

Court Must Look at Effect on Kids Even for Good-Faith Move-Away

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In *re Marriage of Brown/Campos*, 108 Cal.App.4th 839 (2003), held that, in considering the request of a parent to move away with the minor children, the trial court erred by refusing to hold an evidentiary hearing to consider the detriment to the children from the move. The 2nd District Court of Appeal held that the trial court must hold a hearing even where the court determines that the decision to move was made in good faith.

David Campos and Linda Campos Brown divorced after 17 years of marriage. The parties had two boys, ages 15 and 12. The judgment of dissolution granted sole physical custody of the children to Brown and visitation to Campos on alternate weekends, for three hours every Monday and Wednesday and for three weeks during the summer. The parties lived in Santa Barbara.

In August 2002, Brown gave notice of her intent to move with the children and her second husband to Moorpark, two hours from Santa Barbara. Campos filed

him to present evidence that the move to Moorpark would be detrimental to the children's welfare.

In considering Campos' contention, the appellate court first discussed the seminal move-away case of *In re Marriage of Burgess*, 13 Cal.4th 25 (1996). *Burgess* held that where a judicial custody order has been issued, the custodial parent has a presumptive right to change the residence of the minor children, so long as the removal would not be prejudicial to their rights or welfare.

In support of its holding, the *Burgess* court cited the "paramount need" of minor children for continuity and stability in custodial arrangements and the principle in *Burchard v. Garay*, 42 Cal.3d 531 (1986), that, once a court has determined what child-custody arrangement is in the best interests of the minor children, the court should preserve that custodial arrangement unless some significant change in circumstances indicates that a different arrangement would be in the children's best interests.

Applying the *Burchard* analysis to move-away cases, *Burgess* held that a

announcing its order, the trial court stated that the best interests of the children would be achieved by an order that the children remain in Santa Barbara in the sole physical custody of the father or the joint physical custody of the parties, should the mother reconsider her move.

Nevertheless, the trial court ordered what it considered to be the next best alternative, custody to the mother in New Mexico, which the court felt *Burgess* compelled it to order because the court found no bad faith by the wife.

The *Bryant* appellate court affirmed the trial court, stating that because the trial court found that the wife was not acting in bad faith in moving away, it did not err and "no further inquiry was necessary or appropriate." The *Bryant* court stated that it was compelled by *Burgess* to uphold the trial court's ruling, based on the finding that there was no bad faith.

The *Campos* court concluded that *Bryant* was not contrary to its decision for two reasons. First, the *Campos* court explained that, in *Bryant*, the court did not deny the evidentiary hearing that the *Campos* court believed was necessary in *Campos*. Second, the *Campos* court explained that nothing in *Bryant* contradicts the holding of *Campos* that trial courts must consider whether a move will cause detriment to the minor children, rendering a change in custody essential for their welfare. The *Campos* court stated that, instead, *Bryant* "counsels trial courts to shift their focus away from evaluating a custodial parent's reasons for moving and toward the effect moving will have on their children."

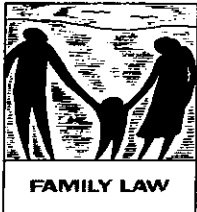
In conclusion, *Campos* is significant because it makes clear that a finding of lack of bad faith for a move does not automatically result in approval of the move. The *Bryant* decision, affirming a move that the trial court admitted was not in the best interests of the children after finding a lack of bad faith for the move, created an ambiguity in the law that the *Campos* court's ruling resolves.

The dissent in *Bryant* cited this ambiguity, stating that it was not clear whether the *Bryant* majority was being "obedient" to *Burgess* because it was "not clear" whether a custodial parent who moves away without bad faith automatically may take the children, even if, the trial court believes that such a relocation is detrimental to the children.

The *Bryant* dissent stated that uprooting the children from a nurturing and successful childhood in Santa Barbara for the "selfish reasons" of the mother was to the detriment of the children. Citing *In re Marriage of Ciganovich*, 61 Cal.App.3d 289 (1976), the dissent concluded that a move should not be allowed where such a move was detrimental to the children.

In *Campos*, the majority opinion is written by Justice Kenneth R. Yegan, the author of the *Bryant* dissent. *Campos* largely adopts the reasoning of the *Bryant* dissent. Further, the *Campos* court interprets *Bryant* as counseling trial courts to shift their focus from evaluating the reasons for a move and toward the importance of evaluating the effect that a move will have on the children.

The result of this interpretation is that the effect of a move on the children now appears to be the most important factor that courts will consider in move-away applications.



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an order to show cause seeking physical custody of the boys so that they could remain in Santa Barbara, arguing that they did not want to leave Santa Barbara because they would leave behind their extended family and lifelong friends and classmates.

The trial court appointed minors' counsel. At the hearing on Campos' order to show cause, counsel reported that the children were concerned about losing contact with Brown's extended family and with their friends and classmates. The boys told a psychologist retained by the minors' counsel that they did not want to move.

The trial court denied Campos' request for an evidentiary hearing at which the children would testify and also Campos' request for physical custody, stating, "Well, I think the law is clear. *Burgess* is the law. And *Burgess* requires nothing further than a look into whether there's an allegation of bad faith in the move." The trial court found no bad-faith motive by Brown in seeking the move and allowed the move.

Campos appealed, contending that the trial court erred by refusing to permit

change in custody is not justified solely because the custodial parent has chosen for a sound, good-faith reason to move. What is required is showing that the children will suffer detriment from the move, rendering it "essential or expedient for the welfare of the child that there be a change of custody."

The *Campos* court held that the trial court erred by concluding that the only relevant issue was whether the move was made in good faith. The court held that a party opposing a move has the right to present evidence both on whether the move is made in good faith and whether the move will cause detriment to the children.

The *Campos* court then carefully explained how its decision was not contrary to the court's holding in another recent move-away case, *In re Marriage of Bryant*, 91 Cal.4th 789 (2001). In *Bryant*, the husband and wife had two minor children, 6 and 9, at the time of their divorce.

During the dissolution proceedings, the wife requested custody of the children and stated her intention to move with them from Santa Barbara to New Mexico. The wife testified that she was moving to obtain the support of her family, who lived in New Mexico. The husband argued that the wife was leaving in order to punish him and that the best interests of the children were that they remain in Santa Barbara.

The *Bryant* trial court found that the move was not in bad faith and allowed the move, granting custody to the wife and liberal visitation to the husband. In

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