

RELOCATION - BEWARE THE VEILED THREAT

Relocation cases are complex, highly emotional and have a significant impact on all parties involved. When one parent is looking to relocate overseas, the issues are even more complex, as arrangements involving "equal care" and "substantial time" are essentially taken off the table. The Court must try and determine what arrangements will be in the child's 'best interests', the practicality of maintaining a meaningful relationship with the other parent, and the potential effect of relocation on the child.

A consideration of the child's "best interests" centres on the idea that, except in circumstances of abuse, a child will benefit from having a 'meaningful relationship' with both parents. It is therefore the aim of the Court to ensure that these relationships are maintained and facilitated.

A recent case in the Family Court - involving an international relocation - brought into sharp focus, not only the need for a parent to facilitate a child's contact with the other parent but also how the Court deals with the moving spouses comment of, "well- I'm moving anyway, regardless of what's decided".

THE FACTS:

- The child, aged 5, had lived the majority of his life with the mother and was primarily attached to her.
- The parties had been involved in numerous Court hearings.
- The mother had re-partnered a Canadian national and planned to relocate to Canada with him. She had not told the father when she got re-married and she then moved to Canada to live with the child, which was contrary to an existing Court Order from 2009. The mother and child were subsequently returned to Australia.
- The mother's husband worked in Canada and had not right of residency in Australia.
- The mother was pregnant to her new husband.
- The mother told the Court that she would be relocating to Canada, regardless of whether the child remained in Australia.
- There was no issue about either the mother's or the father's ability to care for the child.
- The mother's actions indicated that she would not support or facilitate the 'father- child' relationship.

COURT FOUND:

- Given the mother's assertion that she would move to Canada irrespective of the outcome, the Court was not in a position to consider an "equal time" or "substantial time" arrangement.
- Historically, the mother had obstructed the father's ability to maintain a close relationship with the child.

COURT ORDERED:

- The Court reversed the child's residence, ordering that the child live with the father in Australia.

- That the only way the child would have a 'meaningful relationship' with both parents was if the child lived with the father in Australia.
- The child was to 'spend time' with the mother during school holidays, and talk with her regularly via phone/internet.

LESSONS:

Each case is decided based on the individual facts of the case, and there is limited legislative guidance as to how these cases should be determined. In this case the Court stated that the same set of facts could easily have been determined in favour of the mother. The discretionary nature of the child's "best interests" means that it is difficult for parties undertaking relocation to navigate the process on their own.

Whichever side of the matter you are on, whether you are relocating or trying to stop your child from being moved, it is essential that you receive family law advice early on to determine the best course of action.