

Andrew V. vs. Superior Court

Move away cases are always fact intensive and legally complex. Family Code section 217 mandates full evidentiary hearings, unless otherwise stipulated. So why would a trial court allow a temporary move from California to the State of Washington for two children without a hearing?

Answer: Trial court should not have done so, and was reversed. Why would the trial court deny an automatic 30 day stay under Code of Civil Procedure section 917.7, and allow the children to be relocated immediately, before a hearing could be held? Answer: Trial court should not have done so, and was reversed. The children were ordered returned from Washington to Los Angeles forthwith.

This seems so straightforward. What went wrong? The trial court improperly deprived the father of an opportunity to be meaningfully heard before granting the mother's move-away request. A meaningful hearing is a critical requirement of California law before any judicial determination regarding a move-away request for parents who share joint legal and physical custody following a final judicial custody order. Citing and relying on *In re Marriage of Seagondollar* (2006) 139 Cal. App. 4th 1116 [2006 Cal. Fam. Law Monthly (June) p.187] "[t]he rules of procedures for reaching family law decisions—contained in the Family Code, the Code of Civil Procedure, the California Rules of Court, and local court rules—are not mere suggestions. The rules of procedure are commands which ensure fairness by their enforcement." (*Seagondollar*, 139 Cal. App. 4th at p. 1120).

It was also improper for the trial court to predicate its "temporary" order upon the written recommendation of the child custody investigator, without the benefit of cross-examination at a hearing and also, astonishingly, without father's counsel even being present because of illness. The 917.7 stay applies to all move-away orders; no exception for "interim" or "temporary" orders. As the *Andrew V.* opinion perceptively observed: "Children live in the present tense, and "temporary" relocations may have a severe and pernicious impact on their well-being and sense of security."

It would be a wise idea, in light of this reversal, for practitioners to reread Justice Mosk's opinion in *Burgess* (1996) 13 Cal. 4th 25, and Justice Moreno's opinion in *LaMusga* (2004) 32 Cal. 4th 1072. Public policy concerns, the "best interest" standard, a showing of detriment to the children, the initial burden of proof, all are intermixed in these move-away cases, a mixture made more potent with the understandable heightened emotions involved. No family law matter places a heavier burden on counsel, so careful knowledge of the law, creative and innovative strategy, courtroom experience, mastery of the particular facts involved, and wise selection of competent mental health expert witnesses, are all essential elements of proper handling of these cases. The parents and the children involved deserve no less.

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