



RELOCATION

Judge Michael Davis, Judge Mariya Weekes and Douglas Greenbaum, Esq.

FLORIDA STATUTE §61.13001

- (1) DEFINITIONS

- (E) “Relocation” means a change in the location of the principal residence of a parent or other person from his or her principal place of residence at the time of the last order establishing or modifying time-sharing, or at the time of filing the pending action to establish or modify time-sharing. The change of location must be at least 50 miles from that residence, and for at least 60 consecutive days not including a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.

- Note: The October 2009 amendment changed the focus to a parent’s relocation as opposed to a change in the child’s residence.

- A permanent change of duty station (PCS) of a parent in the military is not a deployment because it is a permanent assignment which implicates a “relocation.”

- Applies to Guardians in Chapter 39 cases. See T.B. v. DCF, 189 So.3d 150 (Fla. 4th DCA 2015) (pg. 31).

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- **(6) Temporary order.--**
- (a) The court may grant a temporary order restraining the relocation of a child, order the return of the child, if a relocation has previously taken place, or order other appropriate remedial relief, if the court finds:
 1. That the petition to relocate does not comply with subsection (3);
 2. That the child has been relocated without a written agreement of the parties or without court approval; or
 3. From an examination of the evidence presented at the preliminary hearing that there is a likelihood that upon final hearing the court will not approve the relocation of the child.
- (b) The court may grant a temporary order permitting the relocation of the child pending final hearing, if the court finds:
 1. That the petition to relocate was properly filed and is otherwise in compliance with subsection (3); and
 2. From an examination of the evidence presented at the preliminary hearing, that there is a likelihood that on final hearing the court will approve the relocation of the child, which findings must be supported by the same factual basis as would be necessary to support approving the relocation in a final judgment.
- (c) If the court has issued a temporary order authorizing a party seeking to relocate or move a child before a final judgment is rendered, the court may not give any weight to the temporary relocation as a factor in reaching its final decision.
- (d) If temporary relocation of a child is approved, the court may require the person relocating the child to provide reasonable security, financial or otherwise, and guarantee that the court-ordered contact with the child will not be interrupted or interfered with by the relocating party.

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- **(7) No presumption; factors to determine contested relocation.**--A presumption in favor of or against a request to relocate with the child does not arise if a parent or other person seeks to relocate and the move will materially affect the current schedule of contact, access, and time-sharing with the non-relocating parent or other person. In reaching its decision regarding a proposed temporary or permanent relocation, the court shall evaluate all of the following:
 - (a) The nature, quality, extent of involvement, and duration of the child's relationship with the parent or other person proposing to relocate with the child and with the non-relocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.
 - (b) The age and developmental stage of the child, the 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.
 - (c) The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent or other person once he or she is out of the jurisdiction of the court.
 - (d) The child's preference, taking into consideration the age and maturity of the child.
 - (e) Whether the relocation will enhance the general quality of life for both the parent or other person seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.
 - (f) The reasons each parent or other person is seeking or opposing the relocation.
 - (g) The current employment and economic circumstances of each parent or other person and whether the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.
 - (h) That the relocation is sought in good faith and the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.
 - (i) The career and other opportunities available to the objecting parent or other person if the relocation occurs.
 - (j) A history of substance abuse or domestic violence as defined in [s. 741.28](#) or which meets the criteria of [s. 39.806\(1\)\(d\)](#) by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.
 - (k) Any other factor affecting the best interest of the child or as set forth in [s. 61.13](#).

FLORIDA STATUTE §61.13(2)(C)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial and material change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. **Unless otherwise provided in this section or agreed to by the parties, there is a rebuttable presumption that equal time-sharing of a minor child is in the best interests of the minor child.** To rebut this presumption, a party must prove by a preponderance of the evidence that equal time-sharing is not in the best interests of the minor child. Except when a time-sharing schedule is agreed to by the parties and approved by the court, the court must evaluate all of the factors set forth in subsection (3) and make specific written findings of fact when creating or modifying a time-sharing schedule.

FLORIDA STATUTE §61.13(3)

- (3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interests of the child must be the primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial and material change in circumstances and a determination that the modification is in the best interests of the child. If the parents of a child are residing greater than 50 miles apart at the time of the entry of the last order establishing time-sharing and a parent moves within 50 miles of the other parent, then that move may be considered a substantial and material change in circumstances for the purpose of a modification to the time-sharing schedule, so long as there is a determination that the modification is in the best interests of the child. Determination of the best interests of the child must be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:
 - (a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.
 - (b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
 - (c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.
 - (d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
 - (e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. **This factor does not create a presumption for or against relocation of either parent with a child.**

FLORIDA STATUTE §61.13(3)

- (f) The moral fitness of the parents.
- (g) The mental and physical health of the parents.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.
- (k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.
- (l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- (m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect or evidence that a parent has or has had reasonable cause to believe that he or she or his or her minor child or children are in imminent danger of becoming victims of an act of domestic violence, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.
- (n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

FLORIDA STATUTE §61.13(3)

- (o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- (p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- (q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- (r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.
- (s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.
- (t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

FLORIDA STATUTE §61.13001(8)

(8) Burden of proof.--The parent or other person wishing to relocate has the burden of proving by a preponderance of the evidence that relocation is in the best interest of the child. If that burden of proof is met, the burden shifts to the non-relocating parent or other person to show by a preponderance of the evidence that the proposed relocation is not in the best interest of the child.

FLORIDA STATUTE §61.13001(10)

- **(10) Priority for hearing or trial.**--An evidentiary hearing or nonjury trial on a pleading seeking temporary or permanent relief filed under this section shall be accorded priority on the court's calendar. If a motion seeking a temporary relocation is filed, absent good cause, the hearing must occur no later than 30 days after the motion for a temporary relocation is filed. If a notice to set the matter for a nonjury trial is filed, absent good cause, the nonjury trial must occur no later than 90 days after the notice is filed.

APPOINTMENT OF GUARDIAN AD LITEM §61.401

- **61.401. Appointment of guardian ad litem**
- In an action for dissolution of marriage or for the creation, approval, or modification of a parenting plan, if the court finds it is in the best interest of the child, the court may appoint a guardian ad litem to act as next friend of the child, investigator or evaluator, not as attorney or advocate. The court in its discretion may also appoint legal counsel for a child to act as attorney or advocate; however, the guardian and the legal counsel shall not be the same person. In such actions which involve an allegation of child abuse, abandonment, or neglect as defined in [s. 39.01](#), which allegation is verified and determined by the court to be well-founded, the court shall appoint a guardian ad litem for the child. The guardian ad litem shall be a party to any judicial proceeding from the date of the appointment until the date of discharge.