

Geographic residency restriction in child custody case upheld

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When a court issues a child custody order, it may restrict a child's residence to a defined geographic area. Often, one parent may later wish to relocate. If the parents cannot agree on the matter of relocation at that time, then such a change may be left to the court to decide.

Under Texas law, to modify a custody order, there must be a showing of a material and substantial change of circumstances for either party or the child, and a showing that such requested modification would be in the best interest of the child. The recent Texas Court of Appeals case of *In re P.M.G.* provides an example of how this standard may be applied to a child relocation dispute.

Mother makes plans to attend a university

At the time of their divorce, the couple was appointed joint managing conservators of their only child, with the mother having the exclusive right to designate the primary residence of the child without regard to geographic restriction.

Approximately six years later, the mother made plans to attend a university in another city and notified the father by certified mail, as required by her decree. Having learned of the mother's intent to move, the father filed a motion to modify the parent-child relationship seeking primary custody.

Initially, in temporary orders, the mother was permitted to move away with the child and begin her new life. However, after a hearing for final orders, the trial court issued a modification order which, among other things, ordered the mother to return with the child to the original county, and restricted the child's primary residence to any of four specific school districts. On appeal, the mother claimed that the trial court had no authority to impose the geographic residency restriction because it had failed to find a material and substantial change in circumstances.

Was the change material and substantial?

The Texas Court of Appeals noted that moving a child from one location to another generally results in some change of the circumstances for the child or parents, but the key issue is whether such change was material and substantial. Some moves, depending on distance and other factors, may not materially alter or interfere with the relationship of the parents with the child. Deciding whether the move causes a substantial and material change requires intensive examination of the facts of each case, including factors such as the distance involved, the quality of the relationships with the child, and the motive for the move.

In this case, the distance moved was 191 miles. While that distance was not so great as to impede regular visitation by the father, it was significant. The child and her father were very close during the time she lived in the same county as her father. He was the leader of her Girl Scout troop and coached her soccer team, he helped the child with her homework and ate lunch with her at school once a week. The court-appointed social worker who performed the home study on both parents testified that child was more closely bonded to the father. After the move, the father continued to have access to the child, but the extent of it was significantly diminished.

The mother justified the move for financial reasons. There was evidence that the mother's primary focus was on her own schooling and that she did not make the child a priority in her life.

On the facts presented, the court held there was a material and substantial change in circumstances to support the geographic residency restriction and that the custody modification ordered was in the best interest of the child.

Seek advice prior to a relocation

If you are considering relocating with your child, you should seek the guidance of an experienced family law attorney prior to taking any action. It may be possible to negotiate an acceptable arrangement for all parties, but if not, then ensure that your attorney will also vigorously protect your rights and interests in any ensuing litigation.