

AND BABY CAME TOO... - (Rita Keevil, Family Law)

In a world of increasing mobility and break ups between parents, the issue of children's travel and relocation has become a thorny one.

Both parents' consent is required for a child to be taken from Botswana, be it temporarily or permanently. This rarely causes problems when the child is to go temporarily, but when one parent wants to relocate for any length of time, or permanently, problems often arise.

As with most areas of Family Law the Courts have kept abreast of the times. And, in general, most jurisdictions will consider the best interests of the child as the paramount, but not the sole, consideration.

The infinite variety of human nature and circumstances means that there are no formulae for the consideration of the best interests of the child; each situation is assessed in the judicial discretion of the judge and on a consideration of the matrix of the individual circumstances.

Our Courts have recognised the value of international jurisprudence in this area as stated by Justice Moroka in a 2011 judgment on the issue.

A review of the decisions of the Courts of Botswana, South Africa, England, Canada, Australia and the USA show many common threads. These are:

- The convenience of access for the remaining parent is not a determining issue;
- Access between the child and the remaining parent should continue to the fullest extent practical;
- A custodial parent, as a starting point, has the right to determine where the child lives unless this flies in the face of a Court Order;
- A custodial parent has the right to pursue his or her own life and career;
- A custodial parent cannot be shackled to one jurisdiction;
- The decision to move must be reasonable and *bona fide*. The leaving parent must not be acting out of spite or a wish to separate the child and the remaining parent;
- The gender of a child and that of the parent who wishes to take the child is not relevant;
- A parent wishing to leave with the child should not be asked to sacrifice his or her current marriage or compromise the relationship between the current spouse and children with that spouse;
- The opinions of "experts" are for only the guidance of the Court.

The wishes of the child are a factor for consideration, but Courts are alive to the pitfalls of parental influence, over burdening the child and the child's ability to perceive and understand the real and long term issues.

In the word of Justice Walia:

"It is a truism that children are not the best judges of what is good for them. They are susceptible to any number of influences and must therefore receive proper guidance from their parents on what is best for them, based on the roadmap of values the parents wish to inculcate in the children.

Unfortunately, however, in cases such as this, where the parents are at odds with each other, the decision on what is best for them rests with the Court."