

The Road More Traveled: Ever Increasing Issues Regarding Custody in a Mobile Society

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“Disputes arising from the relocation of a custodial parent ‘present some of the knottiest and most disturbing problems that our courts are called upon to resolve.’” *Arnott v. Arnott*, 293 P.3d 440, 444 (Wyo. 2012) quoting *Tropea v. Tropea*, 665 N.E.2d 145, 148 (N.Y. 1996). In fact, it has been stated that “[r]elocation cases are the ‘intractable problems’ and the ‘San Andreas fault’ of family law.” Elrod, Linda D., *National and International Momentum Builds for More Child Focus in Relocation Disputes*, 44 Fam. L.Q. 341 (2010).

The above are very harsh comments about custody cases but, why do these cases have such a bad reputation? Is it the difficulty in applying the relevant jurisdictional statutes; or is it because these cases are usually filled with drama, and require Courts to make difficult decisions that can permanently shape the life of a minor child? It is most likely the latter. With that being said, this article will provide an overview of some of the jurisdictional issues that may arise in custody disputes, and try to untie some of the perceived knotty problems.

There is little doubt that we live in a transient society today. It should be no surprise to family law practitioners that after a couple physically separates, or after a divorce is granted, that one or the other parent may leave the State of Wyoming with their minor children in tow. When this happens it is simply a question of timing that will have the most effect on a case. The analysis of the timing question relates to when the children left the state with their parent compared to when a legal action is filed with the Court.

The guidelines to answer this timing question are set forth in Wyoming Statutes § 20-5-201 *et seq.*, otherwise known as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). After a parent and child leave the State of Wyoming the first question that needs answered is whether there is a custody order already in place, or whether this will be the first determination of whom should be granted custody.

First, if custody has not previously been granted to either parent by a court in Wy-

oming, or any other state, then you must turn to Wyoming Statute § 20-5-301 to determine which state should make that “initial child custody determination.” W.S. § 20-5-301. If the child has lived in the State of Wyoming for at least six (6) consecutive months before a custody case is started, or if Wyoming was the “home state” within six (6) months of starting a case, and one of his/her parents still reside in the state, then Wyoming would be the appropriate jurisdiction to initially determine custody, and a case can be filed. But, what happens if you are trying to determine custody of a child less than six (6) months of age? In that case it would be “the state in which a child lived from birth with a parent” excluding any “period of temporary absence.” W.S. § 20-5-202(vii).

Second, once the initial child custody determination is made, then Wyoming retains exclusive, continuing jurisdiction over the custody of that child as set forth in W.S. §20-5-302, until a Wyoming court determines that the child and the child’s parents no longer have a significant connection to Wyoming, or a Wyoming court or an outside court determines that neither parent resides in Wyoming any further. This is the ever increasing case load that we are seeing today in our practices when a custodial parent relocates out of state after being granted custody. Further, these are the cases which gain the most notoriety and have been the subject of much discussion in recent years with cases like *Watt v. Watt*, 971 P.2d 608 (Wyo. 1999), *Arnott v. Arnott*, 293 P.3d 440, 444 (Wyo. 2012), and most recently *Kappen v. Kappen*, 2015 WY 3, and *Moore v. Moore*, 2015 WY 125. The notoriety and difficulty of these cases arise after the relocation of that custodial parent with their children. These are the cases that are considered “no-win” and that create enormous tensions for parents and their children, and burden the legal system and the judges who have to decide them. A potential relocation case can generate conflict in cases where there had been none

before, reopen old wounds in others, or exacerbate an already highly-conflicted situation as the left-behind parent contemplates a decreased influence in their child’s daily life. Elrod, Linda D., *National and International Momentum Builds for More Child Focus in Relocation Disputes*, 44 Fam. L.Q. 341, 341-342 (2010).

Third, what happens when a custodial parent moves into the State of Wyoming with their child, and asks you for help in modifying a custody order from another state? To determine whether you can help this potential client you must first turn to W.S. § 20-5-303, to analyze whether or not the UCCJEA will allow you to bring a modification action in Wyoming. Typically, Wyoming cannot modify another state’s custody order unless it has jurisdiction to make an initial custody determination (meaning the child has been in Wyoming six months) and the court of the other state determines it no longer has jurisdiction or that Wyoming is a more convenient forum; or a court in Wyoming or another state determines that the child and both parents reside outside of the state who issued that initial custody order. This usually will involve a conference between the judges of each state to concur on which court should take jurisdiction to modify a custody case from another state, and a simple motion to your local judge is typically all that is needed to initiate this process. Once approval is granted by your local court then one can fully proceed with the modification action.

In conclusion, a quick review of Wyoming Statutes §§ 20-5-301, 302 & 303, along with an understanding of the definitions set forth in Wyoming Statute § 20-5-202, and a review of the current case law on relocation is all that is needed to get you on your way with a custody case when jurisdictional issues are at hand. ●

