

Is a pool more important than a dad?

Court rules that fathers are very important in their children's lives

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FOR eight years, California courts have permitted children of divorce to be moved hundreds or thousands of miles away from the fathers they love and need. Last week, the California Supreme Court issued a historic opinion which clarifies current case law and reaffirms the importance of both parents in a child's life.

Since 1996, move-away determinations have been based on the Burgess decision, in which a custodial mother was allowed to move her two children 40 miles away from their father. Burgess has been disastrous for children because it's been interpreted by California courts to permit moves of hundreds or thousands of miles. In some cases, courts have even allowed children to be moved out of the country, as far away as Australia, New Zealand and Zaire.

In the case — in re marriage of LaMusga — a Contra Costa County custodial mother sought to move to Ohio with her two young boys. The

father fought the move, arguing that moving would be harmful to his children because it would damage their relationship with him.

The trial court decided in the father's favor. However, the state's 1st District Court of Appeal reversed, declaring that as long as the move-away is not done in "bad faith," the custodial mother has the right to move with her children unless the father could prove that, in the event of a move, awarding him custody was "essential" to his children's well-being.

In LaMusga, the Supreme Court ruled that "essential" is an unreasonably high standard and that lower courts have been misinterpreting Burgess by placing their focus on the custodial parent's perceived rights instead of on the well-being of children. The court wrote:

"The likely impact of the proposed move on the noncustodial parent's relationship with the children is a relevant factor in determining whether the move would cause detriment to the children and ... may be sufficient to justify a change in custody."

During oral arguments, the court appeared concerned about the distance issue in move-aways, particularly after one of the mother's attorneys told the court that while the Burgess case involved a move within the same county, he believed the custodial parent's right to move remained the same when applied to interstate or even international moves. In strengthening the ability of trial courts to restrain move-aways, the opinion lists distance among the most prominent factors to be considered.

One reason California move-aways need to be reined in is the strong financial incentive for California custodial parents to move. California has a high child support guideline, a high cost of living and high wages. Thus custodial parents can often live better by moving to other states (or other countries), which have a lower cost of living, because they will still collect child support awards based on California wages and support guidelines.

Beyond the harm done to children by separating them from a loving parent, it is also a terrible injustice to noncustodial parents who often must stay behind to work to pay child support for children who have been moved out of their lives. Move-aways highlight the hypocrisy of the current

public policy and discourse on fatherhood, wherein men are lectured to take responsibility for their children while at the same time courts and lawmakers frequently disregard their right to remain a meaningful part of their children's lives.

At the heart of many move-away decisions is a question: "Do fathers matter or not?" Research overwhelmingly demonstrates that they do: The rates of school dropouts, teenage pregnancy, juvenile crime and teen drug abuse are more tightly correlated with fatherlessness than with any other major socioeconomic factor, including income and race.

The custodial mother in LaMusga has emphasized the economic advantages of her move, and newspapers report that she is happy that the new home she was able to purchase after moving her children out of state is spacious and has a pool. But is a bigger house with a pool more important than a father?

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