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## Family Law team success in relocation case

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In October 2013 Andersons Solicitors Murray Bridge was consulted by a father with concerns that his former partner and mother of his then 16 month old daughter was intending to relocate from the small country town in South Australia to an outer suburb of Melbourne.

The mother had two other children from an earlier relationship who were aged 11 and 8 respectively. The parties had not resided together since prior to the birth of their daughter. The time that the father spent with the child was strictly monitored and restricted by the mother.

In mid October 2013 the mother told the father that she wanted to move with her children to Victoria. The father did not agree to that proposal and voiced his strong opposition.

The mother indicated that she would be moving, notwithstanding his opposition, in December 2013.

The father obtained legal advice from Andersons and instructed his solicitor to send a letter to the mother indicating his opposition to the child moving to Victoria and requesting a formalisation of arrangements for him to spend time with his daughter.

The letter was sent on 6 November 2013. Solicitors based in Victoria responded to the letter on 18 November indicating that their client had already left Mannum as a result of being "driven out of town by the conduct of the father's mother".

As such we assisted our client in urgently issuing proceedings in the Federal Circuit Court of Australia seeking Interim Orders for the return of the child to South Australia.

This case was one that lawyers categorise as "an interim unilateral relocation case". Such cases arise when one parent moves away, with a child, far from the other parent concerned without any proper process of consultation having taken place or any plan having been agreed upon as to how the child involved will interact, in future, with the parent left behind.

Inevitably, these cases lead to extreme emotion in the parties concerned and those associated with them. More often than not, the parent who has left asserts that he or she had no choice other than to move and that it will be difficult if not impossible to return to the location left behind.

On the other hand, the parent left behind fears that the resulting move will impact on the quality of their relationship with the child taken away.

When hearing the evidence of both parties, the Court balanced the primary considerations and the additional considerations contained in Section 60CC of the *Family Law Act 1975* in order to determine the best outcome for the child concerned. In doing so, the Court was very mindful of the parent's entitlement to freedom of movement. But that was not the paramount concern.

Essentially the general rule is, that the Court should not ratify a relocation of a child, at an interim stage, unless there are circumstances of such particular emergency that the unilateral move of the child can be justified as being in the child's best interests.

And that was our argument here. The father made it clear to the mother that he did not agree to the child moving from South Australia to Victoria. He feared that his relationship with the child would be jeopardised by the move.

One of the more important components of a child's best interests is the benefit that he or she is likely to derive from having a meaningful relationship with not just one, but both of his or her parents. This is especially relevant in relocation cases, especially for very young children, who are likely to benefit from being able to see and engage with both their parents frequently and regularly in relatively short blocks of time, rather than through longer and more widely disbursed periods.

The Court therefore took into account the fact that here the child was not yet 2 years of age and that her relationship with her father was far from being fully developed. The Court accepted that the father loved his daughter and was interested in every aspect of her future development. Accordingly, the child had the potential to benefit from knowing her father well and having a warm and intimate relationship with him. The Court was of the opinion that parental relationships are important to children at all stages of their development.

The Court was of the opinion that given the child's young age the best opportunity for her to have a meaningful level of relationship with her father would be if the two were able to interact frequently with one another. It also found that even if the mother was frightened by the conduct of the father and those associated with him it was open to her to seek the assistance of a [Domestic Violence Restraining Order](#) or some other form of Police intervention rather than moving.

The Court found that the mother was driven by considerations of her own needs, particularly to pursue her relationship with a new partner, rather than any need to protect the child from coming to harm. Furthermore, the Court found that the mother's proposal for the father to spend time with the child in the event she remained in Victoria were impractical and ambitious given the mother's lack

of financial resources.

The Court was very concerned that her proposal for the child to spend time with the father would break down.

In conclusion, the Court decided that the child should return to live in South Australia notwithstanding the obvious disruption it would cause to her mother and older siblings so that she could spend regular time with the father. In the event that the mother chose not to return then the Court ordered that the child would come into the care of the father pending the final hearing.

These types of cases are difficult. The Courts often err on the side of caution and not order the return of the child pending the final hearing. A lot of time, effort, specific family law expertise and experience along with significant compassion for our client's situation went into this matter resulting in an excellent result for our client.

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