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News

RELOCATION OF **PARENT** ADDRESSED IN 'BROWNER'

If the courts were to adopt the thinking of Philip C. Siegel and Larry A. Cohen, as articulated in their article encouraging 'Forensic Assessments in Custodial Relocation Cases' (NYLJ, Aug. 13, 2003), the cost of virtually every relocation may prove to be too exorbitant for the potentially relocating parent to even bother. However, contrary to the authors' view of the world, not every relocation case should ignite a full-blown forensic work-up. The Court of Appeals decisions in Tropea and Browner,[FN1] and particularly Browner, implicitly held that commuter-relocation cases may not always necessitate a best interests analysis, especially where the non-custodial parent's complaint centers only on the loss of weekday visitation.

In Browner, the Court approved a 130-mile relocation in holding that the non-custodial parent was not “deprived of a meaningful opportunity to maintain a close relationship with his or her children.” That relocation from Westchester County to Pittsfield was condoned by the Court of Appeals, despite the fact that it would eliminate the father's mid-week visitation opportunity, reduce his ability to participate in his son's religious worship and diminish the quality of the weekend visits he has with his son. The Browner decision went on to note that “[w]hile these losses are undoubtedly real and are certainly far from trivial, it cannot be said that they operated to deprive respondent of a meaningful opportunity to maintain a close relationship with his son. In passing, the Court also noted that “the Family Court found that the relocation of the child in Browner was in the child's best interest and the Appellate Division did not disturb that finding.‘

Should a relocation down the block, 10 miles from the child's original residence, 20, 40 or even 60 miles ever trigger a full-blown forensic analysis? While Messrs. Seigel and Cohen may stake their claim otherwise, if the custodial parent has maintained custody for a period of several years, under circumstances where the child is seemingly well-adjusted, a relocation that is a manageable car ride away should be permitted without a hearing. Indeed, a custodial parent's decision to enroll a child in a particular school or follow a certain religious path represents significant events in a child's life, but are hardly situations where the courts find it appropriate to intervene. Why then should a relocation to another neighborhood that may alter but does not radically change a non-custodial parent's access represent an opportunity for a full-blown forensic and an elongated trial?

The ultimate question is whether or not a “commuter relocation”[FN2] is to be permitted without the attendant forensic work-up. Browner seems to have decided that issue. Provided the relocating parent offers a reconfigured visitation schedule that ensures the non-custodial parent “meaningful access,” the need for an inescapably subjective forensic balancing act is obviated.

Many matrimonial practitioners believe that the mental health community has objectified their skills to rational-

ize a role in family matters they have no business getting into. Indeed, maintaining a functioning status quo by opposing a relocation application presents an inescapable catch-22. If the relocating parent is asked whether they would relocate without the child, they would have to say “no.” What kind of parent would answer otherwise? Hence, a cautious determination will necessarily maintain the child's status quo. However, since the healthcare professional cannot see the future, who is he to opine whether a commuter-relocation is in a child's best interests, especially if meaningful access is afforded the non-custodial parent?

Peter J. **Galasso**

Garden City, N.Y.

FN1. Matter of Tropea v. Tropea and Matter of Browner v. Kenward, 87 N.Y.2D 727 (1996)

FN2. See Tippins, T.M. “Custody Evaluation Expertise by Default?” NYLJ July 15, 2003 p. 3 col. 1.
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