FAMILY LAW NEWS

OFFICIAL PUBLICATION OF THE STATE BAR OF CALIFORNIA FAMILY LAW SECTION

Issue 4, 2009
Vol. 31, No. 4

Message from the Chair

John D. Hodson, Chair

We hope you enjoy this quarterly edition of *Family Law News.* That's partly because we work hard to put out a good product, but it's also because if you're peeking at somebody else's copy, we hope you'll see what you're missing, and will want to join the Family Law Section.

If you're not yet an active member of your State Bar's Family Law Section, I hope you'll stay tuned. What an amazing, talented, hard-working group of practitioners we have, and with so much going on, it's hard to keep up with it all. This is my brief attempt to keep you informed, and to lure you into greater involvement in our profession.

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Message from the Editor

William S. Ryden, Editor

I was driving to work the other day listening to the local news, when I heard that a certain group (I am not sure what group) planned to solicit support for a new initiative ... enact legislation to outlaw divorce. In other words, people who elect to marry stay married. Interesting concept. That would certainly reduce the caseload burdening our courts. That would clearly impact the economy. The family law section of the State Bar has over 3,000 members. If you assume the average annual income per member is $80,000, that would effectively save family law litigants at least $240

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Family Law News

In This Issue

California Move-Away Cases - A Chart

Michelene Insalaco

"The essence of custody is the companionship of the child and the right to make decisions regarding his care and control, education, health, and religion."
Justice Roger J. Traynor in *Lerner v. Superior Court* (1952) 38 Cal.2d 676, 681.

In preparing for a presentation on move-aways in California, I found the many published cases on the topic often inconsistent. With the help of my associate, Janet Simmonds, I thus began to chart the move-away cases chronologically. I drew the initial list of cases from an on-line article by Steven Carlson. I expanded the list to include older and newer cases, and include cases which were not specifically about move-aways but which established rules impacting them.

The move-away law has of course evolved as law and society have changed. For example in *Luck v. Luck* (1892) 92 Cal. 653, the Supreme Court held that because under Civil Code section156 a man was the "head of the family" and free to choose any reasonable place to live, it could not be reversible error for the trial court to permit a father to move with his children. But under the tender years doctrine women were usually awarded sole custody of children. Courts then applied the change of circumstances rule to deny modification of the initial decree. Orders permitting children to travel out of state for visitation with the non-custodial parent were often reversed as impermissible changes in custody, reflecting the fact that prior to the passage of the uniform custody jurisdiction acts when children traveled out of state there was a risk that another action would be filed elsewhere and the children might not ever return.

In 1972 the tender year's doctrine was abolished. In the 1970's, in cases such as *Carney* and *Burchard & Garay,* the focus was on the stability and continuity of existing relationships. A high standard was imposed to change the status quo—a showing that such a change was "essential or expedient" for the child. This created a situation where moves were generally permitted by custodial parents. While this policy might protect a father's rights (as in *Carney*) because more women were still awarded custody it tended to be more favorable to women. An exception began to develop—alienation—as articulated by *Ciganovich,* in which the court opined that a father's visitation rights are "reduced to empty pomposity" when the mother moves and where the court found clear authority to change custody when visitation is being frustrated by a "recalcitrant mother."

In 1980 the Legislature amended Family Code section 3020 (b) (then Civil Code section 4600) to expressly declare it to be the policy of California "to assure minor children of frequent and continuing contact with both parents." This and other trends more encouraging of fathers' rights led courts to become more protective of the rights of the non-moving parent. This resulted in cases such as *Carlson, McGinnis, Selzer, Roe,* and *Rosson* which effectively switched the "essential or expedient" rule by requiring the moving parent to meet the burden of showing that the move was essential for the child. Hence from the mid-80's through the mid-90's moves were routinely disallowed.

Then came *Burgess*, in which the Supreme Court corrected this misapplication and held that it is not for the moving parent to show that the move is necessary or expedient for the child, but for the non-custodial parent to show that the move would be so detrimental for the child so as to warrant a change of custody. *Burgess* re-affirmed the earlier precept whereby the most critical factor is a pre-established custodial arrangement and the bond between the child and the primary caretaker / psychological parent.

However, this ruling led to an atmosphere where a custodial parent could routinely move at his or her whim, at a

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time when fathers were becoming much more involved in their children's lives after separation. This arguably tipped the balance too far to the other extreme. When the *Edlund & Hales* court found that the move itself could not alone establish the detriment needed as grounds for a change of custody—if that were the case all moves could easily be barred—courts interpreted that to mean that the reasons for the move and the impact of the move were irrelevant, making it even harder for the non-moving parent to have any ability to stop a move.

The Supreme Court stepped in again, publishing *LaMusga*. This clarified the *Edlund & Hales* rule and for the first time laid out a clear and logical set of criteria for trial courts to consider in move-away cases, including the child's interest in stability and continuity in the custodial arrangement, harkening back to the 1970's cases such as *Burchard & Garay.* But also included are practical considerations such as the distance of the move, the age of the child, and the child's wishes where the child is sufficiently mature to have an informed opinion. *LaMusga* adds back to the analysis the reasons for the move, and also includes the relationship between the parents as a factor.

Have the courts now reached the right balance with the move-away laws? When the main consideration is the child's best interests, courts have the *broadest discretion*, and their orders are effectively not appealable. This leaves the decision to rest virtually entirely in the hands and perspective of the particular judicial officer involved. And, for better or for worse, some judicial officers and some entire counties have established perspectives as being generally for or against move-aways.

As move-away law has evolved, so has the changed circumstances rule. This judge-made rule was originally created to "protect the court, the parties and the child from interminable and vexations litigation." (*Stack v. Stack* (1961) 189 Cal.App.2d 357.) As such, any status quo was entitled to greater deference. Today, however, the rule has been nearly completely eroded. The only established pattern of care that gives rise to a need to show changed circumstances is an order that is explicitly a "final judicial determination of custody," and the rule only applies when custody and not visitation is sought to be changed. Arrangements outside of court proceedings do not qualify, nor do temporary orders regardless of how long they have been in place. Custodial arrangements resulting from TRO proceedings are also not sufficient. This evolution places most move-away cases again squarely under the de novo, best-interests standard, rather than placing a burden on the non-moving parent, adding to the total discretion in the hands of the particular judge deciding a case.

Layered upon the substantive rules is the question of when an evidentiary hearing is required. This is a key factor because many moves are prompted by economic factors, and the inability to afford to live in one of the most expensive states in the union. When a full evaluation or trial is required, many parents simply cannot afford the process. Under the guidance of *Brown and Yana* (no evidentiary hearing required where the non-custodial parent fails to make legally sufficient showing of detriment and trial would "serve no legitimate purpose") and *Seagondollar* (order permitting move reversed where non-moving parent's basic due process rights were disregarded) the procedural rules are more clear.

Other than assisting practitioners to see the "big picture" in the evolution of move-away law in California, this chart of move-away cases provides a brief overview of each case, and helps to identify cases that involve specific sub-topics such as bad-faith moves, international moves, and moves involving true joint custody. I hope you'll find it useful in your custody practice. ■

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
Pattern of initial custody award to mother, under tender years doctrine, and prohibiting travel out of state with father.						
1952	***Lerner v. Superior Court* 38 Cal.2d 676 (Traynor; writ proceeding)**	Trial court modified custody order to give custody to father, and mother appealed. Pending that appeal trial court granted father's motion to permit son to attend boarding school in NJ. Supreme court reversed, finding order violated the then-automatic stay of custody orders pending appeal. The Supreme Court held that sending the child to the East Coast "would substantially destroy the custody status at the time the appeal was taken" and "effectively end the mother's visitation rights." This was not, however, held in the context of analyzing a move-away. This language was used in subsequent cases in the 1950's to deny the right to move or take children out of the state even for visitation.				•
1954	Stagliano v. Stagliano 125 Cal.App.2d 343 (2nd Dist)	Child was five when parents divorced and custody was awarded to mother. Father relocated to MA. When daughter was 11 father moved for order that she spend four weeks each summer with him in MA. Trial court granted order, but appellate court reversed. It held that father had not met burden to show changed circumstances or otherwise how this change of custody for four weeks was in child's best interests.				
1954	Smith v. Smith 126 Cal.App.2d 65 (4th Dist)	Where mother had sole custody of child, trial court modified to give father custody for three weeks each summer in AR. Appellate court reversed, holding there were no changed circumstances to warrant this "change of custody." Appellate court was also concerned that once in AR father would initiate a custody case there and the child would never be returned (as this case predates the enactment of the uniform custody acts).				
1955	Ashwell v. Ashwell 135 Cal.App.2d 211 (3rd Dist)	At divorce (interlocutory decree), mother was awarded custody of four young children. Father soon moved for custody, with the plan to move with the children to VA. Trial court granted his motion. Appellate court reversed, holding that the evidence was not sufficient to show that mother was unfit or that there was a change of circumstances. It noted father's plan to move with the children would mean that mother would have no further contact with them given her economic situation. Thus the grant of visitation to her in VA was an "idle gesture."				
1959	Dozier v. Dozier 167 Cal.App.2d 714 (2nd Dist)	Mother sought and obtained order to permit her to return to CT with son after divorce, and appellate court reversed. It cited Civil Code section 213 (now Family Code section 7501) to provide that a parent with custody has the right to move subject to court's power to restrain a removal that would prejudice the child's rights or welfare. "Under ordinary circumstances, a mother having custody of a child should be permitted to move about freely, and any unnecessary or arbitrary restriction on her residence is unreasonable." However, in this case the child suffered from a medical condition that would be exacerbated by the move and hence there was a sufficient showing of detriment to bar the move.				

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
1961	Stack v. Stack 189 Cal.App.2d 357 (1st Dist.)	Father obtained sole custody of 10-year-old child when mother (who had remarried) planned to move to KS. The appellate court opined that such custody cases place it in an "almost impossible position" and that "there are no real legal guide lines to assist the appellate court in deciding such a case as this." "[O]ver the years the appellate courts have almost completely abdicated in this field in favor of the trial courts." The court noted that as there was no published case wherein custody had been awarded to father when the mother was fit (at this point in time the tender-years doctrine still applied). The appellate court affirmed in deference to the trial court's decision.				
Development of doctrine that alienating behavior is ground to change custody.						
1961	Hoffman v. Hoffman 197 Cal.App.2d 805 (2nd Dist.)	At divorce with father's agreement mother was given custody of children and permission to relocate to NY. Mother later refused to permit children to visit father during summer pursuant to the court order. Father's motion to change custody based on mother's contempt was granted. Appellate court affirmed, holding that trial court did not abuse its discretion.				
1976	IRMO Ciganovich 61 Cal.App.3d 289 3rd Dist.)	Following divorce, mother moved to NV and hid children from father. Father withheld support, and then in response to a collection action by the district attorney moved to modify support and custody. Trial court denied his request, but the appellate court reversed, describing the case as part of "a frequent, unpleasant and perplexing syndrome of family dissolution in a mobile society" wherein father's rights are "reduced to empty pomposity" when mother moves, even when mother's move is motivated by "a vengeful desire to demolish the paternal relationship." The appellate court said that the reciprocal laws for child support enforcement between states deprive fathers of the "weapon" of withholding support in these cases. This case's focus was whether child support may properly be withheld when custody rights are denied, but it also analyzed the history to-date of move-away cases, finding clear authority to change custody when visitation is being frustrated by a "recalcitrant mother." Ultimately the Court held that "[f]rom these cases we glean the notion that a mother's sabotage of the father's visitation right furnishes no ground for withholding child support payments. It does provide a ground for a motion to modify the decree which the court should consider as part of the array of circumstances affecting custody and support."				•
General rule that courts must preserve continuity and stability of existing custodial arrangements. (Tender years doctrine abolished in 1972)						

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
1979	***IRMO Carney*** **24 Cal.3d 725 (Mosk)**	Supreme Court reversed trial court order that discriminated against physically handicapped father. Mother (in NY) had not seen children (in CA with father) for five years when father injured and became quadriplegic. Court held that although this was the first actual court order on the issue, the order was in effect a complete change in custody. The importance of stability in custody arrangements requires placing the burden on parent seeking to alter long-established arrangements, to show that it is "**essential or expedient** for the welfare of the child" to change status quo. Consideration of father's handicap "fails to reach the heart of the parent-child relationship . . . the essence of parenting is not to be found in the harried rounds of daily carpooling endemic to modern suburban life . . . its essence lies in the ethical, emotional, and intellectual guidance the parent gives to the child. . . ."				
1980	IRMO Murga 103 Cal.App.3d 498 (4th Dist)	Non-custodial father moving to FL sought order to change visitation to permit child to travel to FL during summers. Trial court granted request and appellate court affirmed, finding that father's move was a change in circumstances and that order was in accordance with the new State policy to assure frequent and continuing contact with both parents.				
1986	***Burchard v. Garay*** **42 Cal.3d 531 (Broussard)**	Supreme Court reversed trial court's award of children to father where mother had been primary care-taker, Finding error to favor wealthier parent (remedy there is to award child support) or to disfavor parent who must use paid child care. Court analyzed changed circumstances test, finding that it is based on res judicata and so does not apply if no prior judicial custody determination. However, when assessing best interests, trial courts must give due weight to key factor of **continuity and stability** in custody arrangements. "Custody lawfully acquired and maintained for a significant period will have the effect of compelling the non-custodial parent to assume the burden of persuading the trier of fact that a change is in the child's best interest. That effect, however, is different from the changed-circum-stance rule, which not only changes the burden of persuasion but also limits the evidence cognizable by the court." "When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role." Should not change status quo where mother has been primary caretaker since child's birth and "no serious deficiency in her care" and under her care child "has become a happy, healthy, well-adjusted child."				
Development of rule that moving parent has burden to show move is "essential and expedient" to child's best interests. (Family Code amended in 1980 to include policy to promote frequent and continuing contact with both parents)						

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
1986	IRMO Rosson 178 Cal.App.3d 1094 (1st Dist., King)	Order granting custody to father when mother (with primary custody) proposed to move was affirmed. Children of sufficient age and capacity can have a voice in case. Parents have right to frequent and continuing contact with children. Custodial parent seeking to relocate bears "burden of showing a change sufficient to warrant modification."				
1990	IRMO Fingert 221 Cal.App.3d 1575 (2nd Dist.)	Trial court's "breathtaking" order reversed where it ordered mother to move to location of father's new home or lose custody, where there was no evidence that mother was not a capable, caring, and competent parent.				
1991	IRMO Carlson 229 Cal.App.3d 1330 (5th Dist)	Mother with custody denied permission to move to PA and argued on appeal that this violated her constitutional right to travel. Appellate court affirmed, holding that changes in Family Code to establish presumption in favor of joint custody and the fact that the Supreme Court had never imposed an evidentiary burden on the non-moving parent to prove detriment meant that the trial court had the discretion to deny a move in any case.				
1992	IRMO McGinnis 7 Cal.App.4th 473 (2nd Dist.)	Appellate court reversed trial court's order permitting mother (custodial parent) to move with children. Where a shared (40/60) parenting arrangement is working "the burden of proof is upon the 'move away' parent to demonstrate that the move is in the best interests of the children, i.e. that it is **'essential and expedient' and for an 'imperative reason'."**	•			
1993	IRMO Roe 18 Cal.App.4th 1483 (2nd Dist.)	Order affirmed where trial court allowed mother to move. Appellate court found that trial court had not placed burden of proof on father but had required mother to prove that the move "was both necessary to her and would have no detrimental effect on the child," and she had.				•
1994	IRMO Battenburg 28 Cal.App.4th 1338 (2nd Dist.)	Mother permitted to move to WA with child after her remarriage and appellate court affirmed. It held that mother met her burden to show move was essential and expedient for child.	•			

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
1994	IRMO Selzer 29 Cal.App.4th 637 (1st Dist.)	Trial court permitted mother to move 1 hour away with child and appellate court affirmed. Appellate court rejected "expedient, essential or imperative" rule but concluded that "the moving parent does in fact bear a burden of proof . . . to show that the move was not only necessary to the custodial parent but would also be in the best interests of the child."	●			
Change in rule recognizing custodial parent's custodial right to relocate; burden on other parent to show detriment.						
1996	***IRMO Burgess*** **13 Cal.4th 25 (Mosk)**	- Mother with sole physical custody permitted to move by trial court and Supreme Court affirmed,. but clarified that appellate court erroneously required moving parent to show move is necessary and imperative. Family Code section 7501 provides that "a parent having child custody is entitled to change residence unless the move is detrimental to the child." "Ours is an increasingly mobile society." Primary caretaker "no less capable of maintaining the responsibilities and obligations of parenting simply by virtue of a reasonable decision to change his or her geographical location." - Where moving parent has physical custody, other parent has "substantial" burden to show that a change of custody is in the child's best interests. "A change of custody is not justified simply because the custodial parent has chosen, for any sound good faith reason, to reside in a different location, but only if, **as a result of relocation with that parent, the child will suffer detriment rendering it 'essential or expedient for the welfare of the child that there be a change'**." (Ibid.) - ***Disapproves McGinnis, Selzer, Roe and Rosson.*** - Trial court cannot assume that moving parent "bluffing" and won't move if not permitted; must assume that if children not permitted to move they will undergo a change of custody. - Move away is not enough by itself to justify a reexamination of the basic custody arrangement. - Per "footnote 12" there would be a de novo, best interests review where there was true joint custody.	●		●	
1996	Brody v. Kroll 45 Cal.App.4th 1732 (4th Dist.)	First appellate case to apply Burgess. A move by a custodial parent constitutes a significant change of circumstances that may justify a transfer of custody to the other parent. Parents here had true joint custody. Fact that order was for mother to have "primary physical custody" was not controlling. Given joint custody, analysis was child's best interest and mother had to show that move was best option under all of the circumstances.	●			
1996	Cassady v. Signorelli 49 Cal.App.4th 55 (1st Dist.)	Mother's request to move with children to FL to engage in work as a parapsychologist denied and order affirmed on appeal. No showing of any real need for move and move "seemed intended simply to frustrate father's relationship."				●

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
1997	IRMO Whealon 53 Cal.App.4th 132 (4th Dist.)	Trial court's order permitting mother's move to NY affirmed. No true joint custody. Father thus had burden to stop move and trial court's decision that he had not met burden was within its discretion.	●			●
1997	Ruisi v. Thieriot 53 Cal.App.4th 1197 (1st Dist.)	Trial court had denied a move and Burgess had been published pending appeal. Appellate court reversed for case to be reviewed under Burgess standard. Appellate court cautioned that father's argument that mother would not really move if kids could not join her was improper consideration under Burgess.				
1998	IRMO Condon 62 Cal.App.4th 533 (2nd Dist.)	Trial court allowed mother to move with children to Australia and appellate court affirmed. Appellate court conducted detailed survey of states' laws on moves to foreign countries with children which raise unique issues of culture, distance, and future jurisdiction. Affirmed trial court "by a close margin" under abuse of discretion test. Held that steps to ensure visits will happen are important, including ordering moving parent to agree to continuing jurisdiction in California, post a bond, and forfeit support payments if visits canceled.	●	●	●	
1998	IRMO Biallas 65 Cal.App.4th 755 (4th Dist.)	When mother moved to NE with child trial court gave father custody and appellate court reversed, holding that there was not true joint custody when father had alternate weekends and one weeknight each week. Hence, de novo review incorrect. Fact that order modified had been entered by stipulation not controlling; changed circumstances rule applies to agreed as well as ordered custody plans.	●			
1998	IRMO Edlund and Hales 66 Cal.App.4th 1454 (1st Dist.)	Mother's request to move to IN with child granted by trial court and affirmed on appeal. Mother had primary custody and evidence showed that father "not adequately prepared" to take over raising of child. Change in relationship caused by the move cannot, in itself, be sufficient detriment to bar move as otherwise no moves would be allowed.				
2001	IRMO Williams 88 Cal.App.4th 808 (2nd Dist.)	Parties shared true joint custody. Order allowing younger two of four children to move with mother to UT reversed; family law court may enter an order which has effect of separating siblings only when compelling circumstances dictate.				

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
2001	Montenegro v. Diaz 26 Cal.4th 249 (Brown)	Changed circumstance rule does **not** apply except when modifying final judicial custody determinations. De novo review of any informal or de facto arrangements for custody. Stipulated custody orders **may** be final judicial custody determinations.				
Burgess rule expanded to allow virtually all moves if no showing of bad faith.						
2001	IRMO Bryant 91 Cal.App.4th 789 (2nd Dist.)	At initial separation custody was at issue when mother, the primary caretaker, sought to move to NM. Trial court permitted move and appellate court affirmed, holding that if parent was not acting in bad faith, no further inquiry about reasons for move is necessary or appropriate.			●	●
2002	IRMO Lasich 99 Cal.App.4th 702 (3rd Dist.)	Trial court permitted mother, primary caretaker, to move to Spain with children and appellate court affirmed. Father did not meet his burden to show detriment to warrant change of custody. Relocation alone cannot prove detriment because no move-away request could succeed under that standard. International move-away raised special factors of distance, culture, and jurisdiction.		●		
2002	IRMO Rose & Richardson 102 Cal.App.4th 941 (2nd Dist.)	Order permitting move to WA reversed because trial court did not conduct de novo review where there was no final custody order. Father's visitation was 15% but because judgment provided for further work on custody, was deemed not a final order. Further hearing required.			●	
2003	IRMO Campos 108 Cal.App.4th 839 (2nd Dist.)	Trial court permitted move within CA (two hours away) and appellate court reversed, finding it error to focus only on lack of bad-faith and not allow evidentiary hearing. Minor's counsel reported that teenage children did not wish to move. While standard of proof is very high, non-moving parent has a right to present evidence on detriment.				
2003	IRMO Abrams 105 Cal.App.4th 979 (3rd Dist.)	Trial court permitted custodial parent mother to move within CA (three hours away). Existing order's provision that mother could not move without father's agreement or court order did not change analysis.				
2003	IRMO Abargil 106 Cal.App.4th 1294 (2nd Dist.)	Both parents had immigrated from Israel before marriage. Father had obtained a green card, but mother only had a tourist permit. Mother returned to Israel upon separation with child for a vacation. When she attempted to re-enter the U.S., she was permitted to enter only to resolve custody. Trial court gave custody to mother with right to return to Israel. Appellate court affirmed. Possibility that Israel was a dangerous place was not a sufficient reason to award custody to father, where mother more involved with the child's care and because if father was granted custody child might never see mother again.		●	●	

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
Burgess narrowed / clarified to find new balance.						
2004	***IRMO LaMusga*** **32 Cal.4th1072 (Moreno) (Kennard dissenting)**	Trial court barred mother's move to OH and appellate court reversed. Supreme Court reversed appellate court, holding that trial court's order not an abuse of discretion. Supreme Court held that Edlund "inadvertently generated some confusion" when it stated that the detriment showing must be other than the move itself. "[S]ome courts have mistakenly interpreted . . . Edlund more broadly to mean that the likely consequences of a proposed move can never constitute changed circumstances that justify a reevaluation of an existing custody order." Rather, the likely consequences cannot be the only factor but may be one factor. LaMusga sets out the list of criteria for courts to consider with move-away cases: • children's interest in stability and continuity in the custodial arrangement; • distance of the move; • age of the children; • children's relationship with both parents; • relationship between the parents including ability to communicate; • wishes of the children if they are mature enough; • reasons for the proposed move; • extent to which the parents currently are sharing custody.				●
2004	Ragghanti v. Reyes 123 Cal.App.4th 989 (6th Dist.)	Case pending when LaMusga decision issued. Trial court ordered custody to father when mother sought permission to move, first to GA and then within CA (two hours away) and appellate court affirmed. Evaluator had recommended custody to father; mother had made false allegations of abuse by father. Best interests standard applied because no prior final custody determination. Father not required to prove detriment or that child had "suffered" while in mother's care.			●	●
2004	IRMO Melville 122 Cal.App.4th 601 (1st Dist.)	Appellate court affirmed trial court's order awarding custody to father when mother sought to move to OR. Substantial evidence supported finding that move would cause detriment sufficient to warrant change of custody where child, who had Down's Syndrome, did not transition well, needed to stay in current school, needed to stay near medical care, and where mother was found to have been insensitive to child's needs.				●

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
2005	*Osgood v. Landon* 127 Cal. App.4th 425 (3rd Dist.)	Appellate court affirmed trial court's permitted custodial parent mother to move to TN with children where she would have more stable job with higher income. Father failed to establish detriment and move was in good faith.				
2006	***IRMO Brown and Yana* 37 Cal.4th 947 (Baxter)**	Mother sought permission to move to NV with child; final judicial custody order existed granting sole legal and physical custody to mother. Trial court granted mother's motion without evaluation or evidentiary hearing. Supreme Court affirmed, holding that trial court has discretion to deny evidentiary hearing if non-custodial parent fails to make legally sufficient showing of detriment. • An evidentiary hearing in a move-away situation "**serves no legitimate purpose"** if not "**necessary**." • Non-custodial parent has burden to make a **prima facia case** of detriment, or to identify a **material but contested factual issue** that needs to be resolved through oral testimony. • Detriment cannot be **insubstantial** in light of all the circumstances. • This rule "fosters the goal of judicial economy and reduces litigation costs and unnecessary distress for the parents and children involved." • This rule also protects changed circumstance rule, "particularly in the context of a case in which the trial court has already determined that the moving parent 'shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child'" due to an award of sole legal custody under Family Code § 3006.				
2006	*IRMO Seagondollar* 139 Cal. App.4th 1116 (4th Dist.)	Parties shared joint legal and physical custody. Trial court granted mother's request to move over numerous procedural objections by father including that mother's request for an order shortening time was granted without good cause; trial court should have heard father's motion to quash before the hearing on mother's move-away motion; court should have continued trial to allow father's expert to testify; trial court's order for "limited" evaluation was without the detail on purpose and scope required by Evid. Code, section 730. Appellate court reversed distinguishing from *Brown & Yana* because parents shared joint custody, and citing importance of **due process right to notice and opportunity to be heard**.				

Year	Case Info	Case Summary	Looks at true joint custody	International Move	Initial or non-final custody order	Bad-Faith Move Alleged
2006	*Niko v. Foreman* 144 Cal. App.4th 344 (4th Dist.)	Parties shared 50/50 joint custody and mother sought permission to move to CO with child. Trial court permitted move and appellate court affirmed, holding that trial court properly analyzed mother's move-away request by determining de novo whether proposed relocation would be in child's best interests.			●	
2009	*Keith R. v. Superior Court* 174 Cal. App.4th 1047 (4th Dist.; writ proceeding)	Writ issued reversing order permitting mother to move to AZ when trial court applied change of circumstances rule and placed burden on father to show detriment from the move, rather than best interests test. The only prior custody order was part of a DV order, issued against father for stalking and spying on mother. While a DV order does eliminate the presumption favoring joint custody, it is not and cannot be a final judicial determination of custody. DV orders are often issued quickly and in highly charged situations with the focus being on protection and prevention and not child's best interests.				