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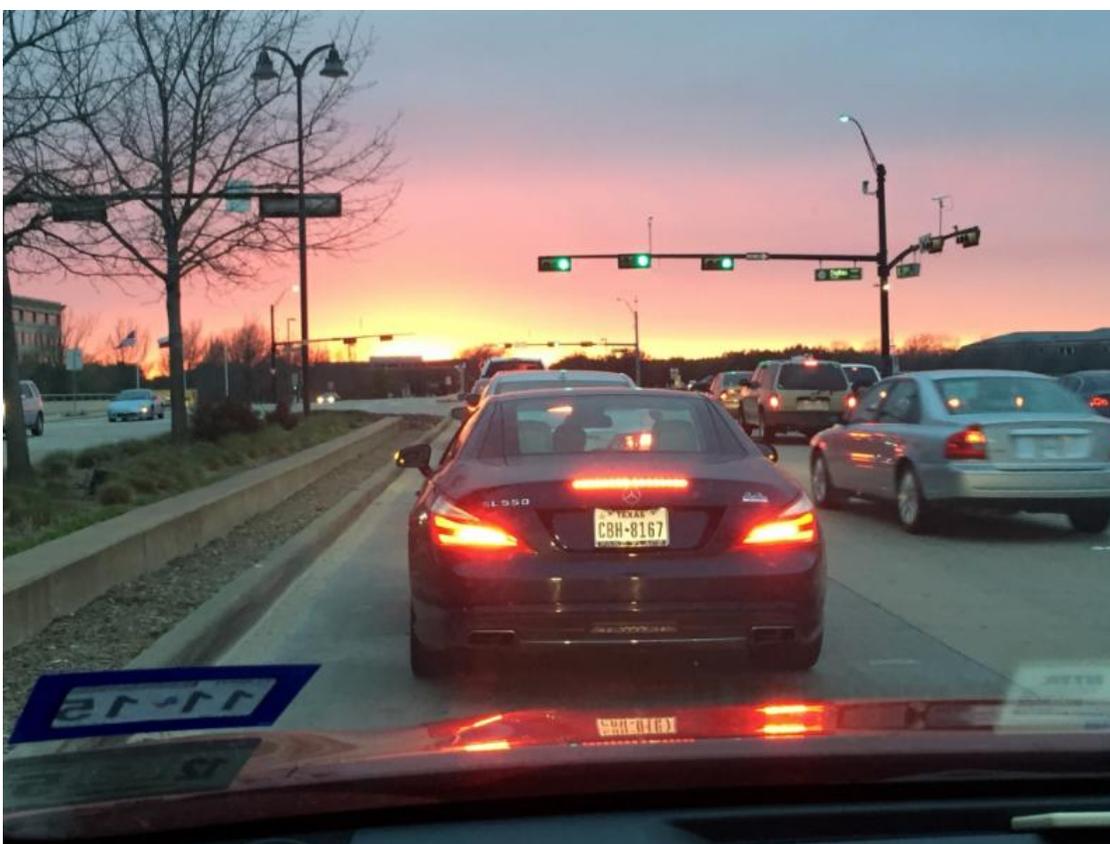
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5 Things NC Courts Must Consider if a Parent Wants to Relocate With the Kids

By Amy A. Edwards

When one parent wants to move out of town or out of state with the kids, the stakes are instantly higher. There are fewer options to compromise on the visitation schedule. School-age children generally need to live primarily in one place or the other, at least when school is in session. If parents live locally, they might have the alternating weekend schedule and a Wednesday night when they do not have the upcoming weekend, and any other times by mutual agreement. But when one lives far away from the other, there are fewer ways to arrange the schedules so that both parents can remain actively engaged.

A pie can only be cut in so many slices. As many judges will tell you at the end of custody cases, these difficult decisions are the ones that keep them awake at night. This is especially difficult when there are two great parents, both of whom have a strong bond with their child. In all child custody cases, North Carolina law requires a judge to consider what is in a child's best interest, to live primarily with mom or dad. When one parent seeks to move, and the other wants to remain, the judge must consider five factors [1]. In other words, the judge's written order must include the answer to each of the five questions when making the decision of what is in a child's best interest. At first, these questions seem simple but once you add the circumstances of each family, they are not as simple as they first appear.

#1 What Are the Advantages of the Move for the Child?

Will there be any improvements for his or her life if the child relocates? This is an argument parents make when the two locations are very different. For instance, when a child lives out in the country, will he or she benefit from living in a big city? If there are already connections to the new area, does that include grandparents who are willing to assist with childcare? Does one location offer better medical care for a child who suffers from serious medical problems? Is a gifted child likely to achieve his or her aspirations if given unique opportunities available somewhere else?

#2 What is the Parent's True Motive for Relocating?

People move for a variety of reasons. Perhaps a parent has an offer for a really good job and/or the support of family members who reside there. Or, maybe the parent has to return to his or her hometown to care for an aging parent. But there are those parents who are mean spirited and want to interfere with the relationship between the child and the other parent. Thankfully, that is not the norm I see in my practice, but the parent who wants to leave should be sure to do some soul-searching to be certain he or she is at peace about the decision and the impact it has on a child. Again, the risks are steep and these cases are more likely to become a win-lose event, not a win-win.

#3 Is This Parent Likely to Comply With the Order After the Relocation?

In other words, can the court trust the relocating parent to comply with the order once he or she is outside of North Carolina? This might be the most important factor when the judge is deciding whether the move is in the child's best interest. Children have the right to love both parents and spend time with each of them. A judge will consider whether the parent will be unselfish, giving their child the opportunity to be a part of the other parent and his or her family. If the judge thinks the moving parent will be selfish and rob their son or daughter of the other parent, the best interest will probably be for the child to remain in NC.

#4 The Integrity of the Parent Who Objects to the Relocation.

Is the parent objecting to the relocation doing so in good faith? This is the flip side of looking at the motive of the parent who wants to leave, but here it is a different standard. The court understands that every parent objecting to a relocation has legitimate and serious concerns, and may be truly devastated if the court lets his or her child leave. That is always the case. However, there are times when there are obvious reasons relocation should be considered. One example of bad faith is

when one parent is violent and/or abusive to the other parent or the children. Let's assume the other parent, as a result of this violence, wants to relocate. That might be a compelling reason to rule it is in the child's best interest to relocate and have a new beginning.

#5 Is There a Realistic Visitation Schedule That Will "Preserve and Foster" the Child's Relationship with the Other Parent?

How will travel arrangements be made? Is a child old enough to safely fly alone? Is it too far to drive one way, or can the parents meet halfway to exchange the children? Are there any grandparents or other relatives who reside between the homes of the parents can serve as the exchange point? Should a child give up a part-time job to visit during the summer? Cost is a key point because parents don't always have the ability to pay for travel expenses. But the court has the ability to assign travel expenses in child support part of the case.

[1] *Ramirez-Barker v. Barker*, 107 N.C. App. 71 (1992). Overruled on other grounds in *Pullium v. Smith*, 348 NC 6165 (1998).

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of January 2017.

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Till Death Do Us Part: Life Insurance and Family Law

Maintaining life insurance and naming the beneficiaries are common topics when dealing with family law cases. Just as no one likes to discuss divorce and taxes, no one likes to discuss death. The [NC Department of Insurance](#) has an excellent publication, the [Consumer Guide to Life Insurance](#) which includes a glossary, simple comparison of the advantages and disadvantages of the different types of policies, and other information in layman's terms. When parties agree how the insurance will be dealt with, they can include it in a separation agreement or have their attorneys add it to a settlement to be signed by the judge to become part of a court order.

Marital Property Cases

In marital property cases, life insurance is merely an asset to be awarded to one spouse or the other. In those cases, the court generally assigns a value to the policy. For example, if the policy is a whole life policy, the court will assign a value based on the cash surrender value. If it is a term life insurance policy it has no value at all unless the person dies and the death benefit is paid, so the court will assign a zero dollar-value to the policy and award the policy to the owner.

Child Support and Alimony Cases

Life insurance is used to protect the stream of income for person receiving child support or alimony. In North Carolina, alimony is not payable after the death of either party, so a former spouse receiving alimony cannot make a claim against the estate for continued alimony. Therefore, life insurance is a tool that may be used to bridge the gap if the former spouse who was paying alimony dies. Likewise, in child support cases, life insurance can be used to protect the parent receiving child support.

Different Options

When reaching an out-of-court settlement, families can make all types of arrangements. If they are using life insurance to secure child support they might agree to keep the policy in place until the last child reaches a specific age. Or, the parties contract by mutual agreement to maintain the beneficiary designation permanently. Gradually decreasing the death benefits can secure child support while keeping the amount of the insurance premium down. In certain cases, owners have the ability to take loans to borrow against the value of the policy, so that issue should be addressed as well.

Beneficiary Designations

If you have an estate plan in place, talk to an estate planning attorney for advice about your life insurance. If not, talk to one before your family law case is finished. Things as "simple" as naming the proper beneficiary are critical. For example, designating your minor child as the sole beneficiary can be a recipe for disaster if you aren't careful. The designation might mean a guardian (not automatically the surviving parent) must be appointed by the court and the funds held by the courts. The child then has an "estate" which requires bookkeeping and annual reports to the court known as [accountings](#) of the estate. Or, the parties might agree to name an adult or a trust as the beneficiary. There are also options available pursuant to the North Carolina Uniform Transfers to Minors Act (UTMA). Life insurance companies have [articles](#) that might be helpful in giving you topics to discuss with your estate planning attorney.

The "Take Away" of This Article

Unless you are subject to a court order or separation agreement that requires you to maintain a policy in a certain manner, update your life insurance beneficiary designations when and if you decide your spouse is not the person you choose to receive the proceeds. If your ex is still designated as your beneficiary, he or she remains the beneficiary and it doesn't matter if you separate, divorce, remarry, have kids or twenty years pass. You can usually change your life insurance beneficiary at any time. If you choose to change the beneficiary designation on a policy, request a "change of beneficiary" document from the life insurance company, [Veterans Affairs](#), the [NC State Treasurer](#), or your Human Resources Department. Many large employers have the "change of beneficiary" document available online. Change the beneficiary designation in writing, return the form, and confirm in writing that the life insurance company has received the change of beneficiary form.

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A Road Map For Getting to the Finish Line in Your Case

By Amy A. Edwards

At the beginning of a case, we usually focus on documents, lists of assets and debts if marital property exists, and detailed budgets. That documentation is necessary to evaluate your case and consider what you are entitled to, or what you must pay or divide. With so much "busy work" it might appear as though we lose sight of the main question, which is . . . how will all of this be done? There are five typical methods to reach the finish line in North Carolina.

Method #1 - Negotiation

Negotiating can happen at any point, even after a trial until the judge signs an order. When a client has all the necessary information about the assets and debts, one good strategy at the beginning of a case is to prepare a proposal, such as a separation agreement. After the other side responds, you will then see how far apart you are from reaching an agreement. There is no way to force the other side to negotiate. It is done only by mutual agreement. After a lawsuit is filed, the proposal might end up being an agreed-

upon court order the judge signs without a trial.

Method #2 - Collaborative Family Law (CFL)

[Collaborative Family Law](#) cases are appropriate in select cases when both parties agree to participate. With this method of finalizing a case, there is a series of meetings with both attorneys and clients in one room. Instead of adversarial negotiation, the parties and their attorneys make a commitment to work together to figure out solutions for their disputes. They also sign an agreement requiring them to be honest and forthcoming about the matters they will discuss. The system of checks and balances requires the parties to hire new attorneys if one of them decides to litigate. That way, both parties have a financial investment in working together in good faith. The spouse with better financial resources can't try to starve out the other spouse without his or her own significant financial consequences. Settlements can also be kept private, especially because CFL cases will not address marital fault.

Method #3 - Mediation

In Family Financial [Mediation](#), the parties and their lawyers are in separate rooms and the mediator facilitates the negotiation going back and forth between the parties. The mediator's only job is to help the two sides find common ground. The decision of whether to settle the case is made only by the parties. In most NC counties, mediation must occur before the trial is scheduled people may choose to mediate before a lawsuit is filed. If an agreement is reached in mediation, the parties sign a handwritten agreement, which is immediately binding although it is usually typed, edited and formalized after mediation. The parties may choose to maintain their privacy in mediation.

Method #4 - Arbitration

This option is not widely used in our area, but it has some great features. If negotiation is unsuccessful and the case is headed to court, in family law [arbitration](#), the parties essentially pay for the benefit of privacy and the ability to have a case tried by an arbitrator

promptly instead of waiting for months and months for a case to be heard in court. In this scenario, instead of having a trial before a randomly assigned judge, they are also assured the decision-maker is one both parties deem best suited for the type of case at hand. The arbitrator will make a decision on the case, and it is finalized as required by law. Settlements can also be kept private because arbitration can be done in an office of one of the attorneys.

Method #5 - Litigation

Litigation is the lawsuit process. This option is useful when the parties truly do not agree. Court is the only way to *force* something to happen, especially when emergencies demand the protections of court orders. A parent might seek an emergency order if there is "substantial risk of bodily injury or sexual abuse or...the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction." NC Gen. Stat. §50-13.5. Another example is a family member seeking a domestic violence protective order. However, there are plenty of times court should be a last resort. There's no secret that litigation is tedious, slow, expensive and inefficient. It can be emotionally devastating for all the family members not just the named parties to the lawsuit. There is no privacy in the courtroom. In fact, the [NC Constitution](#) gives the public the right to attend civil court proceedings. Although there are limits to that right, they are exceedingly rare in family court cases.

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Amy A. Edwards

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