

Move-Away Cases

BEFORE BURGESS							
Case	Parenting Arrangement	Who Brought Motion?	Reason for Move	T/Ct: Move OK?	Ct of Appeal: Move OK?	Holding	CASCT Action
Rosson, IRMO (1986) 178 CA3d 1094, 224 CR 250, 1986 CFLR 3072, FIRST ALERT #F-86-213	Joint legal; informal shared physical custody.	Father (to prevent mother from moving w/ kids).	Mother found better job in another city; would avoid long commute.	No	CA-1 (Div 5) No	Custodial parent's planned move is sufficient changed circumstance to justify mod. Noncustodial parent need not show "harm" to kids to justify custody change. T/CT isn't bound by requests in pleadings.	No petition filed. Disapproved in <i>Burgess</i> to extent that moving parent must prove that move is necessary.
Fingert, IRMO (1990) 221 CA3d 1575, 271 CR 389, 1990 CFLR 4429, FIRST ALERT #F-90-437	Joint legal; shared physical custody (three weeks/mo. w/ mother, one week/mo. w/ father); mother & kid had already moved away.	Mother (to modify to give father weekends, holidays & summers w/ child); father (to compel mother to move back near him).	Father wanted child to live near him again to facilitate visitation.	Yes	CA-2 (Div 6) No	T/CT cannot compel custodial parent to move closer to non-custodial parent to facilitate visitation. Economic superiority of noncustodial parent is not valid factor in custody decision.	Review denied.
Carlson, IRMO (1991) 229 CA3d 1330, 280 CR 840, 1991 CFLR 4802, FIRST ALERT #F-91-484	Joint legal; primary physical custody to mother, visitation to father, all by stip; TRO against any moves.	Issue heard at trial (mother asked to move with kids).	Mother wanted to be near her extended family for emotional support.	No	CA-5 No	Custodial parent can't move with kids unless "compelling" reasons for move outweigh benefit of contact with both parents.	Review denied. Disapproved in <i>Burgess</i> to extent that it concludes that §3024 limits parent's right to move.
McGinnis, IRMO (1992) 7 CA4th 473, 9 CR2d 182, 1992 CFLR 5305, FIRST ALERT #F-92-544	Joint legal; visitation w/ father every Thurs. p.m. to Sun. p.m. mother had kids rest of week.	Father (to prevent mother from moving with kids).	Mother's new husband found job in another city.	Yes	CA-2 (Div 6) No	Custodial parent can't move with kids absent "imperative reason." T/CT may not change custody without giving non-custodial parent adequate notice & time for mediation/ gathering of evidence. One parent's high time with kids based on economic advantage isn't valid factor for custody decision.	No petition filed. Disapproved in <i>Burgess</i> to extent that moving parent must prove that move is necessary.
Roe, IRMO (1993) 18 CA4th 1483, 23 CR2d 295, 1993 CFLR 5749, 5911, FIRST ALERT #F-93-616	Joint legal and physical custody.	Father (to prevent mother from moving child out of state); mother (to get permission to move with child).	Mother's new spouse found job in another state.	Yes	CA-2 (Div 4) Yes	No abuse of discretion to allow move; disapproved "expedient/essential/ imperative" test. Evidence showed move essential to mother, not detrimental to child or father's visitation, and in child's best interests. T/CT hearing met <i>McGinnis</i> notice/time for hearing requirement.	No petition filed. Disapproved in <i>Burgess</i> to extent that moving parent must prove that move is necessary.

Battenburg, IRMO (1994) 28 CA4th 1338, 33 CR2d 871, 1994 CFLR 6418, FIRST ALERT #F-94-670	Joint legal and physical custody; parenting plan provided that child was w/ mother from Sun. eve to Thurs. eve, with father from Thurs. eve to Sun. eve.	Mother (to obtain order allowing move with child to another state).	Mother's new spouse was employed in another state.	Yes	CA-2 (Div 6) Yes	Where shared parenting is not working, child's best interests determine whether move (with custody change) is "expedient, essential & imperative." No abuse of discretion in move-away order because shared parenting was not working, & custody change was both "expedient, essential and imperative" and in child's best interests.	No petition filed.
Selzer, IRMO (1994) 29 CA4th 637, 34 CR2d 824, 1994 CFLR 6461, FIRST ALERT #F-94-674	Joint legal custody; primary physical custody to mother, frequent and continuing visitation w/ father.	Father (to prevent mother from moving child).	Mother obtained job in another city; long commute too stressful.	Yes	CA-1 (Div 5) Yes	No abuse of discretion to allow move if T/CT finds move is necessary & in child's best interests; T/CT must consider (1) child's preference, (2) moving party's motives, (3) need for continuity in custody, and (4) economic effect of proposed move.	Review denied. Disapproved in <i>Burgess</i> to extent that moving parent must prove that move is necessary.

AFTER BURGESS

Case	Parenting Arrangement	Who Brought Motion?	Reason for Move	T/Ct: Move OK?	Ct of Appeal: Move OK?	Holding	CASCT Action
Burgess, IRMO (1996) 13 CA4th 25, 51 CR2d 444, 913 P2d 473, 1996 CFLR 7157, FIRST ALERT #F-96-748	Joint legal custody; sole physical custody to mother, frequent and continuing visitation with father.	Mother asked for order permitting move.	Mother obtained job in another city; also alleged child care, health & educational facilities were better.	Yes	CA-5 No	T/CT should have determined first whether move would detrimentally impact father's established patterns of care, then whether move was necessary; T/CT erred by finding that move was necessary.	Reversed. CASCT holds that moving parent need not prove move is necessary; standard is child's best interests.
Brody v. Kroll (1996) 45 CA4th 1732, 53 CR2d 280, 1996 CFLR 7194, FIRST ALERT #F-96-755	Joint legal custody; primary physical custody to mother, frequent contact with father.	Mother asked for order permitting move.	Mother got job in another state.	Yes	CA-2 (Div 3) No	T/CT erred by finding that father did not put custody in issue by checking box on response; reverses and remands for further proceedings.	Review denied.
Cassady v. Signorelli (1996) 49 CA4th 55, 56 CR2d 545, 1996 CFLR 7301, FIRST ALERT #F-96-769	Joint legal custody; primary physical custody to mother, visitation to father.	Mother asked for order permitting move.	Mother wanted to make career change in another state.	No	CA-1 (Div 5) No	T/CT may refuse custodial parent's relocation request where purpose is to thwart noncustodial parent's visitation and move is not in child's best interests.	Review denied.

Whealon, IRMO (1997) 53 CA4th 132, 61 CR2d 559, 1997 CFLR 7489, FIRST ALERT #F-97-793	Mother had primary physical custody; father had liberal visitation per schedule.	Mother (for permission to move and child-support mod).	Mother found job in New York after her job was eliminated.	Yes	CA-4 (Div 3) Yes	Father had burden to show that custody change was in child's best interests where parties did not have true joint custody arrangement and mother had good-faith motive for move.	No petition filed.
Ruisi v. Thieriot (1997) 53 CA4th 1197, 62 CR2d 766, 1997 CFLR 7523, FIRST ALERT #F-97-793	Joint legal custody; mother primary caregiver; father had generous scheduled visitation.	Mother (for permission to move and for sole custody).	To be near family.	No	CA-1 (Div 1) Reversed & remanded in light of Burgess.	Burgess decided while this appeal was pending; T/CT erred by requiring mother to prove necessity for move, failing to focus on child's best interests.	Review denied.
Condon, IRMO (1998) 62 CA4th 533, 73 CR2d 33, 1998 CFLR 7885, FIRST ALERT #F-98-847	Joint legal and physical custody; visitation to father.	Mother sought order permitting move to Australia.	Mother's family and career ties to Australia.	Yes	CA-2 (Div 7) Yes, but order needed to be revised.	Where move is to foreign country, T/CT must consider (1) adverse cultural conditions and practices, (2) financially prohibitive travel distances, and (3) jurisdictional problems that make local orders unenforceable; should refuse move if it finds such factors. Order permitting move must be made enforceable in foreign jurisdiction.	No petition filed.
Biallas, IRMO (1998) 65 CA4th 755, 76 CR2d 717, 1998 CFLR 7977, FIRST ALERT #F-98-863	Joint legal custody; mother had primary physical custody, father had visitation.	Father brought OSC, seeking custody change after mother moved to Nebraska.	Mother's marriage to, child by, man who lived in Nebraska.	No (de novo custody change)	CA-4 (Div 2) Yes	T/CT erred in making de novo custody determination where father had visitation on one weeknight and alternate weekends; de novo evaluation limited to true joint custody.	No petition filed.
Edlund and Hales, IRMO (1998) 66 CA4th 1454, 78 CR2d 671, 1998 CFLR 8026, FIRST ALERT #F-98-875	Joint legal custody; mother had primary physical custody, father had visitation.	Mother (for permission to move with child to Indiana).	To join fiancé and to improve standard of living and available schooling.	Yes	CA-1 (Div 3) Yes	T/CT did not err in permitting move where parent had good-faith reasons and noncustodial parent had failed to show that move would be detrimental; T/Ct was not required to increase noncustodial parent's visitation time.	No petition filed.
Williams, IRMO (2001) 88 CA4th 808, 105 CR2d 923, 2001 CFLR 8729, FIRST ALERT #F-2001-996	Joint legal custody; joint physical custody, equal time share.	Mother.	Mom's remarriage & move to Utah; lower housing costs & fewer work hours.	Yes for two kids (No for two others)	CA-2 (Div 6) Yes for all (about compelling circ.)	T/CT not permitted to make move-away order that separates siblings absent findings of compelling circumstances.	No petition filed.

Bryant, IRMO (2001) 91 CA4th 789, 110 CR2d 791, 2001 CFLR 8828, FIRST ALERT #F-2001- 1012	Joint legal custody; physical custody to mother, visitation to father.	Mother (for permission to move with child to New Mexico).	New Mexico is mother's home state: family lives there, needs postdisso emotional support.	Yes	CA-2 (Div 6) Yes	Majority feels compelled by <i>Burgess</i> to allow move absent evidence of bad-faith motive or intent to thwart visitation.	No petition filed.
Lasich, IRMO (2002) 99 CA4th 702, 121 CR2d 356, 2002 CFLR 9049, #F-2002- 1054	Joint legal custody; mom is primary care taker 80/20.	Mother.	Mother's return to home and family in Spain.	Yes	CA-3 Yes	Mother's timeshare gave her de facto sole custody; she had absolute right to change children's residence. (<i>Condon</i> conditions imposed.)	No petition filed.
Rose & Richardson, IRMO (2002) 102 CA4th 941, 126 CR2d 45, 2002 CFLR 9145, #F-2002- 1067	Joint legal custody; primary physical to mother.	Father (mod to joint physical custody); mother (move to Seattle).	Mother wanted to move to Seattle	Yes	CA-2 (Div 5) No	Per <i>Montenegro</i> , T/CT should have reviewed custody de novo (no final custody determination.)	Depub denied; no petition filed.
Abrams, IRMO (2003) 105 CA4th 979, 130 CR2d 16, 2003 CFLR 9244, #F-2003- 1081	Joint legal custody; primary physical to mother.	Mom.	Job-related and family reasons.	Yes	CA-3 Yes to move; no to Fam C §271 fee award	Provision requiring mom to obtain dad's consent or court order before move does not create presumption in favor of current residence.	No petition filed.
Abargil, IRMO (2003) 106 CA4th 1294, 131 CR2d 429, 2003 CFLR 9293, #F-2003- 1087	Mother is primary caregiver.	Initial custody hearing.	Mother to care for her dying mother in Israel.	Yes	CA-2 (Div 8) Yes to move but remand to add conditions	Israel not prohibitively dangerous but orders must meet <i>Condon</i> conditions.	No petition filed.
Campos, IRMO (2003) 108 CA4th 839, 134 CR2d 300, 2003 CFLR 9329, #F-2003- 1096	Joint legal custody; sole physical to mother.	Father.	Mother and current spouse want to live in Moorpark.	Yes	CA-2 (Div 6) No	T/CT erred by limiting focus to lack of bad-faith motive and by failing to hold evidentiary hearing re detriment to kids.	No petition filed.

<p>LaMusga, IRMO (2004) 32C4th 1072, 12 CR3d 356, 88 P3d 81, 2004 CFLR 9617, #F-2004- 1143</p>	<p>Joint legal custody; physical custody to mother, increasing visitation to father.</p>	<p>Mother asked for order permitting move.</p>	<p>Mother's husband got job in Ohio.</p>	<p>No on Ohio; temp move to Arizona OK</p>	<p>CA-1 (Div 5) Yes (nonpub)</p>	<p>T/CT erred by giving insufficient weight to mother's right to move and kids' right to stability and continuity, and by placing undue emphasis on detriment from not seeing father.</p>	<p>Reversed. Majority holds that noncustodial parent who opposes custodial parent's move must show that move would cause detriment to child, after which T/CT must evaluate all relevant factors to determine whether custody change is in child's best interests, including reduced contact with noncustodial parent.</p>
<p>Melville, IRMO (2004) 122 CA4th 601, 18 CR3d 685, 2004 CFLR 9749, #F-2004- 1163</p>	<p>Joint legal custody; primary physical custody to Mom, visitation to Dad.</p>	<p>Dad brought motion for custody.</p>	<p>Mom lost job, relocated for new one.</p>	<p>No</p>	<p>CA-1 (Div 4) No</p>	<p>No error in changing child's primary physical custody from Mom to Dad when Mom moved because evidence showed that child's need for continuity and stability, special ed, and medical care would be better met by living primarily with Dad.</p>	<p>No petition filed.</p>
<p>Ragghanti v. Reyes (2004) 123 CA4th 989, 20 CR3d 522, 2005 CFLR 9846, #F-2004- 1169</p>	<p>Joint legal custody; sole physical custody to father if mother moved.</p>	<p>Father brought motion for sole custody; mother asked for order permitting move.</p>	<p>Mother's new husband lived in another city.</p>	<p>No (father awarded sole physical custody)</p>	<p>CA-6 No (custody change affirmed)</p>	<p>Where mother had primary physical custody for significant period of time, but no permanent custody order was made, T/CT need not find that her care was deficient or that planned move would be detrimental; test is child's best interests.</p>	<p>Review denied.</p>
<p>Osgood v. Landon (2005) 127 CA4th 425, 25 CR3d 379, 2005 CFLR 9905, #F-2005- 1185</p>	<p>Sole legal and physical custody to Mom, with reasonable visitation to Dad; later stippled to joint legal custody (no mention of physical custody).</p>	<p>Dad (to modify visitation and change custody because of Mom's planned move.)</p>	<p>Mom offered job in Tennessee.</p>	<p>Yes</p>	<p>Yes</p>	<p>T/CT did not err in applying changed-circumstances standard where prior custody order was final and Dad failed to show that move would cause detriment to child.</p>	<p>No petition filed.</p>

<p>Brown & Yana, IRMO (2006) 37 C4th 947, 38 CR3d 610, 127 P3d 28, 2006 CFLR 10229, #F-2006-1228</p>	<p>Sole legal and physical custody to mother.</p>	<p>Father (to prevent move); mother (to adjust visitation).</p>	<p>Mother's new husband got job in another city.</p>	<p>Yes</p>	<p>CA-2 (Div 6) No</p>	<p>Majority reversed T/CT, holding that parent without legal or physical custody rights is entitled to evidentiary hearing in move-away case.</p>	<p>Reversed. Parent with legal and physical custody doesn't have absolute right to move, but non-custodial parent is entitled to full evidentiary hearing only after unsuccessful mediation and showing of detriment to child.</p>
<p>Seagondollar, IRMO (2006) 139 CA4th 1116, 43 CR3d 575, 2006 CFLR 10317, #F-2006-1244</p>	<p>Joint legal and physical custody.</p>	<p>Dad</p>	<p>Dad sought custody based on allegations that Mom intended to move.</p>	<p>Yes</p>	<p>CA-4 (Div 3) No</p>	<p>T/CT's failure to follow family law rules and procedures deprived Dad of opportunity for meaningful hearing before T/CT allowed move.</p>	<p>No petition filed.</p>
<p>Niko v. Foreman (2006) 144 CA4th 344, 50 CR3d 398, 2006 CFLR 10457, #F-2006-1266</p>	<p>Joint legal and physical custody.</p>	<p>Mother (for permission to move).</p>	<p>Mother got new job.</p>	<p>Yes</p>	<p>CA-4 (Div 3) Yes</p>	<p>Majority approved application of best-interests standard and de novo review where parents had joint custody with 50-50 time-share.</p>	<p>Review denied.</p>