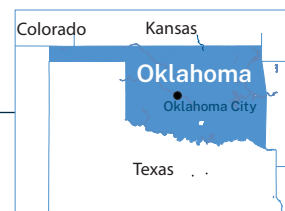


# USA - OKLAHOMA



## Law and Practice

### Contributed by:

Kathleen Egan and Aaron Bundy

**Bundy Law**

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Contributed by: Kathleen Egan and Aaron Bundy, **Bundy Law**

**Bundy Law** is a multi-state law firm headquartered in Tulsa, Oklahoma. The firm's Arkansas office is located in Bentonville. Attorneys at the firm advise on high net worth financial disputes, including the valuation and division of professional practices, mineral interests, farms, ranches, artwork, and investment portfolios. The firm is well-known for its heavy emphasis on trial advocacy skills in bench and jury trials. Its trial work includes family law, criminal de-

fence, and civil justice cases involving severe injury or death. Partner Kathleen Egan leads the appellate practice in Oklahoma and Arkansas. Bundy Law employs next-generation technology, with intake, discovery, trial preparation, and briefing processes enhanced by artificial intelligence. The firm is well-suited for high-value, high-stakes financial cases and appellate matters involving novel issues.

## Authors



**Kathleen Egan** is an attorney with a broad range of skills. With a background that includes work at a plaintiff's personal injury firm, she has extensive trial experience. Due to her research

and writing strengths, she is engaged by individual clients and as co-counsel by other attorneys for special projects including prenuptial agreements, trial briefs and appeals involving matters of first impression. Kathleen is licensed to practise law in Oklahoma, Arkansas and New York. She is a fellow of the American Academy of Matrimonial Lawyers and certified to mediate family law disputes.



**Aaron Bundy** is the founder of Bundy Law. His practice focuses on matters involving jurisdictional questions, catastrophic damages and complex financial issues.

Board-certified for family law trials by the National Board of Trial Advocacy, Aaron is a fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. He is frequently consulted by attorneys and judges for case citations and his opinion on the status of the law.

## Bundy Law

2509 E. 21st St.  
Tulsa  
OK 74114  
USA

Tel: +918 208 0129  
Fax: +918 512 4998  
Email: [info@bundy.law](mailto:info@bundy.law)  
Web: [www.bundylawoffice.com](http://www.bundylawoffice.com)



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## 1. The Care Provider's Ability To Take Decisions About the Child

### 1.1 Parental Responsibility

Oklahoma's appellate courts have fully endorsed the United States Supreme Court's decision in *Troxel v Granville*, 530 U.S. 57 (2000), which affirmed the fundamental, historical right of parents to rear their children. Oklahoma's statutes include a Parents' Bill of Rights, which confirms the inalienable rights of parents to and concerning their minor children.

Unless parental rights have been terminated, a parent-child relationship established under applicable Oklahoma Law applies for all purposes (Okla. Stat. tit. 10 Section 7700-203). "The right of a parent to the care, custody, companionship and management of his or her child is a fundamental right protected by the federal and state constitutions." *In re Adoption of D.T.H.*, 615 P.2d 287, 1980 OK 119, ¶18 (Okla. 1980).

### 1.2 Requirements for Birth Mothers

It is a matter of long-standing Oklahoma precedent that the establishment of a mother-child relationship automatically confers parental rights to any woman who gives birth to a child or legally

adopts a child (Okla. Stat. tit. 10 Section 7700-201). The birth itself confers parental rights onto any biological mother. Another statute, Okla. Stat. tit. 10 Section 7800, provides that an unwed mother has custody of her child until a court determines otherwise.

### 1.3 Requirements for Fathers

Fathers who are parents to children born out of wedlock have a status that is different from mothers who are similarly situated. Until recently, Oklahoma law did not automatically confer parental rights on a child's biological father unless the parents were married at the time of the child's birth. However, in 2022, the legislature modified a statute so that fathers who sign an "acknowledgement of paternity" have rights and obligations equal to mothers. This new law treats a child whose parentage has been established the same as children of parents who were married at the time of birth.

Hospitals are legally required to provide an acknowledgment of paternity form to parents of any child born to unmarried individuals. The acknowledgment of paternity form may also be obtained from the Oklahoma State Department of Health, Division of Vital Records, or the

Oklahoma Department of Human Services Child Support offices. (Okla. Stat. tit. 63 Section 1-311 (D)(2).)

## 1.4 Requirements for Non-genetic Parents

Advances in medical technology have allowed couples who otherwise would have been unable to naturally conceive to have children of their own. These situations have created the need for legislation when one or both individuals are not the child's biological parent. Artificial insemination, oocyte donation and human embryo transfers are just some of these situations.

In Oklahoma, children who are conceived through artificial insemination, oocyte donation or human embryo transfer are considered at law in all respects the same as a naturally conceived legitimate child of the husband and wife so requesting and consenting to the use of such technique (Okla. Stat. tit. 10 Sections 552, 554 and 556).

## 1.5 Relevance of Marriage at Point of Conception or Birth

When a child is born to a woman who is married, her husband is presumed to be the biological father of the child. Additionally, a man is presumed the father of a child if he resided with the minor child for the first two years of the child's life and openly held himself out as the child's father. In both of these situations, however, the legal presumption of paternity may be rebutted in certain circumstances by either the presumed father, the mother, or another individual within the appropriate time period and confines contained in the Uniform Parentage Act (Okla. Stat. tit. 10 Section 7700-204). Married parents of minor children have equal rights and responsibilities to their children under Oklahoma law.

## 1.6 Same-Sex Relationships

Same-sex marriage became legal in Oklahoma in 2014 following the Tenth Circuit Court of Appeals' decision in *Bishop v Smith*, 760 F.3d 1070. That appellate decision paved the way for equal rights in Oklahoma, including the ability for same-sex couples to adopt. With respect to adoption, the requirements for the adoption of a minor child are identical for same-sex couples as they are for heterosexual couples in Oklahoma. Both sets of individuals must petition the court and meet certain basic residency and best interest considerations to be permitted to adopt.

The situation is somewhat different when one of the individuals in a same-sex relationship is the biological parent of a child born during the marriage and the other is not. A recent case out of Oklahoma County demonstrates the differences in parentage presumptions in same-sex and heterosexual relationships. In a pending case entitled *Wilson v Williams*, one partner to a lesbian relationship gave birth during the marriage to her biological child, who had been conceived by artificial insemination. While both women were listed as mothers on the child's birth certificate, questions regarding parentage arose during their divorce proceeding. Had the couple been heterosexual, the artificial insemination statute would have clearly established parentage in both individuals. However, the statute did not apply because the statute specifically uses the words "husband" and "wife". Instead, the trial court found that the non-biological mother should have filed for adoption during the marriage to confer parental rights. Given that she did not, and instead waited until the divorce proceeding to attempt to establish rights, the judge ruled that she forfeited her parental rights to the child's sperm donor. While this case is currently before the Oklahoma Supreme Court on appeal, it highlights many of the issues surrounding par-

entage in same-sex marriage and child custody disputes.

## 1.7 Adoption

Any person wishing to adopt a child in Oklahoma must first give the minor child's natural parents notice of the adoption proceeding. This can be difficult when either parent's whereabouts are unknown.

After providing notice of the adoption proceeding, the party wishing to adopt must either obtain the consent of both natural parents or must prove to the court that the consent of one or both of the natural parents is not required. There are several situations that would support a trial court's decision that the consent of a natural parent is not necessary for the adoption to proceed. Those include proof that a parent has not provided support for the child for a period of twelve consecutive months, has not maintained a positive and substantial relationship with the minor child for a period of twelve consecutive months, has been incarcerated for a period of ten years or more, or has been convicted of certain crimes involving children, among others.

After the petitioning party has obtained consent or had the court determine that consent is not required, they must undergo multiple background checks, go through a home study, and must prove to the court, through testimony, that the adoption is in the minor child's best interests.

Once all of the above requirements are met, the petitioner may ask for the adoption to be set for a final hearing, at which time they will accept all rights and responsibilities for the minor child.

## 2. Relocation

### 2.1 Whose Consent Is Required for Relocation?

The mother of a child born out of wedlock is the custodial parent as a matter of law. Unless there is a court order or pending legal action, the mother may relocate with the child without notice to the biological father whose custody and visitation rights have not been judicially established.

Any parent who has the right to establish a residence for the minor child must notify the other parent entitled to visitation with the minor child of their intent to relocate from the child's current principal residence. Relocation is defined as a change in the minor child's primary residence over 75 miles from the child's current principal residence for a period of 60 days or more.

The relocation notification must be sent to the other parent by mail at that parent's last known address and no later than the 60th day before the intended move or the tenth day after the relocating parent learns the details of the relocation. The relocation notification must contain the following information:

- the intended new residence, including the specific address, if known;
- mailing address, if not the same;
- home telephone number, if known;
- date of the intended move or proposed relocation;
- brief statement of the specific reasons for the proposed relocation of the child, if applicable;
- proposal for a revised schedule of visitation with the child, if any; and
- a warning to the non-relocating parent that any objection to the relocation must be made

within 30 days or the relocation will be permitted.

The non-relocating party then has 30 days within which to file an objection to the relocation with the court. If the non-relocating party fails to file an objection within the timeframe, the requesting party may relocate with the children.

## 2.2 Relocation Without Full Consent

Once the non-relocating party files a timely objection to the notice of relocation with the court, the issue of relocation can only be resolved by agreement of the parties or by court order. If requested, the court is permitted to decide whether the requesting party is permitted to temporarily relocate with the minor children while the final issue is being litigated.

At the hearing, the requesting party has the burden of showing that the proposed relocation is being made in good faith. Good faith has been defined by the Court as “an honest intention to abstain from taking any unconscientious advantage of another” (*Boatman v Boatman*, 404 P.3d 822, 2017 OK 27 (Okla. 2017)). The Court has repeatedly found that “employment opportunities” and “financial considerations” are legitimate reasons to seek relocation and satisfy the good faith requirement.

If a showing of good faith is made, the burden of proof shifts to the party opposing relocation to prove that it is not in the best interests of the child. If the requesting party is unsuccessful in showing that the proposed relocation is made in good faith, then the burden stays with that party to show that the relocation is in the child's best interests.

## 2.3 Application to a State Authority for Permission to Relocate a Child

### 2.3.1 Factors Determining an Application for Relocation

There are many factors that a court is required to consider when deciding whether to allow one party to relocate with the minor children. These factors include:

- the nature, quality, extent of involvement and duration of the child's relationship with both parents, siblings and other significant persons in the child's life;
- the age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child;
- the feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;
- the child's preference, taking into consideration the age and maturity of the child;
- whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the non-relocating party;
- whether the relocation of the child will enhance the general quality of life of both the custodial party seeking relocation and the child, including but not limited to financial or emotional benefit or education opportunity;
- the reasons of each person for seeking or opposing the relocation; and
- any other factor affecting the best interests of the child.

In addition, a court may consider a failure to provide proper notice to the non-relocating party as a factor in making its determination regarding

the relocation of a child. The court is expressly prohibited from considering whether the parent seeking relocation has declared whether they will relocate if the child relocation request is denied.

The Oklahoma Supreme Court has cautioned that no single factor should be given more weight than the others and that trial courts should carefully consider the evidence relevant to each factor and determine whether that factor weighs in favour of or against relocation (*Arulkumar v Arulkumar*, 521 P.3d 131, 135, 2022 OK 90, ¶18 (Okla. 2022)).

### 2.3.2 The Wishes and Feelings of the Child

One of the factors a court must consider when deciding whether to permit relocation is the child's preference, taking into consideration the age and maturity of the child. It is important to remember that just because a child may express a preference concerning relocation does not mean that the court is bound by that preference. The court must consider the other factors listed above.

### 2.3.3 The Age/Maturity of the Child

The relocation statute specifically requires a trial court to consider the child's preference, taking into consideration the child's age and maturity. There is a rebuttable presumption that a child who is 12 years of age or older is of a sufficient age to form an intelligent opinion regarding their preference regarding custody and visitation (Okla. Stat. tit. 43 Section 113). In deciding whether the child is of sufficient age and maturity to state a preference, the court should first decide whether the child's best interests will be served by allowing the child to express a preference. The court may elect to permit the child to provide testimony regarding their preference or may conduct an in camera interview with the

minor child, outside the presence of their parents or the attorneys.

### 2.3.4 The Importance of Keeping Children Together

The nature, quality, extent of involvement and duration of the child's relationship with both parents, siblings and other significant persons in the child's life is one factor the trial court is required to consider when deciding whether to permit relocation. As noted in the *Arulkumar* case, relocation necessarily creates distance and changes in family relationships. While considering the minor child's relationship with siblings is one factor, it cannot be dispositive of the issue. "The natural interrelationship of the statutory factors require that they be read in harmony, and not in isolation." The Oklahoma Supreme Court stated in *Arulkumar*, "[w]e will not impose an unreasonable burden on trial courts to consider each of the statutory factors in isolation, as most factors and the facts that are applied are naturally intertwined."

### 2.3.5 Loss of Contact

For the non-relocating party, their first and primary concern is often the interruption of their visitation with the minor child. While the idea of a loss of contact and close proximity is understandably upsetting, it cannot be the sole factor in deciding the issue of relocation.

In *Scocos v Scocos*, 369 P.3d 1068, 2016 OK 35 (Okla. 2016), the father objected to the mother's proposed relocation. At trial, the father failed to present any evidence that the proposed relocation would not be in the children's best interests. Instead, his only concern was the disruption to his visitation schedule. In finding that the father had failed to meet his burden to show that the relocation was not in the children's best interest, the Oklahoma Supreme Court noted that "visi-



tation rights alone are an insufficient basis on which to deny relocation". The Court cited its own precedent, *Kaiser v Kaiser*, 23 P.3d 278, 286 (Okla. 2001), to confirm that a "custodial parent's relocation should not be disallowed solely to 'maintain the existing visitation patterns'".

### 2.3.6 Which Reasons for Relocation Are Viewed Most Favourably?

Each parent's status prior to a notice of relocation is important to a court's analysis. A parent with legal custody or one who had significantly more parenting time with a minor child is generally better positioned to make a case in favour of relocating the child than a parent who is in a joint custody, or shared parenting, scheme with the non-relocating parent.

The parent seeking to relocate has to show the court three things:

- the relocating parent qualifies, legally, as a parent entitled to establish the residence of the minor child;
- the relocating parent gave written notice to the other parent in compliance with the relocation statute; and
- the relocating parent's proposed relocation is made in good faith.

The definition of what is "good faith" is quite low. On multiple occasions, appellate courts have confirmed that "employment opportunities, financial considerations, and proximity to loved ones are all legitimate reasons to support relocation".

### 2.3.7 Grounds for Opposition to Relocation

While courts are required to consider all of the statutory factors, it seems as if courts tend to place more weight on the preservation of the relationship between the non-relocating per-

son and the child and the emotional toll that the distance and disruption of visitation will take on the minor child. For example, in the *Arulkumar* case, the Oklahoma Supreme Court denied the mother's request to relocate with the minor child, noting that the distance created by the proposed relocation would "almost certainly deprive the child of his close bond with Father and Father's family, which would negatively impact his emotional development".

### 2.3.8 Costs of an Application for Relocation

As with other family law cases, it is difficult to accurately predict the cost of a relocation proceeding, as many of the factors that determine overall costs are out of either side's control. The non-relocating party may object, resulting in litigation, yet settle the case following the exchange and expense of discovery, or upon learning that the relocation may not substantially impact the non-relocating parent's time with the child. Other times, the parents are able to reach an agreement following the temporary order hearing, as the decision made by the trial court may be predictive of the final outcome of the case. In other cases, the parties endure a temporary order hearing, a final relocation trial and an appeal. Expenses mount as litigation continues through its various stages.

### 2.3.9 Time Taken by an Application for Relocation

Other than requiring the non-relocating party to file an objection to relocation within 30 days, the Oklahoma relocation statute does not establish a specific time period within which an objection to relocation or a request to relocate should be heard. With that said, trial courts are generally cognisant of the time-sensitive nature of relocation requests and will schedule a temporary order hearing prior to the proposed relocation,



with sufficient notice to the non-relocating parent.

### 2.3.10 Primary Caregivers Versus Left-Behind Parents

The statutory factors imposed upon trial courts require judges to be equally sympathetic to the relocating and the non-relocating parent. In the initial phase, the court must consider whether the relocating parent is seeking to move in good faith. This involves scrutiny of the motives and intent behind the relocating parent, including financial, employment and relationship dynamics.

Next, a best interests analysis obligates the court to consider factors that may weigh in favour of the non-relocating party. For example, the court must analyse the impact that the relocation will have on the child's relationship with the non-relocating parent and that parent's extended family. The court must also make a determination as to the feasibility of preserving the minor child's relationship with the non-relocating party.

As written, the relocation statute provides trial courts with the framework they need to take each parent's concerns and requests into consideration.

## 2.4 Relocation Within a Jurisdiction

The relocation procedure is required for a parent seeking to move beyond 75 miles from the child's current primary residence, regardless of whether the move is within or beyond Oklahoma's borders. The relocation statute does not apply to a parent seeking to relocate a minor child to a new residence less than 75 miles from the child's current residence.

## 3. Child Abduction

### 3.1 Legality

In Oklahoma, it is illegal for a person to fraudulently or forcibly take or entice away a child under the age of 16 years, with the intent to detain or conceal the child from its parent, guardian or other person having legal rights to that child, or to transfer the child from the jurisdiction of Oklahoma or the United States of America. Any person engaging in said behaviour will be charged with a felony charge, punishable by up to ten years in prison (Okla. Stat. tit. 21 Section 891).

The law also provides a remedy should any person other than a parent remove a child from the jurisdiction, including grandparents and other family members. If the person removes the child with the intent of denying or interfering with a parent's right to custody or visitation under an existing order, that person shall be liable in an action at law. Potential remedies include the following:

- damages for loss of service, society and companionship;
- compensatory damages for reasonable expenses incurred in searching for the missing child or attending court hearings; and
- the prevailing party in such action shall be awarded reasonable attorney fees (Okla. Stat. tit. 43 Section 111.2).

When a dissolution of marriage action is pending, the automatic temporary injunction prohibits either parent from hiding their children from the other parent, and it forbids removing the children from the State of Oklahoma, except for vacations of two weeks' or less duration, unless the other parent consents to the travel.

## 3.2 Steps Taken to Return Abducted Children

If the minor child has been abducted to another state within the United States, the first step would be to contact local authorities so that they can start an investigation into the whereabouts of the children. It is essential that the location of the children be determined so that any later obtained court orders can be properly served and enforced by local law enforcement. While the location of the children is being ascertained, legal paperwork, including a writ of habeas corpus and/or a writ of assistance, can be filed.

The situation changes when one parent removes the child to another country. In that situation, the parent can either start a case in the court in the country where the child has been taken, or in the court in the country of the child's habitual residence, or both. It is important to commence the proceeding within one year of the abduction, as it can be more difficult to get a court to return the child after they have become well settled in the new jurisdiction.

## 3.3 Hague Convention on the Civil Aspects of International Child Abduction

The United States of America is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Oklahoma has adopted the Uniform Child Custody Jurisdiction and Enforcement Act, which provides for the enforcement and return of the child under the Hague Convention. The United States Department of State, Office of Children's Issues in the Bureau of Consular Affairs is the Central Authority to carry out the duties under the Hague Convention.

The United States Department of State issues annual reports, providing a breakdown of abduction cases by country. The report, which can

be found [here](#), notes the percentage of cases that are resolved within one year of abduction, along with an explanation about the difficulties encountered with the foreign state's Central Authority.

The Department of State is committed to aiding in and providing for the safe return of children abducted from their homes and helps lead the effort to meet the United States' obligations under the Hague Convention. With that aim in mind, when a parent informs the Central Authority that their child has been abducted or retained outside the United States, they quickly put that parent in touch with an attorney capable of commencing litigation for the return of the child.

A filed petition is required in order to commence a Hague proceeding. The petition must allege the following:

- the wrongful removal or retention of a child;
- in violation of a parent's custody rights;
- that were actually exercised by that parent;
- the source of the custody rights;
- the date of the wrongful conduct; and
- the child's age.

Once a Hague petition is filed, the court is required to act expeditiously. If a decision has not been made within six weeks of filing, the Central Authority can request a statement asking for the reason for the delay. When deciding the case, a court is empowered to take judicial notice of the law and decisions in the state of the child's habitual residence.

Prior to ordering the return of a child, the court may request a determination of wrongfulness from authorities in the state of habitual residence. The Hague Convention also bars a court in the country where the child has been taken

from considering the merits of custody claims once it has received notice of the removal or retention of the child.

Once a petition has been filed, the petitioner has the burden to prove, by a preponderance of the evidence, the following:

- the child has either been wrongfully removed to this country or wrongfully retained in this country;
- the child was a habitual resident at the time they were removed;
- the removal was in breach of the petitioner's custody rights; and
- the petitioner had been exercising those rights at the time of retention.

The respondent may then present affirmative defences, in support of the minor children's relocation, including the following:

- grave risk (that the minor child would suffer grave risk if returned to the jurisdiction – this is typically used in developing or war-torn countries);
- the other parent has consented to, or acquiesced in, the relocation;
- the child is of an appropriate age and maturity and objects to the return; and
- the petition was filed more than one year following the relocation and the child is well settled in the new jurisdiction.

### 3.4 Non-Hague Convention Countries

The United States of America is a signatory to the Hague Convention.

## Trends and Developments

### Contributed by:

Aaron Bundy and Kathleen Egan

### Bundy Law

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## Authors



**Aaron Bundy** is the founder of Bundy Law. His practice focuses on matters involving jurisdictional questions, catastrophic damages and complex financial issues.

Board-certified for family law trials by the National Board of Trial Advocacy, Aaron is a fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. He is frequently consulted by attorneys and judges for case citations and his opinion on the status of the law.



**Kathleen Egan** is an attorney with a broad range of skills. With a background that includes work at a plaintiff's personal injury firm, she has extensive trial experience. Due to her research

and writing strengths, she is engaged by individual clients and as co-counsel by other attorneys for special projects including prenuptial agreements, trial briefs and appeals involving matters of first impression. Kathleen is licensed to practise law in Oklahoma, Arkansas and New York. She is a fellow of the American Academy of Matrimonial Lawyers and certified to mediate family law disputes.

## Bundy Law

2509 E. 21st St.  
Tulsa  
OK 74114  
USA

Tel: +918 208 0129  
Fax: +918 512 4998  
Email: [info@bundy.law](mailto:info@bundy.law)  
Web: [www.bundylawoffice.com](http://www.bundylawoffice.com)



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### Introduction

Child relocation disputes continue to be a source of contention and high-conflict litigation. Relocation cases are emotionally charged and challenging to compromise. Broadly, many relocation trial court outcomes are appealed, and trial courts are frequently reversed for error. Common errors include the application of the wrong burden of proof, burden-shifting to the wrong party, and fixating on a single factor rather than an overarching best interests analysis. Many trial courts approach relocation requests with scepticism, in effect giving more scrutiny to a relocation request than to relocation opposition.

### Statutory Provisions Regulating Child Relocation

There are two Oklahoma statutes concerning a parent's ability to move a child. One of the statutes is entitled, Parent's Right to Change Child's Residence, and it simply states, "A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child." A separate relocation notice statute sets out the procedure for a custodial person to give notice to other interested persons of intent to relocate a child.

Oklahoma's relocation notice statute provides parents and courts with significant guidance for the relocation process. The statute applies when a person entitled to custody of or visitation with a child seeks to move a child over 75 miles from the child's principal residence. A person whose legal status permits them to establish the residence of a minor child may relocate the minor child without further action if they comply with the statute's written notice requirements and no parent or other person entitled to visitation with the child initiates a proceeding to prevent the relocation within 30 days of their receipt of the notice of intent to relocate. If a proceeding to prevent the relocation is timely initiated, the court may address the relocation on a temporary and on a final basis. At any contested judicial hearing concerning the relocation of a child, the person seeking to move the child must prove:

- they are legally entitled to establish the child's residence;
- they provided all interested persons with written notice in compliance with the statute; and
- the relocation is made in good faith.

If those elements are sufficiently established, the inquiry continues. The burden of proof shifts to the person opposed to the relocation, requir-

ing them to show that the proposed relocation would be contrary to the child's best interests. The statute provides courts with a number of factors the court is required to consider when deciding whether to approve or deny a proposed relocation.

## **Tensions Between Statute, Case Precedent and Trial Courts**

Child relocation disputes tend to be high-conflict and costly. They are one of the few areas of family law where there is a clear winner and loser of the dispute. Most child relocations implicate significant changes to the child's time and relationship with the non-relocating parent and the non-relocating parent's extended family. Persons objecting to relocations often attribute malice to the person seeking to move and suggest that an unspoken reason for the proposed relocation is to undermine their relationship with the child. Despite the statutory detail and body of case law concerning relocations, there continue to be debates and litigation about whether a person seeking to relocate has the requisite legal status to establish the child's residence in the first place. Parents who share joint legal custody of a child have equal rights and status, so neither parent may be in a position to relocate a child.

Recent published appellate decisions continue to reflect a tension between the relocation statute, case precedent and trial courts.

### ***Boatman v Boatman***

In 2017, the Oklahoma Supreme Court held in the case of *Boatman v Boatman* that a joint custodian who is not the "primary physical custodian" does not have the legal status necessary to relocate the minor child. The parents in *Boatman* shared joint custody with equal rights and responsibilities to the minor child. Neither parent had a superior legal status, and they shared

equal time with their child after their divorce. The *Boatman* case clarified conflicting opinions issued by Oklahoma's Court of Civil Appeals, one of which had held that in a joint custody paradigm either parent is eligible to relocate a child, while the other held that in joint custody neither parent is eligible to relocate a child.

The mother in *Boatman* gave notice to the father of her intent to relocate the minor child to another state. Her stated intention for relocation was due to employment circumstances beyond her control. After a contested evidentiary hearing, the trial court held that the proposed relocation was not made in good faith and was not in the best interests of the minor child. On its remand to the trial court, the Oklahoma Supreme Court clarified "good faith" and held that the mother's stated purpose for the proposed relocation qualified as a good faith basis. The trial court was required to determine which of the two parents would be the primary physical custodian, and, if the mother was awarded that designation, the father would have the burden to show that the proposed relocation was not in the best interests of the child.

The *Boatman* case is significant for many reasons. The Court clarified ambiguity in the law concerning the rights of joint custodians. It illustrates that courts continue to struggle with the statutory scheme, and it shows the resistance that some courts give to relocation requests. The case also highlights the struggle and expense that a person requesting or opposing relocation of a child may undergo: trial, appeal, and another trial.

### ***Williamson v Williamson***

A subsequent case, *Williamson v Williamson*, decided in 2021, demonstrates the difficulty that courts have in deciding relocation disputes.

Following a divorce, the mother and the father shared joint legal custody and equal time with their child. Neither was designated as the child's "primary physical custodian". The mother married a member of the United States military. Her husband was required to move out of state, and she gave the father notice of her intent to relocate. He objected and, after a hearing, the trial court declined to designate either parent as a primary physical custodian. Instead, the trial court required both parents to attend a private virtual school and required the parents to continue sharing equal time with the child, exchanging her every three months. The Court of Civil Appeals held that this was error pursuant to *Boatman*, and reversed the trial court's judgment in its entirety.

### *Arulkumar v Arulkumar*

In 2022, the Oklahoma Supreme Court addressed another proposed relocation in the case of *Arulkumar v Arulkumar*. At the time of the divorce, the mother was in medical school. She was designated as the custodial parent of their minor child, and parents shared equal time with the child. When searching for employment, the mother was not offered any position in the state of Oklahoma. She accepted an offer out of state and gave the father notice of her intent to relocate with the minor child. The trial court found that her proposed relocation was made in good faith, but denied the relocation, holding that the father proved that the relocation was not in the child's best interests. The trial court applied each factor in the relocation statute and concluded that the proposed relocation would negatively impact the child's relationship with their father, with no material improvement in the child's quality of life as a result of the move.

On its face, *Arulkumar* may seem difficult to reconcile with *Boatman* and *Williamson*. In *Arulku-*

*mar*, the person seeking relocation had custody of the minor child, rather than joint custody. However, *Arulkumar* teaches us that if the trial court properly follows the scheme set out in the relocation notice statute, the trial court will receive the deference on appeal that it enjoys in conventional best interests decisions.

### *Important matters for consideration in cases of disputed relocation*

Careful preparation and attention to detail are critical to success in a relocation contest. The errors identified by appellate courts are often the result of shortcuts taken by litigants or trial courts in lieu of strict compliance with the order of analysis established in the law. Relocation requests typically involve developments in financial or relationship circumstances, so they are often time-sensitive. Skipping a step, or approaching one incorrectly, will likely result in compounded litigation costs and loss of precious time that cannot be recovered.

State and federal laws may be implicated when a person who is subject to the relocation notice statute moves a child beyond the 75-mile statutory limit without giving proper notice. A person moving in violation of the statute may be charged with violations of criminal statutes in multiple jurisdictions. Even if law enforcement does not get involved, the court in the child's original location may issue an order for the return of the child after the move. Thus, a person who has relocated without notice or judicial permission may find themselves litigating the balance of a relocation request remotely, with the stain of their original unsanctioned move permanently tarnishing the merits of the case.

Persons seeking or opposing child relocation may engage experts for various purposes. For example, depending on the circumstances, a



vocational expert may opine as to the employment and financial advantages in favour of a move. A psychologist or other mental health professional may perform an evaluation and write a report with their opinion about whether the move would serve the child's best interests. Each person involved in a relocation contest should assess the need and practicality of an expert for negotiation and trial.

Child relocations have been the subject of several studies due to the complexities and conflict involved. Some researchers have concluded that it is the conflict associated with the relocation, rather than the move itself, that has the most detrimental impact on each involved child. Once the relocation dispute is concluded, regardless of whether the move was permitted or not, the conflict often reduces. While relocation cases can be difficult to negotiate and settle, when possible, compromise may reduce the impact of the change on the child.

Child relocation disputes are naturally highly polarised because there is a perceived winner and loser. When a parent is seeking to relocate a minor child, each parent should consider the implications of the relocation for their respective parenting time schedules. If the relocation is permitted, courts often make generous accommodations to the non-relocating parent's time with

the child. The remaining parent will frequently receive the lion's share of the minor child's summer break, winter break, spring break and other vacation periods or days when the child will not be in school. The relocating parent may have difficulty finding quality time with their child when school is not in session due to the shift in parenting time following the relocation. The Williamson case is illustrative of the lengths that trial courts will go to in order to ensure frequent access between the non-relocating parent and the minor child.

## Looking Ahead

A recent development in Oklahoma law may have long-term implications for child relocations. In 2021, the legislature modified a statute to confirm a statewide policy and presumption in favour of shared parenting. As trial courts follow this law and order shared parenting and joint custody, it may be more difficult for a person desiring to move with a minor child to prove the first critical piece: showing that they have the requisite legal status giving them the ability to establish the child's residence. A parent contemplating separation or divorce should consider whether a long-distance move by either parent is in the foreseeable future and integrate the likelihood of a relocation contest into their approach to case resolution.