

Winternitz v. Winternitz

Another move-away case. Another case of questionable conduct by a child custody evaluator. Another case addressing application of *La Musga* factors. Another case where attorney fees became a contested issue. After all of this, the exercise of discretion by the trial court was affirmed.

Before getting enmeshed in the crushingly sad facts of the case, one observation of the appellate tribunal stands as a warning beacon to parties about to embark, or already in the midst of, a move-away dispute: **“The parties have litigated to the point of financial ruin, to their own detriment and, more importantly, the detriment of their daughter.”** There are no winners in these scenarios, whatever the outcome.

Yolo County Court allowed Mom to move to San Diego with the children, even though the child custody evaluator found mother had manipulated the children and alienated them from their father. Father then relocated his orthopedic medical practice and moved to San Diego. Several years later, Mom wanted to move again, this time to Chico, in Northern California, where she was engaged to a man who worked in Chico. The evaluator appointed in this move-away recommended against the move and suggested a change of custody to Dad. Despite admitting numerous procedural errors of judgment, the evaluator’s recommendations were accepted and followed by the trial court, the move-away with the children was denied, and custody awarded to Dad. This ruling was affirmed on appeal.

This opinion reminds us that several recent cases have examined factual scenarios where the conduct of child custody evaluators provided cause for removal for bias, provided grounds for disqualification, and for striking of the report. Here, those cases were distinguished, and the report was followed, after vigorous opposition, and admission by the evaluator of less than proper conduct. Lesson: Be very careful with the provisions of a Stipulation or Order appointing the evaluator. Read and re-read Rule 5.220, California Rules of Court; don’t assume the evaluator’s report is sacrosanct and will always be blindly followed by the trial court. This is an area for thoughtful, creative advocacy. Move-away cases are never easy. Do your homework. Read *La Musga* and its progeny. Learn the factors to be considered, and study their judicial application. Provide your client with realistic and reasonable expectations of the difficult and often unpredictable road ahead. Remember this court’s observation and admonition about the financial and emotional toll and cost of these cases. Only then can you serve in meaningful fashion as both advocate and counselor.

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