



Domestic Violence

The Tipping Point

Helping courts discern obstacles to access from
a desperate need for safety

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Family courts operate most frequently within a framework of custody laws that anticipate cooperative behavior between divorcing and separating parents who have minor children. These statutes demonstrate a preference for shared parenting and the use of alternative mechanisms (such as mediation or cooperative parental responsibility for developing parenting plans prior to a final court decision); state legislatures are even enacting statutory provisions aimed at neutrality in custody decision-making.

Because many custody statutes focus on a cooperative model of parenting, the actions of parties who seek to limit one parent's access to the children in favor of their own enhanced access tend to raise red flags for judges. Thus, one parent's request to relocate with the children, which may be perceived as an attempt to limit the other parent's access to the children, may require that this party demonstrate how such relocation is in the best interest of the children. In cases where one parent or the children or both are experiencing domestic and/or sexual violence, a relocation request may not necessarily reflect an attempt to create obstacles to shared parental access, but instead,

the motivation to protect one's self and children.

Victims of domestic and sexual violence often find themselves struggling to achieve a life independent of an abusive partner, particularly when there are children in common. Some obstacles commonly faced may include:

- lack of employment opportunities that would provide self-sufficiency for victims of abuse and their children;
- lack of confidential resources necessary for healing, such as supportive relatives or counseling programs in a community where the victim can feel less visible about using them;

- the impact of relatives and social contacts who may be stigmatizing the victim and/or the children at the behest of the abuser; and
- the dangers of ongoing abuse and harassment at the hands of the abuser.

Beyond establishing a life separate from the abusive partner, the victim of domestic and/or sexual violence may see the opportunity to leave the jurisdiction in which the violence has been taking place to be a crucial security measure. The difficulty for judges is reconciling the unique safety and financial needs that victims and their children face, while working within the statutory and constitutional requirements of family law custody decision-making.

Tools for handling requests

Many aspects of relocation are burdensome, and sometimes dangerous, to victims of domestic or sexual violence. Perpetrators in domestic violence cases often use physical violence and threats to control the nonabusing parent. A request for relocation may represent a direct threat to the perpetrator's sense of control and entitlement in such cases. Merely requesting relocation can put the nonabusing parent and children at risk of escalating threats and actual violence. If the relocation request is openly litigated, the new location of the nonabusing parent is likely to be revealed, providing the perpetrator with a road map to the new location of the victim, thus possibly enabling the abuse to continue.

Emergency issues. If domestic or sexual violence issues are raised in a relocation case—or if the court suspects such problems in the family—the court should consider carefully any evidence indicating lethality risk factors in determining whether special protections are needed for the victim and the children. (See Websdale, lethality assessment resources on page 45.) Many abusers when confronted with allegations regarding their behavior may escalate attempts to control and further harm their victims.

Statutory tools. In many jurisdictions, the statutory framework governing custody cases provides guidance on handling relocation requests where domestic violence occurs. Check local statutes, which may provide that domestic violence is a factor for courts to consider or may change notice requirements. The most widespread and helpful provisions are those that require or strongly encourage courts to assess the dangers posed by domestic or sexual violence and weigh them against the need to preserve the parental rights of the abusive parent.

A few jurisdictions waive notice requirements that might alert an abuser to the victim's new location. Judicial tools that preserve the confidentiality of the new location can be critical where the other party's locating the victim has been found to pose a significant safety risk. Many abusers are tenacious and may follow victims across state lines without hesitation if they know where the victim is located. Where allowed by law, courts should consider sealing portions of

the case file that provide clues to the victim's whereabouts: the child's new school (*see* Family Education Rights to Privacy Act, 20 U.S.C.A. § 1232g (2002)); the victim's new address, telephone numbers, and workplace; addresses of relatives or references to specific services being used in the new location. Because the debate about privacy in court documents is ongoing, judges need to be up to date on their jurisdictional rules and statutes.

Tailor the terms

Another important tool that may be useful in helping victims to relocate is the protection order. Courts handling these cases may want to tailor the terms to the specific relocation needs of the victim. If a protection order has already been issued, then modifying that order pursuant to state authority to provide relief specific to relocation may be appropriate. If the victim is moving to another state, the terms of the protection order should be given full faith and credit under federal law and thus will be enforceable in the new jurisdiction. The Violence Against Women Act of 1994 (18 U.S.C. § 2265 to 2266).

Relief specific to relocation to a confidential address may include:

- awarding temporary physical and legal custody (duration relating to the life of the protection order) to the relocating nonabusing parent;
- providing child support to the relocating nonabusing parent to enhance a capacity to relocate and build an independent economic life separate from the abuser;
- enjoining the abusive parent from following the relocating parent, including provisions prohibiting contact or communications with relatives or schools in the refuge jurisdiction;
- enjoining the abusive parent from using any electronic communications other than that specifically permitted by the court; this should include prohibitions against electronic tracking devices, such as Global Positioning System (GPS);
- designating a service address or clearinghouse for the nonabusing parent so that any subsequent litigation can be safely and appropriately conducted;
- enjoining the abusive parent from utilizing Social Security, health insurance, or credit bureau information; employing private investigative services; or using any other searching method, whether conducted by individuals, companies, or Internet services, to track the relocating parent; and
- protecting the nonabusing parent's access to the family's financial resources and property to ensure that the victim has money, a form of transportation, and essential items, such as clothing and medicines, to permit successful relocation.

If the relocation is *not* confidential, additional provisions may include:

Silencing Schools

Schools that receive federal funding are prohibited from disclosing school records without consent if there is a court order prohibiting release of such records to a parent. See Family Educational Rights to Privacy Act (FERPA), 20 U.S.C.A. § 1232g (2002), or visit the Web site for the U.S. Department of Education at www.ed.gov/policy/gen/guid/fpco/ferpa/index.html.

—M. M. & R. V.

- postponing visitation until the abused parent and children have had an opportunity to establish their safety and heal from any trauma associated with violence or abuse;
- postponing visitation until the abusive parent has successfully completed appropriate treatment, including a batterer's intervention program;
- structuring visitation with appropriate levels of restriction as seems appropriate;
- restraining the abusive parent's communication with or proximity to the children or other parent, except in the context of authorized visitation;
- exchanging children through an intermediary or in a protected setting; and
- securing each child's passport and requiring the abusive parent to post a bond to secure the return of children after a visit, or to secure any other performance on which visitation is conditioned.

Other tools. Some community-based resources may be of significant help to relocating parents. These include shelter and counseling services, job training and placement agencies, housing agencies, legal services, and community affinity groups, such as immigrant assistance and faith-based programs. Many states now have confidentiality programs, which allow victims of domestic or sexual violence to register and obtain a legal address that is maintained confidentially by the state. All of these can be helpful in getting a relocating victim established safely in a new community.

To help victims find these resources in refuge communities, court staffs can refer victims to the National Domestic Violence Hotline (800/799-7233), which can provide multilingual referral services or refer to other services for help in finding an advocate or service in other communities.

The role of the court

Especially when children are involved in a relocation case, the court can take a number of steps to protect the victimized parent and children; such as:

- monitoring the abuser's compliance with court orders and strictly enforcing terms of the order or sanctioning the abuser when violations are found according to

controlling law;

- communicating and cooperating with courts in the refuge jurisdiction, in accordance with state law and in a manner that protects the safety of the parties and procedural due process, should litigation continue (see Nat'l. Conf. of Commissioners on Uniform State Laws, Uniform Child Custody Jurisdiction & Enforcement Act § 110 (1997));
- entering a protection order issued on behalf of the victimized parent in the National Crime Information Center (see <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>) to ensure consistent enforcement of the order across state lines; and
- should continuing litigation in the issuing state be appropriate on custody, visitation, or support, protecting the safety of the relocated victim by utilizing mechanisms that do not require the victim to return to the original state, such as using depositions instead of in-court testimony, allowing the refuge state court to collect and forward evidence to the original state, and allowing the victim to make appearances in court through an attorney or by telephone. The Uniform Child Custody Jurisdiction & Enforcement Act provides authority for such steps.

Final thoughts

The tragedy of domestic and sexual violence haunts many families and forces victims of these crimes to flee abusive family members. In relocation cases where such abuse is an issue, courts have a responsibility to consider and address the safety of victimized family members and to evaluate whether the relocation request is driven by non-cooperative parental attitudes or, instead, by a genuine interest in protecting the party desiring to move or protecting the children. Courts have a primary role to play in organizing the resources and tools that can facilitate a safe, successful relocation when that move is appropriate—an important way to end the continuing pain that domestic and sexual violence imposes. **FA**

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