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Family Law Changes to Keep in Mind

By Mary Johanna McCurley and Laura M. Hilliard

The year 2002 was a significant year for relocation issues in family law. During 2003, issues involving relocation continued to be hotly contested and on the minds of many family law attorneys and judges. Three courts of appeals issued opinions regarding the matter of relocation as it pertains to a modification of a prior conservatorship order: Fort Worth (published), the Houston 14th District (memorandum), and San Antonio (memorandum).

In *In the Interest of Z.B.P. and J.N.P.*, 109 S.W.3d 772 (Tex. App. — Fort Worth 2003), the court addressed whether relocation of a parent and child constitutes a material change in circumstances which would warrant a modification of a prior order. In *Z.B.P.*, the trial court determined that the circumstances of the parents had changed since the rendition of their divorce decree inasmuch as the children had attained school age. Additionally, the children's daily two-hour commute to their school interfered in their ability to maintain age-appropriate peer relations following an agreed temporary move by one of the conservators and the children. The court held that a conservator's permanent move of the children in violation of an existing order and agreement with the other parent conservator was enough to constitute a finding of changed conditions.

In a memorandum opinion, *Knopp v. Knopp*, 2003 WL 21025527 (Tex. App. — Houston [14th Dist.]), The court addressed whether the relocation of the parent conservator having the exclusive right to establish the children's primary residence constituted a material and substantial change of circumstances to support a modification of a prior conservatorship order. The court held that the relocation from Texas to California was a material and substantial change. Factors the court considered included the distance between the parties, the prior relationship between non-custodial parent and children, and whether the relocation deprived the non-custodial parent of meaningful access to the children.

It is without question that family law attorneys remember the 2002 case of *Lenz v. Lenz*, 79 S.W.3d 10 (Tex. 2002) that set forth a number of factors to be considered by a trial court when addressing the issue of relocation and conservatorship. In 2003, in a memorandum opinion, *In the Interest of O.N.L. And D.R.L.*, 2003 WL22295306 (Tex. App. — San Antonio), the court was called upon

to consider, for a second time, whether the trial court erred in denying Rosemarie Lenz's request for attorney's fees in a dispute involving the removal of a residency restriction in a suit affecting the parent-child relationship (SAPCR). Rather than ordering either party to pay the other party's attorney's fees, it ordered that each party should pay their own fees. The San Antonio court of appeals held, under an abuse of discretion standard, that the trial court did not err in failing to award Ms. Lenz attorney's fees despite the fact that she was the prevailing party on her appeal of the merits of the case. The court noted that the trial court could have determined that both parties hired counsel to pursue legitimate requests for conservatorship based upon their belief as to what constituted the best interests of the children. Further, the court reiterated the discretionary nature of the award of attorney's fees. This opinion seems to point out that even if your client appears to be riding the white horse when seeking a modification, lawyers shouldn't assume that fees will be awarded if your client prevails.

With regard to relocation, a statutory change addressing the issue of the child's primary residence was also enacted effective Sept. 1, 2003. Tex. Fam. Code §153.134 now mandates that the court establish a specific geographic area within which the conservator shall maintain the child's primary residence. This change means that the standard language of the county of jurisdiction and any contiguous county is no longer meaningful and the court or parties must specify as to the exact geographic area wherein the children's residence can be established.

While relocation issues continue to be on the forefront of family law, there have been other noteworthy statutory changes. Tex. Fam. Code §6.404 and 102.0085 eliminates the requirement to attach the alternative dispute resolution statement to the petitioner for divorce of SAPCR. Tex. Fam. Code §152.209(a) eliminates the affidavit for UCCJEA information regarding the children's residence if both parties reside in Texas. Tex. Fam. Code §6.410 and 162.602 require the "Austin form" to be filed with the petition for divorce or initial SAPCR pleading. Tex. Fam. Code §153.312 changes midweek visitation to Thursday evenings. One of the most interesting new sections with regard to conservatorship issues, Tex. Fam. Code §105.0060, allows law enforcement officers to make reasonable efforts to enforce a custody order if such provisions are included in the final order.

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