

2009 Edition

Parental Relocation (Postjudgment)

A Guide to Resources in the Law Library

- *“Relocation of parent with minor child. Burden of proof. Factors considered by court. (a) In any proceeding before the Superior Court arising after the entry of a judgment awarding custody of a minor child and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, (2) the proposed location is reasonable in light of such purpose, and (3) the relocation is in the best interests of the child.”*
CONN. GEN. STAT. § 46b-56d (2009). (Emphasis added.)
- *“In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the **best interests of the child**, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers.”*
CONN. GEN. STAT. § 46b-56(c) (2009). (Emphasis added.)

Sections:

§ 1 Burden of Proof	3
§ 2 Factors Considered	5
§ 3 Postjudgment Relocation (Prior to October 2006)	9

Tables:

Table 1: Public Act 06-168	7
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Figures:

Figure 1: Summary of 2006 Public Act 06-168—sHB 5536	8
Figure 2: Motion to Enjoin - Postjudgment (Prior to October 2006)	12

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Burden of Proof

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to a postjudgment custody decision concerning the relocation of a parent with a minor child. (Effective October 1, 2006.)
- CURRENCY:**
- 2009 EDITION
- SEE ALSO:**
- [Best Interest of the Child Standard in Connecticut](#)
- STATUTES:**
- CONN. GEN. STAT. (2009).
 - § 46b-56d. "(a) In any proceeding before the Superior Court arising after the entry of a judgment awarding custody of a minor child and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, **the relocating parent shall bear the burden of proving, by a preponderance of the evidence**, that (1) the relocation is for a legitimate purpose, (2) the proposed location is reasonable in light of such purpose, and (3) the relocation is in the best interests of the child." (Emphasis added.)
 - § 46b-56d. "(b) In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to: (1) Each parent's reasons for seeking or opposing the relocation; (2) the quality of the relationships between the child and each parent; (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent; (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements."
- LEGISLATIVE:**
- [Legislative History - Public Act 06-168](#) (An Act Concerning the Relocation of Parents Having Custody of Minor Children)
- CASES:**
- [Forstmann v. Forstmann](#), No. FST FA 02 0189659 S, Conn. Super. Ct. J.D. Stamford-Norwalk at Stamford (Dec. 17, 2007). "The court, having found that the plaintiff has satisfied her burden of proof as to the first two factors in the relocation statute, must go on to consider whether the plaintiff has proven that this move is in the best interests of the two children. This standard has been developed and considered for

many years by the court in case law. Recently, our legislature codified many of these developed factors at Conn. Gen. Stat. § 46b-56(a). This codification was accomplished in 2005, before the legislature passed the current relocation legislation (P.A. 06-168, s. 1). Therefore, the legislature was presumed in using the 'best interests' language in 2006 to be mindful of the addition of subsection (c) to 46b-56 in 2005 (P.A. 05-258, s. 3). The court will, as appropriate, consider these factors as it considers the statutorily-mandated factors of § 46b-56d(b)."

- Butler v. Butler, No. FA01-0165427-S, Super. Ct. J.D. Waterbury at Waterbury (Apr. 27, 2007). "The burden-shifting analysis adopted in 1998 in *Ireland v. Ireland*, 246 Conn. 413, 717 A.2d 676 (1998), heretofore utilized in cases where a custodial parent sought to relocate with the child, was replaced by our Legislature in 2006 with Public Acts 2006, No. 06-168, now General Statutes § 46b-56d...

"The effect of General Statutes § 46b-56d(a) is essentially to codify the tripartite provisions of the *Ireland* rule, at the same time relieving the party opposing relocation of its former Ireland burden of proving, by a preponderance of the evidence, that despite the moving party's showing that relocation is for a legitimate purpose and is reasonable in light of that purpose, the relocation nevertheless fails to be in the best interests of the child. Section 46b-56d(a) now places squarely on the shoulders of the party advocating relocation the entire burden of demonstrating, by a preponderance of the evidence, not only that the relocation is for a legitimate purpose and is reasonable in light of that purpose, but also that the relocation is affirmatively in the best interests of the child."

RECORDS & BRIEFS:

(Case prior to October 2006)

- CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS (January 2001). McGinty v. McGinty, 66 Conn. App. 35 (2001). [Motion to enjoin - Post Judgment](#) (Figure 2)

TEXTS & TREATISES

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000). § 44.11. Relocation of the child's residence

CURRENT COMPILER:

Christopher Roy, Connecticut Judicial Branch Law Library at New Britain, 20 Franklin Square, New Britain, CT 06051. (860) 515-5110. [Email](#)

* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Factors Considered

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- SEE ALSO:**
- [Best Interest of the Child Standard in Connecticut](#)
- STATUTES:**
- CONN. GEN. STAT. (2009).
 - § 46b-56(b). "In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to:
 - (1) Each parent's reasons for seeking or opposing the relocation;
 - (2) the quality of the relationships between the child and each parent;
 - (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent;
 - (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and
 - (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements."
- CASES:**
- [Mellor v. Payne](#), No. FA-01-0076477 S, Conn. Super. Ct., J.D. Tolland at Rockville (Feb. 23, 2007). "In summary, the child's life will be enhanced economically and emotionally by the family's substantially increased income. There will be far less stress on the family unit with financial pressures eased. Educationally, there is no evidence that the Florida schools are inferior to those in Connecticut. Emily's relationship with her father is unlikely to change. As the GAL pointed out, she is almost ten years of age and her relationship with her father is established as one of visitation. . . The mother has met the burden of establishing the criteria set forth in the § 46b-56d and the Court will grant her permission to relocate to Florida..."
- LEGISLATIVE:**
- [Legislative History - Public Act 06-168](#) (An Act Concerning the

Relocation of Parents Having Custody of Minor Children)

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Table 1: Public Act 06-168

<p style="text-align: center;">An Act Concerning The Relocation Of Parents Having Custody Of Minor Children P.A. 06-168</p>
<p>To Require That, In Child Custody Proceedings In Which A Motion Is Made By Either Parent Regarding Relocation With The Child, The Relocating Parent Has The Burden Of Proving That The Relocation Is In The Best Interests Of The Child.</p>
<p style="text-align: center;">Substitute House Bill No. 5536 Public Act No. 06-168</p> <p>AN ACT CONCERNING THE RELOCATION OF PARENTS HAVING CUSTODY OF MINOR CHILDREN.</p> <p>Be it enacted by the Senate and House of Representatives in General Assembly convened:</p> <p>Section 1. (NEW) (Effective October 1, 2006) (a) In any proceeding before the Superior Court arising after the entry of a judgment awarding custody of a minor child and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, (2) the proposed location is reasonable in light of such purpose, and (3) the relocation is in the best interests of the child.</p> <p>(b) In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to: (1) Each parent's reasons for seeking or opposing the relocation; (2) the quality of the relationships between the child and each parent; (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent; (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements.</p> <p>Approved June 6, 2006</p>

Figure 1: Summary of 2006 Public Act 06-168—sHB 5536

Judiciary Committee

AN ACT CONCERNING THE RELOCATION OF PARENTS HAVING CUSTODY OF MINOR CHILDREN

SUMMARY: This act requires a divorced parent who relocates or plans to relocate with a child to prove that the relocation is in the child's best interest. Prior binding case law placed the burden on the parent objecting to the move. It also codifies a nonexclusive list of factors family courts must consider when the non-relocating parent seeks to block the move due to its significant impact on an existing parenting plan (i. e. , a court-approved custody and visitation schedule). These considerations are already required by a Connecticut Supreme Court ruling.

EFFECTIVE DATE: October 1, 2006

BURDEN OF PROOF IN PARENTAL RELOCATION DISPUTES

By law, a relocating parent has the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose and (2) the new location bears a reasonable relationship to that purpose. If those two burdens are met, prior law required the non-relocating parent to prove, again by a preponderance of evidence, that it would not be in the child's best interest. The act requires the relocating parent to prove it is in the child's best interest.

COURT CONSIDERATIONS

Under the act, factors a court must consider in resolving relocation disputes include, at a minimum:

1. each parent's reasons for seeking or opposing the relocation;
2. the quality of the child's relationship with each parent;
3. the relocation's impact on the quality and quantity of the child's future contact with the nonrelocating parent;
4. the degree to which the relocation may enhance the relocating parent and child economically, emotionally, and educationally; and
5. the feasibility of making suitable visitation arrangements to preserve the relationship between the child and nonrelocating parent.

BACKGROUND

Related Case

In 1998, the Connecticut Supreme Court ruled that a divorced parent objecting to his ex-spouse's decision to relocate with their child had to prove that the move was not in the child's best interests. The Court also listed factors that judges should consider in resolving these disputes (Ireland v. Ireland, 246 Conn. 413).

Postjudgment Relocation

(Prior to October 2006)

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to a postjudgment custody decision **prior to October 2006** concerning the relocation of a parent with a minor child.
- DEFINITIONS:**
- "As we have stated: Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests...quoting *Newman v. Newman*, supra, 235 Conn. 96. Further, we have expressed a concern about conflating the two roles." *Ireland v. Ireland*, 246 Conn. 413, 717 A.2d 676 (1998). (Internal quotation marks omitted.)
 - "...[T]he [best interest] factors advanced by the New York Court of Appeals in *Tropea v. Tropea*, 87 N.Y.2d 727, 665 N.E.2d 145, 642 N.Y.S.2d 575 (1996) . . . are: '[E]ach parent's reasons for seeking or opposing the move, the quality of the relationships between the child and the custodial and noncustodial parents, the impact of the move on the quantity and quality of the child's future contact with the noncustodial parent, the degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move, and the feasibility of preserving the relationship between the noncustodial parent and child through suitable visitation arrangements.' Id., 740-41. The court also considered relevant 'the negative impact, if any, from continued or exacerbated hostility between the custodial and noncustodial parents, and the effect that the move may have on any extended family relationships.' Id., 740." *Ireland v. Ireland*, 246 Conn. 413, 431-432, 717 A.2d 676 (1998).
- STATUTES:**
- CONN. GEN. STAT. (2005).
§ 46b-56(b). "In making or modifying any order with respect to custody or visitation, the court shall (1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interests of the child, and (2) consider whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b."
- RECORDS & BRIEFS:**
- CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS (January 2001).
McGinty v. McGinty, 66 Conn. App. 35 (2001).

(Case Prior to
October 2006)

[Motion to enjoin - Post Judgment](#) (Figure 2)

**COURT
CASES**

(Prior to October
2006)

- Bretherton v. Bretherton, 72 Conn. App. 528, 538-539, 805 A.2d 766 (2002). "There is nothing in the language of *Ireland* to suggest that the burden shifting scheme, in particular with respect to the custodial parent's initial burden of proof, supercedes the standard of the best interest of the child. Rather, our Supreme Court explicitly provided that the salient inquiry remains that of the best interest of the child involved. Therefore, the failure of the custodial parent to meet his or her initial burden cannot in and of itself end the matter in relocation cases. To predicate a decision whether to permit relocation on the basis of parental conduct only, even when that conduct appears unreasonable or illegitimate, would be to ignore the needs of the child and to reduce the court's inquiry to assessing the parents' action only."
- Ford v. Ford, 68 Conn. App. 173, 184, 789 A.2d 1104 (2002). "We, therefore, hold that that burden-shifting scheme in *Ireland*, and the additional *Tropea* factors, do not pertain to relocation issues that arise at the initial judgment for the dissolution of marriage. Rather, we find that *Ireland* is limited to postjudgment relocation cases. We conclude that because the *Ireland* court did not expand its holding to affect all relocation matters, relocation issues that arise at the initial judgment for the dissolution of marriage continue to be governed by the standard of the best interest of the child as set forth in § 46b-56. While the *Ireland* factors may be considered as "best interest factors" and give guidance to the trial court, they are not mandatory or exclusive in the judgment context."
- Barzetti v. Marucci, 66 Conn. App. 802, 807, 786 A.2d 432 (2001). "We therefore conclude that the prima facie showing explained by the Supreme Court in *Ireland* must be made by a fair preponderance of the evidence before the burden shifts to the other parent to prove that relocation would not be in the best interest of the child."
- Sczerkowski v. Karmelowicz, 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). "Although the defendant claims that the court was required to find that a substantial change of circumstances existed before modifying the plaintiff's visitation, this is a misreading of our law. The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child Our independent review of the record discloses that the court applied the best interest of the child standard in ruling as it did and that its decision does not constitute an abuse of discretion."
- Ireland v. Ireland, 246 Conn. 413, 440-441, 717 A.2d 676 (1998). "To determine the child's best interests, the court

should consider the factors set forth in part II of this opinion, giving each relevant factor the appropriate weight under the circumstances of this case, and being mindful that the list is not exclusive."

**TEXTS &
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
§ 44.11. Relocation of the child's residence

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Figure 2 Motion to enjoin - Postjudgment
(Case prior to October 2006)

D.N. FA 96 0149771 S : SUPERIOR COURT
ELLEN MC GINTY : J.D. OF STAMFORD/NORWALK
V. : AT STAMFORD
JOHN MC GINTY : MAY 27, 1998

MOTION TO ENJOIN - POST JUDGMENT

The defendant, by and through his attorneys, hereby respectfully moves that this court enjoin the plaintiff from removing the minor child from the New Canaan/Stamford area for the following reasons:

1. The parties were divorced on November 22, 1996 at which time their Separation Agreement was incorporated by reference into the final judgment.
2. Paragraph 4.10 of said Agreement states, ". . . The Wife shall not relocate until agreement of the parties or order of the Superior Court of the State of Connecticut."
3. On or about May 15, 1998, the defendant received a letter from the plaintiff stating her intention to relocate out of state with the parties minor son in August of 1998.
4. The defendant does not consent to the relocation of the minor child.

WHEREFORE, the defendant moves that this honorable court enjoin the plaintiff from removing the minor child from the New Canaan/Stamford area until further order of this court.

ORAL ARGUMENT REQUESTED

TESTIMONY IS REQUIRED

THE DEFENDANT

Name
Address
Telephone number Juris

ORDER

The foregoing motion having been heard, it is hereby ORDERED:

GRANTED/DENIED.

Judge/ Ass't Clerk

CERTIFICATION

This is to certify that a copy of the foregoing was mailed on this date to the following counsel and pro se parties of record.

Name
Address

Name