

Relocation a crumbling bridge too far to cross



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By: **Peter Magee**

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Australia's Family Court has always been an adversarial system, writes Armstrong Legal's Peter Magee.

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It is immersed in human despair – disintegrated relationships fill the corridors like a casting call – yet it's not an audition for a movie, but an appearance exposing fragile emotional states with each party stripped to their most vulnerable.

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Marriage breakdowns are a cocktail of highly-charged energy, and family lawyers witness continually the intensity of emotion, and while each case has its own challenges, there is never a true winner in family law.

All separations bear a great emotional scar on a child(ren) of a failed relationship, and yet, their unpleasantness is a cross they have to bear. And of all the hurt and animosity family breakdowns create, it's the issue of relocation and what it delivers to children and the unlucky parent, that is most destructive, emotionally, financially and mentally.

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The issue of what is in the best interest of a child(ren) is a key factor in the decision of a Magistrate, but the issue of relocation is a cross too great to bear for one parent fighting to retain a loving and caring relationship with their child(ren).



The Family and Federal Courts are renowned for making interesting decisions in family law matters, and in recent times, the regularity with which relocation cases have succeeded have increased, begging the question, does allowing one parent to relocate a child(ren), a decision that is in their best interest?

Family psychologists appointed by the courts in relocation matters are asked to assess family dynamics and a child(ren) views on relocating. More times than not, psychologists are hesitant or are against doing so. They understand the impact such a decision has on a parent's relationship with a child(ren). However, relocation is now happening with greater regularity, even though family psychologists advise against it.

Former chief justice of the Family Court of Australia, Diana Bryant said Relocation cases are the hardest cases the court does, unquestionably. If you read the judgments, in almost every judgment, at first instance and by the full court, you will see the comment that these cases are heart-wrenching, they are difficult and they do not allow for an easy answer.

Internationally, they pose exactly the same problems as they pose in Australia. I have heard them described as cases which pose a dilemma rather than a problem – a problem can be solved; a dilemma is insoluble.

Restriction to live anywhere in Australia is a right for any adult to live where they choose, and a relocation dispute arises when parents share time they spend with their children and one of them seeks to move with the children to a new location and where the move will effect the time child or children spending with the other parent.

In some cases, a relocation may only be a relatively short distance, but has the effect of making the pre-existing arrangements impractical, such as the travel time from the other parents, home to school. In other cases, the relocation may be interstate or overseas.

It's the cases where there's an interstate relocation that is very difficult to settle because there's usually no middle ground to compromise; it's unfortunate because they arise in circumstances where both parents are great parents and have great relationships with the child or children. Neither parent may be at fault in a relocation dispute.

Relocations can arise for any number of reasons like:

- Career opportunities;
- A new relationship;
- To be nearer to family and support networks;
- To return to one parent's former home city or country;
- Medical treatment; or
- The need to move as a result of financial necessity.

Issues that need to be considered in a relocation dispute can include:

- Is there a way of maintaining the current significance of time spent between residences in the context of the change in residential location of one parent?
- Could the 'left behind' parent potentially consider relocation with the other parent and child?
- Is it reasonably practicable to require a parent to remain living where they are? Will they emotionally and financially be able to cope?
- Is it realistic for the child to potentially live with the parent not relocating?
- What impact will any change having upon the child?
- Is the child of an age where they have specific wishes which should be considered?
- How can the difficulty and expense of travel between new residential locations be mitigated, and will the cost prohibit time?
- How strong is the relationship between the child and each parent now?

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- What attitude have both parents taken to the facilitation of time and meeting the responsibilities of parenthood in the past?
- What is proposed by way of a new school, and living arrangements?
- What capacity will the child have to communicate by electronic means, including telephone, messaging, and Skype?

Relocation cases are devastating, no matter how the courts try to minimise the fallout in allowing a parent to relocate with a child(ren). The courts unwittingly estrange a parent from a child not through deliberate intention but because the financial impact it places on one parent to maintain a loving relationship and bond with a child(ren) becomes, for some, a bridge too far to cross.

Peter Magee is the managing partner and founder of Armstrong Legal.

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