

# **DISPUTED PARENTAL RELOCATION: DETERMINING THE BEST INTERESTS OF THE CHILD**

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## **DECLARATION**

I, the undersigned, hereby declare that the work contained in this assignment is my own original work and has not previously, in its entirety or in part, been submitted at any university for a degree.

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## ABSTRACT

In recent years the issue of relocation has been much discussed and litigated. The complexity of the issues inherent in relocation disputes and the relative lack of research in the area points to the need for a more comprehensive, coherent and empirically sound approach than exists at present. The major considerations involved in relocation disputes, using the best interests of the child standard as a reference point throughout, in terms of the available research and issues that require empirical attention, are presented. These include the relationship of the best interests of the child standard in considering the common motivations for relocation, significant psychological factors, cultural, gender and personal biases, the recent collaboration between the psychological and legal professions and the process of psychological assessment. A number of South African court decisions are reviewed to provide an overview of how the law tends to approach these issues. A number of important research areas are described and several factors are identified that is essential for the evaluator to consider when evaluating a relocation dispute.

## OPSOMMING

Oor die afgelope aantal jare het die kwessie van verhuising gereeld onder die soeklig gekom en is dit in howe oor en weer beredeneer. Die kompleksiteit van die kwessies inherent aan verhuisingdispute en die relatiewe gebrek aan navorsing oor die saak, vereis 'n meer omvattende, koherente en empiries verantwoordbare benadering as wat daar vandag bestaan. Belangrike oorwegings wat ter sake is in verhuisingskwessies en deur gebruik te maak van die beste belange van die kind standaard as 'n deurlopende verwysingspunt in terme van die beskikbare navorsing en kwessies wat empiriese ondersoek vereis, word bespreek. Dit sluit in die verhouding van die beste belange van die kind standaard in die oorweging van die algemene motiverings vir verhuising, betekenisvolle sielkundige faktore, kultuur, geslag en persoonlike vooroordele; die onlangse samewerking tussen die sielkunde en die reg, asook die proses van sielkundige assessering. 'n Aantal Suid-Afrikaanse hofuitsprake word bespreek om 'n oorsig te gee van hoe die reg geneig is om hierdie saak te benader. 'n Aantal belangrike navorsingsareas word beskryf en verskeie faktore word geïdentifiseer wat van wesenlike belang is om te oorweeg by die evaluering van 'n verhuisingsdispuut.



The article format of this assignment is in accordance with the requirements of the Department of Psychology.



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## 1. INTRODUCTION

In recent years, the issue of relocation cases has been much discussed and much litigated. Because of the often competing interests of the custodial, the non-custodial parent and the children that are at stake and the apparent inability to accommodate all of these interests, relocation cases present family courts and practitioners with arguably the most intractable disputes. Yet, the family law and mental health community seem to be no closer to a consensus on how best to address this vexatious issue (Debele, 1998).

The complexity of this issue in South Africa stems from a variety of social factors, including lack of employment opportunities, the increasing number of working parents subject to employment related transfer, the weak economic situation, political uncertainty, increasing crime rates, the greater mobility of our society with far-flung families, and the rising numbers of custody disputes occurring within a burgeoning variety of family structures. Parents may feel that their own future and that of their children will be more secure in another country than in South Africa.

Naturally, personal motives for relocation also play an important role. The custodial, and for that matter, the non-custodial parent's desire to relocate after divorce may stem from a variety of reasons. These may include anticipated economic advantages and opportunities, desire to return to supportive family and friends in one's childhood community, pursuit of educational opportunities for one's self and of an improved physical, social, academic or cultural environment for one's child, and the desire to follow a significant other (Stahl, 1999; Weissman, 1994). Not only are married couples divorcing and moving to different provinces or countries for the various reasons mentioned, but we now have foster parents, step-parents, grandparents and others who have significant relationships with children that are affected by relocations (Debele, 1998). The question of how to reconfigure the family system and maintain on-going contact between important adults and the children in these relationships is one of the most perplexing problems in the South African family law.

In the South African context there are a number of factors that further complicate the issue: firstly; the culturally diverse society adds to the difficulties of settling relocation disputes.



Secondly, the issue of gender is a crucial factor to take into account when considering the social context in which the evaluation takes place, given the tension between current constitutional guarantees of equality and a history of socio-culturally entrenched patriarchy. Thirdly, in the absence of a large body of local legal precedent or other clearly defined criteria, personal bias may play a role in the evaluation process and conclusions reached during relocation cases. Evaluators may often speak and act as if the best interests of a child were self-evident, yet it seems that the evaluator's opinion may often stem from highly personal life experiences, such as the kind of family relationships the evaluator knew as a child, the moral values adopted at an early age concerning violence, authority, autonomy and compassion (Kelly, 1997). It is important for evaluators to reflect on the origins of these values, so that they may act with a clearer sense of why they make their judgements and with an appreciation that values and judgements arise from a special set of circumstances, and not from some universal "Western" truth.

The dangers inherent in successfully negotiating these complexities are often increased by the very concept to which lawyers and mental health professionals turn for guidance: the best interests of the child standard. The concept of "best interests of the child" is relied on heavily by legal and mental professionals, but is rarely clearly defined (Kelly, 1997). The "best interests" as defined legally are at times different from the "best interests" defined psychologically (Miller, 1993). This creates a situation wherein legal and mental health professionals, as well as parents, have the opportunity to create their own meaning of what will be in the best interests of the child. Whereas the psychologist, for example, will consider psychological factors as determinative in deciding on the best interests of the child, the court may consider not only the psychological factors, but also the ability of the parent to provide financial security for the children, while each parent may consider themselves more qualified to know what is best for their child. In addition, the understanding of legal and psychological language plays a significant role in the collaboration between the court and the evaluator. The role of mental health professionals in the courtroom, and the co-operation between psychology and law are vital to the resolution of custody-relocation disputes.

The complexity of the issues inherent in relocation disputes and the relative lack of research in the area point to the need for a more comprehensive, coherent and empirically sound approach than exists at present. To this end, the major considerations



involved in relocation disputes, using the best interests standard as a reference point throughout, in terms of the available research and issues that require empirical attention are presented. These include the relationship of the best interests standard in considering the common motivations for relocation, significant psychological factors, cultural, gender and personal biases, the collaboration between the psychological and legal professions and the process of psychological assessment. A number of South African court decisions are reviewed to provide an overview of how the law tends to approach these issues. To conclude, a number of important research areas are described and several factors are identified that are essential for the evaluator to consider when evaluating a relocation dispute.

## **2. THE BEST INTERESTS OF THE CHILD STANDARD IN RELOCATION DISPUTES**

In the following section the factors constituting the best interests of the child, as well as the ambiguity surrounding the definition of the “best interests of the child” standard, will be discussed. The advantages of, and problems with this standard will be addressed in the context of relocation disputes. The “best interests of the child” standard is the essential tool used in relocation disputes. Although this standard alone is not the deciding factor, all other aspects relevant to the relocation dispute are considered in the light of the best interests of the child.

Parental divorce, as well as relocation disputes, requires a restructuring of parental rights and responsibilities in relation to children. If the parents can agree to a restructuring arrangement there is no dispute for the court to decide on. However, if the parents are unable to reach such an agreement, the court, in conjunction with mental health professionals, must help to determine the relative allocation of decision-making authority and physical contact each parent will have with the child. Courts, as upper guardians of children around the world, typically apply a “best interests of the child” standard in determining this restructuring of rights and responsibilities in both custody and relocation disputes (Zaidel, 1993).

In South Africa the court is the upper guardian of all children (Guardianship Act 192 of 1993), and as such the onus lies on the court to ensure that the best interests of a child



are met in relocation disputes, regardless of the type of family arrangement in which the child resides or in which the relocation dispute arises. Thus in relocation disputes the court essentially supersedes parental discretion by obtaining the services of psychologists, family advocates and social workers to evaluate and make recommendations regarding the best interests of the child. The criteria used to determine the “best interests” of a child in relocation disputes are not necessarily applicable to all cases. This is due to the fact that each family’s circumstances are unique and that there is no specific set of criteria that are used to determine the “best interests” of a child in relocation disputes. It is important to note that during a relocation dispute, the non-custodial parent can re-apply for custody of the child. Thus the way relocation disputes are evaluated and the use of the best interests standard in these disputes are similar to the evaluation and use of the best interests standard in custody cases.

## **2.1 Defining the Best Interests of the Child Standard**

The standard of “best interests of the child” is simple to state, and difficult to apply. There is little consensus among legal, judicial, or mental health communities regarding what the child’s “best interests” actually are as they apply to custody or relocation disputes (Gindes, 1998; Kelly, 1997).

Although a clear and consistent formula according to which relocation disputes could be evaluated would be desirable to courts and evaluators, it would make it impossible to consider the infinite and complex range of dynamics and factors at play in any family (Kelly, 1997). It is therefore important that any set of guidelines remains flexible enough to ensure that custody and relocation disputes are dealt with on a case by case basis. Such flexibility allows for each case and child to be considered as unique, with unique interests that have to be represented; rather than adjudicating children as a class or homogeneous grouping whose best interests are largely the same (Kelly, 1997). Ultimately, the interests of the entire family unit should be considered. This complicates the issue further, as what is in the best interests of the parents and siblings of different ages and characteristics may not be the same (Gindes, 1998).



Kelly (1997) defines the “best interests” of a child as the

...combination of factors this child needs in a custody and/or access arrangement that will sustain his or her adjustment and development. This definition operates from the premise that identifiable strengths in parenting, parent-child relationships, and the wider support system should be identified and preserved whenever possible to ensure that the child continues to thrive in the future. (p. 378)

The most compelling reason for relying upon a determination of the best interests of the child is that decision making is centred on children’s needs, rather than adult considerations or societal stereotypes and legal traditions (Mason, Skolnick and Sugarman, 1998; Zaidel, 1993). More specifically, Wall & Amadio (1994) are of the opinion that children’s best interests are served by protecting them from the severe disruption or loss of relationship with a significant other:

A major psychoanalytic concept relates to the significance that continuous relationships with primary figures are necessary for the development of children’s sense of self and identity. The loss of a significant other ordinarily is considered to have a profound negative effect on children’s development, especially if it occurs in the early years of children’s lives. (p. 44)

The best interest standard thus recognises the importance of children’s needs for continuity, stability, and consistency in their parent-child relationships in order to ensure healthy development.

The best interests of the child standard is a substantive guideline for custody and relocation decision-making that focuses on the life situation of a particular child and involves the consideration of a list of relevant factors in determining with whom the child should be placed (Buehler and Gerard, 1995). In the initial custody dispute these factors include the wishes of the child and the parents, the psychological status of the parents and the children, the relationship between all significant parties, the ability of each parent to encourage the relationship between the child and the other parent and any history of child or spousal abuse (Austin, 2000).

In a relocation dispute, additional factors become relevant in determining “best interests”



and require careful consideration. These include: (1) the parent's reasons for seeking or opposing the move. (2) The quality of the relationships between the child and the custodial and non-custodial parents and the degree to which the child has formed a secure emotional attachment to each parent. (3) The viability of an alternative parenting arrangement post relocation and the potential impact thereof on the child. (4) The degree to which the custodial parent's and the child's life may be enhanced economically, emotionally and educationally by the move. (5) The negative impact, if any, from continued or exacerbated hostility between the parents. (6) The effect that the move may have on any extended family relationships. (7) The developmental age of the child and, where relevant, his or her preferences, and lastly, (8) the potential socio-cultural adjustment of the child after the move (Austin, 2000).

Justice King (see in *re McCall v McCall*, 1994, pp. 204-205) says regarding the best interests of the child the following: "In determining what is in the best interests of the child, the court must decide which of the parents is better able to promote and ensure its physical, moral, emotional and spiritual welfare". This can be assessed by reference to certain criteria as described below, not in order of importance, and also bearing in mind that there is a measure of unavoidable overlapping and that some of the listed criteria may differ only as to nuance. The criteria are the following:

- (1) the love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child;
- (2) the capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires;
- (3) the ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings.
- (4) The capacity and disposition of the parent to give the child the guidance he requires;
- (5) the ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs – generally speaking, the provision of economic security;
- (6) the ability of the parent to provide for the educational well-being and security of the child, both religious and secular;



- (7) the ability of the parent to provide for the child's emotional, psychological, cultural and environmental development;
- (8) the mental and physical health and moral fitness of the parent;
- (9) the stability or otherwise of the child's existing environment, with regard to the desirability of maintaining the *status quo*;
- (10) the desirability or otherwise of keeping siblings together;
- (11) the child's preference, if the court is satisfied that in the particular circumstances the child's preference should be taken into consideration;
- (12) the desirability or otherwise of applying the doctrine of same sex matching; and
- (13) any other factor which is relevant to the particular case with which the court is concerned.

The factors considered under the "best interests of the child" standard should be applied in the context of the impact of the move on the child's physical and psychological adjustment (Miller, 1995). Underlying this standard is the notion that the child should be protected, as he or she is the party who is involuntarily involved in the dispute.

## **2.2 Advantages and Disadvantages of the Best Interests Standard**

The best interests of the child standard, despite problems experienced by evaluators and courts in using it, remains a useful framework for determining the needs of each child in each family.

The following advantages of the best interests standard are evident from the literature. Firstly, the needs of children are prioritized which implies that each recommendation and decision made by the court using the best interests of the child standard, considers the individual child's developmental and psychological needs (Kelly, 1997).

Secondly, this standard is responsive to changing social or legal trends outside of custody law, particularly with respect to custodial parents with severe disabilities, homosexual preferences, diverse life style practices, or in other non-traditional parenting arrangements (Kelly, 1997). For example, as fathers have become more involved in caretaking and child rearing, the best interests standard has accommodated their more active roles by considering access patterns for their children that have expanded beyond the traditional limited visitation structures.



Thirdly, as economic discrepancies between more affluent divorced fathers and less economically secure mothers have begun to appear in custody disputes as the basis for a change of custody from mothers to fathers, the best interests standard has enabled courts to focus not only on the economic advantages, but also on the quality of parenting provided, and the emotional ties of the child to each parent (Kelly, 1997).

The ultimate advantage of the best interests standard is that it asks the courts to consider what a specific child (or children) needs at a specific point in time, given their specific family and its changed family structure (Kelly, 1997).

The core problem regarding the “best interests” standard seems to arise from the lack of uniformity regarding which interests to consider, how to define and weigh the importance of different factors, and to account for children’s changing developmental needs over time. Attorneys, social workers, and custody evaluators consider and emphasise different factors, or interpret the same concepts, such as continuity or stability, in diametrically opposing ways (Halon, 1990; Mason et al., 1998; Zaidel, 1993). Without clear guidelines the courts often have to rely on relatively subjective value judgements and experiences in deciding what would be in the best interests of a child (Mason et al., 1998; Zaidel, 1993).

More importantly, there are conflicting principles in law, in which the court is called upon to make a choice. For example, courts may end up giving precedence on the basis of necessity, to parental rights over a child’s interests and even if they uphold the best interests notion, they are often influenced by other factors (Langelier and Nurcombe, 1985). One judgement cautioned against the “absurd” result of the “unrestrained application of ‘psychological parenthood’ theory” (Miller, 1993). The ‘psychological parent’, the parent who has spent the most time with the child and who has raised the child, is not necessarily the best parent. Other factors, as mentioned before, should also be taken into account. Courts must favour the constitutionally protected rights of parents over the best interests of the child if there is a conflict between the two. Thus when there are conflicting rights between parents and child, the parents’ rights will be considered primarily. Here, the child’s interest becomes secondary, as the rights of the parents take precedence over the rights of the child (Miller, 1993).



Some of the objections to the use of this standard are that its vagueness reduces women's bargaining power, complicates divorce negotiations, and encourages unnecessary litigation because of the uncertainty of outcome (Kelly, 1997). The possibility that the best interests of the child standard may complicate divorce proceedings is not a valid objection. The fact that these disputes demand energy, creativity, and a constant sense of objectivity about what is in the best interests of the child, does not imply that the standard is not useful. Furthermore, recent research indicates that women are not disadvantaged in the bargaining process by the best interest standard. The uncertainty of custody outcomes have not caused women to trade off child support to avoid the risk of losing the child (Kelly, 1997).

In conclusion, it seems that although the best interests of the child standard is not clearly defined and its application is not without problems, it is still the guiding principle in almost all custody-relocation disputes, and is as well accepted among psychiatrists, psychologists, social workers and other mental health professionals as it is by the legal profession (Goldstein, Freud and Solnit, 1979; APA, 1982; Levy, 1985; Solnit and Schetky, 1986; Nevius, 1989).

### **3. MOTIVES FOR RELOCATION**

Both parents should have the right to reorganize their lives, even if this entails moving some distance from the former partner (Maccoby and Mnookin, 1992). To expect divorcing parents to spend their lives in the same geographical vicinity is unrealistic (Austin, 2000; Debele, 1998). This raises the question of how parental rights can be balanced against children's rights in a manner that still produces outcomes that are in the best interests of the children.

A factor that is often examined in this balancing process is the parent's motives for relocation. One reason seems to be that a parent's motives can provide valuable indications of the extent to which the parent is aware of, and is actively considering, the child's best interests. A further reason, according to Weissman (1994), is that parental motivation for relocation could impact negatively on children:

When motivations for relocating are laden with unresolved and conflicted emotions (i.e., anger, pain, fear, loss) and defences (i.e. escape, avoidance, fantasy, and denial), layers of



complexity is added. The “fight” of the dissolution may be followed by the “flight” of despair or revenge. Complexity is further added if capacity for personal discipline and integrity is defective or compromised. The consequences are significant for the non-custodial parent and the child, and access (frequent and continuous) becomes limited. The intended purpose of a prospective move in some cases is to frustrate access to the child and to alienate them from the non-custodial parent. (p. 177)

Given this potential impact, it is important for the evaluator and the court to consider the parent’s motives carefully, and, given that the reasons provided by the parent who wants to relocate may or may not disguise their true reasons and that their perceptions of how the move would improve matters may be distorted, to be extra cautious in reaching conclusions in this regard. It is equally important, however, that the same level of caution is applied in examining the non-custodial parent’s motives for opposing the relocation.

Despite a lack of research in the area, a number of broad categories of motivation for relocation have emerged which include: the anticipated economic advantages and opportunities in the new community, the desire to return to supportive family and friends in the custodial parent’s childhood community and the pursuit of educational opportunities by the parent. Relocation may also be motivated by the desire to provide an improved physical, social, academic or cultural environment for the child. Remarriage and the desire of the custodial parent to distance him- or herself from the former spouse are also motives commonly stated by parties seeking permission to relocate (Gindes, 1998; Weissman, 1994). What follows is a brief discussion of a number of these factors.

### **3.1 Support Systems**

Seeking more emotional, social or practical support is one of the reasons parents give for wanting to relocate (Gindes, 1998; Weissman, 1994). In some instances the custodial parents may wish to return to their childhood region where their own parents live (Gindes, 1998).

For instance, when the custodial parent is the mother, she might find it easier to cope with the increasing demands of having to run the household and earning an income to sustain the family by moving closer to other family members that can lend support. Support may be in the form of grandparents taking care of the children whilst the mother is working.



The same could apply to the father as custodial parent.

In these cases the need of the custodial parent for emotional support from his or her parents or family has to be weighed against the child's need for emotional support from the non-custodial parent. The best interests of the child have to be carefully considered in this scenario. If the custodial parent feel frustrated and overwhelmed by staying in the current community with little support and meagre resources, their resultant emotional state may have a greater negative impact on the child than less frequent visitation with the non-custodial parent (Gindes, 1998).

### **3.2 Economic and Employment Opportunities**

Most people change employment several times during their adult lives. Opportunities to reduce costs or increase income are often motivations for relocation (Gindes, 1998). When these opportunities present themselves, parents are faced with choosing between the other parent's access to the child and their own career options and enhancement (Stahl, 1999). Due to the current economic situation and the lack of employment opportunities, these factors are particularly relevant to relocation disputes in South Africa.

Economic hardship may lead to relocation (Stahl, 1999). It is well-documented that the economic status of many custodial mothers and their children declines after marital dissolution (Hetherington, Bridges and Insabella, 1998). In high-cost-of-living locales, a single parent may need to reside with relatives (often a parent) or move to a location with a lower cost of living, even if there are no relatives nearby. In such cases, the court will often assess the reality of the hardship before allowing relocation (Stahl, 1999). Although the decline of income may account for some of the negative impact of divorce on children, it does not appear to be a primary determinant (Amato and Keith, 1991). The economic consequences of divorce, however, may encourage custodial parents to seek better conditions beyond the marital community (Gindes, 1998).

### **3.3 Desire to Distance Self from Former Spouse**

Divorce usually triggers the desire to start over. For some adults, relocation to a new community, which is not associated with the unhappy marriage, is seen as the first step



toward a new life (Gindes, 1998). Booth and Amato (1992) report that people who divorce are significantly more likely to relocate to a new community than those who do not divorce. This seems to imply that some divorcees have a need to distance themselves from the former spouse and community.

In this regard Weissman (1994) has identified two kinds of relocation disputes. Firstly, the residential parent is described as acting to deprive the non-custodial parent of access to the child. This scenario assumes deliberate manipulation by the custodial parent and holds significant risk that it will have a negative impact on the psychological well-being of the child.

Secondly, the primary parent "usually a middle-upper class, educated, homemaker mother, seeks to escape the perceived humiliation of remaining in the "father's community..." (Weissman, 1994). He suggests that in these cases relocating becomes an attractive idea, because the mother experiences powerlessness and fears of losing her children.

Raines (1985-86) has cautioned courts to look beyond the stated reasons for relocation, because so many parents primarily want to increase the geographic distance between themselves and their former spouses. Raines (1985-86) suggests that this should not be a legitimate reason for relocation. While this argument has some validity, it is important to consider that reducing contact between hostile parents may reduce the level of stress for children, as well as for the parents (Amato & Rezac, 1994).

### **3.4 Remarriage**

Remarriage is also seen as a motivation for relocation. The new spouse may live in a different area or may have to move due to economic reasons, such as an employment transfer. In this case it is the blend of remarriage and employment economics that forces the move (Gindes, 1998).

Another issue resulting from remarriage is the custodial right of the step parent involved in a relocation dispute. Given the relative lack of value placed on the interests of the step parent by the court, cases involving step parents may require a somewhat different



analysis. The court and the evaluator are usually more concerned about the direct impact of relocation on the relationship between the biological parent and the child (Stahl, 1999).

Although motives for relocation and the psychological impact thereof on the child ought to be considered by the court, the extent to which these motives serve the best interests of the child should still be the deciding factor.

It is therefore significant that no empirical studies exist which indicate the types or frequencies of the various motivations of the custodial parent for relocation, and secondly, that the circumstances in which different motivating factors result in more or less detrimental consequences for the children, have not been empirically explored (Gindes, 1998).

#### **4. PSYCHOLOGICAL IMPLICATIONS OF RELOCATION**

It is generally accepted that children from divorced families tend to have more psychological difficulties than children from continuously intact families (Amato, 1993). Children's responses to family disruption are varied, with most children adjusting appropriately after the initial period of trauma and transition has passed. However, it has been found that a minority of children suffer long-term negative psychological consequences (Amato, 1994; Gindes, 1998; Lamb, Sternberg and Thompson, 1997). As divorce has become more commonplace, it may be that the impact of divorce on children may be weakening (Amato & Keith, 1991).

The psychological impact of relocation can be examined across a number of broad and often overlapping areas: namely, the impact of the prohibition of relocation, the frequency of contact of the child with the non-custodial parent, the influence of the relocation of the non-custodial parent, parental discord, the age of the child and parental functioning.

##### **4.1 Prohibition of Relocation**

When a court prohibits a move by the custodial parent, it may force that parent to choose between custody of the child and possible opportunities (e.g. a new marriage, an important job opportunity, or a return to the help provided by extended family) that may benefit the



entire family unit, including the child (Wallerstein and Tanke, 1996). A parent who is frustrated by their quality of life, the loss of job opportunities or who feels overwhelmed due to lack of support and resources, may have an involuntary negative impact on the adjustment of the child. The child may well experience diminished quality of parenting as a result of the parents' discouragement and suffering (Gindes, 1998).

Giving up a major life goal or prospective long-term relationship is a significant loss for an adult. The child's perception that he or she is responsible for the parent's profound disappointment can become a source of guilt for the child (Debele, 1998).

Another factor which should be considered in the prohibition of relocation is the impact thereof on a step parent. The evaluation of such a case should take into account the motivations for the relocation, as well as the new family system. The non-custodial parent may argue that the step parent's relationship with the child is not significant, as he or she is not the child's biological parent. This argument may not always be relevant as the biological relation of a parent to a child is not the only factor to consider in a parent-child relationship. The child may well have a stronger emotional attachment to the step parent than to the non-custodial biological parent.

#### **4.2 Contact with the Non-Custodial Parent**

The relationship between parents and children is necessarily different after a divorce. Accordingly, it would be unrealistic to try to preserve the non-custodial parent's accustomed close involvement in the child's everyday life, at the expense of the custodial parent's efforts to start a new life or to form a new family unit. Relocation complicates the preservation of the relationship of the child with the non-custodial parent due to the increased geographical distance.

Relocation has a direct and immediate impact on the physical contact between the child and the non-custodial parent (Gindes, 1998). In about eighty percent of divorce situations, the custodial parent is the mother and the non-custodial parent is the father (Maccoby and Mnookin, 1992). Generally, relocation disputes involve mothers wanting to relocate and fathers opposing the proposed relocation. The significance of contact with the non-custodial parent is especially relevant to relocation decisions. The consensus among most



mental health professionals is that, in the absence of unusual circumstances, like child abuse and parental enmity, children are better off if they have frequent contact and a good relationship with both parents (Hetherington et al., 1998; Sales, 1992).

According to Weissman (1994), from a psychological perspective:

...geographic distance may result in several different types of outcome: (a) positive, that is, by reducing opportunities for chronically conflicted and discordant parents to ensnare and/or abuse the child; (b) negative, that is, by secondarily stressing the child already rendered vulnerable by divorce and its aftermath and further depriving him or her of ongoing parental and other attachments and resources; (c) neutral, that is, when cooperating and reasonably well-functioning parties seek not to alienate their reasonably well-functioning child from respective parents who affirmatively promote opportunities for quality visitation. (p. 178)

Following divorce, more than twenty percent of children have no or infrequent contact with their non-custodial fathers. Increased distance between non-custodial fathers and their children appears to be related to a decrease in paternal involvement (Gindes, 1998).

The influence of deprivation of frequent contact of the child with the non-custodial parent due to geographic distance has to be taken into account in relocation disputes. In this case, the child's developmental age appears to be a significant variable. Early research on father absence suggests that the younger the child, the greater the negative impact of the father's absence on the child (Sales, 1992). Younger children may not be able to develop and maintain a close relationship with a non-custodial parent, if geographically separated (Gindes, 1998). For adolescents, however, even a relatively small degree of contact may be sufficient to maintain a solid relationship between the child and the non-custodial parent (Maccoby, 1993).

Wallerstein and Tanke (1996), state that though they do not wish to diminish the importance of the role of the father in the child's formative years, they have found that there is no significant influence of the frequency of visits, time spent in the father's home, or on the development of the nurturing father-child relationship on the positive outcome in the child or adolescent.



It is difficult to predict the parenting behaviour of fathers after a divorce on the basis of their pre-divorce behaviour (Hoffman, 1995). Some fathers experience intermittent contact with their children as too painful, with the result that they withdraw from their children. Other fathers tend to increase their involvement with their children. Non-custodial mothers are more likely to stay in contact with their children than non-custodial fathers (Herrerias, 1995). They also tend to be more supportive of their children and more effective in parenting behaviours than non-custodial fathers (Hetherington et al., 1998).

Parents from high conflict marriages may try to avoid contact with each other post divorce. This often results in fewer opportunities for the father to be with the children, especially if the mother is the primary care-giver. The level of pre-divorce parental involvement is not necessarily a valid determining factor for the effects of relocation on the non-custodial parent-child relationship (Amato and Keith, 1991; Gindes, 1998; King, 1994).

The nature or quality of contact and the relationship appear to be more significant than the frequency of contact (Gindes, 1998). When non-custodial parents share a variety of activities, including the routine, everyday activities, with their children, the children's well-being is enhanced (Clarke-Stewart and Hayward, 1996; Lamb et al., 1997). The greater the geographic distance between the child and the non-custodial parent, the less likely that the non-custodial parent can assume the traditional parental roles or participate in the ordinary activities of the child's life. The quality and frequency of contact with the non-custodial parent are important factors that contribute to the adjustment level of the child to relocation (Gindes, 1998).

Where the family situation involves severe parental pathology, a history of physical or sexual abuse, or high overt inter-parental conflict, children may fare better psychologically when they have a limited or no relationship with the non-custodial parent (Johnston, 1994).

The quality of contact with the non-custodial parent, more than the frequency, has an influence on the psychological adjustment of the child. The quality of contact before relocation may influence the quality of contact with the non-custodial parent after relocation.



### 4.3 Relocation of the Non-Custodial Parent

An aspect of relocation that has received very little attention is the psychological impact on the child of non-custodial parent relocation. As Stahl (1999) points out:

Often ignored ... is the parent who *chooses* to move away from his or her child, regardless of the reason. Non-custodial parents are often upset with the desire of the custodial parent to move, but no one seems to object when the non-custodial parent moves. Yet such moves may be very difficult on the child. (p. 74)

The impact of the non-custodial parent relocating on the child is not known (Gindes, 1998). When the non-custodial parent relocates to another province or country, it may have the same deleterious effects on the child as relocation of the custodial parent and child. It would seem that there is a bias toward the non-custodial parent in the freedom to relocate. The same criteria for relocation should apply to both the custodial and non-custodial parent, if the best interests of the child are considered.

The lack of research in this area points to a possible area of bias in favour of the non-custodial parent in the legal and mental health system. The best interests of the child are affected whether it is the custodial parent or the non-custodial parent relocating.

### 4.4 Parental Conflict

Where conflict exists between parents, limited contact with the non-custodial parent appears to have a positive impact on children (Amato and Rezac, 1994). Stress loads may already be severe if parental discord (pre- and post-dissolution) remains high, particularly if parents fail to safeguard children from the hostility between them (Weissman, 1994). Parental conflict has been consistently associated with poor psychological outcomes for children (Amato, 1993; Camara and Resnick, 1989; Johnston, 1994; Lamb et al., 1997).

Conflict is a primary factor related to the adjustment of children after the divorce of their parents (Amato, 1994; Wallerstein and Kelly, 1980). Children whose parents fight in front of them are likely to exhibit a wide range of negative behaviours, whether or not their parents remain together or divorce (Gindes, 1998). Distress and confusion observed in the



child in the transitional relocation period may be more a situational reaction to parental discord and respective tensions or impairments than an accurate reflection of the child's functional status or of visitation problems (Weissman, 1994).

The most deleterious effects of conflict are manifested in those children whose parents involve them in the battle by encouraging alliances, using them to communicate to the other parent, and making negative statements about the other parent to the children (Gindes, 1998). For example, an angry father may influence a vulnerable child to feel similarly toward his or her mother, and then misattribute the cause of the actions of the child to visitation problems at the mother's house, rather than to the results of these efforts to alienate the child from the mother (Weissman, 1994).

The negative consequences of parental conflict may be attenuated by positive conflict resolution strategies, expression of the conflict, and adjustment of the parents (Gindes, 1998). In this context, it may be important to ascertain whether one parent more than the other is responsible for ensnaring and enmeshing children in stressful situations, and thereby compromising the needs and interests of the child (Weissman, 1994).

When overtly acrimonious marriages end, the children may manifest better levels of psychological adjustment because of their reduced exposure to parental conflict. In an analogous fashion, for children caught in highly conflicted post-divorce families, relocation may further lessen their exposure to the parental conflict, thereby reducing the negative consequences of divorce for them (Gindes, 1998). Precipitating a high conflict relationship with the non-custodial parent is not, however, a recommended tactic for a custodial parent wishing to relocate. Low overt conflict between parents is still better for children than high conflict defused only by geographic distance (Gindes, 1998).

#### **4.5 Age of the Child**

Children of different ages have varying developmental levels of cognitive and emotional resources that may influence how they react both to divorce and relocation (Gindes, 1998; Weissman, 1994). In terms of most developmental theories, the younger the child, the greater the impact that separation may have with regard to the relationship with the non-custodial parent (Gindes, 1998). The effects of age are intertwined with other variables,



such as the amount of time since parental separation, parental discord and pre-relocation adjustment (Allison and Furstenberg, 1989; Hetherington et al., 1998).

One of the threshold questions in examining a child's ability to adjust to relocation is the degree to which the child has formed a secure emotional attachment to each parent. Very young children under the age of two are usually not able to tolerate long separations from the primary nurturer. Their emotional attachment to the non-custodial parent may be tenuous, since it gradually develops over the first few years of life and may be interrupted as a result of relocation (Gindes, 1998). Separation prior to the consolidation of a parent-child relationship may interfere with the formation of that relationship (Gindes, 1998).

From a cognitive perspective, infants and very young children do not have the resources to understand the absence of a significant attachment figure, such as the non-custodial parent. Although they may not be able to verbalise or identify their feelings, they may experience distress (Gindes, 1998). Frequent and regular contact with the non-custodial parent is essential in developing a young child's attachment to the non-custodial parent. If a child is deprived of the opportunity for frequent contact, the child's ability to form a secure attachment to the non-custodial parent may be impaired. Preschool children often assume they are to blame for the divorce, relating it to some behaviour on their part. Children of this age are also very literal in their thinking and struggle to envision what their new life will be like (Gindes, 1998).

Elementary school-age children are developing interests and activities outside the home and are usually very involved with peer relationships. Relocation of the family to another community may interfere with the child's relationships with his or her peers. In some respects, children of this age group are more vulnerable to the effects of divorce than preschool children, because they have a better understanding of the situation, but can no longer effectively use fantasy to deny or escape the reality (Gindes, 1998). They do, however, have a better sense of time and continuity and understand that they will continue to see the non-custodial parent (Gindes, 1998).

Pre-adolescents or young adolescents generally have better coping skills than younger children. They have established strong peer relationships, and may be more responsive to therapeutic intervention (Gindes, 1998). They are, however, susceptible to loyalty conflicts between the parents and may get caught up in the parents' battles, often siding with the



parent they perceive as the weaker or wronged one (Gindes, 1998; Stahl, 1999). As with all school-age children, leaving friends, activities, and the familiar school are major sources of anxiety, regardless of whether the family is intact or one parent is staying behind.

Adolescents may be slower to adjust to the impact of family disruption than younger children (Gindes, 1998). Adolescents possess the cognitive capacity to understand their parents' divergent viewpoints and to appreciate that their parents' failed marriage is not their fault or responsibility. They are, therefore, able to distance themselves from the parental interaction better than younger children are (Gindes, 1998).

Adolescents are coping with their developmental tasks of identity resolution, independence, and intimacy in relationships. Paradoxically, however, while these tasks ultimately separate them from their parents, they still want and need the family to remain intact during this process (Debele, 1998). Divorce disrupts the stable family base to which an adolescent can return when he or she needs parental nurturance in order to continue the move toward adulthood. With regard to relocation, adolescents can maintain the relationship with non-custodial parent on a long distance basis more easily than younger children (Debele, 1998; Gindes, 1998). Moving to a new school in the middle of high school, however, can significantly increase an adolescents' level of stress and may interfere with integration into that school. Adolescents frequently resist relocation, following the divorce of their parents (Gindes, 1998).

Evidence exists that the acute effects of divorce dissipate and that most children and parents adjust after two years (Hetherington and Clingenpeel, 1992). In the divorce situation, particularly where relocation is contested, it is very difficult for children of any age to view it in a totally positive frame (Gindes, 1998). While no empirical evidence directly links the timing of relocation to the child's quality of adjustment, one can infer from psychological research and clinical experience that it would be better for the child to adjust to the divorce in a familiar environment, prior to relocation (Gindes, 1998).

#### **4.6 Parental Functioning**

According to Wallerstein and Tanke (1996) the psychological adjustment of the custodial



parent has consistently been found to be related to the child's adjustment, but the psychological adjustment of the non-custodial parent has not. Parental effectiveness is generally lower after divorce, due to the stress associated with this period of time. A parent who is stressed or depressed, for example, is likely to be less attentive and less sensitive to the needs of the child than a parent who is not depressed (Gindes, 1998). The psychological adjustment of the custodial parent could affect child-rearing skills along with other parental functions (Gindes, 1998). The potentially added stress experienced by the custodial parent following relocation should be taken into consideration by the court and mental health professionals.

#### **4.7 Psychotherapy**

Psychotherapy seeks to protect the best interests of the parties involved and especially those of the affected children. This is achieved through enabling parents to process the sometimes overwhelming life crises and complexities evoked by relocation, in a therapeutic context (Weissman, 1994). Since courts appear predisposed to allow relocations, it is important for mental health professionals to assist the court in suggesting interventions that will promote the child's healthy adjustment to the changes associated with relocation (Austin, 2000). The stress that accompanies relocation challenges the therapist to help the parties involved in the dispute to deal with the potentially negative life transition event (Felner, Terre and Rowland, 1988). The meaning attributed to relocation has a substantial influence on the outcome. If relocation is seen as symbolic of the disruption of the family, additional obstacles can be expected (Cornille, 1993).

Psychotherapy could be beneficial at any or all phases of the process. Various modalities of treatment should be considered, including individual therapy for the child or the respective parties, or family therapy for the relocating family members (Weissman, 1994). Psychotherapy for the non-custodial parent would address issues of loss, grief, anger management, issues of fairness and depression (Austin, 2000; Weissman, 1994). Conflict amelioration, reduction of parental discord and prevention of further enmeshing of already vulnerable children in relocation disputes are critical goals (Weissman, 1994).

Child psychotherapy would address issues of separation and loss from the non-custodial parent, extended family, friends, school and extracurricular activities (Austin, 2000).



Adjustment to the new environment and reactions associated with guilt, role conflicts and demands have to be addressed (Austin, 2000; Weissman, 1994). Dealing with anger experienced by the older child who may have been opposed to relocation and developmental regressions of younger children are commonly addressed during psychotherapy (Austin, 2000). Parents would be assisted in acquiring an understanding of what their children are experiencing, and in gaining knowledge of appropriate child-rearing skills (Weissman, 1994).

Methods of alternative dispute resolution (i.e., mediation, couples' or family therapy, etc.) must always be considered and emphasised. Psychotherapy can serve the relevant purpose of expanding parties' perspective as to the range of available options (Weissman, 1994). The main objectives of psychotherapy must include restoring a sense of self-esteem and a sense of control, with an enlightened perspective with its highest standard being the protection of the child's best interests regardless of age or developmental stage (Austin, 2000; Weissman, 1994).

## 5. CULTURE

In working with ethnic minorities or non-dominant cultures, the acculturation process requires careful consideration. A simple definition of the acculturation process is the cultural modification of an individual or group through the adoption and adaptation of traits from another culture (Merriam-Webster, 1989). It is the degree of acculturation that attributes uniqueness and complexity to family units relocating from a common ethnic and cultural heritage.

The presence of cultural sensitivity is considered a desirable attribute for the cross-cultural therapist. Cultural sensitivity can be developed through the appreciation of differences and similarities between different cultures (Anderson and Fenichel, 1989).

Issues of race, ethnicity, national origin, religion, language and culture continue to be in the forefront of society. Due to the wide and complex cultural differences in South Africa, it is to be expected that these would regularly impact on the dynamics of a relocation dispute. Historically, the boundaries between cultures and races have clearly been maintained.



This has promoted a lack of understanding and knowledge of other groups and fostered a situation in which biases and prejudice may flourish.

The guidelines for child custody evaluation as set out by the APA (1994) require that:

The psychologist engaging in child custody evaluations is aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture and socioeconomic status may interfere with an objective evaluation and recommendations. (p. 679)

According to Vasquez (1999), there are a number of culturally related factors that might emerge in an evaluation:

Cultural attitudes, values, and traditions toward marriage and divorce; spousal and gender roles and distribution of power in marriage; attitudes, customs, and learned behaviours regarding the discipline of children; parent-child alignments and parent-child sleeping customs; cultural attitudes and learned behaviour about the expression of emotions; the self-esteem of a minority group member relative to the dominant society; and concepts of time. (p. 159-160)

In addition, psychology itself is the product of "western" discourses in mental health. Western society has often been accused of imposing paradigms and practices on other cultures. Taylor and Sanchez (1991) note that clients (who may not be "white") end up coming into "white" offices, dealing with "white" professionals, and signing many "white" papers. Some clients may be aware of this; others may not. In South Africa, this could be a legitimate problem, as until recently many of the psychological and legal professionals were white South Africans dealing with clients from various cultures found in South Africa.

When a relocation dispute has to be resolved, and the parents come from different cultural backgrounds, it creates a further dilemma for the evaluator and courts in an already complicated dispute (Vasquez, 1999).

Apart from possible bias regarding the parties' cultural dynamics, there is the issue of the evaluators own cultural orientation. It is important that the differences between the evaluator's culture and the client's culture do not diminish the validity of the evaluator's



conclusions (Vasquez, 1999). The evaluator should be aware of the differences and ensure that the conclusions regarding the evaluation consider the cultural background of the clients. Though evaluators cannot become experts on all cultures, they can recognise the importance of being able to understand a person's perspective on significant family issues, if that perspective is shaped, even in part, by cultural influences (Vasquez, 1999).

Current literature on child custody and relocation evaluations seldom mentions the importance of considering a family's culture or any cultural differences within a family (Vasquez, 1999; Roll, 1998). The lack of literature in this regard indicates the lack of understanding in the psychological community regarding the significance of cultural issues in relocation disputes. However, as Vasquez (1999) points out:

...there are articles on culture in mediation and an array of articles, books and research on culture and mental health. There is also literature on ethnicity. Even though there is a scarcity of written material in this specific area, reading and learning about cultural differences will add to the base of knowledge that an evaluator needs. (p. 154)

Thus, even though there is a lack of research and literature, it is still the responsibility of the evaluators to ensure that they gather the relevant information when considering the possible impact of cultural differences during an evaluation. Zemans (1985) emphasises the importance of considering cultural diversity in relocation disputes for the courts:

The task for the court then, is both to ascertain and understand that cultural environment in which children before the court are developing. With all other factors equal, the custodial determination should be significantly influenced by the cultural, religious or social orientation of the child. (p. 67)

The adverse feelings of the parties involved in relocation disputes to working with professionals who do not share their cultural background are noted in literature (McGoldrick, Pearce and Giordano, 1982). This can be an additional barrier for the evaluator (Vasquez, 1999). Therefore, if the evaluator is not aware of the cultural norms of the parties concerned, it could result in an inaccurate evaluation of the familial situation. The literature on culture validates that certain aspects of a person's cultural identity may influence how they relate to the evaluator and how the evaluator interprets their behaviour within the context of the family (Vasquez, 1999).



Raiford and Little (1991) state that the “evaluator’s responsibility is to provide the Court with an objective, professionally sound and honest picture of the family and its dynamics as it affects the children” (p.1).

There are specific implications of cultural biases in the South African context. Due to the cultural diversity of the population, the evaluator and the courts would have to be aware of the possibility that their views on what constitutes appropriate behaviour, values, language and expression through language, traditions towards marriage and divorce, the distribution of power in marriage and the customs regarding the rearing and disciplining of children, will not necessarily be the same as the parties’.

In light of the above-mentioned the evaluator and the court need to be aware of their own possible cultural bias and the influence thereof on their conclusions and the decisions made during the evaluation of a relocation dispute.

## **6. GENDER**

Gender issues can become a matter of concern during relocation disputes. There are several factors that are relevant regarding gender bias. Parental roles are changing in today’s society. In the past it was the norm for the father to work and the mother to stay at home. In the current economic situation it is common, if not necessary, for both parents to work. It is very rare that the mother would still be a “homemaker” exclusively. In South Africa, white South African males are finding it more difficult to acquire employment. The father might have to take on the role of primary caretaker and the mother the role of breadwinner.

The gender of the evaluator is another factor to consider in the evaluation process. For example, a man who is undergoing a difficult role transition in his life may view female evaluators as biased. Evaluators need to stay objective regarding gender bias, be aware of the possibility of issues of transference and the possibility that it could undermine their objectivity. Furthermore, evaluators need to be aware of their own genderised attitudes.



For example, some evaluators may offer arguments in support of the primary parent presumption. They may point out that a woman who has been most involved in her children's daily care has less to learn than the father about child-rearing and, by virtue of her experience, is probably more competent to assume the duties of custodial parent.

Another factor is the imbalance that might be created with regard to financial dependence/independence. In the South African society it is more common for males still to be earning more money than females. The fact that one parent is financially stronger than the other can also cause complications during the dispute for custody of children in relocation cases. One possible scenario is, for instance, that a financially stronger father is able to afford better legal representation than the mother.

Unfortunately, the reality is that the court will consider the ability of the parent to provide financially for the children. The father will then also be in the position to obtain the services of a psychologist to evaluate the child, whereas the mother might not be able to afford this service. This can cause the mother to feel that she is at a disadvantage. On the other hand, the court might conclude that as the father is in a financially stronger position, he is able to afford visitations to the child or children more easily than the mother.

Until recently, custody was typically awarded to the mother (Kelly, 1997). During relocation disputes however, custody of the child may not be necessarily automatically be awarded to the mother. In the *Lubbe v Du Plessis* (2001), the father successfully applied to have the existing order amended in order to grant him custody of the children. The court found in this case that there was a stronger emotional bond between the father and the children than between the mother and the children. The father was found to be maintaining a settled lifestyle, whereas the mother's life was characterised by constant moves to accommodate her new husband's job. The court found that constant changes in school and residence are not desirable for the educational well-being and security of the children. The father's parents were capable and willing to assist him emotionally and materially to bring up and care for the children, thus forming an important support structure. The father's financial circumstances were more certain than the mother's, making him better equipped to provide economic security for the children. Furthermore, the children preferred to stay with the father rather than the mother. Here it is clearly demonstrated that the court found it in the best interests of the children that custody be awarded to the father instead of the mother.



Even though “best interest” is the present guiding principle in custody-relocation disputes, it does not always rule in the courtroom (Miller, 1993). Roth (1976-1977), writing about “the tender year’s presumption”, cites instances of courts favouring the mother, despite statutes endorsing best interests. According to the “tender year’s presumption” the court has to assume that the best interests of the child are met when the child remains with the mother until the age of six years (Atkinson, 1984, Pfeffer, 1999). The “tender year’s presumption” represented a shift from the rights of parents to the needs of children, but still made simplistic and by today’s standards, sexist, assumptions about mothers as primary caretakers and fathers as breadwinners (Pfeffer, 1999). Determination of maternal fault for the marital breakdown and/or evidence of maternal unfitness were required to overrule the presumption (Buehler and Gerard, 1995). These cases reflect a defect in the administration of the law, not in the law itself (Miller, 1993).

Another issue relating to gender that arises in relocation disputes is the use of the “primary caretaker preference.” The “primary caretaker” is usually defined by the parental duties undertaken during marriage, to include a determination of which parent spent the most time performing the main child care functions. The concept of the “primary caretaker” is technically professed to be gender neutral, although there are many who perceive this as a return to disguised maternal preference standard (Kelly, 1997). Wall and Amadio (1994) come to the conclusion that:

Although current research supports the significance of fathers in children’s development, mothers still are perceived by society as the primary parent. Following the assumption of the primacy of the mother-child relationship, mothers therefore are purported to be the preferred custodial parents unless they are determined “unfit” to perform their parental roles. (p. 49)

The most serious problem with the “primary caretaker” standard seems to be that it rewards countable, repetitive, and concrete behaviours, but ignores the quality of the relationship between primary caretaker and child (Kelly, 1997). Thus it would seem that if the mother is the parent responsible for most of the daily tasks of child rearing, she would, according to the “primary caretaker preference” and all else being equal, be awarded custody of the child in a relocation dispute. In this case it may be agreed that this standard can, in certain situations, be seen as a “maternal preference” standard. Research increasingly reveals that fathers have an important function in promoting children’s



development in a variety of areas. This is not always taken into consideration in relocation disputes (Lamb, 1976; Lewis and Weinraub, 1979). No parenting credit is given to the father for supporting the family and its activities.

Another problem with the “primary caretaker preference” standard is that the most important emotional behaviours promoting children’s development and healthy adjustment, including love, secure attachments, acceptance, nurturance, absence of abusive interactions, promoting autonomy and self-esteem, are not considered in this standard (Kelly, 1997). In relying upon the “primary caretaker standard”, it would seem that the child’s core psychological interests are undervalued in custody-relocation disputes. A last critique against the use of the “primary caretaker preference” standard is that the psychological adjustment of the primary caretaker is not taken into consideration, despite the fact it is a known critical factor in the post-divorce adjustment of children (Kelly, 1997).

Other aspects of potential gender bias to be considered in relocation disputes are economic and systemic societal factors (i.e. the structurally compromised position of women). Mothers report being overburdened financially and emotionally when fathers do not maintain both their financial commitments and direct contact with their children (Brandwein, Brown and Fox, 1974). On the other hand, non-custodial fathers who have limited contact with their children, experience anxiety, depression and stress-related illnesses (Grief, 1979).

Miller (1995) notes that:

...the flexibility implicit in the recommended approach to relocation cases permits the courts to weigh the relative importance to the child of such close relationships with the non-custodial parent against all other factors in determining whether to permit the move, alter visitation, or even change custody. The basic change proposed is not a matter of preference between fathers and mothers, but rather one of focus on the child considering all factors impacting upon that child’s best interest unimpeded by rigid preconditions. (p. 387)

It is thus appropriate, however, to include among the criteria to be considered in determining the child’s best interests, a consideration of the range and quality of each parent’s care, activities and interactions with the child (Kelly, 1997).



Most judges perceive relocation disputes to be “nightmare” cases (Berkow, 1996). She outlined social policy issues raised by these cases, as they represent:

...the latest battlefield between feminists advocating the right of the primary custodial parent (often but not always the mother) to move whenever or wherever they like and the father’s rights groups advocating the right of the non-custodial parent to always keep the child in the current location. (p. 18)

She adds that “both miss the point,” because the issue is not “what either parent may desire but which custodial plan is in the best interest of the child in a given case” (p.18).

In the South African context it is important to be aware of possible gender biases. Although it may be true that mothers usually played a more active role in child rearing, this is not necessarily the norm anymore. The evaluator and the courts have to be aware of possible personal presumptions regarding gender.

## **7. PSYCHOLOGY AND THE LAW**

Since the days of Solomon, there has never been any joy in attempting to “divide the baby” (Schutz, Dixon, Lindenberger and Ruther, 1989). As pointed out, child custody-relocation disputes are found to be some of the most difficult cases for mental health professionals and lawyers, due to the fact that relocation disputes involve breaking up the family even further after divorce. These cases are further complicated by the differences found between the mental health and legal professions due to a lack of comprehension of framework, language, value orientations and traditions found in each profession (Miller, 1993). In the following section these differences, as well as South African court cases and the decisions made, will be discussed.

### **7.1 The Best Interests Standard**

The boundaries between psychological and legal disciplines are not easily defined. Since best interests of the child appear in both the mental health and legal domains, and since both professions organise their thinking around this fundamental idea, the phrase appears



to mean the same in both (Miller, 1993). This leads to the conclusion that psychiatric or psychological recommendations entail legal decisions: mental health workers become the evaluators whose findings are translated into judicial action (Ash and Guyer, 1986).

However, the “best interests of the child” standard as viewed by mental health professionals is not synonymous with that of the law (Miller, 1993). When presenting an opinion regarding the best interests of the child, it is important for the mental health professional to observe the language being used in the report in order to avoid the notion that psychological and legal best interests of the child have similar meanings. Miller (1993) emphasises that:

Mental health professionals can help to delimit their area of expertise by referring to the “psychological best interest” rather than the more inclusive “best interest” This would reduce the confusion in custody-relocation disputes by reminding the court and the professional that the moral, legal and other components lay outside the psychological domain. The mental health worker’s primary job is to describe the psychological status of the child, to predict cautiously about the child’s future psychological development, and to refuse to discuss non-psychiatric recommendations concerning the child, family or society. (p. 33)

It is important that mental health professionals are aware of these guidelines, in order to keep the boundaries clear between the two professions, and not make any recommendations which are outside the range of the mental health field.

Thus, for the mental health professions, best interests centre on the formation of affectionate relationships in a developing child; whereas the legal best interests include whatever the law wishes to be defined as constituting best interests (L’Hereux-Dubé, 1998; Miller, 1993). The law is not limited by psychological considerations and may include moral, physical and financial considerations that are relevant to the relocation dispute.

## **7.2 Co-operation between mental health and legal professions**

A supportive interface between the legal system and mental health professions is important. An awareness of the possible detrimental effects that legal procedures can incur on individuals and families during the custody-relocation dispute is essential for both



lawyers and mental health professionals. Both professions need to be conscious of the fact that their interactions with these families can serve either to escalate or de-escalate the inherent adversarial process that currently exists within the legal system (Wall and Amadio, 1994).

Successful co-operative relationships between the professions require that each specialty develop an understanding of one another's framework, language, value orientations and traditions (Steinberg, 1980). Legal and ethical concerns cannot easily be separated from psychological ones; indeed, it is often possible to rewrite psychological propositions as moral ones (Stone, 1984; Miller, 1985). As a result there is always the hazard that a mental health professional may offer moral beliefs disguised as psychological opinions (Miller, 1993).

The potential benefit of the judicial system, especially when the professions co-operate with one another, also needs to be appreciated (Wall and Amadio, 1994). Through greater understanding and appreciation of each profession's contribution to the process, avenues for successful collaborative efforts can be identified. In addition, inherent conflicts between the two specialties may be acknowledged and structures for negotiating these differences can be developed (Wall and Amadio, 1994). It is important that each profession must be knowledgeable about one another's processes and procedures that are essential to the specialty's functions. Mental health professionals need to be aware of the processes associated with the judicial system (Wall and Amadio, 1994).

### **7.3 Relocation and the Legal System**

Efforts that have been made by the courts to establish standards to guide decision makers can be seen in the three-prong legal test set out by the *Gruber* court (1990) for application in child custody relocation cases:

The first prong imposes upon the parent seeking to relocate the burden of persuading the court of the "potential advantages of the proposed move and the likelihood that it would substantially improve the quality of life for the custodial parent and the children." In the second prong, genuineness of motives for and against the move, providing evidence that the move is not motivated "simply by a desire to frustrate the visitation rights of the non-



custodial parent or to impede the development of a healthy, loving relationship between the child and the non-custodial parent.” The third prong states that there has to exist “realistic, substitute visitation arrangements which will adequately foster an ongoing relationship between the child and the non-custodial parent. (p. 177-178)

The *Gruber* court appears to have supported the best interest (of the child) standard as the general standard, and the relocation issue as an element that would be considered in the larger context of this standard (Weissman, 1994). In this regard, it states that the need to modify parenting plans “to account for geographic distances will not defeat a move which has been shown to offer real advantages to the custodial parent and the children” (Weissman, 1994).

#### **7.4 Motives for Relocation in South African Courts**

In the following section, the motivations for relocation stated by the parties involved in South African relocation disputes are discussed. The cases that will be discussed are *Van Rooyen v Van Rooyen* (1999), *Godbeer v Godbeer* (2000) and *H v R* (2001).

Courts face the primary psycho-legal dilemma of trying to preserve stability in the child’s reorganised family unit with the primary residential parent and responding to legislative directives to facilitate the child’s relationship with both parents (Austin, 2000). In *Godbeer v Godbeer* (2000), the court found that the welfare of all children is best served if they have the good fortune to live with both parents in a loving and united family.

When the custodial parent wishes to move away from the old community, it creates an incongruity, and the court may be forced into a position to set a priority between these two goals (Austin, 2000). This area is forcing psychology (as the evaluator) and the law (as the administrator) to grapple with current structural realities of the South African family in a society with high rates of mobility and divorce. As mentioned before, society is changing; people find it easier to be mobile, emigration is increasing, and with this in mind, one has to consider the definition of family, and how it is changing in this new developing society.



### **7.4.1. Economic and Employment Opportunities**

Courts have long recognised the necessity and rights of parents to move for employment reasons, and are likely to grant a move for such reasons to a primary custodial parent (Stahl, 1999).

In *Van Rooyen v Van Rooyen* (1999), it was found that the mother's employment opportunities would be better in Australia than in South Africa. She was found to be disadvantaged in South Africa in terms of employment, because of the fact that she was a foreigner, and also by her inability to speak Afrikaans. Her financial position in South Africa was found to be poor. She was found to have good prospects in terms of employment, various social benefits that would be available to her and the children, rented accommodation at very favourable terms, and satisfactory arrangements in terms of the children's schooling that had been made. These factors illustrated not only the genuineness, but also the reasonableness of the mother's desire to relocate to Australia.

In *H v R*, (2001) the custodial mother and her husband's desire to relocate were motivated by vocational reasons, and also by such factors as the unacceptably high crime rate, the uncertain state of the South African economy, the overburdened social services, the increasingly limited opportunities for white men and the impact of AIDS in South Africa. The custodial mother's husband (the child's step parent) stated that the future in his chosen career is abroad and not in South Africa. The step parent declared that he had developed a warm, affectionate and close bond with the mother's son and he would return to South Africa and seek employment if his wife's son was not allowed to accompany them to London. He did not wish to bring his family up in South Africa. In this case it is clear that the bond between the step parent and the child has to be a considering factor in the evaluation of the relocation dispute.

### **7.4.2 Support Systems**

In the following three cases the relevance of the desire for a better support system as motivation for relocation is illustrated. In the first case, *Van Rooyen v Van Rooyen* (1999), the mother wished to return to Australia, where she stated that she has loving and caring parents and siblings. She furthermore stated that she was desperately unhappy in South



Africa, where the failure of the marriage and the strife involving the children have left her angry and distressed and that she feels alone and isolated. Although the mother had a support system in South Africa, in the form of friends, it was found that she will probably feel more secure and contented within herself if she lived in Australia with her family.

The custodial mother and her husband (*H v R*, 2001) stated that they have a number of friends and relations upon whom they can rely for assistance and support in the United Kingdom. These included the custodial mother's husband's father and his stepmother, who live in London.

In *Godbeer v Godbeer* (2000), the mother stated her motivations for the proposed relocation to the United Kingdom. She stated that she is living in South Africa as a single parent in modest but comfortable circumstances and that she has a circle of friends but no strong support structure. Since the divorce, her longing to return to the environment of her birth has grown stronger. This was found to be evident from the fact that since the divorce she has made annual visits to her family in the United Kingdom and she states that on each occasion she has returned to South Africa feeling unsettled and with a longing to return permanently to the United Kingdom.

In the above cases the stated reason of the parents for wanting to relocate when they seek more emotional, social and practical support, is clearly illustrated.

## **7.5 Psychological Implications of Relocation in South African Court Cases**

### **7.5.1 Contact with the Non-Custodial Parent**

The consequences when a custodial parent relocates to a geographically distant community are significant.

In *H v R* (2001), the child's father counter-argued the proposed relocation by stating that a move to London would destroy the very close bond between him and his son, and that his son is central to his life. He stated that his son is flourishing (in terms of schoolwork and sport) and to change his environment would not be to his benefit. He further stated that his



son has a good support base in Cape Town and would have a limited support base in London.

In *Van Rooyen v Van Rooyen* (1999), the court found that the young lives of the two boys had already been disrupted and that there is no doubt that they would be further disrupted by the deprivation of frequent contact with their father:

I am very much mindful of the effect which the loss of frequent contact with their father will have on the children. He is very much part of their lives and the absence of frequent contact with their father and the loss of his immediate presence will be a diminishing factor in their young lives. I am however satisfied that this can be compensated for, significantly if not entirely, by the generous blocks of access proposed and by such other palliatives as will be incorporated in the Court's order. (p. 440)

Courts have generally allowed the custodial parent to move away with the child as long as certain guidelines are met, especially arranging for suitable visitation between the child and non-custodial parent (*Van Rooyen v Van Rooyen*, 1999; *Godbeer v Godbeer*, 2000; *H v R*, 2001).

In *Godbeer* (2000), it was found that the custodial mother was fully aware of the value to be placed on close contact between the children and their father. The nature of the access arrangements which have existed and the ease with which they have been exercised during the period after the divorce illustrated this fact. In *Van Rooyen* (1999), one of the father's concerns was that the mother would make the exercise of access difficult, if not impossible. The court did not find this a relevant concern. It was found that the mother recognised and acknowledged the need and desirability of continued contact between the children and their father and that she was sincere in this regard.

### **7.5.2 Parental Conflict**

In the case of *Van Rooyen v Van Rooyen* (1999), the father was critical of the mother's perceived inability to discipline the children. The judge found that the boys had had been affected by the discord between their parents and had become manipulative and undisciplined. However, the mother had been conscious of the problem and had sought



professional assistance for both her and the children with good effect. The situation had improved and, was found inevitably to improve if the mother was relieved of the emotional turmoil which she had been experiencing and which necessarily impinged upon the quality of her parenting, which in turn impacted adversely upon the children.

### **7.5.3 Age of Child and Parental Functioning**

In *Van Rooyen v Van Rooyen* (1999), the existing relationship between the children and their mother was found to be basically good and strong and that the disciplinary problems experienced at that time were largely a product of the present environment, more particularly the bad relationship between the parents and its effect on the mother, which was found to not be present when the parents were geographically separated.

In *Van Rooyen* (1999), the court found that although the children will move to a new environment far from that to which they have been accustomed, with a new school and new friends to be made and in some ways a new culture to adjust to, they, particularly young children, do adapt. Furthermore, it was found that the children would also be in the care of their mother who would be happy and contented and at peace with herself, due to the betterment of her circumstances, which would equip her to cope with the inevitable initial difficulties which would attend the change in the children's circumstances. It was found that, in all probability the children's lives would be more stable and secure than they were at present. The conclusion that can be reached in this case is that the denial of permission to relocate in all probability would have had adverse effects on the functioning of the custodial mother in this case.

In *Van Rooyen v Van Rooyen* (1999) the court stated that:

It is trite that the interests of the children are – all else being equal – best served by the maintenance of a regular relationship with both parents. Sadly, however, children of divorced parents do not live in an ideal familial world and the circumstances necessitate that the best must be done in the children's interests to structure a situation whereby access by the non-custodial parent is curtailed but contact between him and the children is effectively preserved. (p. 439)



#### 7.5.4 Relationship between parents and children

In *H v R* (2001), the court was satisfied that the child had a sound and close bond with both his parents. The custodial mother had been shown to be a caring, sensible and responsible person. She had carefully considered the ramifications of the move and had done everything possible to ensure that the move would not be contrary to the child's best interests, and that it would not result in the relationship between father and son being negated. The court accordingly granted the relocation order sought. In this case, it is clear that the positive relationship of the child with both parents had a positive influence on the decision of the court to grant the mother permission to relocate.

In the case of *Van Rooyen v Van Rooyen* (1999), the father's case was founded, as to its positive side, on the strength of the relationship between himself and the children. He was found to be a good father and that there was a strong bond, based on affection and respect, between the children and him. On the other hand, it was found that the father was, in the nature of things, untested as a custodian. It was found that the two young boys, the core of this dispute, had always been with their mother and with the break-up of the marriage, they needed her all the more. There was no question of the two boys being separated. In this case the strong relationship of the two boys with their father confirmed that their adjustment after the relocation would be positive, given that they would have as frequent and continuous contact with their father as would be possible.

In *Godbeer v Godbeer* (2000), the court found that the mother and father both are respectable and responsible parents whose devotion to their children has not been diminished by the rupture in their own relationship. It was found that both of them have a genuine concern for the welfare of the children, which will inevitably be inextricably interwoven with other strong emotions which accompany their present predicament. The children thus have the security of a positive relationship with both parents which would enable them to adjust more easily to the change in circumstances that would be inevitable after relocation.

Relocation scenarios present a Catch-22 situation of trying to decide which type of parental loss is least harmful to the child (Austin, 2000). Psychology and law together have to determine the degree of risk of harm facing the child if he or she moves away or if a change in custody should occur and the child should stay in the home community with the



non-custodial parent (Austin, 2000; *Van Rooyen v Van Rooyen*, 1999; *Godbeer v Godbeer*, 2000; *H v R*, 2001).

Cases (*Van Rooyen v Van Rooyen*, 1999; *Godbeer v Godbeer*, 2000; *H v R*, 2001) generally suggest that factors should be examined that show how the quality of life for the child will be affected by relocation, either through enhancement of or harm to the child's development. A common thread through these cases is the need for the decision maker to perform a calculus of relative benefit versus loss associated with relocation. Whereas the doctrine of best interests of the child is the conceptual umbrella for relocation law, the language in recent opinions suggests that the evaluator needs to predict the potential degree of harm, impairment, detriment, and loss of benefit associated with moving away from the non-custodial parent and home community or of not being able to move away with the custodial parent (Austin, 2000). This is illustrated in *Van Rooyen v Van Rooyen* (1999), where the court had to evaluate, weigh and balance the many considerations and competing factors which were relevant to deciding whether the proposed change to the children's circumstances was in their best interests. The trial court judge must predict the degree of harm associated with a new set of environmental circumstances facing the child (Austin, 2000).

## **7.6 Psychological Opinion in Relocation Disputes**

*H v R* (2001) illustrates the potential for disagreement between mental health professionals themselves. Two psychologists were asked to evaluate and give an opinion regarding the best interests of the child in the custody-relocation application. There was a dispute between the two psychologists who gave evidence in this dispute regarding the best interests of the child. The one psychologist was of the view that it would not be in the best interests of the child for his relationship with the father to be interrupted. The rationale of his view was that there was such a strong bond between the child and his father that the child would be psychologically permanently damaged if he moved to London. The court found that this psychologist had put too much emphasis on the child's reaction to the proposed relocation.



The second psychologist was of the opinion that the child had a sound and close relationship with both parents, albeit the type of relationship differed between the respective parents. He recognised that the child would initially be traumatised by a move to London, but concluded that he would adapt and adjust to the changed circumstances and that the generous access that would be afforded to the father would ameliorate the situation substantially. The psychologist came to the conclusion that the child be permitted to relocate to London with his mother and stepfather due to the possible negative *sequelae* if they were compelled to remain in South Africa, i.e. the general frustration of not being able to achieve their potential in their chosen fields, the frustration of living in a place they really did not wish to live in. According to the psychologist, the aforementioned could affect the atmosphere in the family and the over-all wellbeing of the child.

This situation forces a court to decide which professional opinion has more merit. Furthermore, it may happen that the court can consider the opinion of the psychologist as too elementary, too vague, or too lacking in prognostic value. The opinions may be considered useless, because the "most widely accepted psychological hypotheses concerning childhood needs are virtually identical to the assumptions expressed in judicial guidelines" (Okpaku, 1976: 1126) - that is, they add little to how the court understands the relevance of the psychiatric or psychological opinion (Miller, 1993).

It is only in the last several decades that psychiatric and psychological opinion has played an active role in custody and relocation disputes (Derdeyn, 1980). The active role mental health professionals have in relocation disputes and the importance of their evaluations for the court make it imperative that mental health professionals learn how to write reports for the legal system which is understandable and not vulnerable to legal attack (Steinberg, 1980). Schutz, Dixon, Lindenberger and Ruther (1989) caution that:

...a psychological evaluation that merely attempts to justify the positions of the litigants and their lawyers does little to alleviate this suffering and is therefore not likely to be well received. More than one mental health professional has encountered a hostile bench when offering an incompletely researched or poorly reasoned opinion. On the other hand, a thorough report – one that adds to a court's knowledge and offers the judge a framework for making an intelligent, fair decision – will be viewed as a godsend. Under such circumstances the influence of the psychologist is greater than that of any other player in the game. This influence imposes upon the psychologist the obligation to proceed with the



greatest degree of caution and professionalism possible. (p. 15)

Goldstein, Freud, Solnit and Goldstein (1986) are of the opinion that while all professionals involved in the custody-relocation dispute may be fact-finders, not all facts are for them to find. While all may be opinion givers, not all opinions are for them to give. "Am I qualified to find this fact or to give this opinion?" is a question all professional participants should ask themselves or be pressed to confront (p. 21).

Given the wide variety of family styles in our culture, decisions about children and parent-child relationships, post-divorce relationships should be made on case-by-case decisions. The "best interests" standard can be more thoughtfully applied when the court adopt criteria which delineate important factors to be considered, and will achieve more uniformity with judicial education.

## **8. PSYCHOLOGICAL ASSESSMENT**

Weissman (1994) states that:

Psychological assessment should address elements of the applicable legal standard in child custody, including the relocation element. Psychological findings should be brought to bear upon differential and respective parental competencies vis-à-vis the child's best interests in the current and prospective home/community/psychosocial environments, and whether relocating with one parent serves to promote or impede best interests, when all known elements are considered. (p. 178)

Risk assessment in the relocation case is logically the same as other legal contexts in terms of the need to predict harm, but different in the source of the harm. Instead of harm caused by an individual perpetrator, the task is to predict potential harm derived from environmental circumstances (Austin, 2000).

When a child custody evaluation for relocation is ordered the clinical tasks differ from the approach to an original custody determination, which usually follows the "best interests of the child" legal standard (Austin, 2000). In the original case the evaluator needs to measure variables stipulated by legal statute and other relevant factors important to the particular child and family (Gould, 1998; Stahl, 1994). General factors include the wishes



of the children and both parents, psychological status of all parents and children, the relationship between all significant parties, the ability of each parent to encourage the relationship between the child and the other parent, and any history of child or spousal abuse (Austin, 2000). Factors and parental behaviours which do not affect parenting should not be considered (Uniform Marriage and Divorce Act, 1970).

In relocation disputes evaluators may have to consider all these, but are further directed to examine factors relevant to the reason for the move, viability of an alternative parenting time arrangement with relocation, and the likelihood of potential harm to the child (Austin, 2000). Evaluators can assist courts as they perform the comparative legal calculus of balancing the relative benefits and costs associated with the move and staying with the custodial parent versus staying in the home community with one or other of the parents (*In re Marriage of Francis*, 1996; *Tropea v Tropea*, 1996).

As evaluators evaluate families, they learn their beliefs about child rearing. They try and discern their style of parenting. Evaluators may note the over-involvement of mothers with their children, the passivity of the wife, or her zealous assertiveness (in reaction to what had been her traditional role). It is important to put this information into the appropriate cultural context (Vasquez, 1999).

In his judgement Justice King (1999; see in *re Van Rooyen v Van Rooyen*) referred to the interests of the children. That this is the paramount consideration, the 'ultimate determinant' as it has been called, is clear from, in the first instance, the Constitution of the Republic of South Africa Act 108 of 1996, s 28(2) thereof providing that:

A child's best interests are of paramount importance in every matter concerning the child.

This criterion has been applied by our courts over many years.

## 9. CONCLUSION

It is clear that relocation disputes often provide some of the thorniest issues for mental health and law professionals. These disputes demand energy, creativity, and a constant



sense of objectivity about what is in the best interests of the child (Gindes, 1998). In a relocation dispute the needs of all the parties can rarely be satisfied. Relocation will disrupt or potentially deprive the non-custodial parent and the child of valuable time together.

Prohibiting relocation will potentially deprive the custodial parent of the opportunity of pursuing greater life fulfilment (Kelly, 1997). Within this context, the psychological issues surrounding the relocation of custodial parents and their children are complex and interdependent. Relocation following family dissolution does not occur in a vacuum. It is associated with other significant life events that may have positive or negative consequences for all the family members.

The relocation issue may be reconciled with the "best interests of the child" standard through careful consideration of the following factors. First, all the factors must be considered on a case-by-case basis (Gindes, 1998). Although the importance of some of the factors has been researched, they still need to be assessed in each individual situation. When mental health professionals conduct evaluations, they need to test the fit of the research findings and their own clinical experience to the individual set of circumstances, within the context of accepted legal parameters.

Secondly, a family systems perspective must be maintained (Gindes, 1998). A parent who believes that his rights or needs are discounted may not be able to parent effectively or encourage the child's relationship with the other parent. Although the best interests of the child need to remain the primary consideration, it will be served if the solution is also in the best interests of the family.

Thirdly, the psychological residue of the relocation dispute, regardless of whether it is permitted or blocked, may be considerable (Gindes, 1998). Steps must be taken to minimise the negative impact of either decision. If relocation is to occur, age-appropriate plans need to be developed for preparing the children for the move. Specific arrangements need to be in place so that the child and the non-custodial parent know when and how they will maintain their relationship. If relocation with the children is not allowed to occur, then the custodial parent may need psychological help to deal with the anger, resentment, or depression that may be present. The children, in these situations, often feel a mixture of guilt, anger, and fear, and may need counselling to be helped through this period.



In order to assist evaluators and courts in achieving this there is an urgent need for methodologically sound empirical research that addresses these issues in a manner which is neither speculative nor merely anecdotal, and which is tailored to the South African context in particular. The dilemma regarding the fact that existing research findings regarding relocation is not necessarily applicable to all families in all cultures and contexts, points to the need for research that is tailored to the South African context and can provide socially contextualised results. The following areas deserve attention:

The relationship between relocation following divorce and the degree of adjustment of the children to the post-divorce situation and relocation, as well as the exploration of the contributions of, and the relationships between each of the relevant variables.

The lack of clarity and definition concerning the “best interests of the child” standard, combined with the lack of an empirically based set of factors to consider when evaluating a relocation dispute and the sometimes inconsistent application of the standard by legal and mental health professionals.

The findings regarding the relationship between child adjustment and contact with the non-custodial parent are inconsistent and do not lend themselves to a general conclusion. In this regard the following areas deserve further attention: Situations where conflict exists between parents, contact with the non-custodial parent often involves interactions between the hostile parents. This increases the likelihood of negative outcomes for the child. The nature of the pre-divorce relationship between the child and the non-custodial parent does not predict their post-divorce relationship (Hoffman, 1995). The nature of contact with the non-custodial parent seems to be more related to the well-being of the child than the frequency of contact (Hetherington et al., 1998; Sales, 1992).

The impact of non-custodial parent relocation on the adjustment of children is unknown. The lack of research in this area may be due to the fact that the non-custodial parent generally has less frequent contact with the child and that relocation does not involve disruption of the child's daily life, but given the strong tendency towards joint custodial parenting arrangements, this may well change in the near future.



The influence that culture, gender and personal bias may have on the evaluation of relocation disputes by mental health and legal professionals.

The importance of the mental health professional's evaluation of the family in the court's decision regarding the denial or granting of permission to relocate, and specifically the form and context of such evaluations that will facilitate rather than hinder the legal process.

Finally, the following checklist for evaluators was derived from the literature:

1. The ability of the child to adjust to the relocation has to be considered, including consideration of child's developmental age, pre-relocation adjustment, coping skills, degree to which parenting by non-custodial parent would be impaired, nature and extent of stressors in the new location, availability of support, help and care in the new location.
2. The type and quality relationship of the child with each parent, including the degree to which the child has formed a secure emotional attachment to each parent.
3. The quality of the communication and co-operation between the parents regarding the children during and post-divorce/separation.
4. The reasonable and mature preferences of the children.
5. The nature and quality of communication between the parties about the potential relocation, including the amount of notice that the custodial parent gave the non-custodial parent.
6. The extent to which one of the parties may have withheld or distorted information regarding the relocation.
7. The motives of the custodial parent for the proposed relocation, including the quality and extent of planning that has gone into the proposed relocation, and the extent to which the child's interests have been prioritised in the process.
8. The distance of the proposed relocation and the impact thereof on contact with the non-custodial parent.
9. The potential for improved quality of life and the opportunities available to the child.
10. The potential consequences of prohibiting relocation.
11. The motives of the non-custodial parent for opposing relocation.
12. The psychological status of both parents and the children.



Relocation law is still evolving, with a threshold of harm that is sufficient to block relocation yet to be firmly defined in most courts (Austin, 2000). Perhaps the greatest danger to the well-being of children is inherent to the legal system, which allows for appeals and reversals of previous court orders. Children (and adults as well) thrive when their lives are consistent and stable. The threat of being moved from one geographic locale to another because of changing court decisions, can disrupt the healthy psychological development of the children. Less adversarial ways of resolving family disputes truly would be in the best interests of the children. The best interests concept is a Pandora's Box that will benefit from lifting the lid and exploring the contents. The promise of engaging in the dialogue will be to make possible more consistent, informed, and beneficial decision making for separated and divorced children (Kelly, 1997).



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