Relocation disputes in separated families prior to the 2006 reforms
An empirical study

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This article reports on the findings of a mixed-method research project that examined relocation cases litigated prior to the 2006 reforms to the family law system. A key finding from the study is that most litigated disputes over relocation between separated partners occur in the context of conflict and fractured inter-parental relationships. The evidence from the study about the types of cases where courts decide whether one party (usually a mother with residence of the child(ren)) should be permitted to move with the child(ren) suggests that relocation post-separation is more a product of conflict than the single source of conflict. This finding applies to the majority of cases examined in the study, with only a minority of cases demonstrating a pattern where a proposed relocation was in itself the single main source of conflict.

At the outset, the aim of the study was to examine the experiences of parents after disputes about relocation in an attempt to understand the impact of judicial decision-making in this context. As the qualitative data collection (interviews) unfolded, the research team decided to augment the study with an additional quantitative component based on analysis of 190 FCoA judgments. This was done for two reasons.

First, the participants who volunteered to be involved in the qualitative study were concentrated into one of four sub-groups (referred to subsequently as litigant status), namely:

- those who had unsuccessfully opposed a relocation (19 fathers, 1 mother)—the largest sub-group; and
- three other sub-groups:
  - unsuccessful applicants for a relocation (3 mothers and 2 fathers);
  - successful applicants for a relocation (6 mothers); and
  - those who successfully opposed a relocation (6 fathers and 1 mother).

Second, not surprisingly, the interviews suggested that the relationships were marked by particularly complex pre-dispute histories, often featuring very difficult relationships and litigation over other issues (including residence and
contact) prior to the relocation proposal. The addition of the judgment analysis component provided a means of assessing, at least to some extent, how typical these patterns were among the cohort of parents who litigated in the FCoA over relocation in the relevant period.3

This article describes key findings from each part of the study, beginning with the quantitative component based on judgment analysis. This is followed by an examination of the key themes from the qualitative data.

The judgment sample

Sampling and analytic approach

The quantitative component of the study comprised an analysis of judgments from all relocation matters with a final order heard in the FCoA between 2002 and 2004. A total of 200 judgments were identified by the FCoA as being relevant, and were provided to the research team. Ten of these were interim decisions and were excluded for that reason. The final sample comprised 190 judgments. These were analysed and coded by the research team (primarily Juliet Behrens), based on the following data in the court files:

- the nature of each party's application and the outcome of the case;
- reasons for relocating;
- judicial assessments as to the credibility of each party's evidence;
- the history of the parent–parent and parent–child relationships, including whether there had previously been litigation over parenting matters; and
- whether there were allegations of family violence or child abuse.

Overview of sample characteristics and findings

The findings from the quantitative study underline the gendered nature of relocation disputes: 88% (n=167) of the parties applying for orders to relocate were women; only 10% (n=19) were men.4 In a further 2% of cases (n=4) each party was applying for such orders. An outcome supporting the proposed relocation occurred in 57% of cases; 43% of the judgments resulted in an outcome that did not support the proposed relocation.

Most of the parents involved in the relocation disputes had been married (71%, n=127 cases). A minority of former de facto partners (25%, n=45 cases) and a still smaller number of former casual partners (3%, n=5 cases) were among the remaining litigants. In 12 judgments (6%), relationship status was unclear. In the judgments where current relationship status was described, fathers were more likely to have re-partnered (60%, n=105) than mothers (49%, n=83).

The quantitative analysis demonstrates the complexity of relationships that characterise the majority of litigated relocation disputes in the FCoA. Approximately 80% of the relationships in the sample could, on the basis of the information in the judgment, be characterised as high-conflict or abusive, with allegations of violence being raised in nearly 70% of cases. There had been prior court proceedings in 69% of cases, with half of these requiring a court-determined outcome. Competing applications for residence of the child or children were being considered by the court in the context of the relocation proceedings in 63% of cases.

Interviews suggested that relationships were marked by particularly complex pre-dispute histories, often featuring litigation over other issues prior to the relocation proposal.
Solid minorities of cases involved only one child (45%, \(n=85\) cases) or two children (35%, \(n=66\) cases), with more children involved in fewer cases: three children were involved in 15% (\(n=28\) cases) and four or more children were involved in 5% (\(n=10\) cases) of cases. Most children in the sample had been in the primary care of their mothers (79%, \(n=130\) cases), with small numbers in shared care (10%, \(n=16\) cases) or in care arrangements where the fathers were coded as “quite involved” (10%, \(n=17\) cases). Only 1% (\(n=2\) cases) of the children were in the primary care of the fathers.

Most of the proposed moves involved significant distances, with 61% (\(n=115\) cases) being either international or more than 1,000 km from the existing location. Thirty-nine per cent (\(n=74\) cases) of cases involved distances of less than 1,000 km (this information was unclear in one case).

### Reasons for relocation and factors associated with outcomes

A range of reasons was offered by applicants/litigants for the proposed relocations in the judgment sample. The main reason stated in the judgment was sufficiently clear in 174 judgments to be amenable to coding (16 lacked sufficient clarity for coding). Two types of reason were frequently emphasised: a desire to be closer to family support (33%) and to be with a new partner (30%). The next most frequently raised reason was to pursue work opportunities in the new location (16%). Rates of occurrence for other reasons were:

- to escape family violence, threats or the drug scene (8%);
- to improve lifestyle in a different community (5%);
- economic reasons (5%); and
- health reasons (2%).

Of the two most commonly cited reasons in support of a relocation, the desire to relocate to a place where the mother's extended family lived was more likely to be correlated with an outcome supporting relocation (61%) than where the relocation was motivated by plans to join a new partner (54%). A proposal that would see the relocating parent return to their birthplace was successful in 75% of cases in the judgment sample.

Some clear patterns emerged from the analysis of judgments in relation to the factors that are likely to be associated with an outcome permitting relocation. One influential factor arises from the forensic process a court undertakes when it is assessing the evidence, and the merits of competing applications: the credibility of the evidence being given by each party. Not surprisingly, an adverse assessment of credibility was strongly associated with an adverse outcome, and a favourable assessment of credibility was associated with a favourable outcome, where these issues were dealt with sufficiently explicitly in a judgment to allow them to be coded (\(n=177\)). In a large minority of cases (45%, \(n=80\)), the credibility of both parents was accepted. Where adverse credibility findings were made, these were more likely to be made against fathers (28%, \(n=50\) than mothers (17%, \(n=30\), and were made against both parents in a small minority of cases (10%, \(n=17\)). In a further 7% (\(n=13\) of cases, credibility was not dealt with sufficiently explicitly to allow coding. Where adverse credibility findings were made against mothers, permission to relocate was denied in 80% of cases. Where such findings were made against fathers, outcomes denying relocation occurred in 34% of cases.

The pattern of contact between the non–primary care parent and the children was also clearly a salient factor. More time spent with the non–primary care parent was more likely to correlate with a successful outcome for those opposing relocation. Parents with shared care were least likely to have an order facilitating relocation made (39%), followed by those whose children spent more than alternate weekends and half the school holidays with the non–primary care parent (53%). This compares with 60% of primary care parents being able to relocate where no contact occurred or took place on a non-overnight basis, and 61% where it followed a traditional alternate-weekend and half-school-holiday pattern.

In summary, the quantitative data demonstrate that parents involved in relocation disputes litigated in the FCoA mostly have complex and conflicting relationships, with allegations of family violence and prior court proceedings a feature of these cases. Credibility findings, the availability of family support in the new location and past patterns of care appeared to be linked with outcome patterns.

### Quantitative analysis demonstrates the complexity of relationships that characterise the majority of litigated relocation disputes in the FCoA.

### Interview data

#### Method

As described earlier, the qualitative data were generated by interviews with 38 parents who had been involved in contested relocation proceedings, with fathers who had unsuccessfully opposed a relocation application being over-represented in the sample (\(n=19\)). The recruitment strategy had four aspects. First, the Family Court of Australia and the Federal Magistrates Court sent out invitations to litigants identified to be in scope to participate in the study on behalf of the research team. Where these letters were returned, the solicitors on the file were contacted by the courts by mail, and asked to forward the invitation to participate. Subsequently, the Family Court of Western Australia undertook a mail-out on behalf of the research team. Finally, in an effort to obtain gender balance in the sample, women’s groups circulated an email to members that included the invitation to participate. Despite these efforts, as described earlier, the achieved sample largely comprised men (27 fathers), particularly those in the unsuccessful opposer category (19 fathers).

Notwithstanding the limitations arising from the nature of the sample, the qualitative data offer some valuable insights into the experiences of parents who litigate over relocation. Some of these insights build further on our understanding of the dynamics of the relationships in which these disputes occur, deepening the knowledge gained from the quantitative data. More significantly, however, the data take our understanding beyond the dispute itself and provide some insight into the lives of the parents in our sample in the aftermath of the dispute. As the
following information demonstrates, in most instances for the parents we spoke with, relocation disputes punctuated a relationship that was fraught with conflict before the dispute and remained so after the dispute.

The interview data were collected through open-ended interviews that were conducted either face-to-face or by telephone. The interviews were structured so as to gather information about three periods of time: prior to, during and after the relocation dispute. The nature of the parent–parent and parent–child relationships were a focus in the interviews, in addition to information about the factors relevant to the relocation proposal and how the participant experienced the court process.

Findings

Consistent with the quantitative sample, the majority of relationships as described by parents in our qualitative sample were marked by significant levels of conflict, with allegations of abuse and family violence relevant in the majority of cases ($n=23$). For most parents, the relocation proposal arose in the context of long-standing conflict, often involving prior litigated court proceedings. A contrasting pattern was evident among a smaller group of parents ($n=7$), for whom the relocation dispute was the primary source of conflict. These parents were less likely than the larger group of conflicted parents to report conflicted relationships prior to the dispute and more likely to report improved relationships after the dispute.

Focusing on an analysis of pre-dispute relationship history and post-dispute relationship trajectory, there were three main patterns evident among the parents in the qualitative sample:

- The first and largest group ($n=24$) were on a “rough road” before, during and after the relocation dispute. These relationships were marked by significant conflict, most featured allegations of family violence and in some instances child abuse, and the relocation dispute appeared to be as much a response to, as a cause of, conflict and difficulty.

- The second, smaller, group of parents ($n=7$) appeared to be following “smoother paths”, with less conflicted relationships prior to and after the relocation dispute, and signs of relationships improving after the dispute.

- The third and smallest group ($n=4$) was the most troubled of all, and these parents appeared to be following “separate pathways”. They cited difficult relationships prior to and during the dispute and a complete, or almost complete, diminution of contact between one parent and the children after the dispute. This group was marked by the severest levels of addiction, mental health problems and family violence.

Across the three groups, our analysis suggests that post-dispute relationship trajectories are influenced less by the outcome of the dispute than the characteristics of the parents and their relationship. A small group ($n=3$) fell outside these patterns, with relationships appearing to deteriorate after relocation (these are not discussed in the following sections). Two of these parents had been in highly conflicted relationships before the relocation.

“Rough roads”

Twenty-four respondents fell into this group, which included two sub-groups: the larger sub-group ($n=15$) was marked by a pattern of unremitting conflict before, during and after the relocation dispute; the smaller sub-group ($n=9$) was distinguished from the majority pattern by some evidence of improvement in the parties’ relationship after the dispute. In addition to unremitting conflict, the characteristics of the cases in this pattern included litigation prior to, and in many instances after, the relocation disputes.

Belle’s account illustrates some common features of the non-improvement sub-group in this pattern:

Belle and her former partner (Salvador) had been together only for a matter of months when she fell pregnant. They separated soon after their son, Rolando, was born. Prior to the birth, the couple had moved around and various moves took place after Rolando’s birth. Belle was the primary caregiver for her son but her former partner exercised contact regularly, at times having the child for sleepovers when he was past infancy. When the child was three years old, Belle suffered a serious illness. Shortly after this time, Salvador filed an application for court orders that would allow her to relocate more than 1,000 km away, to a town where her family lived. Belle reported that the relationship with her former partner was difficult (she said he had anger management problems), but at the time of her illness he was supportive and assisted with the care of their son. Afterward, however, the relationship deteriorated, with conflict and physical struggles occurring at contact changeover times. By the time of the court hearing, changeovers were marked by physical violence. “It was directed at me, but often [Rolando] would be caught in the middle of...
While Belle was a successful applicant in her matter, the “Rough roads” group as a whole included parents in all four litigant categories. Belle’s case was typical in that it involved significant conflict before, during and after the dispute. For others in this group, such conflict was also manifested in other court proceedings, before or after the relocation dispute.

Improvements in relationships in the smaller “Rough roads” sub-group tended to be connected with a variety of different factors, and in this context improvement refers most commonly to a reduction in conflict and less commonly to a positive improvement in the parents’ relationship. In some instances, such improvement appears connected with a retreat from conflict on the part of one parent. In the case of one respondent, Caitlin, she had returned to the old location after two years away, and reported that there had then been some improvements in her relationship with her children’s father, who had remained “very, very cross” while she was away.

In other cases, improvement appears linked with one parent (often the non-resident parent) re-partnering and in some senses “moving on”. In the case of another respondent, Lance, relationships and patterns of contact between him and his three older children stabilised after a long litigation history. This involved Hague Convention proceedings (these occur in international relocation disputes where one party has acted unilaterally) and an unsuccessful international relocation by his former partner, followed by a successful relocation application. Lance has re-partnered and has a new baby. He pays for his older children to fly to Australia to see him regularly and has frequent phone contact with them.

“Smother paths”

The seven cases in the “Smoother paths” pattern were characterised by a much less complex relationship and litigation history than those in the other two patterns. Family violence, substance addiction, mental health problems and entrenched conflict were largely absent from these cases, according to the participants’ accounts. Cases in all of the four litigant status groups were also represented in this pattern, which is typified by Ernie’s account:

Ernie separated from his partner, Marsha, when their children were both under five years old. During the relationship, parenting followed a traditional pattern, with Ernie focused on his work and assisting Marsha in her primary caregiving role as much as he could. After separation, there was a stable contact pattern (alternate weekends) until Marsha re-partnered and successfully applied to move more than 1,000 km away. Ernie considered moving, but decided to stay near the rest of his family, including his elderly parents. The children fly to his town for contact for four nights each month and he visits them in their new location whenever he can—three or four times a year. Ernie has also re-partnered and Marsha has a new baby with her new partner.

Like Ernie, the other study participants in this group had maintained regular contact with their children and mainly positive relationships with their former partners. Four of the seven cases in this group involved a relocation, and it was evident that each parent worked to maintain contact with the children and the non-resident parent. In some instances, non-resident parents arranged accommodation in the new location so as to be able to maintain child-focused contact periods. For example, one respondent, Ivan, has rented a unit in the town to which the mother of his children relocated. This enabled him to exercise contact without subjecting the children to lengthy travel and allowed him to be part of the children’s everyday lives: “I make sure I always take them to the birthday parties and the sporting things … the sort of stuff that they do on the weekends. And I’ve got to know their friends and the parents up there …”

“Separate pathways”

All four cases in this pattern were characterised by a complete or almost complete cessation of contact between one parent and the child or children. All involved situations in which one parent had been allowed to relocate by the court, in the context of very difficult relationships involving some or all of these issues: mental illness, addiction issues and family violence.

In two cases, the study participants were fathers who admitted to having problems with drugs and mental illness. One father had not maintained contact with his child, while the other had maintained telephone contact with his children following an international relocation. At the time of interview, 7 years after the relocation, the mother in this case was planning to relocate back to Australia and this father was hopeful of re-establishing relationships with his children.

The third case involved a father who said the mother had a mental illness but had been allowed to relocate more than 1,000 km away, with court orders permitting him to have telephone contact only.

The fourth case involved a mother who reported that her relocation occurred in the context of a relationship where she had been the victim of family violence (the father had been jailed for breaching state protection orders) and her former partner had mental health and substance addiction problems. Although the father had subsequently relocated to within one hour’s drive of her new location, he had not attempted to contact the children.

Discussion

Relocation cases are commonly said to be among the most difficult parenting matters for judges to decide (Family Law Council, 2006), as they potentially involve making determinations that restrict the freedom of movement of one parent or necessitate the diminution of face-to-face contact between a parent and child or children. While the legal literature contains many analyses of the principles
applied in relocation decision-making (e.g., Kordouli, 2006; Parkinson, 2008), empirical examination of the experiences of parents and children in such disputes has been lacking. In general, previous socio-legal research on relocation decision-making has focused on tracking patterns in court orders (e.g., Easteal, Behrens, & Young, 2000; Easteal & Harkins, 2008) in geographically confined samples, and most social science research originates from the US and has limited application to Australia (for a review, see Horsfall & Kaspiew, 2010). The study outlined in this article provides a more in-depth analysis of judgments based on a sample larger than any obtained in other research; it also covers all FCoA registries. In addition, the qualitative data provide new insight into the circumstances of parents after relocation decisions, and the study responds to acknowledgement of a need for empirical evidence of the impact of judicial decisions in the family law area (House of Representatives Standing Committee on Family and Community Affairs, 2003, rec. 19).6

Legal principles relevant to relocation are currently contained in case law. There are no special statutory provisions, although reform has been canvassed (Family Law Council, 2006), most recently through the Australian Law Reform Commission questioning whether special legislative provisions should apply in relocation matters where there has been family violence (Australian Law Reform Commission, 2010). This research provides an empirical basis for further policy development in this area through a systematic examination of the types of cases in which relocation disputes occur and providing some insight into the aftermath of such disputes.

In considering future policy-making, some pertinent and important common themes emerge from the qualitative and quantitative parts of this study. Litigated relocation disputes mostly occur in the context of highly-conflicted parental relationships, with a history of allegations of family violence being relevant in the majority of cases. Previous research has highlighted the prevalence of allegations of violence in litigated parenting matters generally (see Kaspiew, 2005; Moloney et al., 2007). For many of the parents with whom we spoke, the relocation proposal appeared to arise, at least in part, as a response to ongoing conflict in the relationship, and the qualitative data confirm the conflicted nature of the majority of the relationships in the judgment sample. Additionally, a range of other potentially overlapping motivations may be relevant in relocation proposals, including a desire to be closer to extended family support, the need to improve employment prospects, or a desire to be closer to a new partner. Consistent with findings of a study that looked at relocation cases post-2006 (Parkinson, Cashmore, & Single, 2010), the qualitative data in particular indicate that reasons are often multi-faceted, with more than one motivation being relevant in any given situation, and relationship-related issues being more relevant than material ones. Further, the qualitative data indicate that, for most of the parents with whom we spoke, relationships that were fractured prior to the dispute tended to remain so afterward and relationships that were less conflicted prior to the dispute tended to return to this condition after the dispute.

Conclusion

The quantitative study of court judgments shows that, in the period covered by the study (2002–04), just over half of the parties who applied to the Family Court of Australia for orders that would allow them to relocate with their children were successful. The majority of applicants for
relocation were women; the majority of litigants opposing relocation were men. Commonly emphasised reasons for relocation in the judgment sample were a desire to be closer to family support and to be with a new partner, with the former reason more often being connected with a successful outcome for the applicant than the latter. One of the clearest factors influencing court outcomes was the assessment of credibility made by the judge, with adverse assessments being linked to adverse outcomes for litigants either seeking or opposing an outcome that would permit relocation. A further significant factor in the context of outcomes was the pattern of contact between the children and the non-resident parent, with greater levels of contact more likely to be associated with an outcome denying relocation.

The qualitative data based on interviews with parents involved in a relocation dispute are particularly valuable for the insights they provide into the trajectory that relationships take in the wake of a relocation dispute, although the restricted nature of the sample means the findings cannot be generalised. The majority of the relationships described by participants in the qualitative study were troubled before, during and after the relocation dispute. As far as the period prior the court decision is concerned, this is consistent with the characteristics of the majority of litigated cases identified in the quantitative part of this study. This is especially clearly demonstrated by the cases in the “Rough roads” and “Separate pathways” patterns, which account for the majority of the cases in the qualitative sample overall. Parents in the “Rough roads” pattern mainly remained enmeshed in troubled relationships after the relocation dispute, with the dispute itself being a manifestation rather than a cause of conflict. Where conflict diminished in the “Rough roads” pattern, this appears mainly attributable to a retreat on the part of one parent or developments in the personal lives of one or both parents that allow them to step away from the conflict. A similar phenomenon is evident to a more significant extent in cases in the “Separate pathways” pattern, with these cases being distinguished by a sustained diminution or cessation of contact between one of the former partners and their children. In each of these cases, the relocation occurred in the context of extremely troubled relationships and personal difficulties.

The relationship trajectories in the “Smotherer paths” group provide a contrast to the trends evident among the parents in the other two groups. Even though four out of seven of the cases in this group involved a relocation, parent-child relationships were maintained and parent–parent relationships were stable, albeit strained in some cases. Issues such as family violence, mental illness, entrenched conflict and substance addiction were not evident in parents’ stories in this group.

Our findings suggest a need for extreme caution in making assumptions about the types of relocation cases to which the law is applied and consequently a need for caution in framing such law should any changes in legislative policy be contemplated. In particular, the data suggest that it would be wrong to assume when designing law and policy on relocation that judicial decision-making will take place largely in a context where the dispute between the parties is about relocation only.

Endnotes
1 ABC Discovery Project DP06663259. The authors gratefully acknowledge the support of the Australian Research Council, the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court (FMC). Other publications based on aspects of this research include Behrens, Smyth, & Kaspiew (2009), and Horsfall & Kaspiew (2010).
2 Based on litigant status (applicant or opponent) and case outcome (successful or unsuccessful).
3 During the period covered by this sample, the division of child matters between the FMC and the FCoA was relatively evenly balanced (Kaspiew et al., 2009, p. 305). However, it appears that more relocation matters were heard in the FCoA than the FMC (in line with the policy that more complex matters are heard in the FCoA). Letters were sent to 292 FCoA litigants (this included those involved in interim matters that were excluded from the judgment sample) and 108 FMC litigants. The qualitative sample comprised 27 FCoA litigants, 8 FMC litigants and 2 Family Court of Western Australia litigants.
4 Descriptions of the judgment data are based on a valid percentage—that is, cases that were missing, unclear or unknown were excluded from the calculation. Some totals may not amount to 100% due to rounding.
5 Pseudonyms are used throughout this article to maintain the anonymity of the participants.
6 Two other empirical projects were being conducted at the same time as this one. One is an Australian prospective longitudinal study of parents’ experiences of relocation outcomes (reached by consent or judicial determination) after the 2006 reforms (see Parkinson, Cashmore & Single, 2010), while the other is a New Zealand study (see Taylor, Gollop, & Henaghan, 2010).

References

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