

What it Takes to Succeed at Removal

Like most issues involving children, the standard by which courts make removal decisions is "the best interest of the child." It used to be that in most counties in Illinois, generally, removal was disfavored, because it tends to disrupt the connection between the child and the remaining parent.¹ Today, however, where the removal can be shown to be of benefit to the child – notwithstanding the change in the frequency of contact with the remaining parent – removal should be permitted where a direct benefit to the removing parent can be shown or where a direct or indirect benefit to the child can be shown.²

New Spouse in Another State: Illinois law used to frown on removal cases predicated on the need to be near a new spouse in another state. As noted above, however, case law has changed drastically in recent years and such arguments now carry much more weight in a court's determination. Ultimately, the service of the child's best interest is the final determining factor and so the child's relationship with the new stepparent, the increase in standard of living brought by the new relationship and possible employment, and the extent to which the new relationship / locale will better enable the removing biological parent to enhance the child's welfare will all come into play in any determination. Courts often look to the enhanced financial security that the removing parent will attain from the marriage and the extent to which the removing parent will be freed from a prior workload / time commitments as a result of the marriage.³

New Job in Another State: When deciding to allow a particular request to remove children from Illinois, our courts may consider whether the custodial parent has a better job opportunity in another state and the extent to which the increased earnings will provide for a better lifestyle for the child.⁴

Neighborhood and School Comparisons: Any removal case necessarily involves neighborhood and school comparisons. When you get to this point, be sure to work with an experienced attorney to ensure that the evidence you develop may be used in the court case. Most information prepared by non-lawyers ends up not being admissible when the case goes to trial because, lacking knowledge and training, non-lawyers overlook the technical requirements needed to satisfy the court's rules of evidence. Whether you're seeking to remove a child from Illinois, or opposing such an attempt, always work with an experienced, skilled attorney from the outset to ensure the best possible success for your case.

Travel Distance Is Not a Problem -- Duration and Difficulty Are: Sometimes the proposed visitation itineraries can fatally undercut an otherwise permissible removal plan. Consider the differences between a case where a child has both parents living near major airports (say, O'Hare and LAX), and the case where the parents live a hundred miles from the nearest, smaller, regional airport (say, Springfield, IL and Durango, CO). The first child will be able to commute between homes in a few hours, flying thousands of miles on a non-stop flight. The other child, however, will face at least one layover, having to, having to make a connection (probably changing terminals), and a long drive at each end of the trip – for each and every trip, both ways!

Such complications in transportation have undone more than one proposed removal.⁵ If you're thinking about removing your kids to another state – or thwarting an anticipated removal, look closely at all of the hurdles an unaccompanied minor will have to negotiate during the commutes. Those hurdles will play a significant factor in any trial.

Likewise, where the parents cannot afford airfare and driving is the intended mode of travel, long distance visitation is probably too impracticable to be considered and, for that reason, most removal petitions accompanied by such transportation plans are denied.⁶

When Removal Is Allowed, Illinois courts almost always alter the parents' respective rights and responsibilities regarding visitation and other types of contact. In most cases, these are the most important issues – and they are also the issues that are most neglected by parents and attorneys alike. If you are, or your former spouse is, thinking of removing a child from Illinois, do yourself (and the child) a favor by working with a team of attorneys who can accomplish your goal (whether seeking or objecting to the removal) and, if removal is allowed, establishing rights

and responsibilities that will ensure things flow smoothly for everyone – especially the child.

Generally speaking, when removal is allowed, visitation rights of the remaining parent are preserved by allowing him or her less frequent visitation, but for more extended periods of contact.⁷ Our law firm has been successful in obtaining visitation schedules that afforded a remaining parent more time with the child after the removal than before. Depending on the distance of the removal (up to 2,000 miles is not uncommon), in most cases it shouldn't be hard to accomplish.⁸

WARNING, Settlement Agreements That Try To Secure Future Jurisdiction May Not Be Effective: When the parents agree to permit one of them to remove a child to another state, they usually also agree that the Illinois courts will resolve any future disputes. Lawyers and judges call such language a “forum selection clause.”

This makes sense on one hand because the Illinois judge has heard all of the evidence about the relocation and probably has a pretty good familiarity with the parents, the children, and the issues impacting the family. On the other hand, information about the old case may not be very relevant in the future. Most of the pertinent new evidence (school teachers, doctors, therapists, neighbors, etc.) will be in the new state.

So, if the parents agreed to a removal and agreed about keeping future disputes in Illinois, but time has passed and the new circumstances suggest that the new state's court would be a better forum, which state should hear the case? Should the parent's agreement control – is it true that “a deal is a deal?” Or should the removing parent be permitted to say “I know I agreed to have future disputes resolved in Illinois, but now I've changed my mind, I want to renege on my deal, and I want the new dispute heard before a new judge in the new state?”

The answer is: “it depends.” It depends on the county court in which the agreement was approved by the judge. When looking at such agreements, the courts of some Illinois counties say “a deal is a deal and Illinois retains jurisdiction.”⁹ Other county courts, however, say that a forum selection clause is “just one of several factors to be considered. If a visitation or custody dispute arises after the removal, the Illinois judge will look at all of the circumstances, including the forum selection agreement, and decide which state would provide the better forum.”¹⁰

Which case applies to you? It all depends on the county that approved your removal agreement. That's right; the Illinois law is applied differently in different counties. The county where your removal case was approved will determine whether a forum selection clause will carry its intended effect.

There is a way around this problem. Work with a good lawyer who can help you avoid the pitfalls (or insert a loophole or trapdoor for you). Call our office today to speak with one of our knowledgeable and skilled family law attorneys.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.