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Child Custody and Parental Relocations: Loving Your Children From a Distance

Children of divorced families plainly benefit from contact with both parents. In fact, Pennsylvania's Custody Act¹ states that it is the policy of the Commonwealth to assure continuing contact with both parents and the sharing of rights and responsibilities associated with child rearing by both parents after the dissolution of a marriage.² One consideration in deciding who will get custody of the children requires a determination of which parent will foster continued contact between the child and the noncustodial parent.³ Continued contact, however, with both parents in a manner conducive to meaningful relationships is difficult where the custodial parent relocates to a geographically distant location, taking the child with him.

The ultimate test in determining child custody matters in Pennsylvania is the best interests of the child.⁴ Maintenance of contact with both parents would appear to be a major consideration in this test. However, the Pennsylvania courts have begun to more readily equate the child's best interests with that of the custodial parent, altering the nature and frequency of the visitation rights of the noncustodial parent.⁵

1. 23 PA. CONS. STAT. §§ 5301-5341 (1991).

2. 23 PA. CONS. STAT. § 5301. This section of Pennsylvania's Custody Act provides:

[I]t is the public policy of this Commonwealth when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing of the rights and responsibilities of child rearing by both parents and continuing contact of the child or children with grandparents when a parent is deceased, divorced, or separated.

Id.

3. *Id.* at § 5303. This section of Pennsylvania's Custody Act provides that, "[i]n making an order for custody, partial custody or visitation to either parent, the court shall consider, among other factors, which parent is more likely to encourage, permit and allow frequent and continuing contact and physical access between the noncustodial parent and the child." *Id.*

4. See Commonwealth ex rel. Hubbell v. Hubbell, 107 A.2d 388, 390 (Pa. Super. Ct. 1954).

5. See Arnold H. Rutkin, *Away From Home: Children Caught in Middle* by

This comment reviews the Pennsylvania case law of custody disputes where the custodial parent wishes to relocate to an area distant from the noncustodial parent. It proposes that the courts should give more weight to the disruptive nature such a move would have on the child's ties to the community, relationships with friends, and interaction with the noncustodial parent.

BACKGROUND

The View From the Past

In *Commonwealth ex rel. Balla v. Wreski*,⁶ the Superior Court of Pennsylvania articulated the standard to be applied when one parent intended to move from Pennsylvania with the child. The court asserted that placing a child beyond the geographical jurisdiction of the court could only be justified by unusual circumstances, so as to maintain normal relationships with both parents.⁷ In *Wreski*, the obligation of the custodial mother to join her new husband in California was considered a sufficient circumstance to overcome the presumption against relocation and justify allowing the mother to take the children to California.⁸ However, the court noted that relocation was allowed only if the parental relationship between the noncustodial father and the children would not be destroyed or unduly limited.⁹

The presumption of favoring a resident over a non-resident¹⁰ gave way to the analysis of the best interests of the child.¹¹ The best interests of the child include the "physical, intellectual, moral and spiritual" well-being of the child, and must be deter-

Parental Moves, A.B.A. J., October, 1992 at 94.

6. 67 A.2d 595 (Pa. Super. Ct. 1949).

7. *Wreski*, 67 A.2d at 596-97 & n.1.

8. *Id.* at 597.

9. *Id.* The court allowed the mother to take the child to California but revised the order of the lower court which placed the burden of arranging transportation for the children back to Pennsylvania for one month each summer on the noncustodial father. *Id.* The court held:

The present order puts an unduly onerous condition on respondent's right to see his children. The situation is not of his making and he should not be compelled to pay a prohibitive price in time and money for the exercise of a right which the law gives him, with the estrangement of the children from him, their natural father, as an alternative.

Id.

10. See Shoemaker Appeal, 152 A.2d 666, 669 (Pa. 1959) (stating that "[i]f all other factors are approximately equal, the Courts should prefer a resident to a non-resident guardian and custodian, since the former is more amenable to the Court's continuous watchful eye, supervision and control").

11. *Commonwealth ex rel. Hubbell v. Hubbell*, 107 A.2d 388, 390 (Pa Super. Ct. 1954).

mined in light of all of the circumstances.¹² All other considerations and parental rights are subordinate to the best interests of the child.¹³ Although the focus is on the child, past court decisions appear to have viewed the maintenance of a relationship with the noncustodial, non-moving parent as a major consideration in determining the best interests of the child.

In *Davidyan v. Davidyan*,¹⁴ the mother sought to obtain custody of her son and return to Scotland.¹⁵ The trial court awarded custody to the mother but conditioned the custody order upon the posting of a security and the submission from a Scottish court that the Pennsylvania court would retain jurisdiction.¹⁶ The superior court noted that the conditional nature of the custody order showed a concern that the distance of the relocation should not preclude the father from continuing a relationship with the child.¹⁷ The court further stated that damaging a child's relationship with both parents is repugnant to the best interests of the child.¹⁸ However, upon the second appeal, after custody was awarded to the mother, the court in *Davidyan II* held that the removal of the child from Pennsylvania was not controlling in determining custody.¹⁹

In 1977, the Pennsylvania Supreme Court rejected the principle that the courts should prefer a Commonwealth resident over a non-resident in custody determinations, in *Commonwealth ex rel. Spriggs v. Carson*.²⁰ In *Spriggs*, the father forcibly took the children from the mother's residence and moved to Florida.²¹ The mother then instituted a custody proceeding in Florida which resulted in custody being granted to the father.²² The mother, however, left Florida and returned to Pennsylvania with her son in violation of the Florida court order.²³ The father then brought an action in Pennsylvania which also resulted in an

12. *Hubbell*, 107 A.2d at 390.

13. *Id.*

14. 327 A.2d 139 (Pa. Super. Ct. 1974) [hereinafter *Davidyan I*].

15. *Davidyan I*, 327 A.2d at 140.

16. *Id.*

17. *Id.* at 140-41.

18. *Id.* at 141 (citing *In re Duckworth*, 146 A.2d 365 (Pa. Super. Ct. 1959); *Commonwealth ex rel. Skyanier v. Skyanier*, 151 A.2d 817 (Pa. Super Ct. 1959)).

19. *Davidyan v. Davidyan*, 327 A.2d 145, 148 (Pa. Super. Ct. 1974) [hereinafter *Davidyan II*]. The court did note, however, that each parent had the financial ability to provide the best for the child, and the custody order recognized the father's interests and did not place a financial burden on him. *Davidyan II*, 327 A.2d at 148-49.

20. 368 A.2d 635 (Pa. 1977).

21. *Spriggs*, 368 A.2d at 636.

22. *Id.*

23. *Id.*

award of custody to him.²⁴ The Pennsylvania Superior Court reversed the trial court's decision after conducting its own review of the record.²⁵ The Pennsylvania Supreme Court, however, reversed this decision.²⁶

The Pennsylvania Supreme Court in *Spriggs* noted that the superior court had relied upon the presumption in Pennsylvania which preferred a resident guardian over a non-resident guardian.²⁷ The court stated that this presumption was fashionable for a less mobile society, but was of questionable validity in today's accessible world.²⁸ The court also noted that because the Florida court was concerned with the best interests of the child, the presumption in favor of a resident guardian was no longer necessary.²⁹

Even though the preference for a Pennsylvania resident no longer existed, the importance of maintaining a relationship with the noncustodial parent continued to receive great weight from the courts. In 1990, the Superior Court, in *Clapper v. Clapper*,³⁰ upheld a denial of a petition to allow the custodial mother to relocate to Connecticut.³¹ While noting that conditioning a custody agreement on the custodial parent's promise to remain within the state would be an "undue interference with

24. *Id.*

25. *Id.* at 637.

26. *Spriggs*, 368 A.2d at 637.

27. *Id.* at 639. The court in *Spriggs* first articulated the scope of review to be applied by Pennsylvania appellate courts in all custody matters. *Id.* at 637. The court stated that the scope of review in custody determinations was very broad, and the appellate courts were not bound by deductions or inferences of the trial court which were based on findings of fact. *Id.* (citing Commonwealth ex rel. Bowser v. Bowser, 302 A.2d 450 (Pa. Super. Ct. 1973)). Additionally, appellate courts need not accept a trial court's finding which was not supported by competent evidence. *Spriggs*, 368 A.2d at 637 (citing Commonwealth ex rel. Ulmer v. Ulmer, 331 A.2d 665 (Pa. Super Ct. 1974)). However, on matters of credibility and witness demeanor, the trial judge's determinations should be given great weight, and should only be reversed upon a showing of gross abuse of discretion. *Spriggs*, 368 A.2d at 637. This scope of review has continued as the standard applied in determinations of custody where a noncustodial parent challenges a custodial parent's decision to relocate with the child. *See, e.g.*, Kaneski v. Kaneski, 604 A.2d 1075, 1080 (Pa. Super. Ct. 1992) (stating that an appellate court can determine whether the trial court's findings of fact support the factual conclusions, but cannot interfere with the conclusions unless they are so unreasonable as to constitute a gross abuse of discretion). The court in *Spriggs* determined that the superior court had exceeded the proper scope of review. *Spriggs*, 368 A.2d at 637-39.

28. *Id.*

29. *Id.* The court stated, "[i]t would be presumptive to believe that the care and concern of Pennsylvania Courts for the best interest and welfare of the child is not shared by our sister States." *Id.*

30. 578 A.2d 17 (Pa. Super. Ct. 1990).

31. *Clapper*, 578 A.2d at 18.

the [party's] freedom of movement,³² the court reiterated that the best interests of the children, considering all of the facts, governed the outcome.³³ Although the relocation outside of Pennsylvania was only one factor to be considered, the court emphasized that it was important to consider the strength and stability of the children's relationship with the parents.³⁴ The court emphasized the fact that the children were happy in their present surroundings which allowed for frequent contact with grandparents, extended family and friends.³⁵ The court concluded that the maintenance of a relationship with both parents and the ties to the community in which the children lived best served the interests and welfare of the children.³⁶

In determining that the best interests of the children were best served by remaining in Pennsylvania, the court in *Clapper* emphasized that when determining the physical, intellectual, moral and spiritual well-being of the child, other factors are subordinate.³⁷ The court noted that the custodial parent wished to move in order to better *her* educational skills and employment opportunities, and to improve *her* quality of life.³⁸ The *Clapper* court stated that Mrs. Clapper was moving the children from familiar surroundings and a stable relationship with their father, accomplishing her goals at the childrens' expense.³⁹ The

32. *Id.* at 19 (quoting *Daniel K.D. v. Jan M.H.*, 446 A.2d 1323, 1327 (Pa. Super. Ct. 1982)).

33. *Clapper*, 578 A.2d at 19.

34. *Id.*

35. *Id.* at 21 n.10.

36. *Id.* at 21 n.11. This view that maintaining the child's close ties and relationship to the community and to the noncustodial parent is in the best interests of the child was articulated in another 1990 superior court case. In *Lozniak v. Lozniak*, the primary custody of the child was given to the mother conditioned upon her not moving to Iowa with the child. *Lozniak v. Lozniak*, 569 A.2d 353, 354 (Pa. Super. Ct.), *allocatur denied*, 590 A.2d 738 (Pa. 1990). The court, noting that the child had developed a strong relationship with both parents, concluded:

There is nothing in Iowa . . . that is predicated upon some economic, educational, religious, health, or emotional compulsion dictating . . . such a drastic move in the life of [the child] at this time. All of the child's ties are in Pennsylvania. Her significant relationships here are bound up in her teachers, classmates, friends, and relations who give her that abundance of self-assurance and a glowing view of life at this crucial time in her young life. With both parents remaining in Pennsylvania, nothing could give Heather more contentment.

Lozniak, 569 A.2d at 355-56.

37. *Clapper*, 578 A.2d at 20 (quoting *Davidyan II*, 327 A.2d at 148).

38. *Clapper*, 578 A.2d at 20.

39. *Id.* The court noted that although the mother's salary might increase from her move to Connecticut, the increase would be countered by the increased cost of living. *Id.* at 20 n.7. Furthermore, although the trial court was convinced that the mother would be liberal with visitation of the children with the father, the reloca-

custodial mother was forced to sacrifice her interests to provide for the best interests of her children which included maintaining contact with the noncustodial father.⁴⁰

The Current Law

From the views expressed by the Pennsylvania courts until 1990, the maintenance of a relationship with both parents, ties to the community in the way of familiar surroundings, and contact with the extended family, appeared to be major considerations in the determination of the best interests of the child.⁴¹ Beginning in 1990, however, the courts began to take a more standardized approach to custodial parent relocation.⁴²

In *Gruber v. Gruber*,⁴³ the mother was granted custody of the three children from the marriage.⁴⁴ After the divorce, she continued living in a rented house owned by the father's parents; however, as a result of confrontations with her ex-husband and lack of personal friends and family, she became depressed and isolated in her surroundings.⁴⁵ Mrs. Gruber decided to move to Illinois with the children, where her brother had offered her a place to stay and assistance with the support of the children.⁴⁶ The father petitioned the court to prevent the move, and the mother petitioned for a modification of the visitation order which would accommodate her relocation.⁴⁷

The trial court, in *Gruber*, again awarded custody of the children to the mother, but determined that the best interests of the children would be better served by remaining in Pennsylvania where they would have access to both parents.⁴⁸ If the mother relocated, primary custody of the children would change to the father.⁴⁹ The Superior Court of Pennsylvania, however, reversed this decision.⁵⁰ The superior court decided that although the noncustodial parent is important to the child, that relation-

tion would adversely affect the children's relationship with the father due to the distance involved. *Id.* at 20 nn.7-8.

40. *Id.* at 20-21.

41. See *Davidyan I*, 327 A.2d at 141; *Clapper*, 578 A.2d at 20-21; *Lozniak*, 569 A.2d at 355-56.

42. See *Gruber v. Gruber*, 583 A.2d 434, 437 (Pa. Super. Ct. 1990).

43. 583 A.2d 434 (Pa. Super. Ct. 1990).

44. *Gruber*, 583 A.2d at 435.

45. *Id.*

46. *Id.* at 436.

47. *Id.*

48. *Id.* at 437. The trial court stated that the mother could start her life over in Illinois, but that the lives of the children should not be disrupted. *Id.*

49. *Gruber*, 583 A.2d at 437.

50. *Id.*

ship is not as intense and is less formative and influential as the relationship with the custodial parent.⁵¹ The court concluded therefore, that the focus should be on the primary custodial family in determining the best interests of the child.⁵²

The court in *Gruber* determined that divorce caused alterations in parent/child relationships which were inevitable, and that the best interests of the child were tied more closely to the interests and quality of life of the custodial parent.⁵³ The court, therefore, determined that a relocation which was likely to substantially enhance the custodial parent's quality of life would often indirectly serve the child's best interests.⁵⁴ Based on these principles, the court fashioned a three-prong standard to be used in determining the best interests of the child in cases involving the relocation of the custodial parent.⁵⁵

According to *Gruber*, the court must first look to "assess the potential advantages of the proposed move and the likelihood that the move will substantially improve the quality of life for the custodial parent and the children."⁵⁶ The custodial parent's decision to move must not be made on an impulsive whim, and the court must consider factors other than greater economic opportunities.⁵⁷ Other factors that must be considered in determining the potential advantages of the proposed move include a desire to return to family or friends, educational opportunities, or a better physical environment to raise children.⁵⁸

The second prong of *Gruber* is to ensure that the relocation is not prompted by bad faith motives to impede the visitation rights or the relationship between the child and the noncustodial parent.⁵⁹ The moving parent has the burden of proving that the move is not whimsical or vindictive.⁶⁰ Similarly, the noncustodial parent must prove that the challenge to the intended move is derived from a genuine interest in the children.⁶¹

The third prong enunciated in *Gruber* is whether there is a realistic, substitute visitation arrangement, adequately enabling an ongoing relationship between the noncustodial parent and

51. *Id.* at 438.

52. *Id.*

53. *Id.*

54. *Gruber*, 583 A.2d at 438.

55. *Id.* at 438-39.

56. *Id.* at 439.

57. *Id.*

58. *Id.*

59. *Gruber*, 583 A.2d at 439.

60. *Id.* at 440.

61. *Id.*

the child.⁶² The court, however, will not defeat an attempt at relocation that offers real advantages to the custodial family and children simply because the visitation arrangements will have to be altered.⁶³ This three-prong standard set forth in *Gruber* has prevailed as the applicable test in Pennsylvania cases where the custodial parent seeks to relocate to a geographically distant area.⁶⁴

ANALYSIS

The views enunciated in *Gruber*, that the child's relationship with the noncustodial parent is less intense, less formative, and less influential than the relationship with the custodial parent, and that the best interests standard must focus on the custodial parent or family, tends to equate the child's best interests with that of the custodial parent. In an attempt to standardize relocation questions in custody disputes, the courts have lost sight of the interests intrinsic in the relationships with the noncustodial parent and extended family and friends.

The state legislature has articulated a public policy of maintaining the relationship with the noncustodial parent and extended family.⁶⁵ The appellate courts have linked this policy to the best interests of the child.⁶⁶ The court in *Gruber* noted the importance of maintaining a relationship with the noncustodial parent by requiring that a reasonable substitute visitation alternative be available.⁶⁷ Nevertheless, the fact that a large geo-

62. *Id.* at 439. This apparently satisfied the court's realization that there was a mutual interest in the child maintaining a healthy loving relationship with the noncustodial parent. The Court stated:

"Every parent has the right to develop a good relationship with the child, and every child has the right to develop a good relationship with both parents."

The task of this court is to sacrifice the non-custodial parent's interest as little as possible in the face of the competing and often compelling interest of a custodial parent who seeks a better life in another geographical location.

Id. at 438 (quoting *Pamela J.K. v. Roger D.J.*, 419 A.2d 1301, 1309 (Pa. Super. Ct. 1980)).

63. *Gruber*, 583 A.2d at 439-40.

64. See *Kaneski v. Kaneski*, 604 A.2d 1075 (Pa. Super Ct. 1992) (allowing the custodial parent to relocate to New York); *Lambert v. Lambert*, 598 A.2d 561 (Pa. Super. Ct. 1991) (remanding to determine the reasons for the move and the benefit to the children as enunciated in *Gruber*); *Plowman v. Plowman*, 597 A.2d 701 (Pa. Super. Ct. 1991) (allowing the custodial mother to move to Maryland); *Lee v. Fontine*, 594 A.2d 724 (Pa. Super. Ct. 1991) (allowing the custodial parent to move to Washington with the children).

65. 23 PA. CONS. STAT. § 5301 (1991).

66. See *Brown v. Brown*, 213 A.2d 395, 397 (Pa. Super. Ct. 1965); *Davidyan I*, 327 A.2d at 141; *Clapper*, 578 A.2d at 20.

67. *Gruber*, 583 A.2d at 438-39.

graphical distance separates the child and the noncustodial parent obviously puts a strain on the time and resources required simply to maintain contact with the relocated children.⁶⁸ In *Davidyan I*, the court stated that because geographical distance eroded a meaningful relationship between a noncustodial parent and child, distance was repugnant to the best interests of the child.⁶⁹ Additionally, in *Brown v. Brown*,⁷⁰ which involved placing the children in the custody of the maternal grandparents in Omaha, Nebraska, the court asserted that relocating the children 1600 miles away and depriving them of frequent contact with their father and other relatives was not in the childrens' best interests and welfare.⁷¹ Finally, in *Clapper*, the court determined that the distance involved would adversely affect the frequent and steady contact between the noncustodial father and the children if the mother relocated to Connecticut.⁷²

In many situations, the distance and cost of visitation is prohibitive.⁷³ In *Lee v. Fontine*,⁷⁴ the noncustodial parent challenged the custodial parent's move to the state of Washington.⁷⁵ The father contended that because of the lack of financial resources, the great distance involved, and the fact that one child had special needs due to a severe handicap, the visitation schedule would not foster an ongoing relationship with the noncustodial father.⁷⁶ In determining that the visitation needs could be met by extensive summer visitations, however, the court rejected the father's argument and stated that flexibility would be required and that the court could not change the geographical distance between Pennsylvania and Washington.⁷⁷ This is not a realistic custody arrangement that fosters a continuing relation-

68. See Albert A. Menashe & William E. Hensley, *What About the Parent Left Behind?*, FAMILY ADVOCATE, Winter 1989, at 17, 17.

69. *Davidyan I*, 327 A.2d at 141.

70. 213 A.2d 395 (Pa. Super. Ct. 1965).

71. *Brown*, 213 A.2d at 396-98.

72. *Clapper*, 578 A.2d at 20 & n.8.

73. Judith A. Seltzer & Suzanne M. Bianchi, *Children's Contact With Absent Parents*, 50 J. MARRIAGE AND FAM. 663, 675 n.2 (1988). The authors note that research has shown an important link between geographical proximity and maintaining frequent visits and close ties with noncustodial parents. *Id.* This is partly due to the limitations of opportunities for visits and increases in the time and costs required for visits. *Id.*

74. 594 A.2d 724 (Pa. Super. Ct. 1991).

75. *Lee*, 594 A.2d at 725.

76. *Id.* at 727.

77. *Id.* The custodial mother and the stepfather were both receiving public assistance in Pennsylvania and the children were living in public housing. *Id.* at 726. Under such circumstances the move may be justified, but the difficulty of visitation with the noncustodial father still exists.

ship between the children and the noncustodial parent as required by the third prong of *Gruber* and the Pennsylvania statute.

Furthermore, although less frequent visits may be longer in duration, some mental health professionals suggest that the developmental needs of the children are best served by regular and frequent contact with both parents.⁷⁸ Generally, the relocating custodial parent is advised to provide ample blocks of time to the noncustodial parent to substitute for the more frequent contact associated with living in close proximity to the noncustodial parent.⁷⁹ However, the maintenance of a frequent and supportive relationship with the noncustodial parent has been identified as a factor which alleviates the negative effects of divorce on children and thus contributes to their well-being.⁸⁰

The roles of both the custodial and noncustodial parent are important in the development of children.⁸¹ Unfortunately, the relationship a child has with the noncustodial parent deteriorates when a move occurs.⁸² Recent research indicates that there is a significant correlation between the frequency and quality of visitation by a noncustodial father and the distance of the children's residence from that of the father's.⁸³ Researchers have concluded that fathers living a far distance from their children, visited their children less frequently, and that these less frequent visits made the visits less satisfying.⁸⁴

78. Arnold H. Rutkin, *Away From Home: Children Caught in Middle by Parental Moves*, A.B.A. J., Oct. 1992 at 94.

79. John E. Finnerty, *Relocation - How To Do It (Or Stop It)*, FAMILY ADVOCATE, Winter 1989, at 13, 15.

80. See Sanford H. Braver, et al., *Frequency of Visitation by Divorced Fathers: Differences in Reports by Fathers and Mothers*, AM. J. ORTHOPSYCHIATRY, July 1991, at 448, 448.

81. See Alan M. Levy, *A Child's Trauma*, FAMILY ADVOCATE, Winter 1989, at 22, 24.

82. Levy, cited at note 81, at 24.

83. Joyce A. Arditti & Timothy Z. Keith, *Visitation Frequency, Child Support Payment, and the Father-Child Relationship Postdivorce*, 55 J. MARRIAGE AND FAM., 699, 706-07 (1993). The authors note that the noncustodial parent is usually the father. *Id.* at 699.

84. Arditti, cited at note 83, at 707. Also significant is the authors' conclusion that the reverse is not true. Visitation quality does not affect visitation frequency. *Id.* at 708. This is important because, as the authors indicated, policy (and judicial determinations in relocation or custody proceedings) can easily regulate the frequency of a noncustodial parent's visitation, but cannot regulate the quality of that visitation. *Id.*

Additionally, this research indicated that although visitation frequency and quality did not have a significant bearing on child support payments, proximity to the children's residence was a significant determination of support payments. *Id.* at 706, 710. The authors concluded, "[t]he farther away fathers lived from their children, the less support they paid." *Id.* at 706.

Another report showing the importance of geographical distance in the relationship between the noncustodial parent and the child was a study of the effects of divorce on 131 children from sixty divorcing families.⁸⁵ The researchers noted that of the younger children in the study, the only ones content with their visitation situation were the seven and eight year olds who visited their noncustodial parent two to three times per week.⁸⁶ The authors commented that most often these visits were accomplished by riding a bicycle to their noncustodial parent's residence.⁸⁷ This frequent access to the noncustodial parent gave these children a sense of control and helped to alleviate the negative feelings of helplessness and low self-esteem from which they suffered after the divorce.⁸⁸ The authors concluded that a pattern of infrequent visitation was destructive to the overall effect on the child's development.⁸⁹

The Pennsylvania Superior Court in *Gruber* may have been correct in its determination that the best interests of the child are closely connected to the interests of the custodial parent or family.⁹⁰ After all, the custodial parent's home is where the child will most often eat, sleep, play and be cared for. However, sociological and psychological research indicates the importance of geographical proximity in connection with continued frequent supportive contact with the noncustodial parent. The child's relationship with the noncustodial parent is more intense, more formative and more influential than the court in *Gruber* was willing to recognize.

Second, some courts have used the custodial parent's economic opportunities as the main factor in determining the ultimate question of what is in the best interests of the child.⁹¹ In *Plowman v. Plowman*,⁹² and *Kaneski v. Kaneski*,⁹³ the Superior Court of Pennsylvania found that the first prong of *Gruber*, requiring a substantial improvement in the custodial parent's quality of life, was satisfied by greater occupational opportuni-

85. Joan B. Kelly & Judith S. Wallerstein, *Part Time Parent, Part Time Child: Visiting After Divorce*, J. CLINICAL CHILD PSYCHOLOGY, Summer 1977, at 51.

86. Kelly, cited at note 85, at 52. The authors concluded that visits of twice a month were insufficient to maintain a nourishing and gratifying relationship. *Id.*

87. *Id.*

88. *Id.* Certainly a bicycle ride to the father's apartment would be out of the question when the child lives in a different state.

89. *Id.* at 54.

90. *Gruber*, 583 A.2d at 438.

91. See *Plowman*, 597 A.2d at 707; *Kaneski*, 604 A.2d at 1078.

92. 597 A.2d 701 (Pa. Super. Ct. 1991).

93. 604 A.2d 1075 (Pa. Super. Ct. 1992).

ties.⁹⁴ In *Plowman*, the custodial mother had trained as a medical assistant and went to Maryland for better job opportunities in her chosen profession.⁹⁵ She did not cooperate in allowing the father to see the child and refused to make the child available for phone calls.⁹⁶ The court however, affirmed the trial court's decision to allow the move, stating only that the trial judge had examined the mother's conduct of hindering the father's access to the child, and had concluded that this was not enough to award custody to the father and prevent relocation of the child.⁹⁷ The superior court did not disturb the trial court's conclusions and affirmed the decision.⁹⁸

The court did not look to the impact of the move on the child, or the mother's reluctance to let the father have contact with the child. The child's interest in a relationship with the father was protected only by a specifically drafted custody order supposedly designed to keep the custodial mother from denying the father access to the child.⁹⁹ The court relied primarily on the indirect benefit to the child from the mother's enhanced economic opportunity. Certainly, the noncustodial parent's relationship with the child would be hindered in such circumstances.

In *Kaneski*, the custodial parent wished to move to New York with her new husband and her children.¹⁰⁰ The noncustodial father contended that detrimental effects would result from the move, including the loss of proximity to the extended family and friends, loss of access to the father and changing schools.¹⁰¹ The court focused only on the indirect economic benefit to be derived from the move in which the children's stepfather would obtain permanent employment.¹⁰² Although it is hard to argue that the stepfather's employment would not benefit the children, the court did not find any other factors supporting the move, and did not discuss the effects of uprooting the children from friends and family.¹⁰³ The view that the noncustodial parent's

94. *Plowman*, 597 A.2d at 708; *Kaneski*, 604 A.2d at 1078.

95. *Plowman*, 597 A.2d at 708-09.

96. *Id.* at 708.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Kaneski*, 604 A.2d at 1076.

101. *Id.* at 1077.

102. *Id.* at 1078. The court did point out that the noncustodial parent was given liberal visitation rights. *Id.* at 1081

103. *Id.* at 1078-79. The court stated:

We do not accept appellant's argument that there must be demonstrated a separate and distinct non-economic benefit to satisfy the first criterion of *Gruber*. While the *Gruber* court held that such other benefits must not be

relationship with his children is somehow subordinate to economic factors has left the noncustodial parent with little recourse to maintain an important relationship with his children.

In the more recent superior court decision of *Guadagnino v. Montie*,¹⁰⁴ the best interests of the child were ignored completely. In *Guadagnino*, temporary custody was awarded to the mother.¹⁰⁵ After the father filed a complaint for custody, the mother prepared to move with the child to Ohio.¹⁰⁶ The custody mediator, however, relying on *Gruber*, found that the child's best interests would not be served by the move because the quality of life of the mother and child would not be enhanced.¹⁰⁷ Nonetheless, the mediator's report stated that if the move was to occur, shared custody at six month intervals should be arranged.¹⁰⁸

The mother subsequently moved to Ohio, and the trial court modified only that portion of the mediator's recommendations concerning the length of time the child would spend with each parent, and directed that the paternal grandparents should provide transportation for the child.¹⁰⁹ The mother, however, continually obstructed the father's access to the child.¹¹⁰ The father filed a petition for contempt which was granted, and primary custody was transferred to him.¹¹¹ The fact remains that the trial court allowed the move despite the mediator's finding that the relocation was not in the best interests of the child, and the superior court did not even discuss this issue.¹¹²

The Pennsylvania courts are not alone in the view that the maintenance of the current relationship between the noncustodial parent and the child must be subordinate to the economic or personal benefits of relocation to the custodial parent.¹¹³ How-

ignored or overlooked, it did not require that a move which would significantly improve the quality of life on an economic basis be precluded because other less tangible factors were lacking.

Kaneshi, 604 A.2d at 1078-79.

104. 646 A.2d 1257 (Pa. Super. Ct. 1994).

105. *Guadagnino*, 646 A.2d at 1258.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Guadagnino*, 646 A.2d at 1258.

111. *Id.* at 1258-59.

112. *Id.* at 1258.

113. See, e.g., *Love v. Love*, 851 P.2d 1283 (Wyo. 1993). In *Love* the custodial parent wished to relocate with her eleven year old daughter to Sioux Falls, South Dakota from Sheridan, Wyoming. *Love*, 851 P.2d at 1285. The parent wanted to attend a technical school not available in Sheridan, and believed her opportunities were limited in Wyoming (although she had worked as a licensed practical nurse in Sheridan, she did not like that profession). *Id.* The court stated that the appropriate

ever, Pennsylvania's neighboring state, New York, has recognized the importance of the child's relationship with the noncustodial parent and has fashioned an analysis for use in cases involving the relocation of the custodial parent which strives to maintain the relationship with the noncustodial parent.¹¹⁴

The importance that the New York courts have placed on the maintenance of a meaningful relationship with both parents and its connection to the best interests of the child is evident in the 1993 case of *Radford v. Propper*.¹¹⁵ In *Radford*, the custodial father wished to relocate to New Jersey from Brooklyn, New York, a distance of approximately fifty miles.¹¹⁶ The reasons for the move articulated by the custodial father were that his wife's commute to work would be shorter, the family's standard of living would be higher in New Jersey, and the environment would be better for the child.¹¹⁷ Determining that the father would not retain custody of the child if he relocated, the court in *Radford* reiterated the standard applied in New York relocation cases and the persuasive reasoning behind that standard.

First, the court explained that the best interests of the child were served by meaningful visitation between the noncustodial parent and the child, which required that the visitation be frequent and regular.¹¹⁸ The court recognized that the best interests of the child required nurturing and guidance by both parents, and that removing a child to a distant location necessarily frustrated the fundamental right of frequent and meaningful visitation shared by the child and the noncustodial parent.¹¹⁹

test was whether the motives in seeking to relocate were proper and whether reasonable visitation would be available to the noncustodial parent. *Id.* at 1288-89. Although the noncustodial father's involvement with the children had been significant, the court noted that, the "[f]ather also raise[d] the issue of problematic visitation if the mother is to move. He stated that his weekend visitation would be 'non-existent' because of the distance between the two towns. Father's change in visitation due to mother's relocation is unfortunate, but not an unusual result of divorce." *Id.* at 1286, 1289. The court allowed the mother to relocate with the children even though she had not yet found a home, enrolled herself in school, or identified employment in her prospective new residence. *Id.* at 1289.

114. See *Schultz v. Schultz*, 606 N.Y.S.2d 480 (App. Div. 1993); *Temperini v. Berman*, 605 N.Y.S.2d 363 (App. Div. 1993); *Atkinson v. Atkinson*, 602 N.Y.S.2d 953 (App. Div. 1993); *Clark v. Dunn*, 600 N.Y.S.2d 376 (App. Div. 1993); *Radford v. Propper*, 597 N.Y.S.2d 967 (App. Div. 1993); *Frizzell v. Frizzell*, 597 N.Y.S.2d 513 (App. Div. 1993); *Lake v. Lake*, 596 N.Y.S.2d 171 (App. Div. 1993).

115. 597 N.Y.S.2d 967 (App. Div. 1993).

116. *Radford*, 597 N.Y.S.2d at 969, 973. The proposed move would have increased the distance from the noncustodial mother's home by fifty miles. *Id.* at 970.

117. *Id.*

118. *Id.* at 969.

119. *Id.* at 971. The court noted that the right to meaningful and frequent visitation was so fundamental that the divorce decree implied a prohibition against

The starting point for the court's analysis was whether the move would deny the noncustodial parent frequent and regular access to the children, which would require the moving parent to demonstrate exceptional circumstances.¹²⁰ The court should not only look at the distance in miles, but must look at other factors including travel time, the burden and expense of travelling, the loss of visitation hours, the frequency of the visitation, and the noncustodial parent's involvement in the children's lives.¹²¹ If a move was likely to frustrate meaningful visitation with the noncustodial parent, two additional tests must be satisfied by the relocating parent before the court would permit the move.¹²²

First, the relocating parent had the burden of proving that exceptional circumstances existed such as exceptional financial, educational, employment or health considerations which would justify the relocation.¹²³ Remarriage or mere economic betterment, such as promotions or salary increases, however, would not constitute exceptional circumstances.¹²⁴ Once exceptional circumstances were shown, the custodial parent then had to establish that the move was in the best interests of the child.¹²⁵

The standard applied by the New York courts may seem stringent and burdensome upon the custodial parent who may have legitimate reasons for desiring to move to a new location with the child. However, this standard would more closely protect Pennsylvania's public policy of ensuring reasonable and continued contact between the child and both parents. Additionally, it would require the courts to grant greater weight to the importance of the role that a caring noncustodial parent has on the psychological growth and development of the children of divorced families.

removing a child to frustrate visitation. *Id.* (citing *Wiles v. Wiles*, 578 N.Y.S.2d 292 (App. Div. 1991)).

120. *Radford*, 597 N.Y.S.2d at 972.

121. *Id.* The court stated, "[s]cenarios in which a parent must fight traffic or run into delays at an airport, thus cutting in on meaningful visitation time, must not be ignored. Factors such as these should be considered when determining whether the noncustodial parental rights would be affected by a move." *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 973. Additionally, the desire of a custodial parent to get a "fresh start" in a new area will not suffice as an exceptional circumstance for permitting relocation. See *Shultz*, 606 N.Y.S.2d at 481.

125. *Radford*, 597 N.Y.S.2d at 973.

CONCLUSION

The Pennsylvania courts' focus on the interests of the custodial parent does not take into consideration the direct disadvantages to the child which are associated with relocation to a distant locality away from the noncustodial parent. Research shows that benefits to the child are derived from frequent contact with the noncustodial parent, and disadvantages are associated with less frequent contact.¹²⁶ Even the move itself can have emotional or psychological consequences. A recent study on the effects of relocation on child development and behavior¹²⁷ reports that in a move, children with two parents were less likely to have multiple behavioral problems or to have repeated a grade in school than children from single parent families.¹²⁸ The report comments that a move disrupts everything outside the family that defines the child's world.¹²⁹ The continued relationship with the noncustodial parent should hold a greater degree of weight in determining the best interests of the child when they are moved by the custodial parent. As one author states, "[f]ew litigants or judges are able to keep the focus on when, or if a 'better' school, house or job is more beneficial to the child than continued close contact with a parent."¹³⁰ Placing too much emphasis on the quality of life of the custodial parent in determining whether to permit relocation undermines the plain statutory mandate to consider the best interests of the child.

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126. See notes 78-89 and accompanying text.

127. David Wood et al., *Impact of Family Relocation on Childrens' Growth, Development, School Function, and Behavior*, 270 JAMA 1334 (1993).

128. Wood, cited at note 127, at 1335.

129. *Id.* at 1337.

130. Arnold H. Rutkin, *Away From Home: Children Caught in Middle by Parental Moves*, A.B.A. J., Oct. 1992 at 94, 94.