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Profile: Fallout from a Recent California Supreme Court Decision that Places Restrictions on Custodial Parents who Wish to Relocate with their Children

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This is ALL THINGS CONSIDERED from NPR News. I'm Robert Siegel.

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And I'm Melissa Block.

Few areas of family law are more emotional than child custody cases. Some of the toughest battles arise when a divorced parent wants to relocate with the children for a new job or to start a new life. Now a closely watched decision by the California Supreme Court has intensified the conflict. In a case that divided children's advocates, the state high court had told custodial parents, most often mothers, that they risk losing their children if they try to move away. NPR's Elaine Korry reports from San Francisco.

ELAINE KORRY reporting:

The California Supreme Court recently ordered two boys – 12-year-old Garrett LaMusga and his 10-year-old brother, Devlen – taken from their divorced mother who raised them since birth. The mother, Susan Navarro, had remarried and wanted to move from the San Francisco Bay area to Ohio with her new husband. The boys' father, Gary LaMusga, objected, saying the move would destroy his already troubled relationship with his sons. A trial court agreed, and ordered custody transferred to the father if the mother moved. After years of litigation, the case reached the state Supreme Court. Gary LaMusga's victory became a rallying point for divorced fathers across California.

Mr. ERIC TRAUB: Frankly, I think it makes my case a slam-dunk.

KORRY: Forty-four-year-old Eric Traub lives in an apartment in the hills north of San Francisco. Photos of his 14-year-old daughter, Angelique, line the shelves of one bookcase. For years, Traub has fought his ex-wife Tina's plan to relocate with Angelique to Costa Rica, where Tina's second husband was born. The plan is for Angelique to have three extended visits with her father each year. That's not nearly enough, says Traub, as he straightens up his daughter's room.

Mr. TRAUB: Welcome to a teen-ager's bedroom, a truly scary place. What we have here is a museum of the transition from being a kid to being an adult. So you have all the things she used to like and still doesn't

want to part with and all the things she has to have now to be cool.

KORRY: Besides the posters and nicknacks and teen magazines, Angelique's room is also home to a small menagerie, including a pet snake and several mice. Traub says since the LaMusga decision, he's relieved to think that Angelique and her pets are staying put.

Mr. TRAUB: LaMusga kind of sealed the deal because it eliminates this whole notion that Mom has a presumptive right to do something.

KORRY: Attorneys for Traub's ex-wife say the outcome in that case is anything but a slam-dunk. Nonetheless, the LaMusga case does make a move more risky.

Prior to the ruling, custodial parents, usually mothers, had broad discretion to make decisions for their children, including where they would live. Years of case law stressed the need to honor the custody arrangement. What was best for the custodial parent was thought to be best for the child. The LaMusga case turned that on its head, giving trial judges broad discretion to make decisions for divorced families. In move-away cases, the prior custody arrangement is now just one of many factors that judges can weigh before ruling on a proposed move. Disruption of the non-moving parent's relationship with the children is enough by itself to block a move. Appellate attorney Garrett Dailey, who argued the case on behalf of Garrett LaMusga, says it's simple commonsense.

Mr. GARRETT DAILEY (Attorney): All we said was, is that somewhere in this mix, you've got to consider what's best for the kids. That had been lost, and the Supreme Court said in, I think, a very clear opinion the best interests for the children always is the test. Now how mothers' rights groups can object to that I don't know, because isn't that what we should be concerned about?

KORRY: But everyone in this case claims to care most about the kids. The lower-court rulings and the many friend-of-the-court briefs all claim to know what's best for children, yet often they reach opposite conclusions. Tony Tanke, an appellate lawyer who represented Susan Navarro before the high court, says if children truly matter, then the LaMusga decision is a disaster.

Mr. TONY TANKE (Lawyer for Susan Navarro): How can you take children away from the parent they're attached to and who's taken care of them day to day, and give them to a parent whose relationship with them is tenuous and detached? The California Supreme Court said absolutely nothing wrong with doing that.

KORRY: The court-appointed attorney who represented the LaMusga boys also objects. Leanne Schlegel recommended that the children be allowed to move with their mother. She said the court's ruling will only encourage more nasty custody battles, which is the last thing the children need.

Ms. LEANNE SCHLEGEL (Attorney): It will cause moms and dads to fight this matter out a lot more in court to the benefit of the trial attorneys and the psychologists and to the detriment of the children. That is absolutely the worst thing that can happen for kids is moms and dads to be fighting over them.

KORRY: A father's objection to a mother's move now may prompt a full-scale custody re-evaluation, which can cost tens of thousands of dollars. Even Garrett Dailey, the lawyer who won case, concedes that

could be a problem for some families.

Mr. DAILEY: In some cases, this opinion will work a hardship on people, because it will force these evaluations when money is tight. When somebody's moving to try to get a better job and then they're forced to go through these evaluations, that's going to be tough. But by the same token, one of the things that happens when you have children is you lose a substantial amount of your personal liberty, and with that may come the ability to move where you want with your kids whenever you want.

KORRY: Outside a county courthouse east of San Francisco, attorney Kim Robinson, who represented the mother, Susan Navarro, through the lower courts, says restricting women's mobility is exactly what this case is about.

Ms. KIM ROBINSON (Attorney): I think this court had a political agenda from day one when they granted review of this case. They just wanted to stop custodial parents – that is, mothers – from moving following divorce. It's that simple.

KORRY: In this new legal landscape, says Robinson, some custodial parents will be deterred from even trying to move. Lesley Ellen Shear, who wrote a brief on behalf of an association of family lawyers, says that's not necessarily a negative outcome. For too long, she says, non-custodial parents have gotten short shrift in children's lives. She says this decision is more in line with current thinking about custody.

Ms. LESLEY ELLEN SHEAR: Custody is no longer about picking a parent to dominate child rearing; custody is now about developing and adapting a parenting plan over the life of the child that allocates child-rearing responsibilities between two parents.

KORRY: But the United States remains a mobile society. Studies indicate, especially post-divorce, one of the parents is inclined to move. In a weak economy, parents seeking work often have little choice. The California Supreme Court has made such a move much more precarious for parents with custody of their children. It's not the only court to lean in that direction, but as attorneys in this case point out, when the California Supreme Court rules in the area of family law, courts around the country sit up and take notice.

Elaine Korry, NPR News, San Francisco.

BLOCK: To read the California Supreme Court's ruling and learn more about this legal battle, you can visit our Web site at npr.org.

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