An Examination of Relocation Law in Massachusetts, Connecticut, and Rhode Island: Successful Trends toward Determining the Best Interests of the Child

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I. INTRODUCTION

Courts have long decided custody cases. Today, with rising divorce rates, an unreliable economy and the popularity of remarriage, courts often have to reconsider custody orders when the custodial parent decides to relocate with her children. While the number of motions to relocate after divorce is on the rise, there is currently no widely accepted relocation doctrine. Although the American Bar Association’s “Uniform Marriage and Divorce Act” attempts to address relocation disputes, very few states have accepted this rule.

The Uniform Act, like many states, adopts a “best interests” standard in determining when a court may modify a custody decree. While the Uniform Act suggests some factors for courts to consider when determining the “best interests,” the standard is not consistently applied among states. Consequently, the ambiguity of this standard allows courts to de-


* In 2001 the United States Census Bureau reported that there were 13.4 million custodial parents in the U.S. Of those, 84.4% were mothers while only 15.5% were fathers. U.S. Census Bureau, http://www.census.gov/prod/2003pubs/p60-225.pdf (last visited March 9, 2005). Throughout this document, for the ease of readability, custodial parents will be referred to in the feminine and non-custodial parents will be referred to in the masculine.

2 See Major Fenton, supra note 1, at 58; see also Chris Ford, Untying the Relocation Knot: Recent Developments and a Model for Change, 7 COLUM. J. GENDER & L. 1, 12-26 (1997) (describing history of relocation in multiple states); infra notes 45-100 and accompanying text (discussing multiple approaches to relocation determinations in Massachusetts, Connecticut and Rhode Island).


4 See Ford, supra note 2, at 6 (listing only eight states that have accepted rule).

5 See Uniform Act, supra note 3 (stating court may modify visitation rights whenever modification serves best interests of child); infra notes 45-100 (discussing “best interests” standards in Massachusetts, Connecticut and Rhode Island).

6 See Uniform Act, supra note 3 (listing six factors); see also Ford, supra note 2, at 31-52 (examining different interpretations of Uniform Act).
velop their own factors for determining the best interests of the child. In states that have developed factors, the courts do not always consistently apply them or encounter difficulty when applying the factors, leaving relocation outcomes unpredictable.

This Note examines approaches to relocation in the United States today, focusing particularly on the development of relocation in Massachusetts, Connecticut, and Rhode Island, and uses the positive aspects of each state's relocation approach to propose a process for determining the best interest standard; one that balances the emotional and financial well being of the post-divorce family. Section II addresses the changing family dynamics that have led to increased relocation conflicts, its historical development and constitutional decisions that impacted relocation law. Section III discusses the various statutory and common law approaches Massachusetts, Connecticut and Rhode Island adopted to balance the child's best interests, the custodial parent's right to relocate, and the non-custodial parent's right to visitation. Section IV compares these approaches and identifies the most favorable aspects of each. Section V concludes with a proposed method for establishing a successful relocation doctrine.

II. BACKGROUND

A. Changes in Society

Divorce, once frowned upon in United States society, is now a widely accepted occurrence, resulting in a divorce rate of 7.5% per 1,000 people in the United States population. Between 2002 and 2003, 17.8%...
all Americans who moved were divorced people, many of whom were custodial parents.\textsuperscript{10} Case law demonstrates that motions by custodial parents to relocate within the first few years after divorce are becoming extremely popular.\textsuperscript{11} The most common reasons cited for relocation are accepting an out-of-state job, pursuing educational opportunities and moving closer to an out-of-state spouse.\textsuperscript{12} Despite the increase in custodial parent relocation, courts struggle with the questions of how and when to intervene because of constitutional concerns and disputes regarding the proper standard for allowing relocation.\textsuperscript{13}

B. Constitutional Issues

In addition to difficult emotional and social issues, relocation disputes also raise fundamental constitutional concerns.\textsuperscript{14} The Supreme Court has long recognized the right to travel although it is not explicitly stated in the Constitution.\textsuperscript{15} Court intervention preventing the custodial parent from


\textsuperscript{13} See Sanford L. Braver, Ira M. Ellman & William V. Fabricius, \textit{Relocation of Children After Divorce and Children’s Best Interests: New Evidence and Legal Considerations}, 17 No. 2 J. Fam. Psychology 206, 208 (2003) (discussing relationship between right to travel and relocation issues); see also infra notes 14-25 and accompanying text (concerning constitutional limits on court’s interference). Courts must be careful not to interfere with the right to privacy within the family as well as the constitutional right to travel. See LaFrance, supra note 12, at 67.

\textsuperscript{14} See Braver, supra note 13, at 207 (acknowledging constitutional limits on court interference); LaFrance, supra note 12, at 67 (discussing implied right to travel).

\textsuperscript{15} See Shapiro v. Thompson, 394 U.S. 618, 629 (1969) (implying right to travel); Laura W. Morgan, \textit{Imputing Income Based on Better Job Location and the Constitutional Right to Travel}, 15 No. 1 Divorce Litig. 12 (2003) (citing Shapiro holding). In Shapiro, the Supreme Court held that “the nature of our Federal Union and concepts of personal liberty unite to require that all citizens be free to travel throughout our land uninhibited by
removing the child implicates this right. In the past, some legal analysts argued courts that restricted or took steps to discourage mobility unfairly imposed on the right to travel. Although these analysts believed that the state had an obligation to protect the welfare of the child, they also felt that courts should restrict the right to travel only if specific harm to the child would occur. In *Watt v. Watt*, the Supreme Court of Wyoming held that a court’s denial of a custodial mother’s request to relocate constituted “an infringement upon [her] constitutional right to travel.” Despite this holding and similar language from other state supreme courts, neither the right to travel nor the right to relocate are recognized as fundamental rights under any constitutional doctrine. Consequently, courts generally hold that the child’s best interests trump the custodial parent’s right to relocate.


See *Morgan*, supra note 15, at 12; *Ford*, supra note 2, at 12 (arguing right to travel infringed where move poses threat of losing custody).

*See Ford*, supra note 2, at 1. In states with restrictive relocation laws, custodial parents are forced to pass up economic opportunities such as favorable job offers or educational placement merely because such opportunities are far from the non-custodial parent. *Id.* In such states, if a parent decides to ignore the law and relocate with her children, she faces criminal and civil consequences. *Id.* A choice to take advantage of such opportunities without her children means losing custody. *Id.*

See Paula M. Raines, *Joint Custody and the Right to Travel: Legal and Psychological Implications*, 24 *J. FAM. L.* 625 (1985) (addressing “problem of parents’ right to travel within the ambit of joint-custody agreement”) (publication page references not available for this document). This group, which opposed judicial action imposing on the rights of custodial parents and placing the burden of proof on the parent opposing the move, was referred to as the “right to travel faction.” *Id.* This faction viewed judicial intervention as “unwarranted interference with both family autonomy and the custodial parent’s freedom.” *Id.* The right to travel faction also argued that the constitutional right to travel should predominate over an analysis of the best interests of the child, a standard that will be discussed in Section II (C)(2). *Id.* This faction was criticized for placing the rights of the custodial parent ahead of the child’s best interests. *Id.*

971 P.2d 608 (Wyo. 1999).

*Id.* at 610 (reversing trial court’s decree changing custody by calling trial decision abuse of discretion).

Other constitutional issues discussed in relocation cases include the custodial parent’s right to privacy, right to remarry and right to equal protection. Courts have also addressed the non-custodial parent’s liberty interest in caring for his child. States have discussed relocation’s effect on these rights and interests, but the Supreme Court has not yet ruled on the constitutionality of relocation doctrines primarily because relocation is a family law issue.

C. State Interference

While the methods by which states have approached relocation issues differ, both statutory and common law relocation doctrines have centered on the principle of protecting the “best interests of the child,” a standard adopted from custody and visitation doctrines. Historically, opin-
ions vary as to what constitutes the best interests of the child. Majority opinions have shifted from favoring the non-custodial parent and his right to visitation to favoring the custodial parent and her right to move. Today, post-divorce economic struggles and increasing cases of re-marriage have led the majority of states to favor relocation, yet there is no widely accepted uniform rule.

1. Former/Minority Approach

In the past, a number of states discouraged relocation of a custodial parent with minor children. Only a minority of states still subscribe to this opinion today. Courts often discouraged relocation by imposing heavy burdens on the custodial parent to prove that the move was in the best interests of the child. States with restrictive statutes and decisions

\[\text{Id.} \text{ During the mid-twentieth century, with the popularity of Equal Protection and gender equality, the tender years presumption morphed into the "best interests" presumption that dominates today. \text{Id.} \text{ at 820; see also Ireland v. Ireland, 717 A.2d 676, 680 (Conn. 1990) (adopting best interests standard from custody statute where no relocation statute existed). The court in Ireland held:}

Unlike some of our sister states, Connecticut has no statute specifically governing situations in which a custodial parent wishes to relocate with his or her children. Yet, our statutes expressly mandate that judicial determinations regarding child custody and visitation matters are to be governed by the best interests of the child. This clear legislative policy, in conjunction with the legislature’s silence on relocation issues, presents this court with the opportunity to exercise its common law adjudicatory authority.

\[\text{Id.}

27 See Katz, supra note 1, at 438 (criticizing vagueness of best interests standard). In 1970, the commissioners on Uniform State Law created the Uniform Marriage and Divorce Act, which enumerated factors for dealing with the best interest standard. \text{Id.} \text{ at 439. These factors brought clarity to the standard and limited personal opinion in judicial decisions. \text{Id.} \text{ This act, however, was adopted in part by only eight states. \text{Id.} \text{ at 438.}

28 See Bruch, supra note 12, at 246-47 (discussing historic shift).

29 See Bruch, supra note 12, at 249-50 (noting national trend toward restoring custodial parent’s relocation opportunities).

30 See Ireland, 717 A.2d at 680 (explaining history of denying relocation); see also Kathryn E. Abare, Protecting the New Family: Ireland v. Ireland and Connecticut's Custodial Parent Relocation Law, 32 CONN. L. REV. 307, 309 (Fall 1999) (noting presumption against relocation in some states); Ford, supra note 2, at 15 (naming states and cases adopting restrictive approach to relocation).

31 See Mazzoli, supra note 12, at 260. “Today, as means of communication have become faster and more reliable, courts are more likely to allow the custodial parent to relocate.” \text{Id.}

32 See Ford, supra note 2, at 14 (describing restrictive relocation rule in New York prior to 1996). An example of a state with such heavy burdens is the relocation rule in New York prior to 1996. \text{Id.} For the custodial parent to relocate when the move would disrupt the non-custodial parent’s visitation schedule, the custodial parent had to show exceptional
operated under the presumption that the best interests of the child were served by fostering the child’s relationship with both parents through frequent contact with both. 33 While this presumption was based on clinical studies, it was also supported by the belief that the non-custodial parent’s right to visitation was one worthy of protection and that relocation made visitation complicated, if not impossible. 34

2. New Approach

As mobility has increased and technology has advanced, parent/child studies have yielded new results and relocation presumptions have changed. 35 Recent studies show that the child progresses best when circumstances as a threshold. Id. Once exceptional circumstances were proved, the court still had to find the move in the best interests of the child. Id. at 15-16; Mazzoli, supra note 12, at 260 (acknowledging courts traditionally required custodial parent to also prove move in good faith). In addition to assigning the custodial parent the burden to prove the move was in the best interests of the child, she also had to prove the move was in “good faith” and not solely to prevent the non-custodial parent’s visitation. Id.

33 See Richard A. Warshak, Ph.D., Social Science and Children’s Best Interests in Relocation Cases: Burgess Revisited, 34 FAM. L.Q. 83, 85 (Spring 2000) (analyzing clinical studies supporting continued relationships with both parents). In 2000, Dr. Warshak relied on more than seventy-five studies in social science literature when he wrote an article supporting a policy of encouraging both parents to remain in close proximity to their children. Id. at 84-85. In his article, Dr. Warshak criticizes the California decision In re Burgess and Judith Wallerstein’s amica curiae brief which both advocated a presumption in favor of relocation. Id. at 84-86. Dr. Warshak points out that Wallerstein’s assertions in the brief contradict her own research and ignore the widely accepted professional opinion that children normally develop close attachments to both parents. Id. at 85.

34 See, e.g., Santosky v. Kramer, 455 U.S. 745, 753-54 (1982) (holding non-custodial parent’s right to visitation is natural right); In re Marriage of Elser, 895 P.2d 619, 622-23 (Mont. 1995), overruled on other grounds by Porter v. Galanneau, 911 P.2d. 1143 (Mont. 1996) (refusing to allow custodial mother’s relocation where disruption in non-custodial parent’s visitation irreparable); see also Mazzoli, supra note 12, at 262 (arguing in favor of non-custodial parent’s rights when custodial parent relocates). When relocation is allowed, it detrimentally affects the child’s best interest by reducing time with the noncustodial parent. Id. Thus, courts are forced to restructure visitation schedules and minimize loss of contact with the non-custodial parent. Id. at 263. In many circumstances, couples anticipate relocation and provide two visitation schedules in their separation agreements. Id. at 264. One schedule applies while both parents are in the same location, and the other schedule begins when the relocation occurs. Id. at 264. While Mazzoli supports the preventative nature of such agreements, he notes that some courts are reluctant to enforce them because the relocation is anticipated and it does not represent a material change in circumstances. Id. at 625. Mazzoli criticizes courts that refuse to enforce separation agreements that provide alternative visitation schedules in anticipation of relocation and argues that such judicial action may represent an abuse of discretion. Id.

35 See Wallerstein, supra note 12, at 310 (noting societal changes leading to rise in relocation). Today, relocation is normal as a result of the United States’ unstable job market and high incidence of remarriage and second divorces. Id. Although at the time of divorce the child’s support network may include both parents, because of the high probability that at least one parent will change residency, it is unrealistic that both parents can be regarded as a
the relationship with his custodial parent is fostered. The majority now feels that the best interest standard is achieved through preservation of the custodial parent/child relationship. Unlike anti-relocation states that restrict custodial parents' relocation by imposing heavy burdens, pro-relocation states have burdens of proof favoring the custodial parent. The current presumption that maintaining a relationship with the custodial parent fosters the child's best interests also favors a custodial parent who seeks to relocate.

Until the mid-1990's, the majority of states avoided strong presumptions favoring or disfavoring relocation and instead chose the neutral standard of determining the best interests of the child on a case-by-case basis. In the mid-1990's, however, relocation case law became dramatically more permissive in allowing the custodial parent to relocate. Today, states that once opposed relocation have relaxed their standards and trends now favor the custodial parent's right to relocate. Some courts have opined that the best interests of the child are so interwoven with the

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36 See Wallerstein, supra note 12, at 310-11 (citing results of research at Center for the Family in Transition).
37 See Wallerstein, supra note 12, at 310-11 (discussing research). The authors argue that social science research does not support the presumption that frequent and continuing access to both parents is in the child's best interests. Id. at 311-12. Rather, their work demonstrates that a good post-divorce outcome stems from a well-functioning custodial parent-child relationship. Id. at 312; see also Bruch, supra note 12, at 247 (noting shift in public perceptions concerning child welfare). Bruch and Bowermaster write "a growing body of social science literature has identified the child's relationship with its primary caretaker as the single most important factor affecting its welfare when the child's parents do not live together." Id.; ANNA FREUD, BEYOND THE BEST INTERESTS OF THE CHILD (New York: Free Press) (1979) (discussing study). This non-legal, psychological study focused on the well-being of the child rather than the rights of the parents. Id. Freud's research influenced child custody law by discovering that, rather than visitation with both parents, a child needs continuity of care with an adult who wants the child and can provide him or her with affection. Id. Freud suggests that in a custody case, where parents cannot agree, it is the job of the judge to determine who can best fulfill those needs. Id.; Katz, supra note 1, at 441 (citing research of Anna Freud).
38 See Abare, supra note 30, at 312 (explaining New Jersey's burden of proof).
39 See id. at 309 (arguing relocation doctrines containing presumptions biased in favor of custodial parent).
40 See Ford, supra note 2, at 16 (citing Jeff Atkinson, Modern Child Custody Practice, §7.08 at §7.02 (1986 & Cum. Supp. 1996) and Claudia A. Pott & Kala Shah, Relocations Pose Custody Concerns, Nat'l L.J., June 6, 1996, at B7). In most of these states the non-custodial parent had the burden of proving the move was not in the best interests of the child. Id.
42 See Abare, supra note 30, at 309 (explaining move result of new presumptions and burdens of proof); see also Ford, supra note 2, at 17-26 (noting shifts).
best interests of the custodial parent that a court cannot make a relocation decision considering each independently. Rather, in considering what is best for the child, the court also must consider what is best, mentally and emotionally, for the custodial parent.

III. CASES AND STATUTES

A. Massachusetts

Massachusetts is one of the states that has a statute dealing specifically with relocation. Under chapter 208, section 30 of the Massachusetts General Laws, a minor child cannot be removed from the Commonwealth without receiving consent from both parents. This requires a custodial parent wishing to relocate out of state with a minor to obtain permission from the non-custodial parent. Without consent from the non-custodial parent, the court still has the power to order the relocation “upon cause shown.” In Massachusetts, courts have interpreted “cause shown” to mean that the parties must demonstrate that the move will result in a “real advantage” and that in making that determination, every person, parent and child, has an interest to be considered.

43 See, e.g., Ireland v. Ireland, 717 A.2d 676, 681 (Conn. 1998); Yannas v. Yannas, 481 N.E.2d 1153, 1157 (Mass. 1985); Ford, supra note 2, at 9 (noting language from Taylor v. Taylor, 849 S.W.2d 319, 328 (Tenn. 1993)). In Taylor the Supreme Court of Tennessee, in determining the best interests of the child, acknowledged that “in almost every removal case, moreover, the courts have recognized that the child’s best interests are fundamentally interrelated with those of the custodial parent.” Id.

44 See id.

45 See MASS. GEN. LAWS ch. 208, §30 (2004); see also WIS. STAT. ANN. §767.327 (3)(a)(2)(a) (West 1998); S.D. CODIFIED LAWS §25-5-13 (Michie 1999).

46 MASS. GEN. LAWS ch. 208, §30 (2004). The statute states:

A minor child of divorced parents who is a native of or has resided five years within this commonwealth and over whose custody and maintenance a probate court has jurisdiction shall not, if of suitable age to signify his consent, be removed out of this commonwealth without such consent, or, if under that age, without the consent of both parents, unless the court upon cause shown otherwise orders.

Id. According to this language, only native children and children who have resided in the state for over five years are covered by the statute. Id. Because those categories do not cover all Massachusetts’ children, family courts currently struggle with the questions of how and/or if the statute should apply to children not explicitly covered. See id.

47 Id.; see also Yannas v. Yannas, 481 N.E.2d 1153, 1158 (Mass. 1985); D.C. v. J.S., 790 N.E.2d 686 (Mass. App. Ct. 2003). In Yannas and D.C. v. J.S., the Supreme Judicial Court and the Massachusetts Appeals Court held that "upon cause shown" means only that removal be in the best interests of the child." Id. Both courts acknowledged that in determining the best interests of the child, there must be a "real advantage" and that in making that determination, every person, parent and child, has an interest to be considered.” Id.
advantage,” which in turn has been interpreted to mean that the move must be in “best interests of the child,” a standard difficult to apply.\textsuperscript{49}

The leading case in Massachusetts regarding relocation law is \textit{Yannas v. Yannas},\textsuperscript{50} decided in 1985. In \textit{Yannas}, the Supreme Judicial Court analyzed what it considered to be the central question in relocation cases: how “best interests” should be determined.\textsuperscript{51} In \textit{Yannas}, the court awarded a mother physical custody of her two minor children and allowed her to relocate with them to Greece because she was able to prove the move would provide her children and herself with more stability financially, emotionally and socially.\textsuperscript{52} The court developed a number of factors to consider in determining whether to grant relocation.\textsuperscript{53}

First, the court will determine whether there is a good reason for the move.\textsuperscript{54} In making this determination, the court will examine whether the custodial parent is looking to deprive the non-custodial parent of reasonable visitation.\textsuperscript{55} If the custodial parent can establish a good reason for wanting to move, the court will consider the relevant factors collectively, without allow any specific factor to control.\textsuperscript{56} Second, in \textit{Yannas}, the court established that the following interests of the children should be considered: how the move would improve the child’s quality of life; how the move would impact the child’s relationship with the non-custodial parent; and the effect of the move on the child’s emotional, physical or developmental needs.\textsuperscript{57} Third, in \textit{Yannas}, the court ruled the needs of the custodial

\textsuperscript{49} See Rubin v. Rubin, 370 Mass. 857 (1976) (interpreting statute). The Supreme Judicial Court of Massachusetts held that “upon cause shown” means only that removal must be in the best interests of the child. \textit{Id.} at 857. See also Williams v. Pitney, 567 N.E.2d 894, 897-98 (Mass. App. Ct. 1991) (holding “real advantage” standard used when determining whether relocation outside commonwealth allowed); Signorelli v. Albano, 486 N.E.2d 750 (Mass. App. Ct. 1985) (requiring judge consider whether mother’s following new husband to better place of employment was real advantage). The court in \textit{Signorelli} held that determining whether there is a “real advantage” is a threshold question in relocation cases and, once such an advantage is shown, the other relevant factors are only considered collectively and are not individually controlling. 486 N.E.2d at 751.

\textsuperscript{50} 481 N.E.2d 1153 (Mass. 1985).

\textsuperscript{51} \textit{Id.} at 1158.

\textsuperscript{52} See \textit{id.} at 1157.

\textsuperscript{53} See \textit{id.} at 1158.

\textsuperscript{54} See \textit{id.}

\textsuperscript{55} See \textit{id.}

\textsuperscript{56} \textit{Id.} In \textit{Yannas}, the court found that the mother proved a good reason because she was moving in order to obtain a better job and be closer to extended family members, not to deprive the father of visitation. \textit{Id.} Additionally, the father traveled to Greece regularly and would have the opportunity to visit the children when he was there. \textit{Id.}

\textsuperscript{57} \textit{Id.} The court found that by moving to Greece the children’s quality of life would benefit because their mother would have a prosperous job, and they would be exposed to good schools and a new culture. \textit{Id.} at 1157. The court found the children’s relationship with their father would not deteriorate because he often visited Greece and the mother was
parent should be considered. Like many other state courts, the Supreme Judicial Court of Massachusetts held that because the "best interests of a child are so interwoven with the wellbeing of the custodial parent, the determination of the child's best interest requires that the interests of the custodial parent be taken into account." The court further ruled that if relocation would improve the quality of the custodial parent's life, it may result in improvements in the quality of the child's life. Lastly, in *Yannas*, the court considered the interests of the non-custodial parent in determining whether to grant relocation. For example, if a non-custodial parent has always been diligent in visiting and maintaining a relationship with the child, the court should make reasonable efforts to continue that relationship. If the non-custodial parent does not have a relationship with the child at the time of relocation, the court's decision will be easier.

Chapter 208, section 30 of the Massachusetts General Laws does not provide a comprehensive relocation doctrine on its own, which prevents a strict yes or no rule for relocation requests but allows for broad interpretation. The *Yannas* decision has proved helpful in interpreting the statute by providing factors for courts to follow. Since 1985, courts have consistently used the factors listed in *Yannas* when making relocation decisions.

interested in continuing their relationship with him. *Id.* Additionally, the court found that the children's emotional, physical or developmental needs would not be drastically affected because, although they might experience some culture shock, they would maintain close relationships with both parents. *Id.*

*Yannas*, 481 N.E.2d at 1159. The mother had an interest in the move because it would allow her to pursue a better career and gain emotional support from her family while remaining with her children. *Id.*

*Id.* at 1158-59.

*Id.* at 1159.

*Id.* at 1159. In *Yannas*, the court found that the children's move to Greece would not have an adverse effect on their relationship with their father because although his visitation schedule would change, he had large blocks of free time in which to visit, and he regularly traveled to Greece. *Id.*

*Id.* at 1158. In *Yannas*, the court acknowledged the importance of protecting the visitation rights of a non-custodial parent. *Id.* If the non-custodial parent has made diligent efforts in the past, the court should assess the reasonableness of maintaining that relationship. *Id.* However, the court also ruled that the fact that a non-custodial parent's visitation will be altered cannot be a controlling factor in denying the custodial parent's request for relocation. *Id.*

*Id.* (acknowledging situation where non-custodial parent unfit).

*See supra* notes 46-49 (discussing statute and interpretation).

*Yannas*, 481 N.E.2d at 1158 (providing factors for consideration in determining best interests).

Connecticut, like most states, does not have a statute expressly addressing relocation or the factors courts should consider when determining relocation issues. In 1998, however, the Connecticut Supreme Court issued a decision in Ireland v. Ireland that gave clarity to the state’s position on relocation law. The Ireland decision has become the state’s landmark relocation case and is still widely followed.

In Ireland, the mother was awarded primary physical custody of the child upon divorce in 1990. In 1995 the mother remarried. From 1990 until 1995, the child’s father visited his son every other weekend. In July 1995, the mother informed the father that she and the child were moving to California to be with her new husband. Upon receiving this news, the father obtained a temporary injunction enjoining the mother from leaving the state with the child. The trial court denied the mother’s motion to relocate and held that the custodial parent failed to meet her burden of proving that relocation would be in the best interests of the child. The Appellate Court of Connecticut affirmed. The Supreme Court of Connecticut granted certiorari and reversed, holding that in relocation cases the burden to prove or disprove the best interests of the child should be shared by both parties, starting with the custodial parent and then shifting to the non-custodial parent.

67 Abare, supra note 30, at 308.
68 717 A.2d 676 (Conn. 1998).
69 See id. at 689 (explaining burden-shifting scheme for determining relocation); see also Abare, supra note 30, at 308 (noting Ireland decision made Connecticut “leader in relocation law”).
71 717 A.2d at 677.
72 Id.
73 Id.
74 Id.
75 717 A.2d at 678.
76 Id. at 677-78.
78 Ireland, 717 A.2d at 679. In addressing the burden of proof issue, the Connecticut Supreme Court noted that this was an issue of first impression for this court and one that no state statute specifically addressed. Id. The court did note the well-settled legislative policy regarding custody and visitation to consider the best interests of the child and it exercised “common law adjudicatory authority” to adopt the best interests standard for use in relocation cases. Id. at 680. In proposing a burden shifting scheme for relocation cases, the court noted the historic opposition to relocation by states that considered the child’s continued
In addition to clarifying the standard and burden of proof in relocation cases, the Supreme Court of Connecticut also approved several factors for determining the best interests of the child in future relocation cases including: each parent's reasons for seeking or opposing the move; the quality of the relationships between the child and the custodial and non-custodial parents; the impact of the move on the quantity and quality of the child's future contact with the non-custodial parent; the degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move; and the feasibility of preserving the relationship between the non-custodial parent and child through suitable visitation arrangements. Historically, the best interests standard revolved around the child's best interest with both parents to be in her best interest. The court, however, focused on the growing number of states that presumed the custodial parent's good faith decision to relocate is in the best interests of the child. The court reasoned that the realities of divorce inevitably change the character of the child's relationship with both parents and trying to preserve the non-custodial parent's relationship with the child may not be realistic in every case. The court in adopted the notion recognized by the New Jersey Superior Court in D'Onofrio v. D'Onofrio that after divorce, a new family unit is created between the custodial parent and her children, and that what benefits the unit as a whole benefits its individual members. The court acknowledged that restricting a custodial parent's relocation could be detrimental when the move would result in an improved life for her and the child, it also acknowledged that the custodial parent's motives need to be examined in the event the move is in bad faith. The court reasoned that it is consistent with this trust to presume the move is in the child's best interests and to place the burden on the non-custodial parent to show otherwise. Secondly, the non-custodial parent is in the best position to show the detriment, in terms of the quantity and nature of contact after relocation. The standards used by the Connecticut Appellate Court and affirmed by the Supreme Court of Connecticut were adopted from the New Jersey case of D'Onofrio v. D'Onofrio. The Supreme Court of Connecticut noted that the appellate court did not abuse its power when it supported the trial court's decision and concluded that the trial court had essentially considered those criteria. The D'Onofrio factors include: the advantages of the move, such as how it would likely improve the quality of life for both the custodial parent and the child; the motive of the custodial parent in seeking the move; and the motive of the non-custodial parent in resisting the removal. The Court must also be satisfied that there will be a realistic opportunity for visitation with the non-custodial parent such that the non-custodial parent-child relationship would be preserved if the relocation were allowed. It is important to note that while the Supreme Court of Connecticut affirmed the appellate court's use of the D'Onofrio factors, it adopted the factors from another decision for use in future relocation decisions.
around the interests of the child, but this court modernized its best interests test by holding that trial courts can and should consider the interests of the family unit as a whole when making this determination.\textsuperscript{80} Since 1999, Connecticut courts consistently followed the burden shifting scheme and factors for determining the bests interests described in\textit{Ireland}.\textsuperscript{81}

\textbf{C. Rhode Island}

Similar to Connecticut, Rhode Island does not have a statute specifically addressing relocation law. Like Connecticut, Rhode Island's relocations standards stem from general custody statutes codified in case law and focus on the best interests of the child.\textsuperscript{82} Unlike Connecticut, however, Rhode Island case law does not specifically deal with the burden of proof in relocation cases; rather, it deals with the burden of proof in motions to modify custody.\textsuperscript{83} Unlike the burden shifting scheme in Connecticut,

These factors were taken from the New York Court of Appeals' decision in \textit{Tropea v. Tropea}, 665 N.E.2d 145 (N.Y.1996). The \textit{Tropea} factors include but are not limited to:

[E]ach parent's reasons for seeking or opposing the move; the quality of the relationships between the child and the custodial and non-custodial parents; the impact of the move on the quantity and quality of the child's future contact with the non-custodial parent; the degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move; and the feasibility of preserving the relationship between the non-custodial parent and child through suitable visitation arrangements.

\textit{Id.} at 151. The \textit{Ireland} court reasoned that the \textit{Tropea} factors were better suited for future use because they are more exhaustive for determining the best interests of the child. \textit{Ireland}, 717 A.2d at 686.

\textit{Ireland}, 717 A.2d at 685 (explaining Supreme Court of Connecticut's reasoning). Although the father argued that shifting the best interests inquiry from the child to the interests of the new family unit contradicted the court's long-standing commitment to the best interests of the child standard, this court did not agree. \textit{Id.} The court acknowledged the importance of the child's best interests, but it reasoned that the interests of the custodial parent are so intertwined with the interests of the child that to determine what is best for child the without considering what is best for the family unit would be an incomplete inquiry. \textit{Id.} at 684-85.

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\textsuperscript{80} \textit{Ireland}, 717 A.2d at 685 (explaining Supreme Court of Connecticut's reasoning). Although the father argued that shifting the best interests inquiry from the child to the interests of the new family unit contradicted the court's long-standing commitment to the best interests of the child standard, this court did not agree. \textit{Id.} The court acknowledged the importance of the child's best interests, but it reasoned that the interests of the custodial parent are so intertwined with the interests of the child that to determine what is best for child the without considering what is best for the family unit would be an incomplete inquiry. \textit{Id.} at 684-85.

\textsuperscript{81} See Abare, supra note 30, at 307 (supporting \textit{Ireland} holding). Abare notes the Connecticut Supreme Court's decision in \textit{Ireland} as properly recognizing the changing nature of the American family. \textit{Id.} at 308. The author also stated that the \textit{Ireland} decision properly recognized that the American family should be awarded privacy and that the custodial parent's decision making power should not be interfered with; rather, it should be protected. \textit{Id.} at 328.

\textsuperscript{82} See, e.g., Pettinato v. Pettinato, 582 A.2d 909, 913 (R.I. 1990) (holding custody analysis based on best interests); Chatelain v. Chatelain, 172 A.2d 332, 333 (R.I. 1961) (holding children's interest main factor in custody decisions and in motions for change of custody); see also \textit{Ireland}, 717 A.2d at 680 (discussing Connecticut's adoption of custody statute's "best interest" standard for use in relocation cases).

\textsuperscript{83} See, e.g., Kenney v. Hickey, 486 A.2d 1079, 1082 (R.I. 1985); Chatelain v. Chate-
Rhode Island courts historically placed the burden of proof solely on the moving party. While some Rhode Island courts have discussed factors for determining the best interests of the child, they have inconsistently applied these factors. Consequently, unlike Connecticut, Rhode Island case law has not provided a clearly articulated relocation doctrine.

Rhode Island’s relocation case law dates back to 1927 to Leighton v. Leighton. In Leighton, the Supreme Court of Rhode Island commented, in dicta, that the superior court had the power to return a child to Rhode Island and the standard for making this decision depended on whether the child’s return was necessary for protection of his/her welfare or enforcement of the father’s visitation rights.

The “child welfare” and “non-custodial right” standard for determining relocation matters appeared again in 1961 in Chatelain v. Chatelain. The Supreme Court of Rhode Island cited Leighton in ruling that the welfare of the child is the “paramount consideration” when ruling on a motion by a custodial parent to remove a child from the jurisdiction of the court. The court further stated, “it has been recognized generally that in determining such motions [for relocation], consideration should be given to whether, if such permission be granted, it would unreasonably infringe upon the other parent’s right of visitation.” The court noted, however, that although the non-custodial parent does have a right of visitation, the

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84 See Kenney, 486 A.2d at 1082.
85 See infra notes 96 and 99 (noting array of factors applied throughout history).
86 See Bruch, supra note 12, at 302 (noting confusion in Rhode Island and other states without clear statutes or case law).
87 136 A. 443 (R.I. 1927).
88 Id. at 443. In Leighton, the Supreme Court of Rhode Island did not discuss whether the superior court had the power to issue an order demanding the children’s return to the state. Id. Rather, the Court stated that the superior court could effectuate the children’s return by suspending the father’s child support payments until the children were returned to Rhode Island. Id.
89 In Rhode Island case law, “best welfare of the child” and “best interests of the child” have been used synonymously when dealing with relocation. See, e.g., Pettinato v. Pettinato, 582 A.2d 909 (R.I. 1990); Kenney v. Hickey, 486 A.2d 1079 (R.I. 1985); Chatelain v. Chatelain, 172 A.2d 332 (R.I. 1961); Leighton v. Leighton, 136 A. 443 (R.I. 1927). While Leighton, Chatelain and Kenney refer to the standard as concerning what is best for the child’s welfare, Pettinato and cases following refer to the standard as the best interests of the child. Pettinato, 582 A.2d at 913; Kenney, 486 A.2d at 1082; Chatelain, 172 A.2d at 333; Leighton, 136 A. at 443.
90 172 A.2d 332 (R.I. 1961). In Chatelain, the mother was awarded custody and, after two years of separation, filed a motion to relocate with her children to Switzerland. Id. at 335. See also Scott v. Scott, 60 A.2d 147, 148 (R.I. 1948) (passing on deciding relocation issue). In 1948, the Supreme Court of Rhode Island faced a relocation issue but avoided it by holding that relocation and change of custody issues were premature where the custodial parent’s relocation was not definite. Id.
91 Chatelain, 172 A.2d at 334.
92 See id. (citing cases from New Hampshire, New Jersey and Pennsylvania).
non-custodial parent cannot dictate the place of residence because the non-
custodial parent does not have custody. Additionally, the Chatelain
court held that non-custodial parental rights to visitation are of great im-
portance, but they are subordinate to the child's welfare.

Leighton and Chatelain determined that Rhode Island's relocation
standard should be the "best welfare of the child," a standard that the
courts have consistently applied. Despite the existence of the best inter-
ests standard, neither statutory nor case law enumerated any factors for
determining "best interests." In 1990, the Supreme Court of Rhode Is-
land, in Pettinato v. Pettinato, described the lack of statutorily defined fac-
tors as resulting in "an [amorphous] standard [whose] implementation has
been left to the sound discretion of the trial justices." The Pettinato
court, however, also acknowledged that, while not statutorily defined, there
are relevant identifiable factors that courts must weigh in the best interests
analysis. These factors include the following: the wishes of the child's
parents regarding custody; the reasonable preference of the child; the in-
teraction of the child with the parents and any other people who may affect
the child's best interests; the child's adjustment to the home, school, and
community; the mental and physical health of all individuals involved; the

93 See id. at 334 (relying on Leighton dicta).
94 Id. at 334-35 (adopting said rule from New Hampshire, New Jersey and Pennsyl-
vania case law). The Chatelain decision specifically states, "[w]hile access to the child by
the parent denied custody is an important right, it is one that must yield to the greatest good
of the child." Id. at 335.
95 See, e.g., Garrison v. Mulcahy, 636 A.2d 732, 733 (R.I. 1993) (holding stable job
not enough to prove relocation in best interest of child); Kenney v. Hickey, 486 A.2d 1079,
1082 (R.I. 1985) (holding suitable home and stable job made relocation best for child's
welfare).
96 See Chatelain, 172 A.2d at 334-35. The Chatelain court adopted the best interests
standard for relocation, but it did not specify factors for determining best interests. Id. at
335. In Chatelain, relocation to Switzerland was considered to be in the child's best inter-
ests because of the advantages the children would accrue by traveling, residing in a foreign
country and becoming bilingual. Id. In Chatelain, the court acknowledged the non-
custodial parent's right to visitation but suspended visitation during the relocation period,
and held relocation trumps visitation when relocation is in the best interests of the child. Id.
at 334-335. See also Kenney, 486 A.2d 1079, 1081 (affirming custody modification and
relocation). Without stating specific factors to be routinely applied, the Supreme Court of
Rhode Island affirmed the trial court's consideration of the proposed living quarters, the
relocating parent's employment opportunity, the beneficial effect of the weather in Florida
on the child's health, the non-custodial parent's wishes and the child's preference in deter-
mining the best interests of the children. Id. However, other than the child's preference,
this court did not address where these factors derived from, whether they have been rou-
tinely used in relocation cases or whether they should be routinely followed. Id. at 1083.
97 See Pettinato v. Pettinato, 582 A.2d 913, 913 (R.I. 1990) (acknowledging failure of
legislature to define best interests of child).
98 Id. at 913-14.
stability of the child's home environment; the moral fitness of the child's parents; and the willingness and ability of each parent to facilitate a close and continuous relationship between the child and the other parent.\textsuperscript{99} While the factors defined in \textit{Pettinato} did provide guidance for determining "best interests" in subsequent custody and relocation cases, courts have not always consistently used them as a reference.\textsuperscript{100}

IV. ANALYSIS

Despite its popularity, there exists no widely accepted uniform law governing relocation after divorce.\textsuperscript{101} Additionally, some states do not have relocation statutes at all and are forced to rely solely on case law.\textsuperscript{102} Where statutes do exist, they are sometimes incomplete.\textsuperscript{103} In states that have used case law to create relocation standards, most standards are too broad to be consistently applied.\textsuperscript{104} Additionally, standards themselves are sometimes inconsistent among states.\textsuperscript{105} Some are unduly restrictive on the custodial parent while others imply presumptions in favor of the custodial parent's relocation.\textsuperscript{106}

\textsuperscript{99} Id. (adopting said factors from Florida, Maine, North Dakota and the Uniform Act). The \textit{Pettinato} court noted that best interests should not be determined using any one factor but, rather, by weighing a combination of the relevant factors. \textit{Id.} at 914. The \textit{Pettinato} court held that said factors \textit{must} be weighed when relevant, but it did not specify any regulating body of law enforcing the use of such factors. \textit{Id.} at 913. Rather, the trial judge has discretion in choosing the factors for determining the best interests of the child and the factors used will only be reconsidered when there is an abuse of discretion. \textit{Id.} at 914.

\textsuperscript{100} See, e.g., Gallogly v. Smith, 642 A.2d 670, 671 (R.I. 1994) (acknowledging trial court's application of \textit{Pettinato} factors). \textit{But see} Garrison v. Mulcahy, 636 A.2d 732, 732 (R.I. 1993) (denying relocation without referring to \textit{Pettinato} factors). In Garrison, the Supreme Court of Rhode Island held that although the custodial mother showed that her new husband's job prospects would be better in Ohio and that his summer home in Rhode Island would allow the child to maintain visitation with the child's father, those facts were not enough to prove the relocation would be in the best interests of the child. \textit{Id.} While a stable home environment and continued visitation are factors listed in the \textit{Pettinato} decision, the Garrison court did not consider other \textit{Pettinato} factors, nor did it refer to \textit{Pettinato} as a source for the factors it did use. \textit{Id.}

\textsuperscript{101} See \textit{supra} notes 45-100 and accompanying text.

\textsuperscript{102} See \textit{supra} notes 67-100 and accompanying text.

\textsuperscript{103} See \textit{supra} notes 45-66 and accompanying text; \textit{see also} MASS. GEN. LAWS ch. 208 §30 (2004); \textit{Yannas} v. \textit{Yannas}, 481 N.E.2d 1153, 1153 (1985). Chapter 208, section 30 of the Massachusetts General Laws establishes the best interest standard for relocation cases, but it does not specify factors for determining best interests. MASS. GEN. LAWS ch. 208 §30 (2004). Rather, case law decisions established such factors and supplemented the statute. \textit{Yannas}, 481 N.E.2d at 1158.

\textsuperscript{104} See Woodhouse, \textit{supra} note 7, at 829 (describing "best interests" as too broad and requiring descriptive factors).

\textsuperscript{105} See \textit{supra} notes 9-44 and accompanying text (detailing different standards among states).

\textsuperscript{106} See \textit{supra} notes 9-44 and accompanying text (comparing old and new approaches...
Massachusetts, Connecticut and Rhode Island have taken different approaches to creating and defining what each refers to as the "best interests" standard. While each is on the right track in placing the child at the heart of the relocation determination, some have made clearer and more contemporary determinations of what constitutes "best interests," thus providing a more predictable and appropriate approach to relocation.

Connecticut, one of the many states without a relocation statute, has developed a successful relocation doctrine through case law. Although it took until 1998, the Connecticut Supreme Court's landmark decision in *Ireland v. Ireland* developed a child-centered approach to relocation that courts have since consistently followed. A major part of *Ireland*’s success is due to the court's development of specific factors for determining best interests and the explicit statement that such factors are for use in future relocation cases. These factors not only give subsequent trial courts concrete rules for determining best interests, but they also allow parties to anticipate what the court will consider in determining what is best for the child. These factors allow for substantial preparation and prediction, which save time and money in court.

Another positive aspect of Connecticut’s doctrine is the attention and protection it awards to the post-divorce family unit. The *Ireland* court acknowledged the rise of divorce and need for relocation in modern society. In response, its relocation doctrine protects the new family unit to relocation presumptions).

107 *See supra* notes 45-100 and accompanying text (describing approaches taken by Massachusetts, Connecticut and Rhode Island in reaching best interests standard).
108 *See supra* notes 78-81 and accompanying text (noting consistent use of Connecticut’s best interest factors and discussing how Connecticut combined custodial parent’s best interests with best interests of child).
109 *See id.*
110 *See supra* note 80 (acknowledging creation of new family unit and importance of considering interest of custodial parent as a component of child’s best interests determination).
111 *See Ireland*, 717 A.2d at 684-86 (adopting Tropea factors).
113 *See Ireland v. Ireland*, 717 A.2d 676, 678 (Conn. 1981) (providing lower courts guidance). *But see* Bartlett, *supra* note 8, at 471 (discussing factor tests); *Ford*, *supra* note 2, at 19 (criticizing Tropea factors). These researchers agree that lists of factors that the legislature or courts create can help make the best interest determination more specific. Bartlett, *supra* note 8, at 472; *Ford*, *supra* note 2, at 19. They argue, however, that because some of the factors are open-ended and difficult to measure, and because the factors are not prioritized, such an approach does not provide for predictable outcomes. *Id.*
114 *See supra* notes 78-81.
115 *See Ireland*, 717 A.2d at 684-85.
by considering the best interests of the parent as a part of the best interests of the child.\textsuperscript{116}

Massachusetts made headway early on when it enacted chapter 208, section 30 of the Massachusetts General Laws, establishing a concrete legal rule for relocation issues.\textsuperscript{117} However, the statute’s standard, “upon cause shown,” allowed for broad interpretation.\textsuperscript{118} Years of case law accumulated before the legal community chose to interpret “upon cause shown” as meaning “real advantage.”\textsuperscript{119} More time passed before courts interpreted this to mean “best interests,” but still, the standard was not capable of being applied as a strict rule.\textsuperscript{120}

The \textit{Yannas} case supplied one of the most helpful decisions for interpreting the incomplete statute.\textsuperscript{121} In \textit{Yannas}, the Supreme Judicial Court of Massachusetts acknowledged that relocation determinations require a case-by-case analysis and established factors for relocation that courts have consistently followed.\textsuperscript{122} Therefore, although the Massachusetts statute can be criticized because the legislature failed to create a thorough relocation doctrine and because the statute required subsequent case law for proper interpretation, it can also be praised for avoiding a strict rule.\textsuperscript{123}

Rhode Island, like Connecticut and Massachusetts, has succeeded in creating a consistently applied “best interest” standard, however Rhode Island has not succeeded in creating consistently applied factors for determining what constitutes “best interests.”\textsuperscript{124} Additionally, Rhode Island’s case law lags behind Massachusetts and Connecticut in acknowledging and stressing the importance of the post-divorce family unit as part of the child’s best interests.\textsuperscript{125}

\textbf{V. CONCLUSION}

While the relocation issue is not a new one, questions remain regarding the standards courts should use in allowing children to be moved out of jurisdiction. The previous examination of case law in Connecticut, Massachusetts and Rhode Island shows how common the subject is and the

\textsuperscript{116} \textit{Id.}
\textsuperscript{117} \textit{See supra} note 46.
\textsuperscript{118} \textit{See supra} notes 47-63 (describing statute’s failure to define best interests and need for supplemental case law).
\textsuperscript{119} \textit{See supra} notes 47-63 and accompanying text.
\textsuperscript{120} \textit{See supra} notes 47-63 and accompanying text.
\textsuperscript{121} \textit{See Yannas}, 481 N.E.2d at 1158.
\textsuperscript{122} \textit{See supra}, note 66.
\textsuperscript{123} \textit{See id.; see also} Warshak, \textit{supra} note 33, at 112-13 (stressing importance of tailoring relocation decision to individual family’s circumstances).
\textsuperscript{124} \textit{See supra} note 85 (describing lack of factors and inconsistency with which they are applied).
\textsuperscript{125} \textit{See supra} notes 82-100 and accompanying text.
way courts and legislatures have responded. While each of these states has developed a consistently applied standard, what constitutes best interests in one state may not be the same in another. Additionally, in Rhode Island, due to the lack of concrete factors, what constitutes best interests in one courtroom may not be the same in another. Of the states examined within this note, Connecticut has set the best example for a successful relocation standard. Although Connecticut’s relocation doctrine is not statutory, it is consistently applied and somewhat predictable.

A successful relocation doctrine requires a statute specifically stating the standard to be applied and the factors for defining the standard such the standard is easily applicable and relocation decisions are somewhat predictable. Although relocation issues need to be determined case-by-case, specific factors for determining the standard will at least give some predictability and allow for preparation.

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