

RELOCATION CASES IN UNITED KINGDOM

DISCUSSING THE FACTORS THAT COURTS CONSIDER WHEN ONE PARENT WISHES TO RELOCATE TOGETHER WITH HER CHILD/CHILDREN TO ANOTHER JURISDICTION AND THE TWO TYPES OF HARM THAT AFFECT THE CHILDREN AND THE NONMOVING PARENT AFTER RELOCATION HAS TAKEN PLACE

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ABSTRACT

One of the most emotional and controversial agreements an individual can enter into, is child custody arrangements. Couples passing through a divorce or a separation consider the debate of relocation and child custody to be very complex. Many divorced parents seek approval from the court every year to move their children away from their other parents to a new location. Such relocations stress and sometimes interrupt the parent-child relationships. When such relocations take place, they may cause detrimental effects on children. This paper discusses how relocation is probable to impact children that are involved when a relocation occurs; factors to be considered when choosing whether or not to allow relocation; This paper also describes the methodology employed in undertaking this thesis. The methodology used is a qualitative analysis of different judicial cases concerning relocation that have been decided by Court of Appeal in United Kingdom .

Key terminologies such as relocation, child arrangement orders ,welfare and Best interests of the child are defined at the end of paper.

Keywords: Child arrangement orders, Relocation, Welfare, Children/Child, Judges, Parental responsibility, Child's best interests

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Chapter one

“Relocation cases . . . present some of the knottiest and most disturbing problems that our courts are called upon to resolve. In these cases, the interests of a custodial parent who wishes to move away are pitted against those of a noncustodial parent who has a powerful desire to maintain frequent and regular contact with the child. Moreover, the court must weigh the paramount interests of the child, which may or may not be in irreconcilable conflict with those of one or both of the parents”. (Matter of Tropea v Tropea 87 NY2d 72 paragraph 13) available at <http://www.courts.state.ny.us/reporter/archives/tropea.htm>.

Introduction

Relocation cases are common features of family law not only in United Kingdom but also in different countries. Numerous family cases that involve divorce or separation trigger the question of relocation of a child either to move to a different town within the habitual resident country or to new international jurisdiction. When one parent wishes to move a child away from one country to another or separate a child from the other parent, relocation cases are one of the most difficult for courts to determine due to the fact that there are usually "no win, situations". There is a new shift of change that occurs and thus a child or children involved are forced to create new relationship contacts with only one of their parents. (Linda D. Elrod 2010). Linda D. Elrod additionally states that the most common type of relocation occurs when one of the parents of a child/children declares his or her intention to relocate to another jurisdiction. (ibid). According to academic scholar Reddick Emily, most children prefer residing with their mothers other than living in any other “type of parental situation” Mothers are, thus, the parents who usually wish to relocate to other jurisdictions. Reddick additionally asserts that according to women’s rights it is the mother’s autonomy to move with her family in order to enhance employment or children’s schooling, to enhance child care support, to begin a new partnership or relationship, or to reduce and protect a child from any form of abuse.(Reddick, Emily A. 2012).Most partners wish to relocate to different jurisdictions after divorce or separation due to several reasons. (Ibid 1998). For the purposes of elaboration, some of the primary factors behind the relocation are parental divorce, economic hardships, work development, family improvements and remarriage. (Micheal A.Saini, 2013, p.21). To throw more light on reasons of relocation; Parents who wish to relocate always wish to return to their original countries and live near their parents, close family and close friends justifying that this would help them to get emotional, social and practical assistance from their loved ones. (Ibid, 1998). Additionally, another reason as to why one parent may wish to relocate can be because of new relationship which the relocating

parent would like to establish. Usually such relationships are long distance in nature. (Patrick, Judy Cashmore (spring 2010). Basing on the fact that the well-being of children is largely dependent, it is important for the courts to ensure that children will have the best parenthood after divorce or separation. The duties of parents in raising their children during marriage and after divorce has altered significantly over the years from both a social and a legal perspective, and continues to even develop today.(Joan B. Kelly, 1994). Child custody cases may be complex to navigate, most especially when there are extenuating issues, like relocation.

Main Aim of the Thesis

The overall aim of this thesis is to examine some of the factors that the court puts into consideration when one parent makes an application to relocate with a child/children to other jurisdictions. Such factors are stipulated under section 1(3) of the Children's Act 1989 and include the following;

- a) The wishes and feelings of the child or children concerned
- b) The physical, emotional and educational needs
- c) The likely effect on him of any change on his circumstances
- d) His age, sex and background
- e) Any harm which the child/children have suffered or is at risk of suffering
- f) Capability of his parents and any other person whom the court considers to be relevant.

The researcher also intends to examine the two types of harm that affect the nonmoving parent and the child after relocation has taken place. These two types of harm include;

- (i) The relationship harm to nonmoving parent-child relationship
- (ii) The development harm due to diminished parent-child relationship

In a nutshell, the problem which the researcher is investigating is the harm that effects both the child and the nonmoving parent after relocation has occurred.

The qualitative research methodology

Research methodology is defined by Leedy & Ormrod (2001) as “the general approach the researcher takes in carrying out the research project” (p. 14). For the purposes of this study, a qualitative research method will be used. Qualitative legal research method is defined in a

book by Mike McConville as, “simply as a non-numerical, and as such, contrasted with quantitative (numerical) research” (McConville, 2017). Mike McConville goes on to explain that, the qualitative research method is also an empirical research which is “based on observations of the world, in other words, data, which is just a term for facts about the world” (McConville, 22). The qualitative research methodology consists of different methods among which include Case studies, grounded theory, ethnography, content analysis, empirical studies and phenomenological. (Carrie Williams, 2007). The researcher intends to use case studies as part of the qualitative methods. Creswell (2003) describes case study as “researcher explores in depth a program, an event, an activity, a process, or one or more individuals” (p. 15). The methodology will be theoretical in nature and will discuss some of the primary prominent relocation cases that the court of Appeal in United Kingdom has dealt with between years 1999 to 2012. These include; *Payne v Payne [2001] EWCA Civ 166, K v K (Children: permanent Removal from Jurisdiction)[2011] EWCA Civ 793,[2012] Fam 134, CA Thorpe, Moore-Bick, Black Ljj,7.7.11, Re B(children)(Removal)from Jurisdiction; Re S(A child)(Removal from jurisdiction)[2003] EWCA Civ 1149, Re M(Minors) Contact: violent parent) (1999).*

Another method that the researcher intends to use as part of the qualitative study is the Content Analysis Study which was defined by Leedy and Ormrod (2001) as “a detailed and systematic examination of the contents of a particular body of materials for the purpose of identifying patterns, themes, or biases”. Carrie Williams (2007) states that content analysis methods encompasses reviewing different books, newspapers and academic articles. It is stated that “The method is designed to identify specific characteristics from the content in the human communications. The researcher is exploring verbal, visual, behavioral patterns, themes, or biases” . That mentioned the researcher will therefore use an array of primary sources such as the Children’s Act 1989, The Human Rights Act, NGO reports that concern child relocation and publicized articles that concern the issue of relocation in United Kingdom. Due to the page limitations of this study, the intended methodology will be mostly theoretical rather than empirical, and hence will mainly focus on the harm that affects the nonmoving parent and the child after a relocation has taken place.

Problem Statement

Relocation cases are commonly considered to be one of the most perplexing and controversial issues that family law courts encounter. Additionally relocation disputes have been described

as presenting “some of the knottiest and most troubling problems ever resolved by the courts. These cases have been “described as cases that cause dilemmas rather than problems”. This is because, “problems can be solved but dilemmas are insoluble”. (Nicola Taylor, Megan Gollop and Mark Henaghan, 2010). Judiciaries and academics expressly state that the issue of relocation creates conflicts which are seen as contests between the custodial parent's wish to move against the noncustodial parent's wish to maintain a stable and continuous contact with the child. For example, the American Academy of Matrimonial Lawyers ("AAML") stated in the commentary to its model act on relocation that:

“The child's custodian may have a compelling interest to move with the child; and the noncustodial person may have a compelling competing interest in maintaining the relationship with the child, which may be significantly undermined by the move. The child has a compelling interest in stability - both in the stability of remaining with the custodian and with maintaining frequent contact with the noncustodial parent. In sum, even a perfect list of factors, when applied to decide such a contest, will not resolve the dilemma, i.e., relocation often is a problem seemingly incapable of a satisfactory solution.” (Merle H. Weiner, 2007).

The issue of allowing one parent to relocate permanently with a child over the objection of the other parent is a challenging one, irrespective of whether the move is temporary or a permanent relocation. Therefore in considering whether a parent can relocate from a residential jurisdiction to another jurisdiction with a child over the objection of another parent, family courts normally consider the aspect of :“a presumption in favor of relocation”. (Mary Sattler, 2010). When cases of child custody involve relocation matters, they are particularly challenging because they entail the emotionally loaded issues of a parent seeking to relocate the child to a different geographical jurisdiction that usually involves long distance, thereby creating physical and psychological disconnection between the child and the left-behind parent. (Kelly and Lamb 2001). If the application is accepted, relocation involves the development of a parenting plan for long distances, including practical and logistical problems. These cases are problematic for judges who have to comply with the law of the present jurisdiction while balancing the freedoms of both parents to access and involve their children with the likelihood that relocation is the best for the children. Relocation cases generate a condition of challenge as they do not result in a winning consequence. Such cases

always alter an earlier established custody agreement and often create more conflicts between parents. The complexity in cases of relocation custody arises from the conflicting interests of the parents and the social policies observed in most jurisdictions that promote the continued and frequent participation of both parents with the children after separation and divorce. The relocating parents want to move with the children to enhance their quality of life and/or pursue new possibilities such as better work, new relationships, and new life among others. The non-moving parents want to maintain the quality of their connection with the children, claiming that the move will result in "relational harm," that is to say that, it is not in the best interests of the children not to have both parents available. Additionally, the non-moving parents usually claim that the other parent tries to marginalize him or her an "alienate" to the children. The literature promotes this option, indicating an increased danger of damage to relationships when the distance between families is created by relocation. (Austin, Bow, Knoll and Ellens, 2016).

Review of literature

Oliver Powell states that research that is being or has been carried out regarding research on relocation disputes is 'alarming'. Oliver goes on to recognize a social-legal scholar Freeman who states that, 'we don't know' if relocation is in the best interests of a child. Further still, Oliver further notes that Geldof however disagrees with Freeman, and argues that empirical research demonstrates that the recent 'pro-relocation' issue is 'wholly destructive to a child and its entire family'. Research concerning the harm factor on the child's welfare regarding "from a truncation of contact with the nonmoving parent, and the effect on the mother of having to facilitate contact with the father after a court dispute, are all significant factors" to be put into consideration by the courts when dealing with relocation disputes.(Oliver Powell ,2013). Evidently various empirical studies concerning the field of relocation have also been carried out by different scholars around the world. Research conducted in 2002 by Verropoulou et al. on children's wellbeing, family structure, and migration indicated that constant relocation influences the lives of the children adversely. Relocation tends to disrupt a child's education and social life as it implies changing schools and making new friends every time they move. Research done in 2003 by Gilman et al.(2003) showed that children who are involved in frequent relocation during childhood are more likely to develop depression when they become adults. Additionally Braver et al. published a study in 2003, which showed that children who relocate have negative outcomes socially, psychologically, and thus, academically. The study resembles research conducted by Gilman et al. in 2003 about negative outcomes in children

after the relocation. However, Verropoulou et al. study shed a positive light on relocation and stated that it might not necessarily have adverse outcomes, especially if the child moves to a better school or lives a better lifestyle than before.

A 2002 study carried out by Norford and Medway indirectly associates relocation with negative outcomes in terms of children's participation in extracurricular activities. However, the main difference in this study is that the adverse outcomes were directly associated with maternal attitudes. If maternal attitudes about relocation were positive, the children also showed positive outcomes; however, if maternal attitudes were negative, the children were negatively affected. Research conducted in 2008 by Austin complements the results of an earlier 2003 study by Braver et al.(2003) as they both address the adverse outcomes of relocation on the lives of children. Therefore, statistical trends from the studies discussed above show that relocation after divorce or separation has a significant negative impact on children socially, psychologically, and academically.

In United Kingdom research has focused on the harm effect that affects both the child /children and the nonmoving parent after a relocation has taken place. (Nicola Taylor and Marilyn Freeman, 2010). Socio-legal theorists like Taylor Nicola and Marilyn Freeman suggest that whilst there is "very significant research literature on the impacts of Residential mobility on children of divorce," two overall aspects can be shortly identified. However, this proof has not yet been fully incorporated into the research that concerns relocation cases in the academic and judicial sphere. Additionally, as mentioned earlier empirical research theory study results are blended in a way that some surveys show positive impacts from relocation whereas other show detrimental or dangerous results that affect children after a relocation has occurred. However, overall, the results of empirical research show "higher risk" when children relocate, especially if there has been previous relocations and multifaceted modifications of family structure. (ibid 2010). In policies concerning relocation, empirical research concerning the real experience of families is crucial to be put into consideration. There's certain evidence about the effect of parental relocation based on accounts from young adults, but the results of this study are strongly disputed. In United Kingdom, substantial comparative surveys have also shed some light on relocation problems. Some experts also comment on the problems based on a wider understanding of residential relocation. While literature reviews and comments are useful, thorough empirical research is needed on the knowledge of parents and children engaged in relocation conflicts to evaluate different aspects of the issue. (Patrick Parkinson, Judy Cashmore and Judi Single 2010).).

The socio-legal approach to law regarding relocation disputes

The issue of relocation concerning child arrangement orders has increasingly been analyzed from both social and legal perspectives. (Austin, William, G. 2000). Thus the concept of child arrangement orders which involves relocation for children is essential for parents, their children, judges and the society at large to determine custody provisions that involve children. Law and society are inseparable due to fact that law plays very significant roles in shaping the society. David N. Schiff notes that there is a relationship between law and society. In his own words, he states that, “according to a socio-legal approach, analysis of law is dire to the analysis of the society to which the law” must be considered since it plays major roles in shaping society. (Schiff, David N, 1976). Since this thesis discusses an array of law, measures and policies used in relocation disputes it is relevant to discuss the aspect of socio-legal perspectives. Mansell (2015) states that law is understood as “any other system of power allocation which plays a central part in reinforcing the particular social reality in which it exists” and it has been criticized for “its ability to disguise political acts as politically neutral” (2015). Adding to that, legal scholar Carbonnier connotes that , “law is more than formal legal norms” (Carbonnier 1988, pp. 20–21 as illustrated in Freenan). Usually legal policies are used as part of deciding relocation cases thus the writer will refer to statutory provisions, cases law and a number of policies under chapter 2 which encompasses the analysis part of this paper.

Intersectionality, Gender and parental rights during relocation

Gender has played a major role in relocation cases for centuries. Since in most cases mothers hold the custodial rights of their children, legal critics like Nicola Taylor, Megan Gollop and Mark Henaghan argue that relocation is a gendered issue because most (although not all) relocation cases involve mothers who wish to relocate and fathers who reject this. (Dr Nicola Taylor, Megan Gollop and Professor Mark Henaghan 2010). For example, Wallerstein's theory of *amicus curiae*, strongly influenced the courts which later confirmed "the simple principle that, in general, what is good for the custodial parent is good for the child" (as illustrated in Michael A. Saini 2013). There are however no bases in the assumption that children are better off being brought up by women or men, provided that their interests are protected. Martin Strous arguably connotes that fathers are often unnecessarily removed from the lives of their children. (Martin Strous ,2007). Quoting extensively from Robert E. Oliphant (2001) he avowed that “it is a well-documented fact that fathers have a very difficult time obtaining custody due to the pervasive gender-bias that still

exists in many parts of the Family Court system. The sad fact is that custody is frequently granted without any regard to who is actually the better parent and what is truly best for the children.” (Oliphant, Robert E.2001). However Martin Strous(2007) dissents Robert Oliphants reasoning arguing that states that reject the custodian mothers the right to internationally relocate sometimes leads to gender discrimination. The scholar adds that women often hold custodian rights for their children and when courts do not acknowledge such mothers freedom of movements, this negatively affects them more than men.

According to Ann Phoenix the concept of intersectionality administers a conceptual language for identifying how every individual is categorized among social categories that include gender, social class, sexuality and race. Anna Phoenix opines that intersectionality cannot be understood separately. (Phoenix, A. (2006). Legal critics like Eva Nilsson ,Maritha Jacobsson, and Lena Wennberg (2013) state that Intersectionality is the general term Kimberlé Crenshaw developed to describe the relationship between various social classes . This viewpoint originates from the feminism thinking, which indicates that gender does not encompass just one a `social position`, but rather multiple and reflects on the relationship between different power structural systems. They additionally **note** that since courts take into the age and maturity of a child/children when deciding relocation cases, it is worth considering what it “means to be a child”.(Eva Nilsson Maritha Jacobsson, and Lena Wennberg ,2013) Referring extensively to Eva Nilsson Maritha Jacobsson, and Lena Wennberg it has been acknowledged that children cannot be seen as ' one ' regardless of age and maturity. Subsequently, it seems to have become evident what it implies being a child also varies depending on gender, class and race. It has also been observed, in the field of child law, that in many ways , the perception of feminist theories about gender has shaped the power relation other than gender itself. Indeed, the comparison between women and children is “flawed” because children are unable to define who they are as human beings. Instead, children are regarded as ' particular, ' completely opposite from the standards of ' ideal legal subjects, ' which has led to ' particular child law ' being introduced. (Ibid).

CHAPTER 2

ANALYSIS

Statutory context governing relocation

”At the heart of the [relocation] dispute is the child, whose best interests must always be the court's paramount concern. Those interests do not necessarily coincide, however, with those of one or both parents” (Ireland v. Ireland, 246 Conn. 413).

Johanna Schiratzki (2003) notes that whereas the principle of the best interests of the child has origins that ‘precede the discourse’ that concerns the human rights of children, the principle is a fundamental part of the human rights of children and is one of the general principles of the United Nations Convention on the Rights of the Child.

Article 3(1) of the United Nations Convention on the Rights of the Child that states,

“In all actions concerning children, whether undertaken by public or private social welfare institutions courts of law, administrative authorities, or legal bodies, the best interests of the child shall be a primary consideration”.

The quotation above means that member states commit to provide the child with the protection and care necessary for his or her well-being, bearing in mind the rights and obligations of both the child and the parent. Such children’s rights include social and economic rights that are sufficient enough to meet their needs before, during and after relocation has taken place. Additionally Johanna Schiratzki further argues that when interpreting other human rights instruments, such as statutes like the European Convention on Human Rights as well as European Union law sources, the United Nations Convention on the Rights of the Child, not forgetting Article 3 that concerns the best interests of the child is, or should be, a compelling authority. (Johanna Schiratzki 2013).

Stephen Gilmore (2008) acknowledges Bainham who accords that numerous articles of the United Nations Convention on the Rights of Children aim at protecting “establishment or preservation of family relationships”. Similarly Article 9(3) of the UNCRC directly addresses the “question of contact”, stating that:

“States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”

The above quotation means that best interests of the child include the right to have a personal relationship with both parents.

Lord Justice Thorpe suggests that Article 12(2) of UNCRC is of relevance when upholding the rights of a child. The article states that “for this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” Therefore this subparagraph imposes a legal duty upon all signatory states to ensure that children of a majority age have the right to express their views or opinions and the right to be heard in all matters where welfare is put into question.(Rt. Hon. Lord Justice Thorpe, 2010). Hence this clause applies directly to United Kingdom’s legislation where legal foundations are used as guidelines during the legal proceedings of relocation.

In her article Children in Legal Research, Eva-Maria Svensson elaborates more about the rights of children. She noted that recognition of children’s rights is a ‘hallmark’ for all democratic societies. Eva-Maria additionally states that these rights comprise of discourses which include a discourse that concerns children’s rights based on “*children as competent agents*”. Eva- Maria Svensson further states that a “child *needs* protection because it cannot protect itself, at least not fully and full legal responsibility is shared between the parents and the society” She refers to this as a “*need-oriented perspective*”. In this regard, she argues that this type of perspective is very ‘prevalent’ in the United Nations Convention on the Rights of a Child (UNCRC), which also incorporates the balance between the needs of children and their capabilities which must be taken into consideration and reflected upon when one parent suggests to relocate to another jurisdiction with a child. (Eva-Maria Svensson, 2013).

Also under English numerous articles concerning the European Court Human Rights (ECHR), as scheduled to the Human Rights Act 1998, in particular the right to respect for family life as stated in Article 8. Although that Article is not directly pointing to a right of contact between family members, the European Court of Human Rights on has stressed that:

“the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents has broken down, and domestic measures hindering such enjoyment amount to

an interference with the right protected by Article 8 of the Convention”. (ibid, 2008).

In his article, *Relocation - the Continued Search for Common Principles*, Rt Hon Lord Justice Thorpe noted that Article 2 of the European Convention on Human Rights Fourth Protocol grants all European Union citizens the right "to freedom of movement and freedom of choosing their residence." Protocol 4 thus acts as a helpful reminder that everyone in a family, has rights. The role of the court is not only to safeguard the individual's rights, it is also to consider individual's rights when conflicts arise. The European Union's goal is also to guarantee the right of European citizens to travel within the Union. (Rt Hon Lord Justice Thorpe, 2010 p.5) Therefore within United Kingdom, whenever a court is deciding a relocation case, all statutory goals must be considered under Section 1 of the Children's Act 1989. Where the order is contested, it is obligatory to consider the welfare checklist under section 1(3) of the Children's Act 1989.

The United Kingdom's *Children Act 1989* (Children Act) strongly forbids removing of a child from the country without the written consent of "every person who has parental responsibility for the child or the leave of the court" (subsection 13(1)). This section means that if a residential order is in effect, a parent with full custody rights may only take a child out of the jurisdiction for only up to one month, that is to say, without the approval of the parent with parental responsibility. The approval of the other parent with parental responsibility must be acquired if the other parent wishes to relocate with a child for longer periods and to other jurisdictions. However, in case one of the parents refuses to give consent to the parent who wishes to relocate, a court order may be sought from the court to seek permission for relocation with the child/children. Paradoxically, it should be noted that where no residence order is in force but more than one parent has parental responsibility, consent must be obtained from the other parent to remove the child from the jurisdiction for a certain length of duration. Again, if that approval is not forthcoming, the judiciary must have a 'recourse'. Where a parent is the primary care giver of a child, the parent may generally move without anybody's consent. But precautions should be taken since caselaw has demonstrated that there are instances in which the parent, even without the parental responsibility, is considered "as the de facto primary parent" hence making the removal of the child from the United Kingdom a criminal offense under the Child Abduction Act of 1984). (Marilyn Freeman, 2009) <http://www.reunite.org/edit/files/Library%20%20reunite%20Publications/Relo>

[cation%20Report.pdf](#). The significance of the Hague Convention is to save children who are already being affected by a marriage or separation breakdown of their parents from further disruption which is encountered when they are wrongfully taken by one parent from one habitual jurisdiction and relocated to another jurisdiction for the “purposes of finding there a supposedly more sympathetic forum or a more congenial base” (Kisch Beevers, 2006).

Therefore, when dealing with cases that concern relocation, the parent must submit a petition to the court requesting the relocation of the child/children to another jurisdiction. The non-moving parent will eventually oppose a relocation against the transfer of the child. Consequently, judges often ask for custody assessments to provide a comprehensive, unbiased welfare assessment to assist them in reaching better decisions which are in favour of the child's welfare. In this case, the court examines conflicts concerning the relocation basing on previous caselaw and the corresponding jurisdiction law which is in this case, United Kingdom. The evolution of case law has shown a strong tendency towards the legal standards of children's best interests and towards taking into account particular relocation factors as described in laws and case law. (William G. Austin, James N. Bow, Andrea Knoll, and Rebecca Ellens 2016).

Generally, in relocation law, courts usually allows a parent who wishes to relocate to do so long as an agreement has mutually been reached by both the relocating parent and the non-residential parent and that there are no selfish motives for the relocation. The foundation for developing the ' permissive' relocation law in favour of the parent who wishes to relocate is the prioritization of a ' fresh family unit' which is established by the relationship of the parent and the child after the divorce. The welfare and the positive social development of the child is presumed to depend on continuity in this relationship. (Austin, William 2000). Although each relocation case is distinctive, several distinct fields of empirical socio-legal studies could help the parents involved and the judiciary to predict the probable effect of child relocation. Theses involve studies on the impact of relocation on children's mental and psychological development; the effect of having only one parent; the impact of divorce; and the effect of remarriage. (Warshak ,Richard A 2000).

If a residential parent with custodial rights tries to relocate to another country or region, the greatest possible post-divorce situation is endangered for children. The desire to move represents the most drastic instance which shows families and children's conflicting wishes and desires, as well as custodial and non-custodial families ' competing wishes and desires. Most children don't desire to leave their residential society or they don't want to leave

their non-custodial parent behind and at the same time, the non-custodial parent does not want them to go either. However, in a modular society, parent and child relocation has become a significant issue. (Marion Gindes,1999).

As mentioned earlier, in this study, the researcher analyzes major considerations involved when examining relocation cases, such as, psychological effects that affect children after relocation has taken place, the factors which the courts put into consideration while passing judgment for relocation and the various motivations for relocation. I will begin with the factors which the courts put into consideration when one parent makes an application to relocate to another jurisdiction.

Factors that family law courts put into consideration when one parent wishes to relocate to another jurisdiction

“... an unfettered discretion in the judiciary leads to unpredictability and a lack of uniformity in decision-making and we support the development of a common international framework to guide the exercise of judicial discretion”. (ELROD, LINDA D. 2010))

The above quotation means that courts look at a number of factors when evaluating relocation cases.

In United Kingdom, the law on relocation is statutorily governed by section 13 of the Children Act 1989, which lays down the factors to be generally considered by the court when one of the parents of a child seeks to remove a child from his or her habitual resident country to another country. (Peter Boshier 2010) Such factors are established in the Court of Appeal judgment *Poel v Poel* [[1970] 1 WLR 1469 CA include,

1. The welfare of the child is the paramount consideration; and
2. Refusing the primary carers reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children.
3. In the majority of cases the diminution in contact to the other parent is also likely to impact detrimentally. The judge’s task is then to strike the balance having regard to these and other welfare considerations.

Basing on the fact that the welfare of children is largely dependent, it is important for the courts to ensure that children will have the best parenthood after divorce or separation. The duties of parents in raising their children during marriage and after divorce has altered

significantly over the years and continues to even develop today.(Joan B. Kelly, 1994). Since the term welfare is significantly used throughout this paper it was explained by Lord Justice Munby in *Re G(Education: Religious Upbringing) [2012] EWCA Civ 123 I FLR 677* as; “Welfare.. extends to and embraces everything that relates to the child’s development as a human being and the child’s present and future life as a human being”. Additionally child best interests includes;” taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare consideration, education and child environment”. (Hayes and Williams, 2018). Thus the Children’s Act 1989 stipulates that when determining any question concerning the relocation and upbringing of a child, the welfare of the child should be the primary consideration of the court. The factors include, the wishes and feelings of a child, physical and emotional and educational needs of a child, likely effects upon a child in case of any change of circumstances. Additionally, family law courts that deal with relocation cases are required to consider this' checklist' only when dealing with a disputed request for an order under section 8, but it is deemed excellent practice for judges to refer to checklist factors when dealing with requests that concern leave to remove a child under section 13(1)(b), despite the fact that there is no statutory duty to do so.(Perry 2001).The researcher will consider some (although not all) of the factors due to limitation of pages.

The wishes and feelings of the child or children concerned

One of the most significant elements of the Children's Act 1989 is that of determining the child's wishes, feelings and emotions, not only in the framework of applications to courts, “but also regarding many aspects of a child being in care of a relocating parent.” (Sally Jones 1992). Internationally, there is almost no mutual agreement on how judiciaries should determine controversies over relocation cases. The commonly accepted view is that the child's best interests which should be a major factor. But different countries have a variety of considerations which contain the concept of the' best interests' and help judges in referring to the welfare checklist in order to reach his or her grounds. The first of these considerations in United kingdom is' the unpredictable wishes and feelings' of the children which is considered in light of the child/children’s age and understanding. (Cashmore, Judy, and Patrick Parkinson. 2016.)

Linda D. Elrod’s tentative hypothesis regarding the best interest of the child is that a parent wishing to relocate must demonstrate that the relocation will positively impact

the child's physical, educational, and emotional development not forgetting the age of the child/children, their stages of development, and social and economic welfare. (Ibid 2010).

Paradoxically, it has been noted by Williams and Hayes that children may at times feel that the contact they have with a certain parent is problematic. In such cases, courts must weigh the child's wishes and feelings in order to find a justifiable reason for denying contact with another parent. This was illustrated in the case of *Re C (Contact: No Order for Contact [2000]2FLR 723 (Fam)* Where the judge passed a decision to end all contact between a father and an eight year old boy. The brief facts were that the father and the boy had contact but this ended due to the fact that the boy alleged that the father's new step son had been sexually abusing him. The boy told his school that he would commit suicide because he was not happy with the way he felt in his own fathers home. (Hayes and Williams 2018 p. 536). In this case, the mother was rewarded a relocation order because she feared for the safety of his son and additionally, the son wanted to end contact with his father because the father did nothing to help him stop his step son from sexually abusing the eight year old son. The judges put the wishes and feelings of the son and reached their verdict of the son ending contact with his father which was in his own best interest.

The physical, emotional and educational needs

The court considered the welfare principle in *Re C (Child)* 29 July 1999 when it stated that;

“The guiding principle is that the welfare of the child is the paramount consideration of the court. That is the only duty imposed upon the court by s 1 of the Children Act 1989. In many cases that does and will involve the court recognizing that it is wrong to deprive the non-residential parent of contact without there being cogent reason for doing so. If it is wished to call that a presumption, then it is there in the practice of the courts. What reasonable contact is a matter which depends on the facts and circumstances of the individual case, as to which there is a broad discretion.”

This factor is stipulated under section 1(3)(B) of the Children's Act 1989 which includes the physical needs of the child such as accommodation, food, clothing's among others. In principle, child welfare is inextricably related to education. It is essential for their well-being to ensure that children have access to educational possibilities and to ensure that children have access to healthcare, housing. Additionally, Eric Chung noted that, “*if socio-*

economic disadvantages do not obtain sufficient education, economic self-sufficiency and the patterns of poverty that plague the welfare system will not be achieved. Socioeconomic status and academic output are simultaneously extremely linked". (Eric Chung, 2018). Illustration is taken from the case of *Re G[2012] Education: Religious upbringing* 2012 Here the father proposed that children went to an ultra-orthodox Jewish school which separated boys and girls from which very few children went on to attend universities. Court of Appeal took the mothers reasoning which left the children with open opportunities to choose from their adult lives that treated equally both girls and boys. In this case, we see that the fathers reasons were discriminative in nature and it was therefore in the courts interests to take an equality stance that was in light with gender equality.

Any harm which the child/children have suffered or is at risk of suffering

It is generally accepted among social researchers that understanding how the harm of domestic violence operates is relevant to understanding how women can achieve success in decreasing it. Consequently, "being able to identify and distinguish between different types of conflicts that can assist courts to differentiate between" normal and functional conflicts and conflicts that can signal pathology and be dysfunctional, which is particularly important where children are involved". (Mary Przekop, 2011). Notably, there is evidence that an abusive father who abuses a mother in the presence of a child is both physically damaging and mentally harmful to a child/children. In such instances, courts take into consideration any harm which the child has or is likely to suffer when assessing issues of relocation.

In a relocation assessment, how to assess the issue of a partner violence history is an extremely complicated problem. Research identifies that potential harm to children if they were previously subjected to domestic violence or if there is/was a danger of future exposure. It is always wanted to be considered by evaluators as an important risk factor. When violence is a problem factor, courts take precautionary measures when evaluating relocation. If there is a more significant domestic violence and there are ongoing residual pathological behaviors like intimidation, harassment, stalking repeated physical abuse, then there is an argument for relocation to geographically protect children concerned and improve the efficiency of custodial parent's parenting and the environment of the children. (William G. Austin, 2008).

An overview of case law concerning relocation

The leading relocation case in United Kingdom is *Payne v Payne* which is landmark case in which the court came to the final decision and avowed that rejecting a custodian's order to remove a child from one jurisdiction to another was likely to be impair the child's welfare. The Court of Appeal in United Kingdom set out its principles that govern relocation as stated above. On 24 July 1970, the court passed its judgment in the case of *Poel v. Poel* (1970) 1WLR 1469 in which three residing judges agreed that the mother's application to move back to New Zealand had to be "governed by the paramount factor of child welfare". Nevertheless, the court found that the wellbeing of the children is best achieved by acknowledging and promoting the primary caregiver's capability. (Rt. Hon. Lord Justice Thorpe 2010). This concept was noted by Lord Justice Sachs in this note;

“When a marriage breaks up, a situation normally arises when a child of that marriage, instead of being in the joint custody of both parents, must of necessity become one who is the custody of a single parent. Once that position has arisen and the custody is working well, this court should not lightly interfere with such reasonable way of life as is selected by that parent to whom custody has been rightly given. Any such interference may, as my lord has pointed out, produce considerable strains which would not only be unfair to the parent whose way of life is interfered with but also to any new marriage of that parent. In that way it might well in due course reflect on the welfare of the child. The way in which the parent who properly has custody of a child may choose in a reasonable manner to order his or her way of life is one of those things which the parent who has not been given custody may well have to bear, even though one has every sympathy with the latter on some of the results.” Recent cases of relocation that are being discussed below adopted the judgment that was delivered in *Poel v Poel* .

International relocation cases, consume time because they must be carefully examined in family courts and additionally turn out to be very costly to parties involved. The issue of psychological stress and the effects of financial status upon families involved in relocation cases basically means that the “paramount considerations” and the welfare and best interests of children are likely to be severely impacted regardless of the outcome of a judicial judgment. The welfare of most children largely depends on the bond between children

and their parents and the amount of economic resources available in their homes. These two pillars collapse when relocation to another jurisdiction takes place under the weight of the drawn conflict over relocation (Mark Henaghan ,2009).

The following relocation cases to be considered in this study include *Re B(children) (Removal) from jurisdiction; Re S (A child) (Removal from jurisdiction) [2003] EWCA CIV 1149, Re B [leave to remove [Impact of refusal |EWCA CIV 956, and Re M (Minors) Contact: violent parent) (1999).*

In the case of *Payne v Payne* [2001] EWCA CIV a mother wished to permanently relocate from England with her daughter to another jurisdiction which in this case was New Zealand. The mothers reason for relocation was that she was very unhappy. (Perry 2001). The father appealed against the leave to remove his child to another jurisdiction, but the courts ruled in the mother's favour. Despite applying for a residence permit, the father was denied as the judge believed that the child could be moved permanently moved to New Zealand due to the fact that the mother always felt isolated and depressed living in London and she therefore disliked where she stayed and lived in fear of her life due to high criminal incidences that used to happen in London particularly where she lived. (Judith Bray, 2012). Perry adds that in case of mother's stay in England, her unhappiness, depression and feeling of isolation would be magnified to the extent that could be disadvantageous to a child's welfare. Moreover, the child's father would be in a position to afford tickets to visit his daughter at least twice or thrice a year mitigating the loss effectively for both the child and himself (Perry 2001). The Judge applied the judgment that in *Poel v Poel* which stated that courts must accept removing a child from one jurisdiction to another jurisdiction if the mother's wish to relocate is not motivated with selfish interests which include ending contact/relationship between the father and the child. (Judith Bray 2012) In a nutshell, the Court of Appeal dismissed the fathers application and leave to remove the child out of United kingdom to New Zealand was granted. The impact of Payne's ruling on the future and continuous contact between father with the child was disastrous. From a socio-legal perspective, Bray argues that despite the fact that the father was capable of paying air tickets to go visit his child in New Zealand, he would nevertheless miss the daily contact that he had enjoyed before.(Bray 2012).

Similarly, scholars have over years criticized the judgment in *Payne v Payne*. For example in her article ,*The Wisdom of Solomon: Relocation on Relationship Breakdown,*

24 Denning L.J. 177 (2012), Judith Bray recognizes Andrew Bainham who criticized Payne's ruling stating that it overlooked the importance of continued relationship contact between the father and his child. He went on to quote Article 9(3) of the Convention on the Rights of the Child of the United Nations, which states that:

"respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests"

With reference to the above, Bray(2012) continues to refer to Andrew Bainham who noted that it was "regrettable" that the Court of Appeal did not consider the issue of continued father-child contact with great weight and according to state international obligations. Paradoxically, in *Payne v Payne*, it appears that the welfare principle used by Court of Appeal fails to consider particular fundamental rights and freedoms that fall under the Human Rights Act. Additionally, the European Court of Human Rights stipulates that children's rights should be given extra weight when "balanced against the rights of their parents, the children's rights are not automatically overriding" (Herring and Taylor 529).

The opinion in *Payne* was cited in *Re B(Children)(Removal) from Jurisdiction; Re S (A Child) (Removal from Jurisdiction)* [2003] EWCA CIV 1149 ,After her marriage fell apart, a mother met a South African man who was an entrepreneur. They fell in love and the mother wished to relocate to South Africa together with her children aged 7 and 10 years. The mother applied to court for permission to grant her relocate her children because she wanted to begin a new fresh life. Following the judge's observations and basing on the facts of the case, it appeared that the presiding judge had come up with the following subsequent findings: The judge stated that:

'It was undoubtedly the case that the mother in character is mercurial'. Although she was approaching 40, the mother's description of her relationship with her new partner had been likened by the judge as being that of 'the first fine careless rapture of a teenager'. He said that the relationship itself was 'largely untried and untested'."

The judge went on to state that although the mother and her new partner talked having more children, they nevertheless discussed about getting married. In this case, The

judge was particularly worried about mother and children's safety when they would relocate to South Africa and things didn't work out. The judge added that In South Africa the mother had no friends or close family, and that should they and her partner separate without marriage she would find herself in a very bad financial status. Having weighed all the facts of the case, the judge noted that:

“At this stage, with neither party divorced, no proposals to remarry, very unclear as to what might happen, and an untried and untested relationship, in my judgment, despite the enthusiasm of both parties for it, I am concerned that from the point of view of the children these proposals are not realistic at present. I am concerned about that to the extent that I conclude that although the practical matters have been sorted out, the application as a whole is not realistic for that reason.”(Mary Hayes, 2006).

The mother appealed to the Court of Appeal which granted her permission to relocate. The court of Appeal overturned the decision of the first court thereby holding that the court of first instance had not given optimum weight to the case and that the principal of welfare as part of a whole new family had totally been ignored. (Hayes and Williams, 2018). Following *Re M(Minors) Contact: Violent Parent* (1999), relocation may be permitted or denied by the judiciary if proof of violence is present in a home (Araji 2012). A violent father of a 9-year-old child who had seen his son in a contact centre for a number of years. The contact stopped when the parents had an argument, whereupon the child declined to see his father anymore. Notably, there was no direct contact for two years at the time of the hearing and the mother stated that she could neither pressure on her child nor force him to see his father. However, a forensic psychologist testified that this was an example of “parental alienation syndrome” which the mother had alienated the child from his father. It was suggested that this syndrome could be treated through therapy. This was however denied by the court which recognized that the mother, although unenthusiastic, was not abusive and did not seek to convince her son to dismiss contact deliberately or directly from the father, adding that; after all, she had held the contact at the contact centre for five years.(Barnett 2000). The judge did not want to prescribe treatment for underage children without the mother's approval, given that the said syndrome was not prevalent in children. In addition, as much as possible, the law should safeguard children from abuse (Parkinson, Judy, and Judith 2010). Furthermore, the Court of Appeal stated that parental alienation syndrome was not a recognized disorder. It recognized

the court's subsequent finding that the child was “normal and healthy” and supported its ruling not to order direct contact. To make contact, the child should be subjected to treatment. The court was not ready to create such an order against the desires of the mother in relation to her child . The judiciary felt this would have a significant negative impact on the child and his long-term relationship with his father if he were compelled to see his father. (Felicity Kaganas) see <https://bura.brunel.ac.uk/bitstream/2438/5816/2/Fulltext.pdf>. Given the father's history of violence, the judge applied the welfare checklist and found that the only rational decision based on the facts of the situation was based on his discretion, thereby ordering the indirect contact with which he was satisfied with.

Kelly notes that when courts decide custody arrangements orders for “ well-functioning” 9-year-old boy with two loving and supporting parents who contribute physically, emotionally and mentally to the child's well-being, the judge may consider both parents to continue having contact with their child. Whereas if a 9-year-old boy is disturbed, angry, mentally and physically not in good terms with one parent who also happens to be emotionally and physically abusive, the judge will be more “likely to weigh the child's need for relief from the corrosive effects of that abusive parent and recommend a parenting plan that limits the child's contacts with that parent” (Kelly,1997).

CHAPTER 3

DISCUSSION

Family Breakdown and its impact on children and the non-moving parents.

In this chapter the researcher discusses the two types of harm that affect the nonmoving parent and the child after relocation has taken place. These types of harms **include;**

- (i) The relationship harm to nonmoving parent-child relationship**
- (ii) The development harm due to diminished parent-child relationship**

According to Felicity Kaganas and Shelley Sclater, the most prominent is what socio-legal scholars refer to as “the dominant discourse about welfare”. In this discourse that concerns welfare, children are regarded as vulnerable while divorce and separation are considered as potentially harmful to both children and parents involved. Children are at a risk of harm if, their parents fail to handle the divorce correctly and their parenting skills hence creating the two different types of harm that are discussed below. (Felicity and Day Sclater 2004).

The Relationship Harm

One of the main issues that arise during legal disputes between parents following separation and divorce concern the potential relationship harm to the non-moving parent-child relationship. Studies have shown that the relationship between infants and their parents unfolds through four major phases which included social responsiveness, discriminating sociability, attachment, and goal-corrected partnerships (Stevenson et al. 2018).

The first three phases of this process involve infants learning to discriminate among parents and caregivers through the establishment of extensive relationships with them and the development of emotional attachments as well (Stevenson et al. 2018). During the first two months, children employ a litany of innate signals particularly smiling and crying in bringing and keeping caregivers close to them (Stevenson et al. 2018). Also, they do not discriminate against caregivers. Cashmore and Parkinson (159) note that the more discriminating processes of attachment are initiated by both the relief of distress from pain or anger, and the budding interest in facial expressions and adult vocalizations. Children at this age do not have recourse to images of parents in the parents’ absence. This can be attributed to their rather primitive cognitive processes and memories. Therefore, frequent interaction is

necessary during this stage to facilitate the process of relationship formation (Cashmore and Parkinson 155). Lack of regular contact and caregiving from the noncustodial parent may therefore result in a lack of familiarity and closeness with the child.

Discriminating sociability becomes an issue when children attain the age of between two to seven months. During this time, children begin recognizing their parents and prefer interacting with them (Austin 2015). It is also at this stage that they begin anticipating the responses of parents to their signals. Nonetheless, they do not understand that their parents continue existing even in absentia (Stevenson et al. 2018). Children in this age bracket evince signs of attachment in the making by virtue of how they initiate and enjoy social interactions with their parents. While they may not protest separations from their parents, these children require more time with their parents for continued attachment formation. Relocation or divorce during this stage jeopardizes these growing relationship attachments (Austin 2015). Children caught in such circumstances may view parents who were absent for long periods as strangers. Both fathers and mothers are competent enough to provide care and love to their children if given the opportunity and time to gather the necessary experience (Austin 2015). However, separation or divorce during this stage may undermine the development of relationships between non-moving parents and their children.

It is stated that attachments start becoming apparent when children are between the ages of 7 and 24 months. During this stage, children crave closeness and interactions with their preferred parent. Numerous studies have shown that while fathers tend to spend less time with children than mothers, many children in this age form multiple attachments to both parents (Stevenson et al. 2018). Children also begin protesting when separated from their primary attachment figures. Such protests can be seen through wary reactions to strangers and most importantly, the realization that parents still exist even when absent (Warshak 2000). The relationships between children and their parents is strengthened and maintained through regular interactions. Evidence suggests that lack of these regular interactions results in significant distress that may persist even after reunions (Kelly and Lamb 2003). Using a socio-legal perspective, it can be stated that separation or divorce during this stage causes child/children to lack the necessary social, emotional, and physical interactions which undermines relationships with non-moving parents, and consequently prevents the consolidation of relationships that occur at this phase (Kelly and Lamb 2003).

When children attain the age of two years, they begin understanding why parents have to leave and come back. Stevenson et al. (2018) attribute this understanding to the increased language and cognitive abilities that enable these children to tolerate longer parental

separation, stress-free. Nonetheless, their primitive understanding of time inhibits them from understanding and coping with extensive parental separation spanning several months (Stevenson et al. 2008). Therefore, separation or divorce still holds the potential to erode established relationships between 2-year-olds and their noncustodial parents unless the parents broadly and meaningfully interact with the children on a monthly basis (Kelly and Lamb 2003). When deciding separation cases, the presiding judge must understand the type of interaction needed to strengthen and sustain noncustodial parent-child relationships (Kelly and Lamb 2003). Most importantly, the decisions must ensure that measures have been established to encourage healthy parent-child relationships. To prevent non-moving parents from becoming distant relatives to their own children, plans of parenting during separation or divorce should endeavor to reduce the length of time for long-distance visits and consequently increase opportunities for activities of normal parenting during reunions (Cashmore and Parkinson 161).

Concluding this relationship harm caused as a result of relocation, it should be noted that although courts state that the most profound element in relocation cases is "a child's need for stability and continuity in established patterns of care and emotional bonds," Wallerstein as recognized by Richard Warshak somehow diverts himself from the theory of "continuity of emotional bonds, which is in plural, to continuity of the bond strictly between mother and child". The scholar bases his theory on two reasonings;

(1) "All our work shows the centrality of the well-functioning custodial parent-child relationship as the protective factor during the post-divorce years."

(2) "Frequent and continuing contact between father and child is not a significant factor in the child's psychological development (but this] does not diminish the important role of the father or of the father-child relationship in the child's growing up years."

Warshak continues to state that Wallerstein constantly applies the term "family unit" to define the custodial mother's home, implying that after divorce the father of the child/children ceases being a member of that "family unit". This accordingly causes relationship harm to both the child and parties involved.(Richard A. Warshak 2000).

The development harm due to diminished parent-child relationship

Besides relationship harm, the developmental harm due to the diminished parent-child relationship is also another critical factor to be considered in relocation or divorce cases. Academics like Cashmore and Parkinson (157) note that the relationships

children have with their parents significantly influence their cognitive, personal, emotional, and social development not only in middle childhood but also in adolescence. Numerous studies have determined that interfering with parent-child relationships undermines the development and adjustment of children (Warshak 2000). Still, there is evidence suggesting that there exists a direct linear relationship between separation age and later attachment quality in adolescents (Warshak 2000). In particular, children separated from their parents during the first five years of their development often end up having the weakest attachments to their parents. Children raised under the supervision of both parents hardly experience any development issues as opposed to those raised in single-parent homes (Kelly and Lamb 2003). In earlier studies in which the quality of child-father relationships was not assessed, it was found that there exists no association between child development and the frequency of father-child contact (Kelly and Lamb 2003). Age and gender also significantly determine the development of children affected by separation or divorce. One study determined that boys and younger children adjusted better to their new environment with regular visitation from their fathers as compared to girls and older children (Kelly and Lamb 2003).

In separation cases involving low conflict, frequent visitation from the non-moving parent particularly fathers is associated with improved child development whereas in cases involving high conflict, frequent visitation from the non-moving parent is associated with poor child development. Studies have shown that active involvement by competent non-moving parents through measures such as emotional support, help with projects, and authoritative discipline was related to positive child development outcomes following divorce or separation (Kelly and Lamb 2003). What is more, increased participation of non-moving parents in the education of their children significantly promoted their developmental, evidenced through improved grades, few suspensions, and low drop-out rates (Kelly and Lamb 200). Other studies have demonstrated that increased paternal involvement in two-parent households is related to improved social and academic competencies in young and school-going children (Cashmore and Parkinson 158). What this evidence suggests is that children who enjoy warm and positive relationships with two actively involved parents develop better emotionally, physically, and even psychologically than those who experience diminished relationships with their parents.

It is noted by Gilmore that separation or divorce deprives children of meaningful relationships with their non-moving parent. Such children experience poor psychosocial development notwithstanding their relationship with the other parent (Gilmore 2008). Studies have shown that children raised in fatherless households experience several challenges

concerning psychosocial adjustment, educational achievement and behavior at school, and social adjustment as well (Gilmore 290). As a result, they may end up engaging in antisocial and criminal behavior. Such children may also be incapable of developing and sustaining intimate relationships (Cashmore and Parkinson 2016). Children can only achieve their psychological development potential through the establishment and maintenance of meaningful relationships with both their parents regardless of whether they are separated or not (Kelly and Lamb 2003). Attachments between parents and children are more delicate during the earliest stages of formation. Therefore, many researchers concur that young children are more susceptible to interferences during the formation and consolidation of attachment (Kelly and Lamb 2003). When determining the possible psychological impacts of relocation due to divorce or separation, courts must demonstrate consideration to the age of the children as well as the stage of the attachment process when the noncustodial parent was actively involved in parenting regardless of the amount of time the parent spent with the child following separation (Austin, 2015). Kelly and Lamb (2003) recommend that divorced or separated parents who wish to relocate must wait until their children attain the age of at least two or three years. The rationale is that during this phase of attachment formation, children are provided with the essential language and cognitive skills required in the maintenance of long-distance relationships especially when they are separated from one of their parents by formidable distances (ibid).

Separations that occur from the decision of one of the parents to move or take the children to a place away from the other parent come along with controversial, heart-breaking and complex aspects in a society. Divorce prevents the accessibility of the children by the parents. Living in different places changes the relationship of both the child and the parents in a manner that no single individual can reverse the situation. Due to the increased litigations about separation and the relocation of the parents, litigants and the courts have highly called for experts to establish evidence which can help in testifying on aspects that are of best interest to the children (Saini, Michael, Daria Allan-Ebron, and Jessica Barnes, 2015). In my own opinion, relocating children often has proved that they are at a risk of starting to smoke, drinking alcohol, facing depression and additionally attempting suicide. Therefore, it is evident that the cases of divorce or separation are on the increase and hence the society and the courts should come up with measures that are aimed at helping the divorced couples solve the crisis that happens after the marriage. However, the solution to the divorce crisis should be done in favor of the children. It is because such laws are known to have negative effects on both the child and the nonmoving parent. Therefore, there is a need for law enforcement

agencies to come up with measures to ensure that the law favors the child because they end up suffering because of the decisions made by their parents (Cooke, Mulder, and Thomas, 2016). Kelly argues that the challenge judges encounter after parental separation or divorce, is that “children have numerous competing developmental needs that were not in competition during the marriage. After divorce, the challenge is to understand and balance these competing needs, particularly those of continuity and stability”. Some academics perceive the importance of the bond between a parent and a child and suggest that in order to keep such strong bonds, contact with each parent is significant after divorce or separation and after relocation has taken place. (Kelly 1997). Additionally, the process of relocation where parents separate should be addressed in a manner that does not detrimentally affect children. Wall and Amadio (1994) are of a view that children’s best interest are achieved by giving them protection the help they need during difficult separations or divorce and helping them prevent relationship and developmental harm that are caused as a result of relocating to another jurisdiction without the nonmoving parent . They state that:

“A major psychoanalytic concept relates to the significance that continuous relationships with primary figures are necessary for the development of children's sense of self and identity. The loss of a significant other ordinarily is considered to have a profound negative effect on children's development, especially if it occurs in the early years of children's lives. (p.44)

CHAPTER 4

Enabling conflicting management and reduction

Conclusion 1

”a child's development is not something with which courts should experiment and risk disruption. Although ideally a child would develop a close relationship with his loving and caring parents through an equal division of parenting time, the ideal is difficult to achieve when . . . the child's parents . . . establish their homes in different communities . . . the paramount consideration ... is the child's best interests, not those of his parents.” (Elrod, Linda .D, 2010).

Based on the analyses and discussions presented in this thesis, in order improve the effects that come as an aftermath during and after relocation, I argue that necessary steps/procedures should be taken into consideration. For example, the judiciary , legal practitioners and parents should acquire more informative ways regarding settling relocation

disputes. For example; children's voices should be heard; and public policy must support parents to settle their own conflicts through proper education, mediation, or a cooperative mechanisms. (Elrod Linda .D 2010). When the issue of relocation is put into question, children's best interests must be the main concern in any discussion about relocating children to different jurisdictions. In relocation cases that follow parental separation or divorce, courts must decide on several issues, including whether primary custody parents can relocate with their children, and if possible, what access and social resources will be relevant. Warshak (2000) observes the issue of relocating as not adjudicated in situations when primary custodial parents are at liberty of moving unless a real danger to the child exists and can be proven. However, the issue of access to social resources must be taken into consideration, even though both court trials and judicial settlement have noted inadequate avenues for the careful reflection of the special developmental requirements of children (ibid,p.93). Following the resolution of the relocation factor, it is imperative to encourage mediation, even in those cases where substantial degrees of violence and hostility take place. Kelly and Lamb (2003) note that in circumstances where there is evidence of continuous violence or mental instability after relocation, it may be necessary to conduct focused custody evaluations that aim at determining that access.

Numerous quantitative studies in the field of relocation have showed that mediation has arguably demonstrated great success in the resolution of challenging and emotional custody disputes in most relocation cases. Evidence from different studies suggests that from about 55% to 80% of such custody disagreements are either partially or fully resolved, with all the clients expressing high levels of satisfaction (Stevenson et al.2018). At the beginning of the 21st century, scientists conducted some studies. They indicated that mediation contributes to significantly high levels of father involvement 12 years following initial intervention (Kelly and Lamb 1999). The effectiveness of mediation is yet to be examined, particularly in relocation cases. However, Warshak (2000,p. 87) notes it as an important strategy, especially considering the social needs of the affected children. Specifically, mediation provides a neutral environment for parents to make decisions regarding several critical issues. They are such as the frequency of visits to non-moving parents, the allocation of driving and travelling responsibilities, cost-sharing, and the selection of summer vacations and holidays as well (Austin 2015). Agreements, reached through mediation, are more potent and superior than the inflexible orders, which are often imposed by court trials or judicial settlements. Needless to mention mediation provides room for parents to review their arrangements at certain critical developmental stages in the lives of

their children (ibid, p.624). For instance, the primary custodial parent may make the forceful decision of finding free housing in the new location, and the other parent may have considerable disagreements. Eventually, focused discussions through mediation will ensure that children enjoy normal parenting as much as possible. The custodial parent can also agree to schedule visits to the other parent's location several times a year to provide their children with natural social development. Other family members are also important social resources for many families, and should, therefore, be part of the mediation process in relocation cases following separation or divorce (Gilmore,2008).

Parents may continue expressing their anger and frustration in destructive ways following the moving. As a consequence, courts have a legal prerogative to set the appointment of parent coordinators or special masters. The latter ones are responsible for facilitating and monitoring arrangements, settling parental disputes, providing insight on the social requirements of the children, and managing communication and hostility between the sides (Cashmore and Parkinson 2016). Essentially, it is the parents who specify that such an appointment should be court-ordered. Austin (2015) observes that as a hybrid mediation-education-arbitration strategy. This intervention is effective among parents who continue litigating after the divorce or relocation. Again, research into the effectiveness of such interventions is scant. Nonetheless, previous findings suggest that they not only significantly reduce litigation rates but also promote improved satisfaction among the parents. Processes of mediation and arbitration have the potential to settle many of the social challenges in relocation cases, taking into consideration the emotional, and cognitive development of children.

Overall, various qualitative empirical studies show that the majority of court verdicts in relocation cases after separation or divorce provide rather simple solutions to these custody disputes. Most of these decisions tend to favour either the primary custodial parent. Thus, according to my findings and in my own view, they are largely influenced by the politics of gender and fairness issue. This fact shifts the focus of these cases away from their primary objective, ensuring the best interests of the children. This research paper maintains that the social and developmental interests of children in societies should be the major concern in the relocation cases. Therefore, the courts need to examine several key issues when seeking ways to achieve child-focused outcomes in the challenging relocation situations. These issues primarily focus on the social development and well-being of the affected children. They include the quality of the relationships between parents and children, the psychological resilience of the parents, age and developmental requirements of the children,

and also the cultural, educational, and social opportunities available for the children in either location. Court decisions or judicial settlements of relocation cases should prioritize the needs of children by applying legal strategies that will guarantee the emotional, cognitive, and social well-being of the children.

The findings of this research included the fact that parental divorce affect the social, legal and the economic welfare of the child. Consequently, the discussion question in the study was answered. Hence, it was evident that two harms affect the nonmoving parent and the child after separation. It is because the research has indicated divorce cases results to lack of financial support, and the child suffers emotionally because they do not experience parental love (Parkinson, Patrick, and Judith Cashmore, 2016). Additionally, some scholars state that children are more likely to achieve their psychological potentials if they are able to develop and maintain meaningful relationships with both parents, regardless of whether the two parents live together or not. Therefore, if parents lived together prior to separation and the relationships with both parents were, at least, good enough, young children are likely to benefit if they retain the two attachments following separation or divorce.(Kelly and Lamb 2003).

Conclusion 2

Generally as discussed above, the question of relocation after parental separation or divorce is problematic and complicated. However, it is possible to have parenting plans that both accommodate parental relocation and maintain the same proportion of residential parental responsibility that each parent exercises before and after relocation, despite the fact that this could be particularly challenging. Overall, the majority of court verdicts in relocation cases after separation or divorce provide rather simple solutions to these custody disputes. Most of these decisions tend to favor either the primary custodial parent or the non-moving one. Thus, in conclusion, they are largely influenced by the politics of gender and fairness issue. This fact shifts the focus of these cases away from their primary objective, ensuring the best interests of the children. This research paper maintains that the social and developmental interests of children should be the major concern in the relocation cases. Therefore, the courts need to examine several key issues when seeking ways to achieve child-focused outcomes in the challenging relocation situations. These issues primarily focus on the social development and well-being of the affected children. They include the quality of the relationships between parents and children, the psychological resilience of the parents, age and developmental requirements of the children, and also the cultural, educational, and social

opportunities available for the children in either location. Court decisions or judicial settlements of relocation cases should prioritize the needs of children by applying legal strategies that will guarantee the emotional, cognitive, and social well-being of the children.

In conclusion, according to what this paper has presented, parental separation or relocation contributes to severe challenges to children and to nonmoving parents. Court decisions that concern one parent relocating to another jurisdiction usually have adverse effects on upon the parents involved and their children. The problems that they cause are initially addressed in this paper. It is because they highly affect to the relationship between the nonmoving parent and the child hence causing relationship harm to both parties. This relocation causes development of damage due to the diminished parent-child connection. Hence, through the appropriate mitigation and legislation, such harms can be prevented either by courts or through mutual understandings between the parent who wishes to relocate and the nonmoving parent.

I take the view that non-custody parenting is extremely important to a child's development when a relationship with that parent is established. Kelly and Lamb note that single parenthood is not a good choice when it comes to children's development (Kelly & Lamb, 2003), and therefore every possible effort should be made to maintain the beneficial elements of the relationship with the not-custodial parent. These elements, include among others, emotional and physical support, which positively contribute to the child's welfare. When the choice is made by one parent to move to a new jurisdiction, necessary steps should be taken by both parents to maintain relationships with their children. Such steps include making telephone calls, videos and visits. The results of different relocation cases should be closely considered by how motivated parents are in maintaining long-term relationships between them and children involved.

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Terminologies used:

The following terminologies are used throughout this paper.

Relocation: For the purposes of this paper Marion Grindes defined the term relocation to be seen in "terms of a continuum of distance between the noncustodial or nonresidential parent and the child. The impacts regarding visits between the nonmoving parent and the child "change significantly with the distance".(Marion Gindes, 1998).

Child Arrangement Orders: Section 8 of the Children's Act 1989 defines child arrangements orders as, "orders regulating arrangements relating to any of the following; (a) with whom a child is to live, spend time or otherwise have contact, and (b) when a child is to live, spend time or otherwise have contact with any person".

Best interests of a child : Kelly defines the principle of "best interests" of a child as:

“ a combination of factors this child needs in a custody and/or access arrangement that will sustain his or her adjustment and development. This definition operates from the premise that identifiable strengths in parenting, parent-child relationships, and the wider support system should be identified and preserved whenever possible to ensure that the child continues to thrive in the future”. (Kelly, 1997,p. 378).

Welfare: The term welfare means, ”While the requirements may be readily mentioned, it is a matter between judges and academics in interpreting paragraph 1(1) of the 1989 Children Act 1989 which states that the “child’s welfare shall be the court’s paramount consideration”(this is the so-called "paramountcy principle"). (Stephen Gilmore, 2006).