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Consider kids in move away cases

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In the paternity action *J.M. v. G.H.*, the appellate court affirmed the trial court's decision to allow the mother to relocate with the minor child to Israel, with summer visitation to the father in the United States. 228 Cal. App. 4th 925 (2014). Although they began dating in 1996 and lived together thereafter, the parties never married. G.H. is an Israeli citizen and gave birth to Joey in September 2005.

In July 2009, J.M. filed a petition to establish his paternity of Joey, requesting joint legal and physical custody and reasonable visitation. J.M. had signed a voluntary declaration of paternity and birth certificate. In prior years, G.H. had taken Joey to Israel for the summer. In October 2009, however, G.H. and Joey returned from Israel three weeks later than agreed, which resulted in J.M. filing an order to show cause requesting sole legal custody and shared physical custody. G.H. responded by requesting sole legal and physical custody of Joey, with the right to move to Israel with Joey.

A June 2010 interim order divided physical custody equally "because of [G.M.'s] immigration status," and reserved all issues. In June 2011, the parties stipulated to the appointment of a privately compensated temporary judge for all purposes.

In March, 2012, after a trial, the court awarded J.M. and G.H. joint legal and physical custody of Joey, allowing G.H. to relocate to Israel with Joey during the school year. In making its determination, the trial court said, "So long as the court does not find that the party intending to move is moving in bad faith, instead of assessing what would be the very best circumstances for the child, the court must determine how the child's interest will best be served by that living arrangement which causes him the least detriment after one parent moves away." The trial court found that both parties were "fully adequate to care for Joey's organizational, educational, social, emotional, physical and moral needs so the tipping factor becomes comparing the level of detriment the child will suffer under each scenario."

J.M. appealed the judgment. He claimed the trial court failed to make findings under Family Code Section 3048, which requires eight findings in a custody order when "the court becomes aware of facts which may indicate there is a risk of abduction of a child." Because the 2010 order was based on G.H.'s immigration status, J.M. said the court had a responsibility to make a 3048 order. But the 2010 order made no finding there is a risk that G.H. would violate the court orders. During 2012 trial, the court issued a statement of decision providing there was "no showing that [G.H.] was unlikely to

comply with future custody orders or was likely to refuse to return Joey to the United States" for J.M.'s summer custodial schedule. The trial court did require G.H. to register the judgment with the Israeli court system and to stipulate to continuing jurisdiction of the California court, and said G.H. would forfeit all child support if she failed to comply with any court order. The appellate court confirmed the trial court was not required to make Section 3048 findings.

J.M. also argued that the trial court did not follow precedent holding that a child's best interest in an international relocation case requires guaranteed enforceability of the California custody order in the foreign country. *In re Marriage of Condon*, 62 Cal. App. 4th 533 (1998). In *Condon*, the court held that the judgment must require a concession to California's continuing jurisdiction, and must create sanctions to enforce that concession. "At a minimum, such sanctions should include the posting of an adequate monetary bond, within [financial] means, and the potential forfeiture of all or some support payments upon proof of disregarding essential terms of the court order or violating the concession of jurisdiction by pursuing modification of the California order in the [foreign country's] courts."

In this case, the trial court found that G.H. did not have sufficient resources to provide a bond, and therefore ordered that if G.H. violated any custody order, all child support would be deposited into a trust account owned by J.M., with G.H. as beneficiary, to be used for the costs of litigation. But J.M. argued that the absence of a bond is fatal. *Condon* addresses a bond within the relocating parent's means and provides that whether or not the move-away parent has the funds to post a substantial bond, other options are available in the form of terminating or reducing child support payments if the custodial parent attempts to frustrate the custody order and the foreign court refuses to enforce it. Here, the appellate court held that the trial court did not abuse its discretion in declining to go beyond the requirements of the *Condon* case.

J.M. further contended that the trial court did not apply the correct standard in making the custody order by focusing on the relative detriment to Joey of awarding primary physical custody to either parent, rather than applying the best interest of the child standard. Citing the *LaMusga* decision, the court said that when one parent proposes a move, "it is within the wide discretion of the superior court to order a change in custody based upon such detriment to the relationship between the child and the noncustodial parent, if such a change is in the best interests of the children in light of all the relevant factors." *In re Marriage of LaMusga*, 32 Cal. 4th 1072 (2004). In this matter, the appellate court affirmed the trial court's consideration of whether Joey's relationship with G.H. would suffer more detriment if Joey stayed behind while G.H. moved to Israel; or would Joey's relationship with J.M. suffer more detriment if Joey moved to Israel with G.H. The trial court decided that Joey had a closer bond with G.H., and that he would suffer a greater detriment if his primary custody was not with her — making it Joey's best interest to reside primarily in Israel with G.H. Here, the appellate court said there was no abuse of discretion and that the trial court's decision advanced the best interests of the child.

When addressing the best interests of a child in a move away case, attorneys must consider the detriment to the child, both if the child remains with one parent, or relocates with the other parent. Attorneys must also address the financial means of the parent requesting the move away — specifically that there are other options available for clients of lesser means — in lieu of posting a bond.

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