by Jacqueline M. Valdespino

Relocation: A Moveable Feast?

We live in an increasingly mobile society in which, by the mid-1990s, one in five adults changed residences each year.[1] Additionally, the realities of the current labor market require that adults be able and willing to travel long distances to secure employment.[2] When a parent decides to move out of state or far from the other parent, a previously established timesharing arrangement often becomes untenable.[3] The party seeking to relocate must either negotiate with the other parent to alter the timesharing agreement or seek a remedy from the courts.[4]

• *Historical Context: Prior to the 1980s* — Historically, relocation cases did not pose the dilemma they do today. Prior to 1980, when California became the first state to authorize joint custody, there were typically two scenarios: custodial parent (usually the mother) can move with children, usually without restriction; and noncustodial parent (usually the father) can move without the children, without restriction. In both situations, parents rarely went to court for relocation disputes.[5]

• *Historical Context: Post 1980s* — With equal or close to equal timesharing and the notion of shared parenting, which became more common in the 1980s, relocation disputes increased. Fathers were less willing to become marginal parents, only seeing their children for two to three weeks in the summer and on holidays. While noncustodial fathers could still move at whim, usually for better jobs or new relationships, some noncustodial fathers tried to prevent custodial mothers from moving because it might interfere with their parenting rights. This led to a rise in relocation-related disputes and concomitantly a rise in rules seeking to govern those disputes.[6] Accordingly, the rise in relocation-related disputes led to a rise in the literature concerning the psychological effects on the children of parental relocation.[7] Today, family law practitioners consider relocation cases their most contentious.[8]

The American Law Institute (ALI) addresses relocation,[9] explaining that the custodial "parent is allowed to relocate without a specific showing of the benefits to the child." The ALI further advances a highly permissive standard for judging contested relocation petitions:

> [I]f a parent has been exercising a clear majority of custodial responsibility and the move is in good faith, no further analysis is required. The court is not permitted to prevent a relocation simply because it determines that such a relocation would not, on balance, be best for the child.[10]

The ALI's relocation model operates with the de facto presumption that the family courts can serve the welfare of the children in relocation matters by maximizing the wellbeing of their custodians.[11]

Relocation in Florida Prior to 2006

• *Florida Caselaw* — Florida initially weighed in on the relocation issue in 1993 in *Mize v. Mize*, 621 So. 2d 417 (Fla. 1993). In *Mize*, the court resolved an ongoing conflict in the district courts as to the standard to be applied by a trial court when a custodial parent requests to relocate with the minor children. Prior to *Mize*, the district courts of appeal appeared to approach the issue in three different ways. The Fifth District adopted a policy strictly disfavoring relocation.[12] However, the Third District adopted a policy favoring relocation.[13] Finally, somewhere in the middle of these two approaches was the track taken by the Fourth District, which adopted certain considerations to guide the discretion of the trial judge.[14]

The *Mize* court resolved the conflict by adopting the Third District's approach in *Hill v. Hill*, 548 So. 2d 705 (Fla. 3d DCA 1989), including Judge Schwartz's special concurrence. The Florida Supreme Court later explained in *Russenberger v. Russenberger*, 669 So. 2d 1044 (Fla. 1996), that its "basic intent" in *Mize* "was to adopt a policy allowing a good faith relocation by a custodial parent, although stopping short of adopting a per se rule."[15] *Mize*, like the ALI principles, created an implied presumption in favor of relocation, so long as the move was not motivated by an improper desire to interfere with the other parent's parental rights:

> [S]o long as the parent who has been granted the primary custody of the child desires to move for a well-intentioned reason and founded belief that the relocation is best for that parent's — and, it follows, the child's — wellbeing, rather than from a vindictive desire to interfere with the visitation rights of the other parent, the change in residence should ordinarily be approved.[16]

After a flurry of relocation cases in the appellate courts, the Florida Supreme Court addressed relocation again in *Russenberger*.[17] The court stated:

> We reaffirm the policy adopted in *Hill* and reiterate here the general rule adopted therein that a request for relocation should

be favored as long as the request is made in good faith under the criteria described by Judge Schwartz that were quoted with approval in *Mize*. In other words, relocation should ordinarily be approved so long as the custodial parent desires to move for a well-intentioned reason and a founded belief that relocation is best for the well-being of that parent and the children, rather than from a vindictive desire to interfere with the visitation rights of the other parent.[18]

• *F.S. §61.13* — On June 1, 1997, the legislature enacted F.S. §61.13.(2)(d). This statute stated in pertinent part: "No presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent."

The statute also delineated certain factors that courts must consider before approving relocation. The statute and *Mize* together held that judges should consider and weigh factors, such as 1) whether the move would be likely to improve the general quality of life for both the primary residential spouse and the children; 2) whether the motive for seeking the move is for the express purpose of defeating visitation; 3) whether the custodial parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements; 4) whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child or children and the noncustodial parent; 5) whether the cost of transportation is financially affordable by one or both of the parents; and 6) whether the move is in the best interests of the child.

Additionally, in 2005, the Florida Supreme Court approved the "substantial change" test.[19] The party seeking modification of the custody arrangement must show "(1) that the circumstances have substantially and materially changed since the original custody determination, and (2) that the child's best interests justify changing custody."[20] All requests for modification, whether adopted by a court after agreement or those established during a hearing for custody, were subject to the "substantial change" test.

The New Statute: F.S. §61.13001

• *Florida Relocation Statute 2006* — F.S. §61.13001, titled "Parental Relocation with a Child" replaced §61.13(2)(d) on October 1, 2006. A primary residential parent, including domestic violence victims, must follow the requirements of §61.13001 if they intend to relocate with their children.

The 2006 statute on parental relocation was very detailed. Outfitted with its own list of definitions, the 2006 statute made clear the procedure for relocating with a child. The purposes delineated in Ch. 61 included the promotion of "amicable settlement of disputes that arise between parties to a marriage and [t]o mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage."

In 2006, §61.13001 defined the primary residential parent of the child as "the person seeking to relocate with a child," absent a court order or an agreement designating one parent as the

primary residential parent.[21] Under this section, "'change of residential address' means the relocation of a child to a principal residence more than 50 miles away from his or her principal place of residence at the time of the entry of the last order establishing custody." Relocation is defined in this section as a change of residence for 60 consecutive days.

The statute indicated that the first method of relocation is by agreement. The primary residential parent may relocate if he or she has reached an agreement with the secondary residential parent. This agreement must define "the visitation rights [of] the nonrelocating parent," "any transportation arrangements related to the visitation," and the nonrelocating parent must have signed the agreement. The agreement must be approved by court order, and a hearing will only be held if requested. If there is no agreement for relocation between the parents, then the parent who wants to relocate must give notice of intent to relocate to the other parent. The notice must include a description of the intended new residence, new home telephone number, the intended date of relocation, specific reasons for the relocation, and a proposed revised visitation schedule. "The mailing address of the parent seeking to relocate" must be included and the contents are not privileged. The parent seeking to relocate must also prepare a certificate of filing notice of intent to relocate. In addition, the relocating parent must provide any changes in address, phone numbers, or any other information required.

Furthermore, pursuant to the statute, each notice must include an "objection clause." If no objection is filed within 30 days, the relocation is presumed to be "in the best interest of the child." However, if an objection is timely filed, the parent seeking to relocate with the child has the burden of proving the relocation is in the best interests of the child, among other things. Under this statute, there is no presumption in favor of either parent for modification due to relocation. The statute then required that courts consider the petition based on these factors: 1) The nature and quality of the relationship with the primary residential parent; 2) the age, developmental stage, and needs of the child; 3) the likely impact of relocation; 4) the maintenance of continuing contact with the other parent; 5) the child's preference; 6) the reasons for and against relocation; 7) career opportunities available to the objecting parent or relocating parent; 8) a history of domestic violence; and 9) "[a]ny other factor affecting the best interest of the child...."[22]

If the relocating parent fails to file a notice before relocating, the relocating parent is subject to contempt and may be compelled to return the child. In addition, the court will consider the failure to timely file the notice, along with the unauthorized removal of the child from the jurisdiction, as factors in determining whether to approve relocation. The court will also consider the unauthorized removal when it determines whether to change primary residential custody or to modify visitation. Moreover, the relocating parent may be ordered to "pay reasonable expenses and attorney's fees" for the objecting parent.[23]

The statute specifically prohibits the judge from considering the change in the nonrelocating parent's timesharing schedule, and the decrease in the nonrelocating parent's quantity of timesharing, as the ultimate factor in denying a relocation request. That means the court must not deny a moving party's request for relocation solely on the basis that the nonrelocating parent will see the child less during the year as a result of the relocation. Instead, the court must essentially pretend that alternate timesharing arrangements can be made to ensure quality timesharing and a close relationship between the child and the nonrelocating parent. In contrast, the court might consider the feasibility of preserving the relationship between the nonrelocating parent and the child through substitute arrangements that take into consideration the logistics of contact, access, and timesharing, as well as the financial circumstances of the parties.

The court must also consider whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person, as well as the likelihood of compliance with the substitute arrangements by the relocating parent or other person once he or she has moved away.

• *Florida Relocation Statute 2009* — A number of changes were made to the statute in 2009. The new statute:

1) Deletes the definition of "change of residence address," which references the relocation of the child;

2) Amends the definition of "relocation," referencing the relocation of the parent (rather than the child) and incorporating language from the definition of "change of residence address" (*e.g.*, change in location must be more than 50 miles from the original place of residence);

3) Amends the definitions of "other person" and "parent";

4) Removes the requirement that a parent notify the other parent, and other persons entitled to timesharing with the child, of a proposed relocation of the child's residence via a notice of intent to relocate;

5) Requires that a petition to relocate be filed by a parent or other person seeking relocation and served upon the other parent and every other person entitled to access to or timesharing with the child;

6) Amends the deadline for objecting to relocation from 30 days after service of the notice of intent to relocate to 20 days after service of the petition to relocate;

7) Provides that failure to respond to a petition to relocate results in a presumption that relocation is in the child's best interests and that, absent good cause, the court must enter an order allowing the relocation;

8) Provides that if a response objecting to a petition to relocate is filed, the petitioner may not relocate and the matter must proceed to a temporary hearing or trial;

9) Amends the bases upon which the court may grant a temporary order restraining relocation to include that the petition to relocate does not comply with the statutory requirements;

10) Requires that a motion seeking temporary relocation be heard within 30 days after the motion is filed and that, if a notice to set the matter for a nonjury trial is filed, the trial must be

held within 90 days after the notice is filed; and

11) Amends the applicability of the relocation provisions.

Florida Caselaw: 2009 to Present

• *Parent vs. Child Relocation* — In *Krift v. Obenour*, 152 So. 3d 645 (Fla. 4th DCA 2014), the relocation statute was inapplicable, when the order provided for change of *child's residence* upon reaching kindergarten age. Neither parent sought to move from his or her principal place of residence, and, under the ordered parenting plan, neither parent would be changing his or her residence. The parenting plan in the amended final judgment does not involve "relocation," as defined in §61.13001(e), but rather orders that the father become the primary residential parent once the child begins kindergarten.[24]

In *Rolison v. Rolison*, 144 So. 3d 610 (Fla. 1st DCA 2014), the First District Court of Appeal held that the plain language of the relocation statute applies only when a *parent's principal place of residence changes* "at the time of the last order establishing or modifying time-sharing" (which is not applicable here) or "at the time of filing the pending action."[25] The mother's location was already in Georgia when the father filed the pending action; as such, in accordance with §61.13001, she did not have to seek permission from the father or the court to move there.

In *Essex v. Davis*, 116 So. 3d 445 (Fla. 4th DCA 2012), according to the wording of the order under review, the trial court determined that §61.13001 had been violated by the mother relocating the child's residence to Louisiana. By references to notice to relocate, it also appears the trial court was contemplating the earlier version of the statute.[26] The order under review states, "Based on a review of the court file, the [c]ourt finds...." It does not appear the court conducted an evidentiary hearing before making its ruling. A review of the documents mentioned in the order, which appear to be the sources of information from which the trial court made its findings, leads us to conclude that there was no competent substantial evidence before the trial court to find that the mother was living in Florida at the time the order approving a timesharing arrangement (the mediated agreement) was entered by the court. The mother clearly stated her address was in Louisiana when she signed the mediated agreement. Moreover, the finding in the order under review that "[t]he [m]other has since removed the minor child from Palm Beach County," appears to use the mediated summer timesharing agreement as the temporal point of reference. We conclude the trial court erred in its determination. Without additional information gained from an evidentiary hearing, the trial court could not properly determine that the mother had violated the relocation statute.

In *Arrabal v. Hage*, 19 So. 3d 1137 (Fla. 3d DCA 2009), the mother was the residential parent and the father, who resided out of state and had been residing out of state since signing the child custody agreement, sought modification of custody agreement. The Third District Court of Appeal held that the notice of relocation statutory provision did not apply in child custody modification proceedings initiated by the father, the nonresidential parent, and that the statute only applied to a residential parent's notice to a nonresidential parent that he or she intended to relocate with the child.

• *Statutory Factors* — In *Albanese v. Albanese*, 135 So. 3d 532 (Fla. 5th DCA 2014), the Fifth District Court of Appeal discussed the statutory factors and held that the trial court erred in granting the relocation request because "[w]hile the evidence might have supported a finding that a move to the New York City area was in [h]usband's best interest, it was insufficient to establish that it was in the children's best interest."[27] The evidence was undisputed that the wife had a strong bond with her sons; yet, the trial court made no finding regarding the feasibility of preserving the relationship between wife and her sons through substitute timesharing arrangements. Additionally, the wife's testimony that the boys would suffer emotional harm from the relocation was not addressed by the trial court other than to acknowledge its concerns regarding the emotional health of the children. Furthermore, there was no finding (and little or no evidence) that the relocation would enhance the general quality of life or educational opportunities for the minor children.

In *Fetzer v. Evans*, 123 So. 3d 124 (Fla. 5th DCA 2013), the former wife failed to prove by preponderance of the evidence in proceedings on her petition to relocate out of state with parties' minor child that her relocation out of state with parties' minor child was in best interest of the child. Evidence established that after the former husband and his fiancée left their jobs in California to move to Florida to be closer to the child, the former wife and her husband moved out of state, with minimal notice to the former husband and over his objection. The former wife provided the former husband with a post office box address, but refused to disclose her physical address.

In *Eckert v. Eckert*, 107 So. 3d 1235, 1237-38 (Fla. 4th DCA 2013), the Fourth District Court of Appeal held that the mere fact that a house was available for the wife and child was insufficient evidence to support the final order granting her parental relocation with the child in the divorce proceeding. Nothing in the record showed that the trial court evaluated any of the statutory factors, as no evidence was presented on most of them.

In *Mata v. Mata*, 75 So. 3d 341 (Fla. 3d DCA 2011), the Third District Court of Appeal held that the trial court erred when, on ex-wife's emergency motion to permit the temporary relocation of the parties' minor child to North Carolina, the court did not consider the statutory factors that had been considered in matters involving temporary relocation of a child.

In *Rossman v. Profera*, 67 So. 3d 363 (Fla. 4th DCA 2011), the Fourth District Court of Appeal held that the trial court's finding that denial of ex-wife's request, as primary residential parent, to relocate to Texas was in the minor child's best interest, was supported by substantial competent evidence. In this case, the ex-husband was extremely involved in the minor child's life, and the ex-wife's proposal for substitute arrangement, whereby the minor child was to fly 11 unaccompanied round-

trips per year between Texas and Florida to visit the ex-husband, would drastically limit the ex-husband's participation in his child's life.[28]

In *Orta v. Suarez*, 66 So. 3d 988 (Fla. 3d DCA 2011), the Third District Court of Appeal held that the wife was entitled to relocate to California with parties' minor child because she, as parent seeking relocation, carried the burden of demonstrating that relocation was in the child's best interest,[29] and because the husband never demonstrated why proposed relocation was not in the child's best interest. The wife was a Venezuelan-educated dentist who could work only in California without re-attending dental school, and as a consequence, the husband had agreed to move with her to California so that she could work. After the wife became pregnant and then demanded a divorce, the husband reneged on his agreement. The wife was the parent who would best foster a continuing meaningful relationship between the child and nonrelocating parent, and the pre-litigation primary caregiver was the wife.

In *Arthur v. Arthur*, 54 So. 3d 454 (Fla. 2010), the trial court found that relocation of the child with the wife was not in the best interests of the child at the time of the hearing on the petition for relocation and, thus, should have denied the petition, rather than authorize relocation 20 months after the hearing. The court stated that "[b]ut for the [c]ourt's concern for the [h]usband's ability to bond with his son, the [w]ife's relocation would have been granted without further delay," and found that requiring the wife to wait until child turned three years old allowed husband and child the time necessary to form a lasting bond with each other.

• *Principal Parent Address Does Not Change* — In *Rolison*, the court held that the plain language of the relocation statute applies only when a *parent's principal place of residence changes* "at the time of the last order establishing or modifying time-sharing" (which is not applicable here), or "at the time of filing the pending action."[30] The mother's location was already in Georgia when the father filed the pending action; as such, in accordance with §61.13001, she did not have to seek permission from the father or the court to move there.

• *Geography* — In *Moore v. McIntosh*, 128 So. 3d 985 (Fla. 1st DCA 2014), the mother's and father's relocation to different cities within the county so that each of them resided 20 miles from the child's school, by itself, did not constitute substantial change in circumstances warranting modification of custody agreement when the agreement incorporated into the divorce decree indicated the possibility of the parties' relocation was expressly contemplated.[31]

International Relocation

Each year, our world gets smaller. Ease of travel and the Internet have opened doors that were not as accessible 20 years ago. As family practitioners, we face issues we may not have thought we would face. International law issues are the new reality in everyone's practice. Attorneys must ramp up their knowledge on how international law issues relate to their clients, specifically issues related to relocation, parental child abduction, and asset distribution.

In a divorce case in which international issues exist,[32] the issue of relocation is generally divided into two parts. Either one parent fears that the other parent, in violation of a court order, will permanently take the children out of the U.S., never to return, or one parent wishes to relocate the children out of the country. The latter is similar to the issue of relocation in a domestic case, with the factor for consideration being the best interest of the children. However, the issue of a parent's fear of relocation by abduction is a legitimate fear in many international cases, and should at all times be considered by the lawyer.

• *International Travel with a Child* —Anytime a child is traveling internationally, whether short- or long-term, particularly when a parent has ties to another country, child abduction is a concern. There are three preventative steps that can be taken to help address the nontraveling parent's concerns. First, the minor children's passports should be addressed. If passports exist, they should be located and secured. However, the other parent could still apply for new or replacement passports. To help address that potential issue, the concerned parent can register the children's passports with the Children's Passport Issuance Alert Program (CPIAP)[33] adding the passports of child U.S. citizens in the State Department's Passport Lookout System. Hence, if a passport application is submitted, the department will

alert the parent and allows for advance warning of possible plans for international travel with a child.

Second, the parties can enter into a clearly and carefully drafted written agreement outlining the terms of travel. There are several forms or templates that can be the starting point of such an agreement to ensure the major concerns are addressed.[34]

Third, the nontraveling parent can also request that the traveling parent, prior to departure, post a monetary bond sufficient to cover the nontraveling parents' anticipated legal fees and costs in the event the child is wrongfully removed or retained in the foreign country.

• *International Child Abduction* — If a child has been wrongfully removed or retained outside the U.S., immediate action is required. The Hague Convention on the Civil Aspects of International Child Abduction[35] provides a mechanism of return for parents whose children are wrongfully removed to or retained in a treaty partner country; however, the convention has a hard deadline to take action for the left-behind parent.[36]

There is no easy mechanism to assist a parent in a situation in which children have been taken to a country that is not part of the Hague Convention.[37] By far the most difficult consideration in an international relocation dispute is the problem of enforceability. While the Parental Kidnapping Prevention Act (PKPA) of 1980[38] ensures that a custody order will be given full faith and credit following an interstate move, there may not be a realistic way of enforcing an American court order in a foreign country. The moving parent may be able to effectively terminate the child's relationship with the left-behind parent simply by ignoring the court order and blocking access to the child. In these cases, coordinating with counsel in the local country may be key in determining the most expedient way to secure the return of the child.

• *International Child Relocation* — The requirements of F.S. §61.13001 apply when a parent is requesting international relocation with a minor child.[39] These factors, however, are often insufficient to address the complex and unique concerns that inevitably arise in international relocation cases.

The most obvious problem posed by an international move is the increased physical distance between the left-behind parent and the child. Difficulties inherent in maintaining a close relationship over long distances are not unique to international moves. Concerns of distance and time zones frequently arise in interstate relocations; state statutes regarding relocations generally address the problem of increased physical distance. Still, the problem is often more severe in international cases. International travel tends to be particularly expensive, burdensome, and time-consuming, and there may be other logistical concerns regarding a party's ability to leave a certain country or re-enter the U.S. Particularly if the parties lack substantial financial resources, it may be difficult or impossible to arrange frequent physical visitation following an international move.

Conclusion

Relocation cases are fact intensive. All relevant facts must be presented to the court in a clear manner. Prepare your case carefully using all available resources including demonstrative evidence. Despite the existence of statutes and caselaw, no bright-line rules allow either party to predict with any degree of certainty the end result. With thorough preparation, you can present a viable, persuasive case on behalf of your client.❑

[1] Linda D. Elrod, *National and International Momentum Builds for More Child Focus in Relocation Disputes*, 44 FAM. L.Q. 341, 341, 342, n.5 (2010) (providing some more recent statistics); *see also* Anne L. Spitzer, *Moving and Storage of Postdivorce Children: Relocation, the Constitution and the Courts*, 1985 ARIZ. ST. L. J. 1, 3 (observing that during the first four years following divorce or separation, 75 percent of custodial mothers moved at least once, and half of those mothers moved again).

[2] Judy S. Wallerstein & Tony J. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 FAM. L.Q. 305, 315 (1996) (stating that "prohibiting a move by the custodial parent may force that parent to choose between custody of his or her child and opportunities that may benefit the family unit" including new jobs, marriages, and relatives' support).

[3] Paula M. Raines, *Joint Custody and the Right to Travel: Legal and Psychological Implications*, 24 J. FAM. L. 625, 656 (1985) (stating that "the possibility of creating or sustaining [a joint custody] arrangement is destroyed when one parent" moves far from the other parent).

[4] SANFORD N. KATZ, FAMILY LAW IN AMERICA 114 (2003) (framing relocation disputes as balancing the benefits of the move with the child's ability to remain in contact with the nonrelocating parent).

[5] *See* Theresa Glennon, *Still Partners? Examining the Consequences of Post-Dissolution Parenting*, 41 FAM. L. Q. 105, 118, n.76 (2007) ("In review of 602 relocation cases, 90 [percent] of parents seeking to move were women."); Sanford Braver *et al.*, *Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations*, 17 J. FAM. PSYCH. 206, 216 (2003) (citing similar statistic).

[6] *See* Family Court Review, *Special Feature: Reigniting the Relocation Debate* (Jan. 2015); American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* (2002); Robert E. Emery, *et al.*, *Custody Disputed*, 16 SCI. AM. MIND 64 (2005).

[7] *See, e.g.*, Richard A. Warshak, *Social Science and Children's Best Interest in Relocation Cases: Burgess Revisited*, 34 FAM. L.Q. 83 (2000); William G. Austin, *A Forensic Psychology Model of Risk Assessment for Child Custody Relocation* Law, 38 FAM. CT. REV 192 (2000); William G. Austin, *Relocation, Research, and Forensic Evaluation, Part II: Research in Support of the Relocation Risk Assessment Model*, 46 FAM. CT. REV. 347 (2008); William G. Austin, *Relocation, Research, and Forensic Evaluation, Part I: Effects of Residential Mobility on Children of Divorce*, 46 FAM. CT. REV. 137 (2008); Philip M. Stahl, *Avoiding Bias in Relocation Evaluations*, 3 J. CHILD CUSTODY 109 (2006).

[8] Rebecca Palmer, *Strategies for Family Law in Florida, 2013 Edition: Leading Lawyers on Working with Clients, Creating an Effective Strategy, and Handling Complex Cases*, 2013 WL 2137491 ("Cases involving relocation are probably the most contentious and require a thorough understanding of the relocation statute.").

[9] American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* §2.17 (2002).

[10] *Id.*

[11] *See* Janet Leach Richards, *Resolving Relocation Issues Pursuant to the Ali Family Dissolution Principles: Are Children Better Protected?*, 2001 B.Y.U. L. REV. 1105 (2001).

[12] *See Mize v. Mize*, 589 So. 2d 959 (Fla. 5th DCA 1991), *quashed*, 621 So. 2d 417 (Fla. 1993); *Mast v. Reed*, 578 So. 2d 304 (Fla. 5th DCA 1991); *Cole v. Cole*, 530 So. 2d 467 (Fla. 5th DCA 1988); *Jones v. Vrba*, 513 So. 2d 1080 (Fla. 5th DCA 1987); *Giachetti v. Giachetti*, 416 So. 2d 27 (Fla. 5th DCA 1982).

[13] *Hill v. Hill*, 548 So. 2d 705 (Fla. 3d DCA 1989), *rev. den.*, 560 So. 2d 233 (Fla. 1990); *Matilla v. Matilla*, 474 So. 2d 306 (Fla. 3d

DCA 1985).

[14] *See DeCamp v. Hein*, 541 So. 2d 708 (Fla. 4th DCA 1989), *rev. den.*, 551 So. 2d 461 (Fla. 1989).

[15] *Russenberger*, 669 So. 2d at 1046.

[16] *Mize*, 621 So. 2d at 419.

[17] *Russenberger*, 669 So. 2d at 1046.

[18] *Id.*

[19] Pursuant to the current statute, when an agreement expressly prohibits relocation, the party who seeks to relocate must show a substantial change in circumstances to justify the relocation. *Guizzardi v. Guizzardi*, 89 So. 3d 967 (Fla. 3d DCA 2012). The standard clause practitioners often include in agreements that codify the statute and the statutory procedure is not a prohibition and will not require proof of a substantial change in circumstances.

[20] In *Wade v. Hirschman*, 903 So. 2d 928 (Fla. 2005), the Florida Supreme Court approved of a two-part "substantial change" test that was set forth in *Cooper v. Gress*, 854 So. 2d 262 (Fla. 1st DCA 2003), which must be met for modification of all custody agreements. The "substantial change" test requires the party seeking modification of the custody (timesharing) arrangement to show 1) that the circumstances have substantially and materially changed since the original custody determination, and 2) that the child's best interests justify changing custody. *Wade*, 903 So. 2d at 931, n.2. Furthermore, the substantial change must be one that was not reasonably contemplated at the time of the original judgment. *Id.*

[21] Each time a client moves, even if the move is less than 50 miles, which does not require the filing of a petition for relocation, the client should consider asking the court to enter an order establishing the new residence/address as the last address. If not, any future relocation will be measured from the previous or "last" order. The order can simply provide that the existing timesharing schedule can remain in place.

[22] FLA. STAT. §61.13001(7)(a).

[23] FLA. STAT. §61.13001(3) (2009).

[24] Even when a parent seeks to relocate without the child, if the move is more than 50 miles, it is a relocation case and not a modification proceeding.

[25] FLA. STAT. §61.13001(1)(e).

[26] After October 1, 2009, the critical inquiry, as to the applicability of the relocation statute, is whether the mother relocated her principal residence. Based on §61.13001(1)(e) and A.F., the mother is correct in arguing that if she had already moved to Louisiana prior to the father's filing of the petition to determine paternity or any order establishing or modifying timesharing, then she is not subject to the relocation statute.

[27] The Fifth District Court of Appeal cited to *Berrebbi v. Clarke*, 870 So. 2d 172, 173 (Fla. 2d DCA 2004), which held that relocation statute required courts to consider best interests of child, not just petitioning parent).

[28] Make a chart of the timesharing allowed and exercised. Compare and contrast that chart to one detailing the amount of timesharing offered.

[29] To either bolster the new/intended school or to discredit it, use an educational expert to present expert testimony on the two schools.

[30] FLA. STAT. §61.13001(1)(e).

[31] Contact the local police department in both the current location and the intended location and obtain a crime grid for each.

[32] For both domestic and international relocations, provide the court with the applicable airline routes, rules regarding unaccompanied minors, and average cost of transportation.

[33] U.S. Department of State, International Parent Child Abduction, Children's Passport Issuance Alert Program, http://travel.state.gov/content/childabduction/english/preventing/passport-issuance-alert-program.html.

[34] The I CARE Foundation has published a form agreement for international travel focusing on key issues associated with a child's return under the 1980 Hague Child Abduction Convention.

[35] Convention on the Civil Aspects of International Child Abduction, *available at* http://www.hcch.net/index_en.php?act=conventions.text&cid=24.

[36] Countries that follow the Hague Convention include Argentina, Australia, Austria, The Bahamas, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong and Macau only), Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Republic of Macedonia, Malta, Mauritius, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Saint Kitts and Nevis, San Marino, Serbia, Slovakia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, Bermuda, Cayman Islands, Falkland Islands, Isle of Man, Montserrat, Uruguay, Venezuela, and Zimbabwe.

[37] These countries include, but are not limited to Afghanistan, People's Republic of China, Egypt, Iran, Iraq, Indonesia, Lebanon, Libya, Nigeria, Pakistan, Saudi Arabia, Syria, Thailand, and Yemen.

[38] 28 U.S.C. §1738A.

[39] *Wraight v. Wraight*, 71 So. 3d 139 (Fla. 5th DCA 2011).

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