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Divorced Parents Move, and Custody Gets Trickier

By LESLIE EATON

Not too long ago, Jacqueline Scott Sheid was a pretty typical Upper East Side mother. Divorced and with a young daughter, she had quickly remarried, borne a son, and interrupted her career to stay home with the children while her husband, Xavier Sheid, worked on Wall Street.

Early last year, Mr. Sheid lost his job and saw his only career opportunity in California. But Ms. Sheid's ex-husband, who shares joint legal custody of their daughter, refused to allow the girl to move away. So Ms. Sheid has spent much of the last year using JetBlue to shuttle between her son and husband on the West Coast and her daughter (and ex) on the East.

The New York court system, which she hoped would help her family to resolve the problem, has cost her tens of thousands of dollars in fees for court-appointed experts, she said, and has helped to prolong the process by objecting to her choice of lawyers.

Worst, she added, "they are making me choose between my children."

Ms. Sheid is caught up in what legal experts and social scientists say may be the most contentious and fastest-growing kind of custody litigation in the country today: relocation cases. Also known as move-aways, these involve a parent who wants to move with a child over the other parent's objections.

More fathers, who play a larger role in their children's daily lives than in earlier decades, are refusing to allow their children to move out of town, forcing mothers - who about 80 percent of the time have physical custody of children - to remain in the same city. And more mothers are fighting back.

Spurred by such changes in society, in the law and in the economy, relocation cases are roiling families, and courtrooms, from California to Colorado to Connecticut.

Relocation "is the hottest issue in the divorce courts at the moment," said Judith S. Wallerstein, a leading expert on divorce from Marin County, Calif., who favors the rights of mothers to move.

Though there are no reliable statistics on these cases, the highest courts in at least seven states have tackled relocations in the last three years, and lawyers say they represent just the tip of the litigation iceberg.

"We tell people, the best parent is both parents, and it's hard to be a long-distance parent," said David L. Levy, president of the Children's Rights Council, a longtime advocate for fathers' rights and joint custody. "There are 15 million noncustodial fathers in this country, and 3 million noncustodial mothers. They shouldn't be marginalized."

As fathers' rights groups have organized around the country, judges and legislators have become more sensitive to the heartbreak of parents separated from their children. But now mothers with physical custody say they feel trapped in untenable situations, especially since alimony has become uncommon and the economy remains rocky in many regions. Judges say that they find all custody cases difficult, but for many, relocations can be the toughest and most time-consuming. When warring parents live far apart, it is hard to come up with a plan that allows them to share the child.

"It's much more difficult to come up with a Solomon-like decision," said Sharon S. Townsend, a longtime family court judge who is now the state administrative judge in western New York. And the task has only become more difficult since 9/11, she said, as parents have become more reluctant to let children travel alone.

The United States remains a highly mobile society; a 2000 Census Bureau survey found that in a 12-month period, 43.4 million people changed residences. Americans have become more likely to move longer distances, the survey found, and divorced people are far more likely to move than those who are married.

Ultimately, relocation cases usually come down to "the best interests of the child," but there is little agreement about what that means. In many states, including New York, judges have a laundry list of factors to consider, but no clear way to weigh their importance.

Although the laws differ in each state, judges hearing such cases usually begin in a traditional way, weighing whether one parent is more fit than the other. But then they have to assess the motives for the proposed moves and for the objections. Does the parent who wants to move have a compelling reason, or is she just trying to keep the child away from the father? Does the parent who opposes the move really want to be involved with the child, or is he just trying to control his ex-wife?

Complicating matters, lawyers say, judges technically do not have jurisdiction over the parents' right to move, only over the relocation of the children. Practically, though, judges know they can often stop a move by threatening to give the other parent custody. (Noncustodial parents can move without dealing with the court at all.)

The legal and moral difficulty of such cases was made clear in April in a case decided by the California Supreme Court involving the two sons of Gary LaMusga (pronounced LA-moo-shay) and Susan Poston Navarro, who divorced in 1996.

Ms. Navarro, who had primary physical custody of the boys, remarried and had another child. In 2001, she asked the court for permission to move to Cleveland, where her husband had gotten a better job.

Mr. LaMusga objected, saying that she was trying to alienate the boys from him, and asked for primary custody if she moved.

After the State Supreme Court agreed to hear the case, the amicus briefs poured in from representatives of women's groups, Legal Aid lawyers, law school deans, and mental health professionals.

But the crux of the debate over the best interests of children was summed up in two papers filed by researchers.

One, favoring the right to move, was written by Dr. Wallerstein, the founder of the Center for the Family in Transition, who is known for her studies on the long-term effects of divorce. She argued that the most

important things for children after divorce were that their relationship with their custodial parent was protected and that their wishes were heard.

An opposing brief was written by Richard A. Warshak, a Dallas psychologist whose most recent book is "Divorce Poison: Protecting the Parent-Child Bond From a Vindictive Ex" (Regan Books, 2003).

Dr. Warshak wrote that Dr. Wallerstein had ignored research showing that children do better when both parents are involved in their day-to-day lives, something that cannot be accomplished through summer or holiday visits.

As Dr. Warshak said in a telephone interview, "If it weren't a problem to live apart from your children, then it wouldn't be a problem for a mother to leave a child behind."

But Dr. Wallerstein said in an interview that she agrees that in the best of circumstances, children do best with both parents. "That sounds like a very good argument for marriage," she said dryly. "The issue is, the people who come to court are not cooperative parents."

In a ruling that is expected to influence courts around the country, the California Supreme Court ruled against Ms. Navarro. It decided that the parent with physical custody has the right to choose the child's residence, unless the other parent can show some detriment to the child. At that point, a judge has to undertake a "best interests" custody inquiry.

The ramifications of the decision are a matter of debate, even among those closely involved. "We won't know until the next five years," said Philip M. Stahl, who was the court-appointed psychological evaluator. While he hopes courts will follow a best-interest standard in which no factor is automatically most important, he said, "The difficulty will be if people view this change as, 'We have to keep parents in the same community.'"

Kim M. Robinson, Ms. Navarro's lawyer, said her client was considering asking the United States Supreme Court to review whether the decision violates her constitutional right to travel. And the California Senate is planning to hold a hearing later this month on legislation that would permit moves under most circumstances.

The next relocation battleground may be Colorado, where in 2001 the legislature abolished a legal presumption that custodial parents have the right to move.

Now the State Court of Appeals has ruled that the parent who wants to move must show a direct benefit to the child, not just an indirect one like a job opportunity for a parent. Some legal commentators have contended that this places an insurmountable barrier to moves.

The case involves Michelle A. Ciesluk and Christopher J. Ciesluk, who were divorced in 2002. Their son, Connor, now 7, lives primarily with his mother in Parker, Colo.

In early 2003, Ms. Ciesluk lost her job when Sprint reduced its work force; the company offered to rehire her, she said, but only if she moved to Arizona.

In Denver, she has not been able to find a job with benefits, she said in a telephone interview, and is working for \$10 an hour as an administrative assistant.

"How hard is it? Oh, honey," Ms. Ciesluk said. "Very, very hard. The money thing, worrying about where my

next meal will come from, worrying about Connor. My whole life is on hold."

Mr. Ciesluk declined to be interviewed, his lawyer said, and referred a reporter to his legal briefs. That filing said Mr. Ciesluk opposes the move because "he does not want to lose the relationship he presently has" with his son, and would not be able to attend the boy's athletic and school activities. He added that Mr. Ciesluk is "aware of the difficulties in maintaining a close relationship from a distance."

Ms. Ciesluk is planning to appeal the decision barring her move with Connor, said her lawyer, Anne Whalen Gill.

As states like Colorado increasingly turn to "best interest" analyses, they may find that there are some drawbacks to what is essentially a subjective approach, including the likelihood of more litigation, uncertainty for families and increased costs and delays.

In New York, which has been a "best interests" state since a 1996 decision called *Tropea v. Tropea*, judicial decisions about relocations are all over the map. This year alone, judges have decided at least two dozen cases involving relocation. While most moves have been refused, a small number were approved.

"It doesn't give lawyers a lot of ability to predict what will happen," said Barbara Ellen Handschu, the incoming president of the American Academy of Matrimonial Lawyers and an expert in New York on relocations.

Ms. Sheid, the Upper East Side mother, who spoke to a reporter on the condition that her children's names not appear in print, has little good to say about her experience in court. She was belittled by the judge, she said, and stereotyped by the court-appointed experts, who portrayed her husband as a greedy, selfish Wall Street tycoon and her as a wimpy little woman. She said they ignored her husband's financial obligations, which include the support of his teenage daughter and elderly parents.

The court-appointed lawyer and psychologist both declined to comment, as did Ms. Sheid's former spouse. Like most parents in relocation cases, Ms. Sheid finally decided to try to settle with her former husband, who lives in the Connecticut suburbs.

At this point, her main goal is to make sure her daughter, now 8, can continue to attend her New York City school. Moving her to California seems out of the question. "I'm hoping maybe the only thing a parent in my position can hope for," Ms. Sheid said, her voice trailing off, "that maybe when she's older "

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