

Removal

The relevant statute, M.G.L.A. c. 208, § 30, regarding removal states the following:

“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. The court, upon application of any person in behalf of such child, may require security and issue writs and processes to effect the purposes of this and the two preceding section.”

Relevant cases:

Yannas v. Frondistou-Yannas, 395 Mass. 704 (1985): sets forth the “real advantage” test where the parent seeking removal from the commonwealth must establish a good, sincere reason to move.

Rosenthal v. Maney, 51 Mass.App.Ct. 257 (2001): provides a detailed analysis of the “real advantage” test under Yannas.

Dickenson v. Cogswell, 66 Mass.App.Ct. 442 (2006): the mother’s request for removal was denied because she did not meet the “real advantage” test.

Mason v. Coleman, 447 Mass. 177 (2006): the mother’s request for removal was denied because where parties have joint physical custody of the children, the “best interests of the children” is the applicable standard rather than the “real advantage” test.

Cartledge v. Evans, (2006): a divorced mother with physical custody of the child was denied her request for removal. The “real advantage” test should be applied to these facts but the probate judge applied the test improperly. The judgment denying removal was reversed.

Wakefield v. Hegarty, 67 Mass.App.Ct. 772 (2006): the parties were unmarried parents, and a nonmarital child is entitled to the same rights and protections as other children, and the court properly applied M.G.L.A. c. 208, § 30 and the “real advantage” test to these facts, and the removal was allowed.

Pizzino v. Miller, 67 Mass.App.Ct. 865 (2006): remarriage of a custodial parent is a good and sufficient reason that satisfies the requirement of a “real advantage” for a removal.

Abbott v. Virusso (February 28, 2007): the judgment denying the mother’s request for removal was inconsistent with the judge’s findings and the “real advantage” test.