

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Superior Court of California
County of Los Angeles**

In re the Marriage/Matter of:

PETITIONER:

X,

and

RESPONDENT:

X

: Case No.: BD x
: STATEMENT OF DECISION AND
: TENTATIVE RULING ON ISSUE OF
: CHILD CUSTODY RELOCATION

The Court issues its Statement of Decision and Tentative Ruling on the issue of the parental request for relocation of the minor child.¹

1. In General

1.1. Parties

¹ For the purpose of this order the word relocation is synonymous with the phrase "move away." The Court believes the word relocation more accurately describes the effect of an order that allows a parent to relocate a child's residence; whereas the phrase "move away" might imply a loss of relationship with a child, as in the child moved away from the parent. For the purpose of this order the phrase minor children includes the singular minor child. See *Family Code Section 10*.

1 1.1.1. X

2 1.2. Minor Children

3 1.2.1. The children subject to this proceeding are:

4 1.2.1.1. X

5 1.2.1.2. X

6 1.2.1.3. X

7 1.3. Statement of Decision

8 The Court issues its Statement of Decision as required by *Family Code*
9 *Section 3022.3²* and consistent with the provisions of *Code of Civil*
10 *Procedure Section 632*. And to the extent otherwise applicable under the
11 *Family Code*, this Statement of Decision and Tentative Ruling articulates
12 the reasons and findings supporting the Court's decision.

13 1.4. Trial Preference

14 The Court gave priority to the trial of the issue of child custody as required
15 by *Section 3023*.

16 2. Adequacy of Notice

17 2.1. In General

18 *Section 3024* and *Marriage of McGinnis* (1992) 7 Cal. App. 4th 473
19 provide that a parent shall receive adequate notice that a parent is seeking a
20 relocation order.

21 2.2. Provision Requiring Notice Not An Allocation of Burden of Proof

22 Under *Marriage of Abrams* (2003) 105 Cal. App. 4th 979 the Court did not
23 allocate the burden of proof on relocation based on any prior order
24 requiring notice of request for relocation.

25 3. No Order Prohibiting Travel by Parent

26 Nothing in this order concerning relocation impairs the right of either parent to
27

28 ² Unless indicated to the contrary, all statutory references are made to the *Family Code*.

1 travel or relocate their residence. This order impacts only the issue of where the
2 minor children reside. *Marriage of Fingert* (1990) 221 Cal. App. 3d 1575,
3 prohibits orders that requires a parent to relocate to or from a particular location;
4 neither shall courts make orders that restrains or interferes with a parent's right to
5 relocate him or herself.

6 4. Opportunity for Mediation

7 As mandated by *Marriage of McGinnis, supra*, the Court finds the parties
8 participated in a meaningful form of mediation because:

9 4.1. X

10 5. Time to Marshal Evidence & Evaluation Protocols for Move Away Case

11 5.1. In General

12 *Marriage of McGinnis, supra*, requires that the court provide parents
13 adequate time to marshal evidence to present his or her case. Under
14 *Section 3025.5*, the Court ordered a custody evaluation. The Evaluation
15 report is a confidential portion of the Court file of the proceeding and
16 available only to those persons enumerated in *Section 3025.5*. The
17 evaluation was performed pursuant to the Judicial Council Standards
18 adopted pursuant to *Section 3117*; the evaluation was performed by an
19 evaluator duly qualified under *Section 3110* and in conformity with the
20 provisions of *Sections 3111 through 3118* and the applicable provisions of
21 the *California Rules of Court* and the Judicial Council Standards
22 established. The Evaluation Report was ordered under the applicable
23 provisions of the *Family Code*; and the duly qualified evaluator (Evaluator)
24 rendered the Evaluation Report as the Court's Evaluator under *Evidence*
25 *Code Section 730*. The Court ordered an evaluation under *Section 3081* to
26 determine whether an order under joint custody is in the best interests of the
27 Minor Children (Evaluation Report). Consistent with the principles
28 enunciated in *Marriage of Seagondollar* (2006) 139 Cal. App. 4th 1116, the

1 Court invited the parties to make recommendations regarding the scope,
2 methods and protocols for the evaluation. In making its decision the Court
3 has also considered the evidence received during the direct and cross
4 examination of the Evaluator.

5 5.2. Specific Findings from Evaluation Report

6 Based on the Evaluation Report, the Court makes the following specific
7 findings:

8 5.2.1. X

9 5.2.2. X

10 6. Pre-Hearing Motions Under *Brown & Yana*

11 6.1. Motion Under *Brown & Yana*

12 *Marriage of Brown and Yana* (2006) 37 Cal. 4th 947 gives the Court
13 discretion to deny an evidentiary hearing where one party has sole legal and
14 physical custody and the noncustodial parent has failed to meet his or her
15 burden by showing legally sufficient detriment so long as the other
16 procedural due process rights articulated for the parent resisting the move
17 are protected. Based on the findings set forth above, the Court finds that
18 the following rights are satisfied:

19 6.1.1. The right to adequate advanced notice of hearing on the
20 relocation request; and

21 6.1.2. The right to a meaningful mediation; and

22 6.1.3. The right to marshal adequate information

23 6.2. Ruling on Motion

24 On the contested issue of whether the resisting party has established a
25 *prima facie* case of detriment to the minor children justifying further
26 proceedings, the Court finds and rules as follows:

27 6.2.1. X

28 7. Best Interest Determination In Initial Proceeding

1 7.1. In General

2 *Marriage of Burgess* (1996) 13 Cal. 4th 25³ provides that where relocation
3 of the minor child presents before the Court where there is no prior order
4 awarding a parent sole legal and physical custody, then the Court shall
5 make its determination of relocation as an initial determination under the
6 Best Interest of the Child standards articulated under *Section 3011*
7 concerning the health, safety, welfare, history of abuse, nature and amount
8 of contact with the parents.

9 7.2. Findings On Best Interests

10 The court makes the following findings on the issue of the best interest of
11 the child:

12 7.2.1. Health-

13 7.2.2. Safety-

14 7.2.3. Welfare-

15 7.2.4. History of Abuse-

16 7.2.5. Nature & Amount of Contact With Parents-

17 7.2.6. Other Factor-

18 8. Custodial Parents Right to Relocate In Modification Proceedings

19 8.1. In General

20 *Marriage of Burgess, supra*, and *Section 7501* confirms that where a parent
21 has sole physical custody of a minor child, courts shall not interfere with
22 the rights of the custodial parent to relocate a minor child in the absence of
23 evidence of intentional interference by the relocating parent.

24 8.2. Burden of Proof

25 *Marriage of La Musga* (2004) 32 Cal. 4th 1072 provides that the
26

27 ³ See also *Burchard v. Garay* (1986) 42 Cal. 3d 531 and *Marriage of Carney* (1979) 24 Cal. 3d
28 725.

1 noncustodial parent bears the initial burden of showing that the proposed
2 relocation would cause detriment to the child requiring a reevaluation of
3 custody.

4 8.3. Findings

5 The Court makes the following findings on the issue of the rights of the
6 custodial parent:

7 8.3.1. X

8 8.3.2. X

9 8.3.3. X

10 9. De Novo Review of Custody

11 9.1. In General

12 Where parents share actual joint physical custody and joint legal custody,
13 the Court shall conduct a *de novo* review of custody applying the best
14 interest of the child standard based on *Niko v. Foreman* (2006) 144 Cal.
15 App. 4th 344.⁴

16 9.2. Grounds for De Novo Review

17 The Court makes finds and rules as follows:

18 9.2.1. X

19 9.2.2. X

21 ⁴ *Marriage of Burgess, supra*, footnote 12, requires that the Court consider the actual nature and
22 extent of the actual time share not simply the labels. *Marriage of Whealon* (1997) 53 Cal. App.
23 4th 132, held that a 20% time share does not constitute *de facto* joint physical custody. *Marriage*
24 *of Biallas* (1998) 65 Cal. App. 4th 755 held that a *de novo* review of custody was not required
25 where father's care for the child was one night a week and alternate weekends was liberal
26 visitation not joint physical custody. *Marriage of Lasich* (2002) 99 Cal. App. 4th 702 held that
27 an 80% time share amounted to a *de facto* sole physical custody for the purpose of deciding
28 whether *de novo* review was required.

1 10. *Marriage of LaMusga* Factors

2 10.1. In General

3 *Marriage of La Musga, supra*, mandates considering and weighing of the
4 certain identified factors.⁵ Under *Marriage of Burgess, supra*, the Court
5 exercises its deferential discretion on the question of whether its order
6 advances the best interest of the Minor Children. Here, the Court
7 articulates each factor, and then makes findings and conclusions.

8 10.2. The Custodial Parent's Presumptive Right to Relocate

9 10.2.1. The Court finds that x

10 10.3. Children's Interest in the Stability and Continuity in the Custody
11 Arrangement

12 10.3.1. The Court finds that x

13 10.4. The Primary Parent's Proven Ability to Provide and Care for the Children
14 on a Full Time Basis Compared to the Noncustodial Parent-⁶

15 10.4.1. The Court finds that x

16 10.5. Significant Change of Circumstances Indicating Custody Change in Best
17 Interest of Child

18 10.5.1. The Court finds that x

19 10.6. Distance of the Move & Financial Impact on Parents

20 10.6.1. Considering the economic feasibility of maintain frequent and
21 continuing contact for both parents, the court finds that x

22 10.7. Age of the Children

23 10.7.1. The Court finds that x

24 10.8. Children's Relationship with Both Parents

25
26
27 ⁵ *La Musga, supra*, affirms rulings in some earlier cases; and for ease of reference factors
28 enunciated in post *La Musga, supra*, cases are consolidated herein.

⁶ See *Marriage of Edlund and Hales* (1998) 66 Cal. App. 4th 1454.

- 1 10.8.1. The Court finds that x
- 2 10.9. Relationship between the parents, respective abilities to communication and
- 3 cooperation effectively and willingness to put the children's interest above
- 4 their own interests including the level of parental animosity and past
- 5 conduct as indicative of the best future arrangement.
- 6 10.9.1. The Court finds that x
- 7 10.10. Child's Wishes
- 8 10.10.1. The Court finds that x
- 9 10.11. Reason for the Move including Good Faith Reason for the Move
- 10 10.11.1. The Court finds that x
- 11 10.12. Extent to Which parents are Currently Sharing Custody
- 12 10.12.1. The Court finds that x
- 13 10.13. Nonpayment of Support by Stay Behind Parent
- 14 10.13.1. The Court finds that x
- 15 10.14. Impact on Mental Stability of the Parents if Relocation is Permitted or
- 16 Denied
- 17 10.14.1. The Court finds that x
- 18 10.15. Availability of Special Education & Medical Care⁷
- 19 10.15.1. The Court finds that x

20 11. Finding of Detriment

21 11.1. In General

22 *LaMusga, supra*, recognizes that any relocation of the minor children
23 involves some detriment to parent-child relationship. It is the level of
24 detriment that the Court must consider. Under *LaMusga, supra*, the
25 detriment must render it essential or expedient for the welfare of the child

27 ⁷ See *Marriage of Melville* (2004) 122 Cal. App. 4th 601 mandates consideration of the impact
28 on availability of special health care services for a child.

1 that there be a change of custody. The likely impact of the proposed move
2 on the noncustodial parent's relationship with the child is relevant in
3 determining detriment.

4 11.2. Specific Findings

5 On the relevant standard of detriment, the Court finds and rules as follows:

6 11.2.1. X

7 11.2.2. X

8 11.3. X

9 12. Relocation Order Resulting in Separation of Siblings

10 12.1. In General

11 Before a Court issues an order that separates siblings as a result of a
12 relocation order, *Marriage of Williams* (2001) 88 Cal. App.4th 808, the
13 Court must find compelling reasons through a real analysis of the
14 relationship between the siblings that the relocation of one sibling is in the
15 best interest of the children.

16 12.2. Findings of Compelling Reason to Separate Siblings

17 The Court makes the following findings:

18 12.2.1. X

19 12.2.2. X

20 13. Intentionally Frustrating Other Parent's Visitation Rights

21 13.1. In General

22 *Marriage of Ciganovich* (1976) 61 Cal. App. 3d 289 originally established
23 that a ground for prohibiting relocation of a child may be justified by a
24 finding that one parent is intentionally interfering with the custodial access
25 rights or visitation by the other parent. This concept was affirmed in
26 *Marriage of Burgess, supra*. In *Cassady v. Signorelli* (1996) 49 Cal. App.
27 4th 55 the Court established the zone of inquiry of whether the move is an
28 apparent pretext to defeat visitation. (See Also: *Bagghanti v. Reyes* (2004)

1 123 Cal. App. 4th 989).

2 13.2. Findings on Issue of Interference

3 The Court makes the following findings on the issue of parental
4 interference:

5 13.2.1. X

6 13.2.2. X

7 14. Ruling on the Issue of Relocation

8 14.1. X

9 14.2. X

10 15. Terms of Relocation Order

11 15.1. In General

12 The Court makes the following orders as a condition of the relocation:

13 15.1.1. X

14 15.1.2. X

15 15.2. International Relocation Orders

16 *Marriage of Condon* (1998) 62 Cal. App. 4th 533 and *Marriage of Abargil*
17 (2003) 106 Cal. App. 4th 1294 requires consideration of special factors
18 enumerated here.

19 15.3. Specific Terms

20 15.3.1. Presence of "cultural conditions and practices" that might have
21 an adverse impact on the child-

22 15.3.2. Whether the distances are so great that they make visitation
23 financially prohibitive-

24 15.3.3. Jurisdiction problems making local orders unenforceable in the
25 foreign country including foreign registration of the local order-

26 15.3.4. The question of international unrest in the new location-

27 15.3.5. The ability for both parents to travel freely to and from the new
28 location-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. Other Orders

16.1. X

16.2. X

17. General Provisions

17.1. By stipulation, the Court's Statement of Decision & Tentative Decision is served upon counsel by facsimile (and if indicated by e-mail transmission in a PDF Adobe Acrobat™ format.

17.2. This Order is effective when signed and filed. No further Order shall be necessary.

17.3. X

Date: x

[Judicial Officer]
JUDGE OF THE SUPERIOR COURT