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Trial Court's Granting of Child Relocation to Florida Reversed

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Special to the Legal

Some of the more trying and difficult child custody cases are relocation cases. Prior to the custody act of 2011, relocation cases in Pennsylvania were governed by the case of *Gruber v. Gruber*, 583 A.2d 434 (Pa. Super. 1990), and its progeny. The *Gruber* case provided a three-pronged analysis and was interpreted by numerous Superior Court cases to contain a trickle-down theory. The trickle-down theory, in essence, meant if the intended relocation was beneficial for the parent it would be deemed beneficial to the child. Upon the enactment of the new custody statute in 2011, the *Gruber* test was replaced with a 10-factor statutory analysis. One of the more interesting aspects of the 10-factor analysis in the custody act is the fact that it delineates, as two separate factors, the benefits of the proposed relocation to the relocating



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parent, and the benefits to the child independently of the benefits to the parent. The new custody act provided a glaring reminder that in all custody actions, regardless of whether it is a relocation case, the best interest of the child is paramount and an independent consideration and not merely something that flows to the child from the parent.

Since the enactment of the new custody statute, the Superior Court

has reminded the trial courts that all of relocation factors should be analyzed by the trial courts in rendering custody relocation decisions. In the recent case of *D.K.D. v. A.L.C.*, 141 A.3d 566 (Pa. Super. 2016), it is clear that every factor in the relocation statute is important and can have a severe impact to the custody decision.

The facts of the *D.K.D.* case are interesting both procedurally and substantively. Substantively, *D.K.D.* (the father) and *A.L.C.* (the mother) married in 2004 and separated in 2009. The parties divorced in March 2015. The parties lived in Pittsburgh with their son, L.D. (who was born in 2008). L.D. has special needs and was diagnosed with Pervasive Development Disorder, not otherwise specified. According to the opinion, "he was prescribed 30 hours per week of intense outpatient therapy, most of which was provided in the marital home. Stability and routine are paramount to L.D.'s continued development."

Pursuant to a consent order, the parties shared legal custody with the mother having primary physical custody of L.D. The father's partial physical custody consisted of two hours on Tuesday and Thursday evenings and three hours on alternating Saturday afternoons. The midweek custody periods were limited to the mother's residence (the former marital residence), though the Saturday afternoon custodial periods were permitted outside of the mother's home. According to the opinion, "mother regularly objected to L.D. leaving the home with father due to her concern that the disruption would be harmful to L.D.'s condition." The father regularly acquiesced to the mother's assertions and exercised his weekend custodial periods at her residence on his weekend periods.

In 2014, the father filed a petition to modify custody to increase his periods of custodial time and for a more specific vacation and holiday schedule. The mother countered the father's modification petition with the request to relocate to Florida "so that she and L.D. could reside with her mother."

After trial, the trial court denied the mother's request to relocate, finding that the only factor that weighed in favor of relocation "concerned the anticipated enhancement to the mother's quality of life." As stated in the opinion: "The remaining factors, including consideration of L.D.'s

quality of life, either weighed against relocation, or determined to be neutral, or inapplicable."

As an example of the change in Pennsylvania jurisprudence regarding the trickle-down theory of relocation, the trial court in issuing its denial of relocation stated: "While mother demonstrated that relocating to Florida would enhance her general quality of life, she failed to meet her burden that relocation is in [L.D.'s] best interest." In addition to denying the mother's relocation request,

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the trial court granted the father's petition to modify and on a gradual basis increased the father's custodial periods to alternating weekends from Friday to Sunday evening.

Procedurally the interesting aspect of this case is that while the trial court's decision was pending, the mother accepted a job in Florida as a claims assistant at the Department of Veteran's Affairs (though she had a Juris Doctor degree) and "had devised an interim plan for maternal

grand mother to care for L.D. in the marital residence while she began immediate employment." The mother also had plans for a house to be purchased for her by her mother in Florida near her new employment. As such, the mother filed a motion for reconsideration and a motion for special relief noting that the trial court did not establish a custody schedule in the event the mother elected to relocate to Florida without the child. The mother requested that the trial court re-open the record and take additional evidence related to her relocation. The trial court granted the reconsideration motion, re-opened the record, and scheduled a hearing. The father submitted a motion to amend his original petition to modify custody in light of the mother's acceptance of employment in Florida.

After another day of trial, the court issued an amended order granting the mother's request to relocate with L.D. to Florida. It is to be noted that the mother's home that maternal grand mother purchased for her during the subsequent hearing is not in the same location as her original attended move to Florida.

The father appealed the trial court's amended order. The father raised six issues on appeal that ranged from claims that the trial court acted in a gender-biased manner in applying the best interest analysis as well as focusing on numerous factors in the relocation statute, and the trial

court abusing its discretion in failing to require the mother to fully meet her burden in determining that the relocation is in the child's best interest. The Superior Court disposed of the father's gender bias claims and focused on the trial court's analysis of factors two, three, five, six and seven of the relocation statute. In doing so, the Superior Court found that: "The trial court erred in finding that the mother would not further thwart father's relationship with L.D. following the relocation; ignoring that mother's principal motivation was to return to her native state of Florida and her concern for L.D.'s developmental condition was secondary; accepting as adequate, the mother's chiefly symbolic search for employment opportunities in Pennsylvania; and concluding that the mother's financial condition was so strained that relocation to Florida was unavoidable."

The Superior Court in its opinion closely analyzed the trial court's own reversal of its prior reasoning in originally denying the relocation request when applying the relocation factors. The court did not agree with the trial court's revised reasoning that was contrary to its initial reasoning when it issued its amended order permitting the mother to relocate. Specifically, the Superior Court found that the record did not support that the mother would change her ways and would now be more willing for promote the

father's relationship with the child, which the trial court historically found that the mother interfered with the father's relationship. Further, the Superior Court highlighted that the mother attempted to find employment in Florida for two years prior to seeking her relocation. The Superior Court found that the mother never made a bona fide effort to find employment in the Pittsburgh area.

In its amended order, the trial court highlighted the fact that the child would have to attend a new school regardless of whether the child relocated with the mother, as the father lived in a different school district than the mother and the mother was not remaining in Pennsylvania. The Superior Court took issue with the reasoning in that it felt the trial court did not give enough weight to the fact that father was willing to move to the school district where L.D. attended school while in the mother's primary care. Further, the Superior Court found that the trial court discounted all of the activities and support in which the child participated that was not specific to the school district. Further, the consistency of the child's doctor and therapy was extremely important to the child.

There was a clear focus in this case by both the trial court and the Superior Court that every factor is to be closely scrutinized in the relocation analysis. However, as should be in all child custody cases and

relocation cases, the best interest of the child prevailed in this case, as the Superior Court stated: "as the trial court's conclusions are unreasonable as shown by the evidence of record, we cannot accept the court's conclusion that relocation is in L.D.'s best interest."

Interestingly, in reversing the trial court's order the Superior Court directed on remand that the trial court fashion a custody order that accounts for the child's return to Pennsylvania and the father's primary custody. The Superior Court further stated: "If mother seeks to retain primary custody of her son in Pennsylvania, she must file a petition for modification ... and the trial court will render a custody determination utilizing the Section 5328(a) best-interest factors in light of the then-existing circumstances."

This case is an important case for practitioners and the bench as there is close scrutiny of the trial court's analysis of the relocation factors and it provides a happy reminder that the trickle-down theory in relocation cases is no more in Pennsylvania. •