

On the Road Again

Moving When a Child Is Subject to a Parenting Plan

by Marci R. Carroll, Esq.

When a parent of a child who is the subject of a parenting plan (formerly known as a custody/visitation order) plans to relocate to the extent that the other parent's ability to exercise parenting time (formerly known as visitation) or to participate in major decision-making is significantly affected, the parent who is moving now has certain legal responsibilities and must follow certain procedures *before* the move is made. Depending on the terms and provisions of an individual parenting plan, this statute may apply to moves to a different city or county as well as to moves out of West Virginia. The law can't prevent a parent from moving away, but the family court could decide that the child should not move with the relocating parent (assuming the relocating parent is the residential/custodial parent) and should remain in the area if the other parent still lives within the county or state. At a minimum, the parenting plan will need to be adjusted to accommodate the move in the event the relocation rises to the level of a substantial change in circumstances.

This is one of the major changes in West Virginia's domestic relations law in recent years and is commonly recognized as applying to current moves involving children under custody/visitation orders entered before the law on this issue changed circa 1999. No longer can the residential or custodial parent move away with no strings and potentially leave the other parent at a loss on how to see their child under the existing order. The statute provides protection for moves by a non-residential/non-custodial parent as well. One of the complications is that many parenting plans, especially older orders entered prior to the change in the statutes, don't put parents on notice about when and what must be done.

So what is a relocating parent supposed to do and what are the procedures? Unless the existing court order says otherwise, if the relocation is expected to last more than ninety days, the relocating parent must give at least sixty days advance notice, or the most notice practicable under the circumstances, to the other parent. The statute does not require this notice to be in writing, but providing written, rather than verbal, notice is the safer practice. The relocation notice must include certain information:

- the date of the move;
- the anticipated address for the new home;
- the specific reasons for the move;
- a proposal for how the parenting plan should be modified in light of the anticipated move; and
- information for the other parent about how he or she may respond to the proposed move and/or parenting plan modification.

There are some potential moderately to severely unfavorable consequences for a moving parent failing to follow this notice procedure.

After the relocation notice is provided both parents hopefully will be able to agree on whether, where applicable, the child should relocate with the moving parent and on how the existing parenting plan should change to take into account the logistics imposed by the move; if the parents are able to do this, the parents still need to file a motion with the family court as soon as possible to modify the existing parenting plan and ask that the new, agreed parenting plan be entered under an expedited timeframe before the move happens. However, too frequently the parents do not agree on whether or not the child should also move and, if so, how the terms of the existing parenting plan should be changed. Depending on how the existing order in a particular case is written, mediation between the parents may be required before returning to family court. In such a contested case, a motion still needs to be filed with the family court and the matter generally should be handled under expedited procedures and getting the legal process initiated and moving sooner rather than later becomes even more important since virtually nothing happens in terms of days or weeks in family court under regular hearing scheduling standards for even thirty minute hearings. The family court will hear the evidence in contested cases and decide if, where applicable, the child should be permitted to relocate with the moving parent and how, if at all, the existing parent plan should be changed to accommodate the move. Regardless of whether or not the parents agree about the move and any changes to the existing parenting plan, it is critical to make sure that a modified order is entered by the family court before the move happens if at all possible.

Assuming that the move constitutes a substantial change in circumstances which require the existing parenting plan to be modified, the family court is supposed to try to maintain the same proportion of parenting time for the parents and child as existed under the current plan but must make sure that such changes are practical in light of the move. For example, if the father of the parties' seven year-old has eighty overnights each year, primarily through alternate weekends, split holidays, and a few weeks in the summertime, under the existing plan and the mother and the child are moving out of state six hours away, the family court will attempt to keep the child with dad for eighty overnights still but will most likely need to consider fewer weekend visits (if at all) and loading dad's time with the child mostly on extended holidays and summer vacation given the travel time involved and the child's age. If the move is such that the family court cannot reasonably keep the same proportion of parenting time, the family court judge then must make a decision based upon the child's best interests in general as well as a list of principles, including whether the move is in "good faith" and to a location that is reasonable in light of that purpose.

A parent in a relocation situation can find the assistance of a family lawyer to be very valuable. A trained and experienced family lawyer can help a parent make sure that the proper procedures are timely followed – both before and after a motion is filed with the family court; that a modification is appropriate and necessary; that any move does in fact qualify as in good faith and to a reasonable locality; that a parent's involvement in the child's life is maintained and

protected; and that a modified parent plan is comprehensive, feasible logistically, and avoids pitfalls common to a parent's particular situation.

Law Offices of Marci R. Carroll • Suite 500 • WesBanco Building • Fairmont, WV 26554-3168
Phone: **(304) 367-9482** • Fax: **(304) 367-9633** • Internet: <http://www.mrcfamilylaw.com>
Copyright © 2004 Marci R. Carroll, Esq. • All Rights Reserved

DISCLAIMER: The information contained in this article is for informational purposes only, focuses on West Virginia domestic relations law, and is not intended to be a complete representation of the law applicable to the issue discussed herein. Our web site contains advertising material. Further, the area of domestic relations law has been rather fluid in recent years. Facts and circumstances, as well as their application to the law, vary from case to case. What would be appropriate and advisable in one case could very well prove inapplicable or disastrous in another case. Further, the application and interpretation of statutes, case law, rules, and other law varies among venues and individual family court judges. Reading this article certainly is no substitution for obtaining the legal advice of a licensed domestic relations attorney regarding specific issues or circumstances in a case.

The information you obtain at this site is not, nor is it intended to be, legal advice and does not constitute or form an attorney-client or other legal relationship between the Law Offices of Marci R. Carroll and persons or entities using or viewing this web site or portions thereof. You are not a client of the Law Offices of Marci R. Carroll until and unless you have executed and returned to us a signed Engagement Letter and the full case advance required. You should consult an attorney for individual advice regarding your own situation and should not rely on this web site to substitute for the advice of the Law Offices of Marci R. Carroll or another qualified attorney regarding the particular facts and circumstances of your domestic relations matter. Marci R. Carroll, Esq., is designated as the responsible attorney for this site. Please refer to our web site for additional legal notices.

DISTRIBUTION: You may reproduce materials, including this article, available at this web site for your own personal use and for non-commercial distribution. All copies must include the above copyright notice, full identification of our office and contact information, and any disclaimer or notice posted on the site that is applicable to the copied information.