

Name: Janet Kotz

Professor: Patricia A. Cashman, Esq.

Class: Professionalism and Civility in the Law

Date: June 9, 2023

Opinion Letter

Law Representative: Janet Kotz, Legal Student

Address: C/O UCF Orlando, FL

Date: June 09, 2023

Name: Margaret Smith

Address: 101 Unknown Street, Orlando, FL

Re: Parental Relocation with a Child

Margaret,

Our firm appreciates your confidence in our opinion in your case. We put a few of the facts together. Let us be clear as to what you are expecting from us. You are divorced and you and your ex-husband of five years currently live in Florida and have shared visitation rights with your children. You have asked our opinion on the judge's perspective of you relocating with

your children to Massachusetts. This opinion is limited to the facts contained in the facts section of this letter and to the law as of the date of this letter and is solely for your benefit.

Five years ago, you and your ex-husband (Bill) settled a Divorce in the State of Florida which has jurisdiction over the case under the laws set forth in the Florida Statutes. You both currently reside in Florida. You were granted visitation with your two children, Andy and Annie, every other week and Bill has the kids the remaining time. Bill has remarried and has a son Tommy that is the half-sibling to Annie and Andy. You are currently working as a professor at UCF and you were offered a job as the Dean of Legal Studies at Harvard Law School. The job is prestigious and comes with a salary gain of \$50,000 a year. The children's grandparents live in Andover, Massachusetts which is close to your new location. You would like to relocate your children, Andy and Annie, to Massachusetts to live with you once you move.

According to Florida Law, in order to relocate, a you must comply with the provisions of Florida Statute Section 61.13001 by either obtaining a written agreement from the other parent,

“(2) RELOCATION BY AGREEMENT.—

(a) If the parents and every other person entitled to access to or time-sharing with the child agree to the relocation of the child, they may satisfy the requirements of this section by signing a written agreement that:

1. Reflects consent to the relocation;
2. Defines an access or time-sharing schedule for the nonrelocating parent and any other persons who are entitled to access or time-sharing; and

3. Describes, if necessary, any transportation arrangements related to access or time-sharing.

(b) If there is an existing cause of action, judgment, or decree of record pertaining to the child's residence or a time-sharing schedule, the parties shall seek ratification of the agreement by court order without the necessity of an evidentiary hearing unless a hearing is requested, in writing, by one or more of the parties to the agreement within 10 days after the date the agreement is filed with the court. If a hearing is not timely requested, it shall be presumed that the relocation is in the best interest of the child and the court may ratify the agreement without an evidentiary hearing." FLA. STAT. § 61.13001(2) (2022)

or by serving a Petition to Relocate signed under oath or affirmation under penalty of perjury in accordance with Section 61.13001(3) of the Florida Statutes, giving Bill 20 days to object.

“(3) PETITION TO RELOCATE.—Unless an agreement has been entered as described in subsection (2), a parent or other person seeking relocation must file a petition to relocate and serve it upon the other parent, and every other person entitled to access to or time-sharing with the child. The pleadings must be in accordance with this section:

(a) The petition to relocate must be signed under oath or affirmation under penalty of perjury and include:

1. A description of the location of the intended new residence, including the state, city, and specific physical address, if known.
2. The mailing address of the intended new residence, if not the same as the physical address, if known.
3. The home telephone number of the intended new residence, if known.

4. The date of the intended move or proposed relocation.
5. A detailed statement of the specific reasons for the proposed relocation. If one of the reasons is based upon a job offer that has been reduced to writing, the written job offer must be attached to the petition.
6. A proposal for the revised postrelocation schedule for access and time-sharing together with a proposal for the postrelocation transportation arrangements necessary to effectuate time-sharing with the child. Absent the existence of a current, valid order abating, terminating, or restricting access or time-sharing or other good cause predating the petition, failure to comply with this provision renders the petition to relocate legally insufficient.
7. Substantially the following statement, in all capital letters and in the same size type, or larger, as the type in the remainder of the petition:

A RESPONSE TO THE PETITION OBJECTING TO RELOCATION MUST BE MADE IN WRITING, FILED WITH THE COURT, AND SERVED ON THE PARENT OR OTHER PERSON SEEKING TO RELOCATE WITHIN 20 DAYS AFTER SERVICE OF THIS PETITION TO RELOCATE. IF YOU FAIL TO TIMELY OBJECT TO THE RELOCATION, THE RELOCATION WILL BE ALLOWED, UNLESS IT IS NOT IN THE BEST INTERESTS OF THE CHILD, WITHOUT FURTHER NOTICE AND WITHOUT A HEARING.” FLA. STAT. § 61.13001(2) (2022)

If you do not comply to these before said subsections, you could find yourself in attempt of court and this could alter your current parenting plan.

“(e) Relocating the child without complying with the requirements of this subsection subjects the party in violation to contempt and other proceedings to compel the return of the child and may be taken into account by the court in any initial or postjudgment action seeking a determination or

modification of the parenting plan or the access or time-sharing schedule as...” FLA. STAT. § 61.13001(3)(a)(7)(e) (2022)

If you wish to take the matter to court, the judge would need to decide the case based solely on the welfare of the children. If Bill were to disagree with the new arrangement in your case, I would need some additional relevant facts, such as; do you have a cordial relationship with Bill since the divorce, the current age of your children, have you discussed this with Bill and what was his reaction, which of you have custody of the children or is this a shared custody arrangement, how much is Bill involved in the children’s activities including sports, school, and hobbies? I would also need to know the relationship between the children and their half sibling. The judge would need to understand all the factors surrounding the welfare of the children involved in the case. The battle to relocate against the wishes of another parent can be challenging.

If you were to work this relocation situation out of court by getting Bill to agree, this would be the easiest way to get the courts approval. If you were in a position to ask the court to make the decision, the burden of proving the relocation would benefit Andy and Annie would be your responsibility and if you meet that burden of proof, Bill would have to debunk it in order to not allow you to relocate.

(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 nonrelocating 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.” FLA. STAT. § 61.13001(8) (2022)

The statutes will guide the judge to base their decision in favor of a congenial agreement with the parents if the children are not negatively affected. If one parent were to force the situation of relocating without the consent of the other parent and/or the courts permission, there could be criminal charges, however; if you can prove the children would be better living near their grandparents in Massachusetts, or if the salary increase gives the children a better living condition and the upset of leaving their half sibling does not affect them and their father is not an active participant in their day to day activities, it could be possible to persuade the judge in your favor. The law states most certainly that you are not to relocate the children without a formal decision.

We hold the opinion that working with Bill or his counsel to reach an agreement prior to taking this to court would be in your best interest.

Respectfully,

Janet Kotz

Assistance received by reading the Florida Statute and the opinion in the Law Article

Cited:

Child Custody Law, Relocation of Children After Divorce in Florida, Florida Law, Ayo & Iken, Attorneys and Advocates, <https://www.myfloridalaw.com/child-custody-law/relocation-of-children/> paragraphs 5-14

FLA. STAT. § 61.13001 (2022), Official Internet Site of the Florida Legislature,

[http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0061/Sections/0061.13001.html)

[0099/0061/Sections/0061.13001.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0061/Sections/0061.13001.html)