



STATE OF MINNESOTA
IN COURT OF APPEALS
Case No. A09-743

Taylor Rae Hagen and Amy Sue Hagen,

Respondents,

vs.

Daniel John Schirmers,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE LEGAL ISSUE INVOLVED

DID THE DISTRICT COURT’S DETERMINATION THAT RESPONDENT SHOULD BE PERMITTED TO RELOCATE TO CALIFORNIA WITH THE PARTIES’ MINOR CHILD AND ITS CONCOMITANT REDUCTION IN APPELLANT’S PARENTING TIME MEET STATUTORY AND EQUITABLE REQUIREMENTS AND DEPRIVES APPELLANT OF A REASONABLE RELATIONSHIP WITH HIS DAUGHTER?

The District Court Held: In the AFFIRMATIVE.

MOST APPOSITE STATUTES:

- Minn. Stat. § 518.175
- Minn. Stat. § 518A.31
- Minn. Stat. § 518A.36

MOST APPOSITE CASES:

Auge v. Auge, 334 N.W.2d 393 (Minn. 1983)

Goldman v. Greenwood, 748 N.W.2d 279 (Minn. 2008)

Lucas v. Lucas, 389 N.W.2d 744 (Minn. App. 1986)

Otava v. Otava, 374 N.W.2d 509 (Minn. App. 1985)

STATEMENT OF THE CASE AND FACTS

Amy Sue Hagen and Daniel John Schirmers are the natural parents of Taylor Rae Hagen, born April 19, 2004 (A-2)¹. Mr. Schirmers acknowledged paternity and entered into Stipulation, which was reduced to an order, and which gave the parties joint custody of Taylor (A-2). Pursuant to that order, Ms. Hagen was granted sole legal custody, and Mr. Schirmers was granted successively increasing parenting time (A-22).

On November 4th, 2008, Ms. Hagen moved the Court for its order permitting her to relocate to California with her child (27). Mr. Schirmers opposed the motion, and a hearing was held before the Hon. James Hoolihan at the Benton County Courts Facility in Foley, Minnesota on March 6th, 2009 (T-1). After the hearing, the District Court issued its order permitting the removal and modifying its parenting time order (A-1ff). On April 29th, 2009, Mr. Schirmers Appealed (A-29).

Ms. Hagen indicated that she wanted to relocate to the area of Los Angeles, California, because she was engaged to one Steve Casazza, who was employed by the same company which employed her, ING Financial Services, and who works in Simi Valley, which is close to Los Angeles (T-10). ING had approved the move (T-28). She stated that Mr. Casazza's relatives lived in California, that several of her own relatives did as well, and that Taylor has an

¹Where there is no disagreement with the District Court's Order, Appellant will generally simply refer to that order for its Findings and Conclusions.

excellent relationship with Mr. Casazza and Mr. Casazza's children by a prior marriage (T-12 through 17). She stated that she and Mr. Casazza have no house in California but are in the process of acquiring one (T-24). She stated that Taylor has already been to California and seen Mr. Casazza numerous time (T-55). She testified that she has looked at several schools for Taylor, who will be in kindergarten in the fall (and in fact has since enrolled there)(T-32). She testified that it would be easy to stay in contact with Mr. Schirmers (T-40).

Mr. Schirmers and his wife, Judith, testified that even while both parents were in Minnesota, Ms. Hagen was very controlling and limited access to Taylor (T-142). Ms. Schirmers would limit telephone calls, especially when she was in California (T-143). Ms. Hagen would often frustrate visitation until Mr. Schirmers was able to establish a parenting-time expediter, Virginia Marso (T-140). Mr. Schirmers was able to have parenting time visits with Taylor twice per week and overnight visits twice per month on weekends (A-22). He and his wife saw Taylor about 150 days per year. Mr. Schirmers and Ms. Hagen were required by the order to revisit the parenting time order on April 19th, 2009 (A-22). Because of the Court's Order of April 3rd granting the relocation and limiting Mr. Schirmers' parenting time, this never happened.

As of the date of hearing, Taylor appeared to be a

reasonably happy and well-adjusted child, although she had become increasingly nervous and "fidgety" (T-144). Counseling was recommended for Taylor both by Ms. Marso and by her teachers (T-143-145). Ms. Hagen refused the counseling recommendations, and cancelled the appointment with the proposed counselor (T-146). Partially as a result, Ms. Marso recommended against the proposed California move. Ms. Hagen moved to California. Ms. Hagen and Mr. Schirmers have ongoing difficulties with parenting time and communication between father and child as is demonstrated by the subsequent history of this case which appears in the record of the District Court.

ARGUMENT

THE DISTRICT COURT'S DETERMINATION THAT RESPONDENT SHOULD BE PERMITTED TO RELOCATE TO CALIFORNIA WITH THE PARTIES' MINOR CHILD AND ITS CONCOMITANT REDUCTION IN APPELLANT'S PARENTING TIME FAILS TO MEET STATUTORY AND EQUITABLE REQUIREMENTS AND DEPRIVES APPELLANT OF A REASONABLE RELATIONSHIP WITH HIS DAUGHTER.

Both the Minnesota Legislature and the Minnesota Courts have been increasing vigilant in monitoring and qualifying a divorced party's right to move out of the State with children unless the right to preserve parenting time in the other partner is protected. Minn. Stat. § 518.175 subd. 3 states:

Subd. 3. Move to another state.

(a) The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given

parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other parent by the decree, the court shall not permit the child's residence to be moved to another state.

(b) The court shall apply a best interests standard when considering the request of the parent with whom the child resides to move the child's residence to another state. The factors the court must consider in determining the child's best interests include, but are not limited to:

(1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;

(2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;

(3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;

(4) the child's preference, taking into consideration the age and maturity of the child;

(5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;

(6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;

(7) the reasons of each person for seeking or opposing the relocation; and

(8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

(c) The burden of proof is upon the parent requesting to move the residence of the child to another state, except that if the court finds that the person requesting permission to move has been a victim of domestic abuse by the other parent, the burden of proof is upon the parent opposing the move. The court must consider all of the factors in this subdivision in determining the best interests of the child.

Of particular concern with respect to a move to another state with children is whether the move would substantially reduce a noncustodial parent's parenting time. Minn. Stat. § 518.175 subd. 1 (3) states:

(e) In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child. For purposes of this paragraph, the percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent or by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

Accordingly, in the absence of evidence showing that there was a good reason to reduce Mr. Schirmers' parenting time below 25%, the District Court should either have refused Ms. Hagen's request to move, or granted substantially more parenting time to Mr. Schirmers.

The effect of the Court's order was to reduce Mr. Schirmers' parenting time from about 150 days per year to about 32 days per year (T-139). Prior to the Court's order granting relocation, Mr. Schirmers had parenting time Tuesdays and Thursday from 4:30 p.m. to 7:00 p.m. and the every other Saturday morning from nine o'clock in the morning until Sunday morning at nine o'clock. By the original Court order, parenting time, including extensive summer vacation, was to commence when Taylor turned five on April 19th, 2009 - two weeks after the District Court's order.

So the District Court's April 3, 2009 order not only deprived Mr. Schirmers of about 120 days of parenting time. It eviscerated its own existing order granting him expanded summer visitation.

Minnesota has not yet defined a method of calculating parenting for purposes of Minn. Stat. § 518.175 subd. 1. The closest it comes is Minn. Stat. § 518A.36 subd. 1:

(a) The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses. Every child support order shall specify the percentage of parenting time granted to or presumed for each parent. For purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method

other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

This helps, but not much. For one thing, the statute itself does not choose between counting overnights and not counting overnights, essentially leaving this to the Court. But the Court in this case did not make this determination, even though it made a new child support and new parenting order, and was thus required to do so. After all, Mr. Schirmers had "significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight" before the move. He has none after the move.

The failure of the Court to take total parenting time into consideration in its order is a serious flaw.² To be sure, two weeknights of parenting time is not a full day. But it is not nothing, either. A child's "bondedness" is not determined solely by her overnight visits. The fact that she regularly sees both parents means that she lives in a "two parent context" in a way that she does not live in such a context when she only flies out to Minnesota several times per year with her mother. Minn. Stat.

²Note here Minn. Stat. § 518A.36 subd. 1(b): "If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include an application of the parenting expense adjustment." The District Court did not do this.

§ 518A.31 is concerned primarily with economic considerations - how much it costs to rear a child - rather than personal or emotional considerations, such as how important it is for a child to retain regular contact with a parent. Thus, it would have been good if the legislature had done the sort of personal analysis with respect to parenting time as it related to § 518.175 and had not left to economic considerations to define relative parenting time. But at least it recognized that pure "count the hours" calculations was not always appropriate, even for child support purposes. *A fortiori*, they are inappropriate for "quality time with children" purposes.

Consider the possible calculations the Court might have made if it had not erred. At one extreme, it might have considered each Tuesday and Thursday dinner a day of parenting time, and calculated $52 \times 2 = 104 + 52 = 156$ days of parenting time. Obviously this is rather radical, and if the Court had calculated thus, its child support order might have been problematical. At the other extreme, it could have ignored the Tuesday and Thursday dinners altogether, counted the weekend overnights as one day, ignored holiday and summer visitation, and thus credited Mr. Schirmers with only 52 days' parenting time. Obviously this would be radical as well. A reasonable calculation might be to credit Mr. Schirmers with four days' parenting time per month for the Tuesday and Thursday dinners, and credit him with the two-

week summer visitations to which a non-custodial parent is ordinarily entitled. This would give him 86 days' parenting time, which is just under 25%. The point is, however, that the judge did not bother to use any method to calculate Mr. Schirmers' current parenting time at all.

The District Court's failure to calculate and this failure's consequent effect on its order for parenting time after removal is even worse than that. The original court order required a readjustment of parenting time when the child reached the age of 5 - essentially simultaneously with the Court's relocation order. The parties were ordered to attempt to determine the adjustment themselves, but if they could not, the court would adjust Mr. Schirmers' parenting time award upward. With a child who was soon to be in school, this would ordinary have meant visitation every other weekend and two weeks during the summer, together with every other holiday, or about 52 regular visitation days + 14 summer vacation days + 20 holiday days including Christmas and Easter + 12 days for nightly visits, or 98 days, or 27%, well within the § 518.175 subd. 1 parenting time presumptions.

Now compare what Mr. Schirmers had after the Court's April 3rd order. Mr. Schirmers has parenting time fourteen total days in June and July (A-16). He has four days in October, 3½ days in

November, 3½ days at Christmas break³, and seven days in April. This is 28 days, or 11% parenting time, or less than 50% of that presumptively permitted a non-custodial parent under Minn. Stat. § 518.175 subd. 1. It is also less than 50% of what he had prior to Ms. Hagen being permitted to remove the child from the State of Minnesota.

If the Court had made some findings justifying this, perhaps the Court of Appeals could uphold it. But it is difficult to see how. Nothing in the record remotely suggests that Mr. Schirmers has been, is, or will be, a problematical parent. He has kept close contact with his child, paid child support, and demonstrated concern for Taylor's welfare in other ways as well. The current parenting time order is more consistent with that imposed upon a Respondent in a CHIPS petition than a normal visitational father's parenting time rights.

Nor is there any other good reason which appears in the record (or in the Court's Order) which would justify this drastic reduction in parenting time. There is no evidence that travel is

³The Court's order here is not altogether clear. It states "The Parties shall alternate who has the minor child for Christmas break. Parenting time of Christmas break includes both Christmas Even and Christmas Day. The Respondent's parenting time shall be seven (7) days or more at the Petitioner's discretion." But Christmas break is ordinarily two weeks. Since Ms. Hagen regularly grants Mr. Schirmers the minimum parenting time awarded by a strict construction of the Court's orders, Mr. Schirmers is permitted seven days in December every other year, or an average of 3½ days per year.

hard on Taylor - she has been back and forth to California and Minnesota more than 11 times already (-55). There is no indication that Ms. Hagen lacks the wherewithal to take her child to Minnesota or that Mr. Schirmers cannot fly to California when appropriate. Taylor has friends and relatives in Minnesota. She has done well in school and there is nothing in either the Minnesota environment or her father's environment which poses any concern. Minnesota is an important part of Taylor's life. Mr. Schirmers is an important part of Taylor's life. By failing to follow the statutorily-required presumptions, and failing to provide analyses which would permit a departure from those presumptions, the District Court not only committed reversible error - it prejudiced a minor child as well.

Furthermore, the Court did not properly analyze the factors set forth in Minn. Stat. § 518.175 subd. 4 as they relate to parenting time. While it set forth the subd. 4 factors in its Conclusions of Law, it did not tract these factors in its findings, nor did it go through the "best interest" analysis required by Minn. Stat. § 518.17 subd. 2. Although this matter also bears on the propriety of the Court's order with respect to permitting Ms. Hagen's removal to California with Taylor, it is of particular importance in determining the modification of parenting time such a move will require as well. Let us consider the adequacy of the District Court's determinations on these

issues as they are set forth in the statute.

(1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life....

The District Court did not set forth its findings analysis in a form which fits well with subd. 4, some of its findings can be read as bearing upon the statutory requirements. Obviously, the duration of Ms. Hagen's parenting time is considerable. But when the Court analyzed Mr. Schirmers' parenting time, it erred:

7. The extent of Respondent's involvement in Taylor's life has been limited to parenting time consisting of small blocks of time during the week. For the past two years, the schedule has allowed for parenting time consisting of 24 hour blocks of time every other Saturday and two weekday visits consisting of two and one-half hours.

(A-4)

In short, 104 days' worth of contacts per year. This is hardly "limited" contact, although under the new order, contact is about to become "limited."

(2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child....

The visitation expediter, Virginia Marso, strongly recommended counseling for Taylor. The basis of her recommendation was not only that Taylor was demonstrating some problematical behavior in school (T-114) but that the diminution

of contact between Taylor and her father, should the removal be permitted, would likely be traumatic. Instead, the court "fired" Ms. Marso and declined to replace her (A-8).

(3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties....

This is probably the most important of the subd. 1 factors. By permitting child removal, the Courts are making it much more difficult to preserve a relationship between a non-custodial parent and that parent's child. Hence, the "trade-off" for permitting a party to remove the child out-of-state is a visitational arrangement which will make the preservation of that relationship feasible. All the District Court said on this issue was:

25. Preserving the relationship between Taylor and her father is feasible given the unique logistic circumstances present. Taylor has grown accustomed to traveling interstate on a fixed schedule for visits. The Petitioner is able to accompany Taylor on all flights to and from California for scheduled parenting times. The Petitioner is able, at certain times, to return to Minnesota for a week and work out of the St. Cloud office through her employment with ING DIRECT. Both parties are successful in their respective careers and earn a good income so as to be financially able to contribute to the cost of transporting Taylor to and from Minnesota for visits.

(A-7)

This does not address the issue. The fact that the parties are financially able to contribute to Taylor's transportation

does not mean much if the Court parenting time order does not permit Taylor to be transported very often.

Furthermore, there is ample evidence that Ms. Hagen has interfered with contact between Mr. Schirmers and Taylor, both in Minnesota and when Taylor has been in California with her mother:

Q. Now, you heard Amy testify that you and her have - have some problems in your relationship between each other, right?

A. Yeah.

Q. And that - that the problems that the two of you have primarily involve makeup parenting time, right?

A. Correct.

Q. And Virginia Marso is the parenting time expediter now, right?

A. Yes.

Q. Have you lost any parenting time since Virginia Marso became the expediter?

A. No.

Q. Prior to her being the expediter did you lose parenting time?

A. Yes, I did.

Q. How common an occurrence was that?

A. I guess I don't know exact dates, but there was - there was times that I would miss and - because of work or another, and I was told that I could not make them up. And that's why we went to the - with Virginia.

Q. And if Amy denied your parenting time, was she amenable to making it up?

A. Not then, no.

Q. And that's all part of what led to her being appointed as the expediter -

A. Uh-huh.

(T-141, 142)

Yet the Court compounded the problem by dismissing Ms. Marso and not appointing a replacement:

30. Ms. Marso's considerable family law experience has been an obvious asset in her successful efforts to resolve the parenting time disagreements between the parties. It is clear to the court that the parties have not yet found a way to communicate easily with each other or to work out disagreements without the aid of a third person. However, the request of the Respondent to transfer to Ms. Marso custody-type decisions lie within the exclusive jurisdiction of the courts, is not appropriate or acceptable to the court.

(A-8)

Note that the finding "It is clear to the court that the parties have not yet found a way to communicate easily with each other or to work out disagreements without the aid of a third person" contradicts its conclusion that:

The Petitioner has made efforts to maintain a parent-child relationship between Taylor and her father despite disputes that have come before the Court. The Petitioner has made reasonable proposals for contact with the Respondent based on Taylor's age. The Petitioner has made offers to encourage communication between Taylor and Respondent.

(A-13)

The District Court got it right the first time.

It's - it's frustrating. I'm - right now I just try to call Taylor on the weekends that I don't have her because it's just - it's such a chore to try to get

through to her. It's just I call and I never get an answer and never get an answer, and then sometimes I get a phone call later at night on my cell phone. Well, I don't always have my cell phone with me, and it's -all I get is, Hi, Daddy, I called - I'm calling you back. Well, it's seven, eight o'clock at night, and like I said, I don't have my phone with me. And I never - very seldom do I receive a phone call on my home phone.

(T-143)

And:

Q. Now starting in November of 2008, or looking back to November of 2008, were you and Amy able to discuss things verbally as far as Taylor's concerned?

A. There was minimal discussion. It was - we weren't discussing a lot, but we - we could actually make comments towards each other. But it wasn't, I mean, a sit-down, long, relaxing conversation.

Q. At some point did the two of you have to start communicating totally in writing?

A. With the counseling - when the counseling came about, that's when - when I was informed that it would be a good idea for Taylor to seek counseling, that's when - and I set up the counseling, that's when it was reduced to letters, writing back and forth.

(T-143, 144)

When Minn. Stat. § 518.175 speaks to "preserving the relationship" between children and noncustodial parents, it does not simply mean "preserving contact." It means "preserving the quality of the relationship." *Lucas v. Lucas*, 389 N.W.2d 744 (Minn. App. 1986). Indeed, a determination that it is not in the best interests of a child to permit his removal to Finland was deemed correct, given a showing that such a move would seriously

impair visitation contacts with the father and would require the child to sacrifice important relationships with her relatives. *Otava v. Otava*, 374 N.W.2d 509 (Minn. App. 1985). Once again, although the Court have not always said so explicitly, the rule is clear enough: If the removal seriously degrades the relationship with the noncustodial parent, the move is to be denied; if the move is to be granted, the parenting time arrangement must insure that the relationship with the noncustodial parent not be degraded. The judge's order fails on both counts.

(4) the child's preference, taking into consideration the age and maturity of the child;

The Court determined that the child was too young to express a rational preference, and that findings is supportable. Still, that is not the end of the matter. The District Court did tend to ignore the extensive testimony that the child was bonded to the father, missed him, and made every attempt to stay in contact with him. While this would hardly be enough, in itself, to deny a move out-of-state, it was more than enough to give the Court pause in restricting Mr. Schirmers' visitation as much as the Court did.

(5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person....

This is the second most serious of the subd. 1 factors. As

has already been noted, the relationship between the mother and the father is very bad. Even the District Court, which displayed a bias toward the mother, noted that "It is clear to the court that the parties have not yet found a way to communicate easily with each other or to work out disagreements without the aid of a third person." And the testimony as to Ms. Hagen's obstruction of contacts between Taylor and Mr. Schirmers, together with her attempts to control such contacts is extensive and convincing. Of course, if there is a pattern of conduct thwarting the relationship of the child and the noncustodial parent, the remedy may not be as drastic as denying the relocation. But it should certainly have extended to an order insure adequate contact, not cutting it down by two-thirds.

(6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity....

The District Court could probably have determined this either way. But it should be noted that the financial benefit is very questionable. Ms. Hagen was earning at least as much in Minnesota as she would earn in California, and given the house expense and the cost of living she and her prospective husband would face in California, she would have less discretionary income to direct toward Taylor than she would in Minnesota. See, e.g., T-84 (her Minnesota house is worth \$183,000); T-99 (her

proposed California house would cost \$725,000 with a \$285,000 mortgage); (T-28) she has a present salary of \$53,500 per year with no increase upon relocation. Her proposed husband has a maintenance obligation of \$1,500 per month and a child support obligation of \$2,100, working in the same firm as Ms. Hagen (T-91). He will not be much help. It is predictable that the Casazzas will have a rough go of it, even without Taylor.

(7) the reasons of each person for seeking or opposing the relocation....

To the extent Ms. Hagen is honest, her reasons for seeking to remove to California are reasonable. However, Mr. Schirmers' reasons for opposing the move are overwhelming - given the extremely limited contact with Taylor permitted to him by the Court's order, the relocation is a formula for attenuating, and ultimately severing, his ties with his daughter.

(8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

There is probably no substantial safety issue in the relocation. Her welfare is another matter. Whatever the fate of the motion to relocate, Taylor's welfare was fine, because Mr. Schirmers was permitted reasonable parenting time and contact under the present regime. As it stands, Taylor is bound to feel deprived, and this feeling of deprivation can only grow.

The legislature's intention in enacting the present Minn.

Stat. § 518.175 is reasonably clear. It wished to change the old rule of *Auge v. Auge*, 334 N.W.2d 393 (Minn. 1983), presuming the removal of a child from the state to be valid if the person seeking the removal was the custodial parent. See, *Goldman v. Greenwood*, 748 N.W.2d 279 (Minn. 2008).

Respondent will probably argue that it would be impractical for the Court of Appeals to require her to go back to Minnesota now that she and her child have established residence in California for a year. Yet, if the District Court violated Minn. Stat. § 518.175 subs. 1 & 3 (and it did), forcing Ms. Hagen to return to Minnesota is not the only remedy. Just as a change of custody is not the only remedy for wrongful denial of visitation, the Court of Appeals should consider other remedies for improper grant of relocation. Most important of these is a modification of the Court's parenting time order. At a minimum, the District Court should be ordered to fashion a parenting time order which gives Mr. Schirmers parenting time equal to at least 25% of the time Taylor spends with her parents; should be required to permit unlimited telephonic and other contact between father and daughter; and should require the appointment of a parenting time expediter or consultant to insure that such an order is carried out.

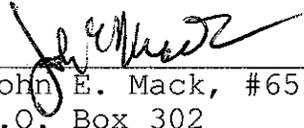
CONCLUSION

This matter should be reversed and remanded to the District

Court with instructions to reconsider its permission to relocate. In the event that the District Court determines that relocation should be granted, the District Court should be required to fashion an order granting Mr. Schirmers at least 25% of the parenting time, granting him unlimited communication with his daughter, and appointing a facilitator to insure that Mr. Schirmers gets the benefit of such an order.

Dated: January 4th, 2010

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