

Dealing with Visitation Issues When there is a Move Out of State

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The decision of a parent to move out of the geographic proximity of the other parent is perhaps the most traumatic aspect of the dissolution of the family. Many parents think that a move will be best for the children because it reduces frequent contact with the other parent, transitions which may be troublesome or even traumatic. Despite those occurrences, the long-term effect of the loss of the relationship for the child is rarely beneficial. Nowhere is it written that children are entitled to the best parents or even good parents-- they are only entitled to the parents they have¹, the two individuals who chose to have enough of a relationship that a child was created. Obviously there are exceptions; in family law the exception is not the rule. The fresh start theory offers little consideration for the needs of a child and a whole lot of benefit to the parent who does not want to look back.

Certain legal assumptions may be made when a move out of state is sought: that the custodial parent is effectively single parenting the child/children and will be an active, if not enthusiastic, supporter of the left behind parent's relationship with the child; and that the support of that relationship will, more often than not, require some reduction in the child support to address the increased costs of travel for visiting between the child and the left behind parent.² Those assumptions can and should be utilized by the professionals working with the family to safeguard the vitality of the relationship of the child to both parents.

¹ Otherwise known as the "goodenough parent."

² There may also be increased costs arising from the additional tools of communication necessary to enhance the left behind parent's relationship with the child. These might include a computer with Internet access for e-mail and faxing. It could even include a video camera; monitor and scanner to permit very ready and high tech access between the left behind parent and the child. A separate phone line in the child's room is a common concession.

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The legal analysis in Minnesota remains relatively uncomplicated. Auge v. Auge, 334 N.W. 393 (Minn. 1983) represents one of a line of cases which appeared across the country in which a presumption, burden of proof, or threshold is used to address the removal issue.³ In Auge the custodial parent is presumptively entitled to the court's permission to remove the child from the state unless the party opposing the move establishes that the removal would endanger the child's physical or emotional health and the move is not, as a result, in the best interest of the child, or that the purpose of the move is to interfere with the visitation rights of the noncustodial parent. Ayers v. Ayers, 508 N.W. 2nd 515 (Minn. 1993) represents a shift in approach which is reflected in other decisions from across the country, regardless of the original custodial award, requiring an evaluation of the proposed move under the best interests standard. Minnesota limited this approach to instances where the parties have joint physical custody; however, the dramatic shift in application of the burden should be noted. Many states across the country have adopted an approach which calls for a case-by-case analysis of each application for permission to remove a child.

It is possible to continue the contact or schedule visits if the financial resources are adequate. More often, again if there are adequate financial resources, the schedule will be monthly on the usual three-day weekends included in most children's school schedule. Often the moving parent will be expected to give up substantially all holidays in favor of the left behind parent. When the financial resources are limited, the left behind parent may be relegated to an extended summer visit.

Perhaps the most important consideration is the child's age and developmental stage. The differences in the scheduling and contact issues between a toddler and an adolescent should be obvious. Unfortunately, court orders and mediated visitation agreements are static documents limited by rigidity or enhanced by the flexibility the parties choose to employ. The schedule should be reviewed annually to ensure it focuses on the child's needs and development. If the parties are not able to do so on their own, the best recourse is not a visit to their lawyers' offices, but rather a meeting with a "parenting consultant."⁴

The left behind parent deserves acknowledgement and recognition from all professionals involved in these situations for the very natural grief and despair he/she may be feeling at the anticipated change or loss of relationship with his/her child or children.

³ See "Postdecree Custody Modification: Moving Out of State and Changes to the Parenting Relationship," Nancy Zalusky Berg and Gary Debele, American Journal of Family Law, Volume 10, 183-195 (1996). This article summarizes the law from across the country regarding removal. Comparison of the approaches taken by other jurisdictions is highly instructive in understanding the depth of the Minnesota approach and considering where the courts may go in the future with this particularly troublesome issue.

⁴ The parenting consultant role has been developed here in Minnesota by a small group of child psychologists. The parents are asked to sign a contract committing to the child psychologist as the final say in resolution of a dispute concerning the child or children (excluding financial issues and modification of custody). The psychologist will initially attempt to resolve the dispute by mediation. If mediation is not successful, the psychologist will then arbitrate the issue-- advising the parents of the decision in writing. No confidentiality is guaranteed. Obviously, the agreement to resolve the dispute outside of court can easily be undermined by one of the party's refusal to abide by the resolution, resulting in the issue going to court. It has been my experience that the utilization of a child psychologist in the resolution of these kinds of issues, i.e., one who is able to secure the trust or at least the respect of the parties, is a critical tool in making an end run around these seemingly endless disputes.

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The moving parent, if he/she wants the move badly enough, should initiate discussions with the offer of a flexible schedule and, to ease the financial costs the left behind parent, will help with the move. Informing the left behind parent of the school and activities schedule and providing an introduction to teacher and scout masters (by way of example) will encourage the child's feeling that he or she still has two parents and that other adults will treat both parents as persons who matter in the child's life. Frequently the failure to take care of these loose ends allows the hurt of the move to fester; the left behind parent becomes increasingly alienated; and the child becomes isolated. The summer visits become taxing and difficult because the child's interests are not easily known (these suggestions are all a haphazard means to supplement the loss of the nuance of daily contact where most parents learn about a child's needs and desires). As children mature these impasses become even more pronounced. The barriers to successful interaction with an adolescent are axiomatic-- the impossibility of a successful 6-week visit with a 14-year-old female who is away from her friends, extracurricular activities and babysitting opportunities should not be hard to anticipate. Because the child's needs are rarely taken into consideration when these moves are proposed, it is always beneficial for any professional involved with the family on whatever level to offer advice to both parents (the one suggesting the move as well as the one to be left behind) in consideration of the impact the move will have on the child.

General observations when a child moves with one parent.

1. Transition times have the potential to lead to or open a gateway to strong and even volatile emotions. These times can include obvious events such as when a child starts or ends a visit with a parent, changes in schools, or when the situation of a parent changes, e.g., ending or starting a new relationship, change of jobs, new births, financial improvements and reversals. More subtle events can also stimulate emotional intensity-- a phone conversation with a parent or sibling, going to bed, a change in the brand of chocolate milk purchased at the grocery store.

Don't assume that these emotions, in the parent or child, reflect how bad things are. Nor should they be considered as a sign of bad things to come. They may reflect the true and understandable stresses that arise from the harder work that is now necessary to maintain relationships over long distances. The child will model the parent's reaction to these stresses. If the parent communicates that things are hopelessly ruined or damaged because of the present living arrangement, the child is likely to adopt this point of view also. If the parent gives voice to the attitude that sometimes things are hard, but that it is possible to adapt to and make the best of the present conditions, the child will look for solutions to his or her feelings and needs.

The parent can use these times as an opportunity to mirror the child's feelings, and acknowledge that there can be challenging aspects to a long distance move.

2. Traveling and any other transitions are often taxing on the child. He/she does not have the physical reserves of adults nor does he/she have the emotional tools to cope with stress. He/she needs support, direction, and understanding to get through these times. Battles over the mode of transportation and the failure to anticipate potential snags in the

arrangements do little to punish the other parent and a whole lot to contribute to the child's despair. Pay the surcharge to ensure the child is attended to by the flight attendants and escorted to the connecting flights.

3. When they are with their children, each parent should focus on managing and expressing his/her own feelings to the end of giving the child a sense of security. Criticizing the other parent, for example, brings up conflict over which the child has no control and can only feel victimized or frustrated. Adequate clothing and special objects appropriately packed allows the child a secure base from which to experience the transition.
4. There can be crises in the relationship between parents. If the child is aware of them, each parent will add to the sense of security if he/she acknowledges that differences exist, but that the parents are responsible for working these problems out, not the children.
5. Divorce should not spell the death of one parent's relationship with his/her child. Both relationships are important in helping the child develop fully and with self-esteem. If one relationship is marginalized, the child's sense of importance also is marginalized. If both parents stay involved, the child regards his/her own feelings, thoughts, and behavior as having significance and importance.

All of that said and known-- how can one work best with either the left behind parent client or the parent that wishes to leave the state? For the left behind parent the following are options to consider-- each of which places the child's needs ahead of either parent.

What to Tell the Left Behind Parent

1. If the move is inevitable and unlikely to be stopped, consider moving as well. Obviously, this is only an option if the left behind parent can possibly find that kind of flexibility in his/her life. Certainly, this is not an option for the purpose of continuing the divorce hostilities and harassment. But if the left behind parent can swing it career-wise, accomplish the transfer in a manner so that the other parent is not threatened or harassed-- why not give the child the gift of both parents' active involvement in their new community.
2. The left behind parent should gather as much information about the new community as possible in order to be as good a resource to the child as the moving parent to the new community. Go and visit the new school; meet the teachers; see the new church; and locate the best swimming or skating facilities. Don't use the move as an excuse to become uninvolved in your child's life.
3. Inform yourself and your child of all the ways you can stay in touch and do it. Remember you are the adult so you, the left behind parent, will have to do 90% of the work. Send a note, card, photo, video, flower you picked and dried after a walk in the woods, e-mail with a poem, and anything else

you can think of almost every day. Send your child the tools to respond (postage, envelopes, address labels, etc.) and show them how to use them. It does no good to give self-addressed stamped envelopes if you never show the child how and where to mail them.⁵ Do not use shame or blame of the child or the other parent to accomplish your goal of communication. Call him/her as often as possible-- even if it is only to hear him/her complain that he/she is in the middle of a cartoon show or playing with a friend. Find a way to commit to a special time for calls and **do not ever miss the call**. Get call forwarding, a beeper, cell phone, fax machine, and voice messaging. The job of a child is to grow up and away-- so the responsibility to stay connected will almost always fall solely on you.

4. Accept your child's desire to have as much of an ordinary childhood as possible. His/her desire to hang with his/her friends, work a summer job, play on a league, go to a special camp should be celebrated-- it means he/she is trying to get on with his/her life even if his/her parents are not able to do so. The law will allow, with some significant limitations, a certain amount of control by a parent over a child until he/she is 18 or graduates from high school. The relationship you have with your child should be for the rest of both of your lives. A missed spring break to allow him/her the opportunity to swim in a competition may be rewarded four-fold in his/her love and appreciation because you respected him/her and put his/her needs first.
5. Make sure everything brought by the child is returned, if at all possible clean and in good repair. Do not forget the stuffed bunny necessary for the child to sleep-- if you do, go back and get it-- no one deserves a sleepy, crabby child who can't go to sleep because his/her bunny is missing.

The parent who moves a child away from the other parent to a different area bears the burden of doing everything possible to ensure that the child does not experience the emotional death of the left behind parent.

What to Advise the Parent Who Wants to Move with the Child

1. Make sure the child has a photo of the left behind parent in his/her room and always feels comfortable expressing joy at contact with that parent.
2. Do whatever you can financially to facilitate contact. Inform yourself of all the technological possibilities and their costs. Explore with your new employer (if that is the reason for the move) resources they may have or be willing to make available to you to facilitate contact.

⁵ This really does not have to be so difficult. Just think of places in the child's life where mail could be sent out-- like the school office, church office, etc.-- all the more reason to inform yourself of the people and places of the moment in the child's life away from the left behind parent.

3. Get the left behind parent the school calendar and get him/her posted about special and extra-curricular activities. Yours should not be the burden to facilitate all communication. The left behind parent must initiate and be responsible for contact with the other adults in your child's life in order to be a full participant. If you become the *gatekeeper* then you will always be responsible for whatever goes wrong, and will likely get little credit when things go well.
4. **Do not plan or offer activities during the other parent's time.** Information about such activities should be directly sent to the other parent. Let that parent decide if he/she is willing to be responsible for the activities and let him/her bear the brunt of saying no.
5. Help the child pack appropriately for the trip-- including items of special importance to the child and the other parent. Send along child projects, hobbies and things made by the child to share with the other parent. For your own sanity, also send along a list of what was sent so the child and the other parent have some hope of getting everything returned.

The law offers little in the way of effective solutions to these problems. All the guardians ad litem, judges, and therapists in the world cannot fix these situations gone sour. It is only through respectful and child-centered discussions and planing that these bad situations can be made tolerable. Remember that the court only has jurisdiction until he/she is, in most cases, 18. After that the child will have the relationship with his/her parent that he/she, the child, chooses to have. Small visitation victories often make for shallow success later when you want your daughter to enjoy a beautiful wedding and your son to call you for your advice on a new job.