

FLY ME TO THE MOON: EFFECTIVE ADVOCACY IN RELOCATION CASES

CHAPTER 40



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**THE HONORABLE JUDGE ROY
FERGUSON**, *Alpine*
394th Judicial District Court

Texas Bar CLE

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“Complicated” Legal Burden

Best Interest.

Proving Best Interest

Overriding Public Policy Considerations:

1. Assure frequent contact with fit parents.
2. Safe, stable and nonviolent home.
3. Co-parenting.

Proving Best Interest

Lenz Factors (simplified):

1. Why? (What will the child gain?)
2. Why not? (What will the child lose?)
3. What does the child need?
4. How will it impact the relationship with the nonrelocating parent?

Proving Best Interest

Holley Factors (simplified):

1. What does the child want?
2. What does the child need?
3. What does the child *not* need?
4. What is the child leaving behind?
 1. Stable home.
 2. Quality school.
 3. Friends and family.
5. Does the staying-parent *deserve* to prevent the move?

Key Factors from the Court's Perspective

It's about RELATIONSHIPS.

1. Non-relocating parent and the child.
2. Relocating parent and the non-relocating parent.
3. Relocating parent and the county of residence.
4. The child and other family support.
5. The child and the community.

Key Factors from the Court's Perspective

It's about **MOTIVATIONS.**

1. Why did family live in county of marital residence?
2. Why does relocating party want to leave?
3. Why doesn't relocating party want to stay?
4. Is this really about the parents, the parent, or the child?

Key Factors from the Court's Perspective

It's about ABILITIES.

1. Parental involvement and efforts.
2. Financial ability to travel.
3. Work/professional ability to travel.
4. Child's ability to travel alone.

Pro Tip - MODIFICATIONS

BUYER BEWARE!

A change of *mind* is not a change of *circumstances*.

SCENARIO 1

- ▶ Parents are married and still live together. Divorce is filed.
- ▶ At the TO hearing, the parties present the following evidence:
 - ▶ Stay-at home mom; hard-working dad.
 - ▶ Mom wants to move. Dad wants a geo restriction.
 - ▶ Mom's entire family lives in California where she lived before marriage.
 - ▶ Dad is from Texas and his entire family still lives in Texas.
 - ▶ Dad's employer has an office where mom's family lives.
 - ▶ The teenaged children are heavily involved in sports. One wants to move and one doesn't.

SCENARIO 2

- ▶ Parents of two children aren't married.
- ▶ Dad works 2 weeks on and 2 weeks off.
- ▶ Mom marries a man on active duty in the military.
- ▶ Dad files SAPCR seeking geo restriction to the county in which the kids currently live.
- ▶ The evidence presented at trial:
 - ▶ Mom bad-mouths Dad in front of the children.
 - ▶ Mom doesn't tell dad about children's activities, and tells kids Dad doesn't care enough to attend.
 - ▶ Children want to move.

SCENARIO 3

- ▶ Mom has primary and wants to move away from Houston due to high COVID-19 rates.
- ▶ Reverse it – Mom wants to move from a small town with few cases, to Houston. Mom thinks COVID-19 is a hoax.

SCENARIO 4

- ▶ Parties divorced two years prior. Divorce decree contains no geographical restriction.
- ▶ Father has the exclusive right to designate the primary residence of the five year old child.
- ▶ Father is offered a transfer to Alaska for far higher pay, and accepts the job. Father gives mother required notice of his move.
- ▶ Mom files to modify and impose a geographical restriction.
- ▶ Mom regularly exercises visitation of the children and has a stable job.

SCENARIO 5

- ▶ Dad is a prominent professor and has primary of two 7 year old daughters with geo restriction to Texas.
- ▶ Dad files modification to lift geo restriction to move to another state for a tenured position. New job is more money with fewer hours.
- ▶ Mom has a healthy and active relationship with the children.

Thank you!

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The Honorable Judge Roy Ferguson

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