

Children - Relocation

As Australia becomes a more mobile society there are more incidents of one of the separated parents of the children wishing to relocate, either within Australia or to another country. A Court cannot prevent a parent from relocating. However, it can prevent the parent who has the care of the children from taking the children with them.

Unless there are exceptional circumstances, the parent who intends to relocate with the children should notify the other parent prior to doing so. If the other parent consents to the relocation, arrangements for time with the children will need to be negotiated or determined by the Court. If negotiations are successful then it is preferable any agreement be properly documented.

If the other parent does not agree then it may be necessary for the parent wishing to relocate to make an Application to Court. The Court will then make a decision based upon the welfare or best interests of the children.

If there is a Court Order relating to parenting issues including with whom the child lives and the time a child spends with other people, it is likely that the parent who the child lives with would not be permitted to relocate without the consent of the other parent; otherwise they may be in breach of the Order. The parent who the child lives with would need to make an Application to the Court to seek to vary the Order to allow them to relocate.

Even if there is no Court Order it would be prudent for the parent wishing to relocate with the children to seek the consent of the other parent before doing so and, if that parent does not give their consent, make an Application to the Court for an Order which would allow them to do so.

In determining relocation cases the Court has applied the following principles:

- The welfare or best interests of the children is the paramount, but not sole consideration;
- A person wishing to relocate with the children is not required to demonstrate compelling reasons for the relocation;
- The court must evaluate each of the proposals advanced by the parties; and
- The evaluation of the intending proposals must weigh the evidence and submissions as to how each proposal would hold advantages and disadvantages for the children's best interest.

A Court cannot determine the issues in a way which separates the issue of relocation from that of who the child will live with and the best interests of the children.

When considering the best interests of the children the Court will take into account such things as the right of the parent who the child lives with to move on with their life, form new relationships, have freedom of movement, the need to ensure the continuation of the relationship with the parent that the child spends time with, and travel costs involved should the parent who the child lives with be permitted to relocate with the children.

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