

THE FLORIDA SUPREME COURT ADDRESSES PARENTAL RELOCATION

Marital and Family Law Section

Chair: Ellie Probasco, Allen Dell, P.A.



On January 14, 2010, the Florida Supreme Court released an opinion in *Arthur v. Arthur*, addressing relocation and Florida Section 61.13001 Florida Statutes (2006).¹ The trial court in *Arthur* entered the original judgment of dissolution of marriage and granted the parties shared parental responsibility with the Wife as the primary residential parent and the Husband having reasonable visitation with the child. The trial court also addressed the Wife's request for relocation to the state of Michigan, allowing the Wife to relocate only after the child turned three years old. The child was sixteen months at the time of the trial.

The court reasoned that relocation was proper because the Wife had family in Michigan and the Husband also had extended family in Michigan. But the trial court delayed the relocation stating, "The Court is cognizant that children between infancy and approximately 3 years of age need more frequent contact with both parents in order to properly bond with the parents. But for the Court's concern for the Husband's ability to bond with his son, the Wife's relocation would have been granted without further delay".

On appeal, the Second District Court of Appeal upheld the trial

court's ruling and found that the trial court's detailed findings in the final judgment supported the Wife's relocation request. Upon review, the Florida Supreme Court quashed the Second District's decision in *Arthur* and found that it expressly conflicts with three decisions of the First District Court of Appeal, namely *Sylvester v. Sylvester*, *Janousek v. Janousek* and *Martinez v. Martinez*.²

The Florida Supreme Court determined the trial court erred in delaying the relocation. The Court held that "a best interests determination in petitions for relocation must be made at the time of the final hearing and must be supported by competent, substantial evidence." The Court reasoned that a prospective-based analysis was unsound and that the trial court was not equipped with a "crystal ball" that enabled the judge to determine what future events would be in the best interest of the minor child. The Court envisioned that any of the statutory factors for relocation, such as financial stability of the parent, could change drastically before the prospective date of relocation. The Court concluded that because trial



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The Court further found that if the trial court would have utilized the "present-based" analysis, the trial court would have denied the relocation request. Relying on the trial court's statement that "but for the Court's concern for the Husband's ability to bond with his son, the Wife's relocation would have been granted without further delay," the Florida Supreme Court reasoned that the trial court determined that

relocation of the child at the time of the hearing was not in the child's best interest. it therefore remanded the case back to the trial court and directed the trial court to prohibit relocation.

¹ *Arthur v. Arthur*, 35 Fla. L. Weekly 538 (Fla. Jan. 14, 2010).

² *Sylvester v. Sylvester*, 992 So. 2d 296 (Fla. 1st DCA 2008); *Janousek v. Janousek*, 616 So. 2d 131 (Fla. 1st

DCA 1993); *Martinez v. Martinez*, 573 So. 2d 37 (Fla. 1st DCA 1990).



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