fragile until about five to seven years old. After that, those bonds are relatively stable, even if separated from a parent by blocks of time. Before that, those bonds can be strained or broken by large blocks of time away from a parent or other attachment figure. Extensive research informs us that a child has a much better chance of doing well over time if he or she has strong positive bonds to two parents, although much of this research has been on the importance of post divorce father involvement.<sup>23</sup> Geo-

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<sup>23</sup> Paul D. Allison & Frank Furstenberg, *How Marital Dissolution Affects Children: Variations by Age and Sex*, 25 DEV. PSYCH. 540 (1989); Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-being of Children: A "Meta-Analysis,"* 110 PSYCHOL. BULL. 26 (1991); Arthur B. Elster & Michael E. Lamb, *Adolescent Fathers: A Group Potentially at Risk for Parenting Failure*, 3 INFANT MENTAL HEALTH J. 148 (1991); Frank Furstenberg, *Childcare after Divorce and Remarriage*, in IMPACT OF DIVORCE, SINGLE PARENTING, AND STEP-PARENTING ON CHILDREN 256 (E. Mavis Hetherington & Josephine D. Arasteh eds., 1988); Frank Furstenberg et al., *Paternal Participation and Children's Well-being After Marital Dissolution*, 52 AM. SOC. REV. 695 (1987); Kristi Hannan & Thomas Luster, *Influence of Parent, Child, and Contextual Factors on the Quality of the Home Environment*, 12 INFANT MENTAL HEALTH J. 17 (1991); Alan J. Hawkins & David J. Eggebeen, *Are Fathers Fungible? Patterns of Co-resident Adult Men in Maritally Disrupted Families and Young Children's Well-being*, 53 J. MARRIAGE & FAM. 958 (1991); James Herzog, *Sleeping Disturbance and Father Hunger in 18 to 28 Month Old Boys: The Erlkonig Syndrome*, 35 PSYCHOANALYTIC STUDY OF THE CHILD 219 (1980); James L. Peterson & Nicholas Zill, *Marital Disruption, Parent-child Relationships, and Behavior Problems in Children*, 48 J. MARRIAGE & FAM. 295 (1986); Judith A. Seltzer, *Relationships Be-*

graphic distance puts this critical aspect of the child's adjustment at risk. Often, parents and courts will try to compensate for the relocation by one parent by giving the parent who is left behind substantial blocks of time with the child (e.g., six weeks in the summer). While this helps maintain the bonds with the parent who is left behind, it comes at a high cost to the child, because, in the process, the bond with the primary placement parent is also getting repeatedly strained or broken.<sup>24</sup> When the child has the attachment pattern to one parent broken, there is increased risk of long term adjustment problems to the child. However, by granting large blocks of time to the parent left behind, the risks of damage to both child-parent attachments is increased.

b. *Cooperative strategy*

There really is no good argument to make that moving a child under five or six years old is beneficial to the child if the child has a strong positive bond and secure attachment to and an active involvement with the parent who would be left behind. The best child-focused argument in a case in which there is a young child is to delay relocation until the child is at least five or six years old.

If a child does not have a strong positive bond and secure attachment to the parent who is to be left behind, i.e., is essentially in a marginal visiting relationship, and the move promises other important benefits (e.g., moves the parent from below to above the poverty line), then the move might benefit the child with little associated risk. Great caution should be exercised, however, in offering blocks of time to compensate the parent being left, because this would likely be harmful to the child. Providing frequent access (e.g., telephone calls every other day) and flexible arrangements (e.g., the other parent may have contact

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*tween Fathers and Children Who Live Apart: The Father's Role After Separation*, 53 J. MARRIAGE & FAM. 79 (1991).

<sup>24</sup> Extensive research has been done on attachment patterns and their effects on the long-term adjustment of children. Breaking those attachment patterns in the first five to seven years of life is a real risk to children. See JOHN BOWLBY, ATTACHMENT AND LOSS: VOLUME I – ATTACHMENT (1969); ATTACHMENT AND LOSS: VOLUME II – SEPARATION (1973); ATTACHMENT AND LOSS: VOLUME III – LOSS (1980); CLINICAL IMPLICATIONS OF ATTACHMENT (Jay Belsky & Teresa Nezworski eds., 1988); RELATIONSHIP DISTURBANCES IN EARLY CHILDHOOD (A. Sameroff & R. Emde eds., 1989).

with the child any time that parent can visit the locale of the primary parent) and perhaps a promise of blocks of time when the child is older, is more *child friendly*.

## 2. Ages 5 to 13 Years Old

### a. Age group risks

Somewhere between five and seven years of age, almost all children go through an important developmental step in which they acquire the capacity to maintain strong bonds to parents and other important people even with absences.<sup>25</sup> Acquisition of this capacity produces a great deal more flexibility with respect to relocation because the bonds with both parents can be maintained if the child has blocks of residential placement time with the parent being left behind.

However, new risk factors arise in this age group. The locus of the child's life moves slowly to outside of the home, with peer relationships and other support systems (e.g., a familiar school, special coaches, and so on) becoming increasingly important in the adjustment of the child. These outside supports are much less important for a first or second grader than they are for a fifth or sixth grader. Thus, the consideration for these factors increases with age.

### b. Cooperative strategy

Children from about five years old to about ten years old are generally least at risk in a relocation case. There are still risks as later sections point out, but developmentally, a child this age is less dependent on the external conditions (a particular peer group) of their lives and is able to tolerate blocks of time away from both parents without substantially damaging those bonds. As the child moves from ten to thirteen years old, however, more consideration must be given to the outside support systems of the child. In addition to the foci on the parent child relationships

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<sup>25</sup> There are too many sources on developmental stages and the impact these have on children to list here. The many works of Stanley Greenspan are worth consulting in this regard. *See e.g.*, STANLEY GREENSPAN & NANCY BRESLAU LEWIS, *BUILDING HEALTHY MINDS: THE SIX EXPERIENCES THAT CREATE INTELLIGENCE AND EMOTIONAL GROWTH IN BABIES AND YOUNG CHILDREN* (2000). Hodges, *supra* note 15, also has a nice section on child development and the implications in divorce.

listed below, some focus on a sufficient substitution of the opportunities outside of the home will be persuasive. Specific plans are better than vague promises. Having very specific information about the coaches and teams, dance classes, and so on, is more likely to prevail as a warrant than talking vaguely about “more opportunity.”

The parent wishing to relocate must examine other adjustment factors associated with this age group (e.g., the importance of the involvement of both parents in the school life of the child) and have concrete and specific plans for mitigating those risks. For example, it is better to recognize the importance of the influence of the absent parent on the child’s education and provide a specific plan that includes disseminating school information to the other parent and allows that parent a role in decision-making influence regarding the education of the child.

“Virtual visitation” has recently received some attention in the literature.<sup>26</sup> This is an overblown concept that suggests that adding a picture to voice (i.e., telephone) via computer is comparable to face to face visitation. Virtual visitation might well be an improvement over the telephone, as much as telephone contact is an improvement over letter writing in some ways. The sound of the voice on a telephone is a little closer to direct experience than reading a letter. Seeing a visual representation via computer, while talking, is closer still. However, it would be difficult to make a convincing argument that seeing each other on a computer monitor is comparable to a hug, or showing a baseball trophy on the screen is comparable to having a parent at the game. Nevertheless, adding offers to purchase the equipment for virtual visitation (remarkably inexpensive) might help bolster a relocation argument.

The parent who wants to prevent a move for a child in this age group will do well to focus more on factors other than the parent-child bonds. The only major factor that is important from the developmental point of view regarding parent-child bonds is the importance of contact with the parent of the same gender.

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<sup>26</sup> See e.g., Sarah Gottfried, *Virtual Visitation: The Wave of the Future in Communication Between Children and Non-custodial Parents in Relocation Cases*, 36 FAM. L.Q. 475 (2002).



The work of several researchers<sup>27</sup> has shown that it is developmentally important for a child in this age group to have a good deal of involvement with the same gender parent. Boys, for example, do better if they have a good deal of involvement with fathers. The research on boys in this age group who have absent fathers suggests important risks to school adjustment, social adjustment, and is associated with the development of behavior problems. The counter argument to this assertion for the parent making the move is to propose a plan that maximizes the involvement of the parent left behind. This might include large blocks of residential time with the other parent, especially time that maximizes opportunities for the child to participate with the other parent in common interests, but also this might include weekly parent-to-parent reports on the child combined with frequent telephone contact between the distant parent and child. Specific procedures for the absent parent to be included in deciding on rules and discipline enhances this even further. Also helpful are planning some visits to the home of the primary placement parent so that the absent parent can meet teachers, participate in key activities or events, see the child's room, meet some of the child's friends, and so on.

### 3. *Age 13 Years Old and Older*

#### a. *External social context*

A change in the child's tolerance for distance between the homes of parents emerges around thirteen years of age. The loci of a child's development have moved outside of the home in stages, beginning most dynamically when the child enters school in the first grade. Nevertheless, the foundations of the child's functioning and personality, both within the home and in those external arenas of school, friendships, and activities, remain chiefly influenced by parents. At about thirteen, the balance tips and the most influential context shifts to outside of the home. We sometimes underestimate how context-dependent a child's adjustment is at this age. For example, a child can appear very

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<sup>27</sup> Chiefly Warshak and Santrock, but also to some extent the work of Michael Lamb. See e.g., John W. Santrock & Richard A. Warshak, *Father Custody and Social Development in Boys and Girls*, 35 J. SOC. ISSUES 112 (1979). See also Michael E. Lamb, *The Emergent American Father, in THE FATHER'S ROLE: CROSS-CULTURAL PERSPECTIVES* 3 (Michael E. Lamb ed., 1987).

socially successful, leading to an inference that the child will likely do well in a different setting, when in fact, the social success is heavily dependent on the long-term social context. A major change in that context can result in a major change in the adjustment of the child. If the child is doing well in his or her current social context, a proposed relocation could threaten that adjustment. In general, moves in this age group are very disruptive to the child's adjustment outside of the home.

b. *Cooperative strategy*

If a parent wishes to move with a teenager, a very specific and concrete plan to quickly get the child involved in positive activities and friendships should be constructed. Having the names and specifics about activities that the child enjoys, such as soccer, in the new location, having had a conversation with the coach about the child, getting information about enrollment dates, and other specifics can be persuasive in a dispute and genuinely serve the best interests of the child. A parent should be cautious not to involve the child in this process to win the child over. This can create an appearance of coaching the child to take sides and can backfire. In fact, a parent who is cautious in how he or she includes the child in this type of dispute will appear, and actually be, a more child-focused parent. The plan might also include specific means whereby the child can maintain some of his or her ties in the current community (e.g., setting up an 800 number for friends to call, enrolling the child in an online chat room with current friends, planning some contacts with a special coach, and even planning the visits to the parent left behind to coincide with important social events, such as homecoming). While these ties are likely to weaken over time, such plans can ease the transition into a new community in the short-term.

If a child is doing poorly in the current location, a well-constructed plan such as that described above can be very compelling. For example, if the child is doing poorly socially, having a specific plan to improve the chances the child will do well in the new setting (e.g., enrolling the child in a church youth group) can be helpful, both in appearance and in reality.

Plans for contact with the other parent must be well thought out in a proposed relocation. A child in his or her teen years is generally going to prefer, all things being equal, summers near

friends. This presents the risks that the bond that the child has with the parent left behind will diminish prematurely (i.e., at fourteen rather than the more developmentally appropriate eighteen or nineteen years old). For example, if spending time in the summer with the other parent directly competes with the child's desire to stay near the primary residence, the parents must design the contact to win that competition. Thus, rather than the parent who made the move arguing that it is important for the child to participate in the early summer activities with friends and thus visit the other parent for a few weeks in August, a more child centered argument would be to plan early summer activities near the parent left behind so that the child has friends to look forward to in both locations. The parent who has been left should have a job lined up for the child, if the child wants to work during the summer. The goal should be to plan time at the non-primary residence in such a way so as to keep large blocks of time going with the other parent for as long as possible.

If a child this age has spent only visitation time with one of the parents (e.g., every other weekend and a few weeks in the summer) a geographic move holds the promise of substantially increasing the time and bond with the less frequently seen parent. Placing the marginal parent in the position of having the child full time in the summer, for example, with little opportunity to "take him/her home" if it becomes tough, might enhance the relationship between that child and that parent. It is a good argument if the geographic move has a good chance of increasing rather than decreasing the involvement between the child and the other parent. A parent who never has been involved in the day to day life of the child in school, only having weekends and a summer vacation, suddenly thrust into the role of arranging a complex life with the child for eight weeks in the summer, substantially increases the range of parenting experiences with the child and the breadth and depth of the relationship that the child has with that parent.

## B. *Geographic Stability*

### 1. *Considerations*

Another factor to consider here is whether a move will be followed by other major moves. We like to think of these situations as a one-time experience, and certainly the party making

the move would like to think so. However, the research on parents who do relocate suggests that in fact a substantial number of them will relocate again. About 50% of parents who relocate do so again.<sup>28</sup> This is not, therefore, a decision about one move; it is a decision about one move with a reasonable probability of additional moves and greater instability. Numerous studies have demonstrated that, without exception, repeated moves, especially following divorce, have a detrimental effect on all aspects of a child's adjustment.<sup>29</sup> If advocating against a move, commenting on the probability of further moves raises serious questions about further instability. This is particularly true if one can show a history of instability on the part of the parent proposing relocation, or if the proposed relocation appears fanciful, reflexive or impulsive,<sup>30</sup> or if the proposed relocation is for such unstable reasons as a new romantic relationship which has uncertain longevity.

## 2. *Cooperative Strategy*

It is important to recognize that repeated major geographic relocations pose significant risks to the child. A move, therefore, should not be considered lightly. The parent wishing to make the move should have substantial information about the likely outcome of the move and only make the move if convincing reasons exist to believe that once in the new community, the child will experience no further major relocation or disruptions.

A contingency plan ought to be considered should the first relocation not work out successfully. To name an intent (which might or might not be binding) can provide reassurance to the

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<sup>28</sup> David Wood et al., *Impact of Family Relocation on Children's Growth, Development, School Function, and Behavior*, 270 J. Am. Med. Ass'n 1334 (1993).

<sup>29</sup> E.g., Hodges, *supra* note 15; Jessica Pearson & Nancy Thoennes, *The Denial of Visitation Rights: A Preliminary Look at Its Incidence, Correlates, Antecedents, and Consequences*, 10 LAW & POL'Y 363 (1988); Arnold L. Stolberg & James M. Anker, *Cognitive and Behavioral Changes in Children Resulting from Parental Divorce and Consequent Environmental Changes*, 7 J. DIVORCE 23 (1983); Wood, *supra* note 28.

<sup>30</sup> Relocating near extended family, for example, can be a regression on the part of a parent going through the stress of a divorce, a likely impossible fantasy of returning to the comfort and dependency of childhood, which once disappointed, might lead to an additional relocation with the child.

parent being left behind and an incentive for the moving party to make the relocation work for the child.

In an odd application of this strategy, the author once mediated a proposed move by the mother to a different state to marry. The child had made visits to the new location and was expressing a preference to move with the mother.<sup>31</sup> The father was rightfully concerned about the stability of the new situation for the mother and also that the fear of loss was dominating the child's stated preference. The parties agreed that the child would remain with the father and finish the school year (about five months), visit with the mother during the summer, and then move in with the mother if the child continued to express a preference to do so and the mother remained stable in the new marriage.

### C. *Effect on Father Involvement.*

#### 1. *Importance of Involved Fathers*

Geographic distance between homes creates a major threat to father involvement with the child,<sup>32</sup> if the mother is the parent who relocates. There is little ambiguity in the findings that increased geographic distance reduces the frequency and duration of contact between the child and the non-custodial parent.<sup>33</sup> Authors have differed as to at what distance real damage to the relationship between the child and non-custodial parent begins to accrue. Certainly, five minutes apart is unlikely to be a problem, but 2000 miles is a real obstacle. One author estimates that it is at about twenty minutes apart that the life of the child begins to become fragmented in order to spend time with the non-custo-

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<sup>31</sup> Many factors went into this stated preference, but it did appear to genuinely reflect the child's independent thoughts. There was no evidence of coaching or improper influence.

<sup>32</sup> This presumes that the party seeking to relocate with the children is the mother, which is the case in most instances. However, if a father relocates without the children, the fact situation is the same, that is, the father has in this instance decreased his involvement in the children's lives, and creates the risks described.

<sup>33</sup> ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992).

dial parent.<sup>34</sup> While we will talk in terms of father involvement, the same could likely be said of mother involvement. The research reviewed here focuses on father involvement, because that is the variable that has been studied. Fathers engage in varying degrees of post-divorce involvement with their children. There is not a similar sample of mothers. Most mothers remain involved after a divorce. The few that are not do not constitute a representative sample of mothers. Culturally, father involvement both pre- and post-divorce has increased. There is less post-divorce abandonment, more shared residential schedule awards, more regular and frequent visitation patterns, and more involved parenting than has historically been the case. In 1970, the rate of father abandonment following divorce was close to 50% nationwide whereas in 1990, it was down to 25%.<sup>35</sup> In 1969, the rate of physical custody schedules with either primary or shared physical custody with fathers was about 10%, whereas today it is about 40%.<sup>36</sup> As appears to be true in intact marriages, fathers seem to be taking on more involved parenting roles post divorce. Despite concerns that have been voiced by some, fathers appear to maintain these more involved roles in most instances.<sup>37</sup> In about one-third of cases, fathers tended to diminish their involvement over time, but an examination of this finding identified possessory and controlling attitudes and interference with visitation on the part of mothers as the key contributing factor to this trend in those cases.<sup>38</sup>

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<sup>34</sup> Leslie A. Shear, *Life Stories, Doctrines and Decision-Making: Three High Courts Confront the Move-Away Dilemma*, 34 FAM. & CONCILIATION CTS. REV. 439 (1996).

<sup>35</sup> Judith Seltzer, *Relationships between Fathers and Children Who Live Apart: the Father's Role after Separation*, 53 J. MARRIAGE & FAMILY 79 (1991).

<sup>36</sup> RICHARD A. WARSHAK, *THE CUSTODY REVOLUTION: THE FATHER FACTOR AND THE MOTHERHOOD MYSTIQUE* (1992).

<sup>37</sup> See HENRY B. BILLER, *FATHERS AND FAMILIES: PATERNAL FACTORS IN CHILD DEVELOPMENT* (1993); *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* (Michael E. Lamb ed., 1997); ROSS D. PARKE, *FATHERS* (1981); Warshak, *supra* note 36.

<sup>38</sup> Mary Whiteside, in an extensive review of research and study for the California Judicial Council does a very nice job of summarizing the obstacles to father involvement post separation. Mary F. Whiteside, *An Integrative Review of the Literature Relevant to Custody for Children Five Years of Age or Younger*, Report to the statewide office of Family Court Services, Administrative Office of the Courts, State of California (1996), available at <http://www.courtinfo.ca>.

A review of the research on the effects of increased father involvement is unambiguous: a child does better in every aspect of adjustment that has been measured, both long-term and short-term, if there is active father involvement.<sup>39</sup> Children who have more father involvement also rate their family experience much higher and when asked as adults, described higher satisfaction rates. With the exceptions noted below, no study has concluded that less father involvement was good for children. One exception was when reduced father involvement resulted from safety considerations (e.g., a violent father). Another exception is when less father involvement (like less mother involvement) substantially reduces the destructive conflict that sometimes occurs after a parental separation. However, this argument is often overused based on a basic misunderstanding of terms. In the psychological research, “high conflict” refers to about 15% of divorces that include mental health and personality disorders along with high rates of conduct disturbances (e.g. domestic violence and substance abuse).<sup>40</sup> It does not refer to parents who are so emotional that they either do not get along when they do engage in communication or avoid communication altogether.

It is noteworthy that, in contrast to father involvement, father absence, in research on loss of a parent through death or in research on father abandonment, has also been studied. The findings are consistent that father absence is a major threat to child adjustment, especially in boys. Interestingly, in the studies on the effect of father custody with boys in certain age groups, father custody has consistently been found superior to mother custody.<sup>41</sup> These findings are limited to situations in which a

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gov/programs/cfcc/pdf/custodyexecsumm.pdf. She found the dominant reason for the reduction in father involvement is possessory restrictive attitudes and behavior on the part of mothers. The second dominant reason is gender bias in the courts.

<sup>39</sup> Gindes, *supra* note 19.

<sup>40</sup> JANET JOHNSTON & LINDA CAMPBELL, *IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT* (1988).

<sup>41</sup> See Peterson & Zill, *supra* note 23; Santrock & Warshak, *supra* note 27, at 112; Richard A. Warshak, *Father-Custody and Child Development: A Review and Analysis of Psychological Research*, 4 BEHAV. SCI. & L. 185 (1986). Hodges, *supra* note 16, discusses research on divorce and also research on loss of a parent through death. He concludes from that research that father custody appears superior to mother custody. One caution, however, is that this conclu-

“choice” must be made. For example, when one parent dies, boys do better if the surviving parent is a father than a mother. Boys do best if they have both parents, not just one, but this research does suggest that father involvement at an at least sufficient level to meet these developmental needs is an important consideration. Even the mother/child relationship tends to be better when the father is involved and worse when the father is not involved. If a mother relocates, depending on the family resources, availability, and so on, this might mean the virtual loss of the father to the child.

## 2. *Cooperative Strategy*

The only *child friendly* approach that is consistent with the research is to recognize how important father involvement is in the development of the child and to plan for it.<sup>42</sup> The strategy of trying to show that the father has not been that engaged in the past, and because of this, no great harm will accrue with the move, is weak when the social science research is considered. A mother who is truly interested in the long-term development and adjustment of her child will become an advocate of father involvement. With relocation, the best child-focused argument to be made is that there needs to be a concrete plan for father involvement. This ought to include specific plans for substantial contact during school breaks and incentives for the child to want to go with the father, even if this competes with the child’s other interests. For example, setting the summer residential placement time when the child can participate in activities that include making summer friends at the father’s residence is a good plan.

Another strategy that will help in many cases is to argue that the move will promote more constructive father involvement, which will benefit the child. If this sounds paradoxical, it is because it is. If the father has not played a major role in the life of the child, perhaps only having three or four placement days

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sion might be unduly influenced by economics because the studies are dated to times when fathers had generally better economic resources than mothers.

<sup>42</sup> This is a tricky problem. The research is on father involvement, but largely because it is hard to do studies on mother involvement. I shall assume here that the mother wishes to relocate, but it is rational to extrapolate and assert that the same could be opined in the reverse, i.e., that mother involvement is important and that the father might be the party wishing to move.



every two weeks, and has not participated much in the child's life, blocks of residential placement time during school breaks might compel a level of involvement between them that has not existed previously. This might create more depth and breadth in the relationship, by forcing the father into a single parenting situation and demanding that he take a more active parenting role.

#### D. *Quality and Nature of Father Involvement*

##### 1. *Visitation-type Patterns*

An important question that needs to be addressed is whether sufficient father involvement can be accomplished with large blocks of time during school breaks, a placement pattern often created by relocation. In 1996, I published a chapter in a book on residential placement needs of children of divorce.<sup>43</sup> At that time, based on the research then available, I concluded that relocation would likely do life-long damage to a child under five or six years of age, but that under the right conditions (i.e., high quality parenting and a good communication and cooperation in the parenting relationship), children over six years old might experience little long-term harm. However, I have found more recent findings in the literature persuasive that this is likely incorrect, because it is not simply the child spending time with the father that affects adjustment, rather, it is the quality and nature of that involvement that appears to make the difference. This is a subtle point, because it might be an easy inference to make that if, on average, father involvement has such a positive effect on child adjustment, spending time is inherently good for the child. It is not basking in the presence of the father that appears to be the factor that affects child adjustment, however, it is the manner in which the father participates in the child's experience and life. Richard Warshak deserves credit for coalescing many different ideas, including some contradictory social science findings into this notion that reverses our view of the problem.<sup>44</sup>

Findings in research suggest that the quality and nature of father involvement is very important, perhaps determinative. This involvement should include participation in all aspects of

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<sup>43</sup> Kenneth H. Waldron, *Developmental Needs of Children of Divorce*, in WILEY JOURNAL OF FAMILY LAW (1996).

<sup>44</sup> See Warshak, *supra* note 9.

the child's daily life and also should include frequent and regular contact. For example, research on adjustment and success in school has found that a child whose father actively participates in his or her school life (e.g., helping with homework, meeting with teachers, attending school functions) is much more likely to do well.<sup>45</sup> Children whose fathers have little involvement in this aspect of their children's school lives are much more likely to have academic, social, and behavioral problems.

Interestingly, when one looks at the research on the need for regular and frequent placement with a father, the findings are inconsistent. If the residential schedule only includes time with the father, there is little difference in adjustment for children who have frequent contact and those who do not. If the residential schedule includes the father actively participating in school, extracurricular activities, recreational activities (e.g., fishing), and the child's peers (e.g., having friends over to the father's house), there is a substantial difference in adjustment between children who have this type of involvement and those who do not. The children who have this participation do better across the board when compared to children who do not have frequent contact. One might speculate that this might be true in families with intact marriages—that a child is likely to do better in adjustment if his or her father is actively involved in the child's life, rather than simply a presence in the home. It appears that the type of father involvement is more important than just the actual time spent with the father. It also looks as if the manner in which the father joins and participates in the child's life outside of the home, not just time with the child, is what affects adjustment in the child. These findings clearly and strongly suggest that the need for father involvement cannot be sufficiently met just through blocks of residential time during school breaks.

## 2. *Cooperative Strategy*

The best solution to this dilemma is to have a concrete plan for the active involvement of the father in the school life of the child, even long-distance. It is also important that the plan includes the father in educational decisions.

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<sup>45</sup> CHRISTINE WINQUIST NORD ET AL., *FATHERS' INVOLVEMENT IN THEIR CHILDREN'S SCHOOLS* (1997).

Thinking through the means by which the father, if left behind by a move, can have a high level of participation in the child's life might also yield creative solutions. Planning summer school at the father's, for example, or making a point of getting the child signed up for summer activities that include the father's active participation might mitigate the effects of less involvement in the school and activities near the relocated mother.

#### E. *Pressures of Single Parenting*

##### 1. *Risks of Parenting Alone*

When geographic distance exists between homes, children are placed in the position of living with a single parent. Several studies specifically focusing on the risks of single parenting have found that children have more problems with depression, aggressive behavior, social withdrawal and delinquent behavior.<sup>46</sup> If the single parent is a mother and the child is a son, there are additional risks of poor parent/child relationships.<sup>47</sup>

##### 2. *Cooperative Strategies*

The parent wishing to relocate should have a very concrete plan for the active inclusion of the other parent in the process of parenting. For example, the parent requesting the move might offer to have weekly telephone calls with the parent left behind for the purpose of fully informing that parent about the child and keeping that parent fully up to date on the important aspects of the child's life. That conversation also could include discussions that include action plans (e.g., what kinds of chores the child should have, how to handle homework time, whether the child should be able to work while in school, etc.). These conversations serve as a resource for the parent who moved; they include the other parent in the day to day parenting of the child and create for the child a team approach that includes both parents.

Second, support systems for the parent are important. These can include extended family or a new spouse, but emphasis should be placed on how these resources will assist the parent in dealing with the pressures of being a single parent. Additional

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<sup>46</sup> See Hodges, *supra* note 15, for a summary of this research. See also Lamb, *supra* note 27; Warshak, *supra* note 27.

<sup>47</sup> See, e.g. Hodges, *supra* note 15.

community resources might be investigated before the move in order to shore up the support systems for the relocating parent.

#### F. *Satisfaction of the Relocating Parent*

An unsupported argument for relocation is that the satisfaction it will bring to the relocating parent somehow benefits the child. There is a sympathetic assumption that relocation will be rewarding for the parent who moves and that the moving parent's happiness will have a trickle down effect on the child's. Research does not support this assumption. With few exceptions, the satisfaction and adjustment of the relocating parent *does not improve* with the move.<sup>48</sup>

It is unknown whether denying a move affects the happiness or adjustment level of the parent denied. I simply could find no research on this. Conjecture in the literature spans the gamut, with some assuming that a denied move will lead to a level of dissatisfaction that will negatively affect the child to others pointing out that adult's adjustment level tends to be relatively stable across locations.<sup>49</sup>

#### G. *Financial Gains and Burdens*

Improved financial status often is cited as a reason for a move, with the supposition that this will improve the quality of the child's life. Except when a move raises the socio-economic status of a parent from below to above the poverty line, research has found no link between economic status and child adjust-

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<sup>48</sup> This notion is a misunderstanding of research findings. In several studies, the mental health of the primary custodial parent correlated with the adjustment level of the child. Marsha Kline et al., *Children's Adjustment in Joint and Sole Custody Families*, 25 DEV. PSYCHOL. 430 (1989); FRANK P. FURSTENBURG & ANDREW CHERLIN, *DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART* (1991); Alan Stolberg et al., *Individual, Familial and Environmental determinants of Children's Post-Divorce Adjustment and Maladjustment*, 11 J. OF DIVORCE 51, 65 (1987); Janet Johnston, *High Conflict Divorce*, 4 THE FUTURE OF CHILDREN: CHILDREN AND DIVORCE 165 (1994). The notion that relocation would improve the general feelings of happiness in a parent is very different than the notion that relocation would improve the mental health of a parent. The misunderstanding arises from a colloquial definition of "mental health" rather than the clinical definition.

<sup>49</sup> For examples of this range, see Wallerstein and Tanke, *supra* note 5 and Warshak, *supra* note 9.

ment.<sup>50</sup> If the move does lift the socio-economic status above poverty level, the chances of improvements in the child's adjustment are good.

Geographic distance between homes creates financial and travel burdens on the family.

#### H. *The Emotional Consequences of Geographic Distance*

##### 1. *Research*

As mentioned earlier, there is limited research that focuses directly on the impact of relocation on children. This article extrapolates from other research, a standard practice, but one that risks mistaken conclusions. Researchers often do this (e.g., study the effects of a procedure on animals and then hypothesize that the same is likely true with humans), but sometimes the extrapolation fails when applied directly. Thus, I have framed these general conclusions about relocation as tentative hypotheses. Although the evidence above indicates that relocation is likely to be harmful to children in most cases, I lack the degree of confidence I would have if I had more direct research.

The literature is not devoid of research on relocation issues, however. As has been mentioned previously, research has looked at the effects of relocation on children in general, not taking into account the divorce variable specifically. On balance, with the exception of relocations of families in the military, repeated relocation does pose risks to the development of children.<sup>51</sup> Some research is specific to divorce; however, in that research on geographic distance was one of the minor factors measured. As an example, K. Alison Clarke-Stewart and Craig Hayward found that one of the five factors that contribute to or detract from the quality of the relationship between the child and the non-custodial parent is the geographic distance between homes.<sup>52</sup>

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<sup>50</sup> See the works of Robert Emery for good summaries on the role of socio-economic status as it relates to the adjustment of children. ROBERT E. EMERY, *MARRIAGE, DIVORCE, AND CHILDREN'S ADJUSTMENT* (1988).

<sup>51</sup> See Gindes, *supra* note 19.

<sup>52</sup> K. Alison Clarke-Stewart & Craig Hayward, *Advantages of Father Custody and Contact for the Psychological Well-Being of School-Age Children*, 17 J. APPLIED DEV. PSYCHOL. 239 (1996).

My tentative hypothesis regarding the negative effects of relocation on children gained support in a recent study directly on the issue of relocation. The findings of that study suggest that children of divorced parents who are separated from one parent due to the custodial or non-custodial parent moving beyond an hour's travel time from the other parent are significantly less well off on many child mental and physical health measures compared to those children whose parents do not relocate after divorce. The findings cast doubt on the current legal presumption that a move by a custodial parent to a destination that the moving parent believes will improve his or her life will also be in the best interest of the child who moves with him or her.

The study appears in the June 2003 issue of the American Psychological Association's (APA) *Journal of Family Psychology*<sup>53</sup> and is the first study to provide direct evidence of the effects of relocation on children after divorce. Psychologists Sanford L. Braver, Ph.D., and Bill Fabricius, Ph.D., and law professor Ira Ellman (the primary drafter of the American Law Institute's recently released *Principles of the Law of Family Dissolution*) conducted their research by dividing 602 college students into groups on the basis of their divorced parents' move-away status. One group consisted of those in which neither parent moved more than an hour's travel time from the original family home and the other consisted of students with at least one parent who had moved more than an hour's travel from the original family home. Both groups were tested on various measures of psychological and emotional adjustment, general life satisfaction, current health status, their relationship to and among the parents and perceptions about having lived "a hard life." The students were also assessed on the extent of financial help they were currently receiving from their parents.

Results show significant negative effects associated with the longer geographic distance between homes (more than an hour's drive), that is, with parental moves by the mother or father, with or without the child, as compared with divorced families in which neither parent moved away beyond an hour's travel time.

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<sup>53</sup> 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 (2003).

As compared with divorced families in which neither parent moved, students from families in which one parent moved received less financial support from their parents (even after correcting for differences in the current financial conditions of the groups), worried more about that support, felt more hostility in their interpersonal relations, suffered more distress related to their parents' divorce, perceived their parents less favorably as sources of emotional support and as role models, believed the quality of their parents' relations with each other to be worse, and rated themselves less favorably on their general physical health, their general life satisfaction, and their personal and emotional adjustment.<sup>54</sup>

While the results of the study do show many poor outcomes are associated with post-divorce parental moves, the results are correlational and cannot prove that the moves are the main or even a contributing cause of the negative effects. Additional longitudinal research is needed, which controls for factors that also may play a role, such as pre-move parental conflict. Alternative explanations for the results could include that moving per se does not seem to be harmful for children, but rather that families with characteristics that are harmful for children also tend to move or a combination of both or other factors. Other variables might contaminate the results in the opposite direction. For example, in one family, relocation might increase the depth and breadth of father involvement because the father was more peripheral historically than after the move, when he was engaged with the children during large blocks of school break time. This child might have improved in adjustment, counter-balancing negative effects with other children. In brief, a preliminary survey study such as this raises curiosity, but does not offer definitive answers.

This study has received a good deal of attention in the literature and elsewhere (e.g., on advocacy websites).<sup>55</sup> Relocation is a highly charged issue, with gender overtones (largely because it is often mothers with primary custodial rights who want to move and fathers who are contesting such moves). In the *LaMusga* case in California, a variety of professionals and advocacy groups filed numerous briefs, demonstrating the controversial quality of

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<sup>54</sup> *Id.* at 214.

<sup>55</sup> See, e.g., Sarah H. Ramsey & Robert F. Kelly, *Social Science Knowledge in Family Law Cases: Judicial Gatekeeping in the Daubert Era*, 59 U. MIAMI L. REV. 1, 26 (2004).

this topic.<sup>56</sup> As a result, the study has been harshly and in some ways unfairly criticized. The study is of a certain type— survey study in which the data is self-report without other objective verifying measures. One often does this type of study as a pilot study, that is, as a somewhat quick and easy way to see if sufficient data exists to suggest that a hypothesis might be true. If a significant finding results, one might then do much more in depth study to further understand the phenomena being measured. An initial study is often done in this form and is followed by other more rigorous research efforts. It is rare that one can base important conclusions on the result of any one study, but one study can suggest that perhaps a hypothesis is true. The study has also been criticized for misrepresenting its own results, that is, that the data suggest there are differences in outcomes, depending on whether it is the mother or father that moves and whether the child moves with the parent or is left behind. The very same critics who state that the research was poor in drawing a conclusion that relocation is not good for children, because of the research method, seem to find support for a gender based conclusion in the subgroups and criticize the authors for not reporting that finding.<sup>57</sup> These subgroups were small and one should not rely any more heavily on these subgroups than the overall findings. Thus, ironically, some critics who condemn the study for its overall findings, look for sub-findings that support their positions.

In brief, this study has received criticism for what most social scientists take for granted, that is, for arriving at results that offer a few hints, but are not conclusive. The researchers reasonably conclude as a result of this study, “There is no empirical basis on which to justify a legal presumption that a move by a custodial parent to a destination she plausibly believes will improve her life will necessarily confer benefits on the children she takes with

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<sup>56</sup> See, e.g., Amici Curiae Brief of Richard A. Warshak et al. on behalf of LaMusga Children, *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004) (No. S107355), available at [http://www.atybriefcase.com/volexports-/lamusga/warshak\\_brief.pdf](http://www.atybriefcase.com/volexports-/lamusga/warshak_brief.pdf); Carol S. Bruch, Brief of Amici Curiae Herma Hill Kay et al., *Marriage of LaMusga*, Calif. S. Ct. (No. 107355) (2003), available at <http://www.law.ucdavis.edu>.

<sup>57</sup> JUDY WALLERSTEIN, Comments on Sanford Beavers “Relocation of Children after Divorce and Children’s Best Interests: New Evidence and Legal Considerations,” <http://www.thelizlibrary.org/~liz/liz/braver-wallerstein.html>.



her.”<sup>58</sup> Nowhere do they claim to have found determinative answers to questions on relocation.

## 2. Cooperative Strategy

This study provides additional support for the position that relocation, if granted, is more likely to be harmful to children, but also provides hints as to steps for mitigating harm. Looking at the effects cited in the study, one can see that the parent proposing the move can offer specific remediation to reduce these risks. For example, the parent proposing relocating might include a very specific plan for the continuing financial security of the children. A child friendly outcome might still be possible if a move is granted, if the parties take measures to specifically address the effects cited in this study.

The parent wishing to make the move should include a plan that makes the important contact between the child and the remaining parent feasible. This should include telephone and other forms of electronic contact (see earlier comments on *virtual visitation*), sending materials, email, and residential placement times. The inclusion of financial planning in this process might make the difference between a move that is allowed and one that is not. Most importantly, planning for this important contact between parent and child is critical to the long-term adjustment of the child and should be a part of any plan.

## V. When Is Relocation in Children’s Best Interest?

It is inaccurate to say relocation is in a child’s best interest. It might be possible to say that under some conditions, a move might positively influence the adjustment of a child or at least might reduce the chance that the move will have a detrimental effect on the child’s adjustment. In other words, a move will always create risks to both the short-term and long-term adjustment of the child. However, in some circumstances the risks can be mitigated and the benefits might outweigh the harm. They include:

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<sup>58</sup> BRAVER ET AL., *supra* note 53, at 215.

- (a) When a move does not substantially decrease, and perhaps even increases, the range of involvement of the non-custodial parent. For example, if a parent is only marginally involved, visiting only several times a year, and the move results in the child having increased contact with that parent for at least some blocks of time, it might be good for the child. At the very least, it probably would not be harmful.
- (b) When the move is from isolation to a substantially improved support system for the parent and the child. A move from a location that offers few, if any, supports, for example, including an uninvolved other parent, to one in which there is a substantial support system, that might include the custodial parent's extended family, might be beneficial. Very little research exists on the effects of remarriage on the adjustment of children. In his review, Hodge suggests that if the second marriage is a healthy one, children have a slightly increased chance of experiencing fewer damaging effects of the initial divorce.<sup>59</sup> I believe, however, that one can extrapolate from existing research on support systems in general and say that if the new spouse, and perhaps stepsiblings and the extended family of the new spouse, substantially increase the support systems for the child and the parent making the move, relocation is likely beneficial to the child.
- (c) When the move increases the socio-economic status of the moving parent to above poverty level.
- (d) When both parents demonstrate the capacity to effectively parent as single parents (which is the family structure created by a move). Again, this does not make the move a positive occurrence but might at least reduce the risks of the move to the child's adjustment.
- (e) When there is a high level of communication and cooperation between the parents and the resources exist to reduce the burdens of money needs and travel.
- (f) When the child's pre-move adjustment is good and when the child has the type of temperament to adjust easily and well to change (e.g., school, peers, and support systems).
- (g) When a move substantially reduces the exposure of the child to a high conflict parental situation, especially if the non-custodial parent displays conduct problems. Moving away from an unsafe parent, for example, probably has more protective benefit to the parent and the child than the harm caused by the associated changes. This is a factor that can be determinative. With some types of domestic violence, for example, a child should have lim-

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<sup>59</sup> Hodges, *supra* note 16.

ited contact, perhaps even no contact, with the violent parent and might feel substantially safer with geographic distance.<sup>60</sup>

- (h) When a child is at least six or seven years old and can maintain attachments and bonds to both parents across time and distance.

## VI. Conclusions

A parent wishing to relocate introduces risks to the child's adjustment. The nature of those risks depends on the facts of the case. The age of the child, for example, or the history of the involvement of the other parent make an enormous difference. The weight of the social science research falls on the side of not allowing such moves, but there are circumstances in which relocation might provide more benefit to the child than harm done. In a situation in which the child has strong bonds to two actively involved parents in a shared residential schedule, strong links to the community, a large support system including important extended family, and other ties, a move might simply not be good for the child. The parent who wants to relocate might do best to consider making the move without the child and going to great lengths to use the information in this review to design a good long-distance parenting relationship with the child.

The parent wishing to relocate with the child in a *cooperative strategy* will recognize the child-related risks, the importance of the involvement of the other parent, and other child-related factors and plan for them. The more thorough and concrete the plan, the more likely it is that the plan will be *child friendly*.

I echo the sentiments of Marion Gindes when she points out that framing relocation as a gender issue is too common and too

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<sup>60</sup> For example, male-controlling violence research suggests that after a divorce, the risks of child abuse by the father increase, the risks of further exposure to domestic violence are moderately high, and the control dynamics modeled to the child might do damage to the child's ability to relate well later in life. See Janet Johnston & Linda Campbell, *Parent-Child Relationships in Domestic Violence Families Disputing Custody*, 31 FAM. & CONCILIATION. CTS. REV. 282 (1993); K. Henning et al., *Long-Term Psychological Adjustment to Witnessing Interparental Physical Conflict During Childhood*, 21 CHILD ABUSE & NEGLECT 501 (1997); Daniel Saunders, *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 SOCIAL WORK 51 (1994); Jaslean J. Taillade & Neil S. Jacobson, *Domestic Violence: Antisocial Behavior in the Family*, in HANDBOOK OF ANTISOCIAL BEHAVIOR 534 (Stoff, Breiling & Maser eds., 1997).

distracting from a more objective study and analysis of a child's best interests.<sup>61</sup> With relocation rates as high as they are in the United States<sup>62</sup> and with the win-lose dilemma proposed relocations pose to the family law system, it behooves professionals to use the body of existing social science knowledge to increase the chances that children will do well and to continue to vigorously study the impact of relocation on children of divorce.

At this state of the social science research and literature, findings are consistent with and supportive of a conclusion that is also intuitive, that is that relocation is, in a probabilistic sense, more harmful to children than good for them. As Richard Warshak has pointed out, many parents probably do not move when they have the opportunity because they weigh the child's interests as being harmed.<sup>63</sup> However, as this article points out, many of the risks and problems associated with relocation can be mitigated with good planning and genuine consideration for the child's independent needs and interests.

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<sup>61</sup> Gindes, *supra* note 19, at 147.

<sup>62</sup> Estimates of the percentage of the population that moves vary because many factors (e.g., military moving) are not taken into account and because relocation is often only vaguely defined, providing little information as to how much distance was involved in the move. Conservative estimates are that about 20% of Americans relocate, Christine Humke & Charles Shaefer, *A Review of the Effects of Residential Mobility on Children and Adolescents*, 32 J. HUMAN BEHAVIOR 16 (1995) and more liberal accounts are closer to 50%. U.S. Census Bureau (2000).

<sup>63</sup> Warshak, *supra* note 9.