

Relocation in Family Law Cases

by Kimberly R. Willoughby

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This article discusses relocation law in light of the 2001 Uniform Dissolution of Marriage Act and the two most recent Colorado Supreme Court cases regarding parental requests to move out of state with minor children.

The Colorado Supreme Court recently decided two cases regarding relocation or “removal” matters.¹ These cases involve the majority time parent’s² request to move with his or her child or children to a geographical location that would substantially change parenting time for the non-relocating parent—usually, but not always, out of the state of Colorado. The first case, *In Re the Marriage of Ciesluk*,³ involved the request of one parent to move out of state after the divorce decree was granted. The second case, *Spahmer v. Gullette*,⁴ involved the initial determination of parenting time when one parent wanted to move away from the state of Colorado.⁵

These were the first Colorado Supreme Court cases involving parental moves decided after the Colorado General Assembly amended the Uniform Dissolution of Marriage Act in 2001. This amendment modified CRS § 14-10-129 to directly address the issue of modification of parenting time when the majority time parent wishes to move with a child. This article provides an overview of relocation law and the 2001 statute. It also discusses how the *Ciesluk* and *Spahmer* cases impact relocation cases in Colorado.

Overview of Relocation Cases

In general, U.S. appellate courts analyze relocation cases in two ways: (1) by considering constitutional arguments; and (2) by considering social sciences arguments through the lens of the “best interests of the child.”⁶ The following al-

ternative generalizations have been used by courts across the nation to guide the outcome of relocation cases:

1. A majority time parent generally should be able to move with a child.⁷
2. A child’s best interests are paramount.⁸
3. The courts should analyze each case on its own merits and eschew generalizations and presumptions.⁹

Keeping these generalizations in mind, courts have taken different formalistic approaches in relocation cases, including:

- putting the burden of proof on the relocating parent
- putting the burden of proof on the objecting parent
- refusing to assign either parent the burden of proof
- giving the relocating parent a presumption that a move will be allowed
- giving the objecting parent a presumption that the child should remain in the state
- recognizing the constitutional rights of the relocating parent
- recognizing the constitutional rights of the objecting parent
- elevating the best interests of the child to a standard that trumps or is equal to the parents’ constitutional rights.

Historically, Colorado appellate courts have alternatively taken the positions that: (1) in general, it is in the best interests of a child to stay in the state of Colorado, with both parents;¹⁰ (2) in general, it is in the best interests of the child to stay with a custodial parent;¹¹ and (3)

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there is a presumption that a child should remain with the custodial parent unless the child would be endangered.¹² Now, Colorado courts use the “best interests standard” when making relocation determinations and give no presumptions to either parent and do not allocate the burden of proof to either parent.¹³

The 2001 Relocation Statute

Before 2001, there was no Colorado statute dealing directly with relocation requests and, as a result, case law was applied to relocation matters. In the case *In re Marriage of Francis*,¹⁴ the Colorado Supreme Court developed a test for trial courts to apply when considering a custodial parent’s request to move a child out of the state. First, a custodial parent had to present a *prima facie* case showing that there was a sensible reason for the requested move. Once the custodial parent presented a *prima facie* case, a presumption in favor of allowing the child to move with the custodial parent arose.¹⁵

The burden then shifted to the non-custodial parent to show that the move was not in the child’s best interests.¹⁶ The non-custodial parent could overcome the presumption in favor of the move by showing one of the following: (1) the custodial parent had consented to the modification of custody to the non-custodial parent; (2) the child had been integrated into the non-custodial parent’s family with the custodial parent’s consent; or (3) the child’s present environment endangered his or her physical health or significantly impaired his or her emotional development (“the endangerment standard”).¹⁷ If no credible evidence of endangerment existed, the non-custodial parent could overcome the presumption in favor of a move by establishing, by a preponderance of evidence, that the negative impact of the move cumulatively outweighed the advantages of remaining with the custodial parent.¹⁸

This test was based on the Court’s general philosophy that:

[A] child’s best interests are served by preserving the custodial relationship, by avoiding relitigation of custody decisions, and by recognizing the close link between the best interests of the custodial parent and the best interests of the child. In a removal dispute, this leads logically to a presumption that the custodial parent’s choice to move with the children should generally be allowed.¹⁹

In practice, under *Francis*, most majority time parents were allowed to move with a child. This created a certain degree of predictability and served the Court’s goal of minimizing litigation.

However, in 2001, the Colorado General Assembly rejected *Francis* and amended the modification of parenting time statute.²⁰ CRS § 14-10-129(2)(c) abrogated the endangerment standard and replaced it with a “best interests” standard. Under the statute, when a majority time parent wishes to relocate with a child, the trial court must take into account all relevant factors, including nine new factors set forth in CRS § 14-10-129(2)(c), as well as the best interests factors set forth in CRS § 14-10-124(1.5).²¹ The trial court must weigh the factors and determine whether the move would be in the best interests of the child.

CRS § 14-10-129(2)(c) as amended requires consideration of the following factors when determining the best interests of a child:

- the reasons for relocation with the child
- the reasons the opposing party is objecting to the proposed relocation
- the history and quality of each party’s relationship with the child since the entry of any previous parenting time order
- the educational opportunities for the child at the existing location and at the proposed new location
- the presence or absence of extended family at the existing location and at the proposed new location
- any advantages to the child’s remaining with the primary caregiver
- the anticipated impact of the move on the child
- whether the court will be able to fashion a reasonable parenting time schedule if the change requested is permitted
- any other relevant factors bearing on the best interests of the child.²²

The amended statute does not assign to either parent the burden of proving what is in the best interests of the child. It does not give special significance to the fact that a parent has been a majority time parent, although it directs the trial court to consider the advantages of keeping the child with that parent. No special showing is required to support making a change to majority time and minority time parent arrangements when a relocation request has been submitted. Thus, the statute puts parents on a level playing field at the

time a request for relocation with a child is made. Whether a child moves and whether a child stays with a majority time parent must be determined using the best interests standard.

The Ciesluk Case

Ciesluk involved divorced parents who shared joint parental responsibility for one son, who was six years old at the beginning of the case.²³ Mother was the majority time parent and Father’s parenting time was scheduled for alternating extended weekends and one overnight every other week.

Shortly after the divorce was finalized, Mother filed a motion to relocate to Arizona and modify parenting time pursuant to CRS § 14-10-129. She proposed a new parenting time schedule that would reduce Father’s time to approximately six weeks per year. Mother’s stated reasons for relocation included a potential new job in Arizona, as well as family, including a sick parent. Father opposed the motion.

The court appointed a Special Advocate. The Special Advocate recommended that the child stay in proximity to both parents so he would enjoy the benefits of growing up with two parents. Her recommendations included that the child not move from the state and that he continue to live primarily with Mother in Denver.

During the trial, the trial court judge, *sua sponte*, recommended that the parents review an article written by Sanford Braver and others about relocation.²⁴ The judge summarized the article as saying that a move with a child generally harms the long-term relationship between the child and the left-behind parent. The trial court denied Mother’s motion to relocate with the child. Mother appealed, and the Court of Appeals, in a published decision,²⁵ upheld the trial court’s order.

Mother appealed to the Colorado Supreme Court. She argued that: (1) the newly modified CRS § 14-10-129(2)(c) included a *Francis* presumption in favor of a move by a majority time parent; (2) if CRS § 14-10-129(2)(c) did not include such a presumption, it unconstitutionally discouraged Mother from traveling; and (3) the trial court abused its discretion in applying the statutory factors.

The Colorado Supreme Court held that the trial court properly concluded that CRS § 14-10-129(2)(c) eliminated the *Francis* test for analyzing relocation cases; amendments to the statute eliminated the presumption in favor of the majority

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time parent seeking to relocate. As a result, both parents now equally share the burden of demonstrating what is in the child's best interests.

The Court further held that the statute did not unconstitutionally infringe on Mother's right to travel. The Court held that a majority time parent has a constitutional right to travel, which is impacted by the relocation statute. However, the minority time parent also has a constitutional right to the care and control of the child. Additionally, the best interests of the child test tempers both parents' constitutional rights. The Court found that the relocation statute, as written, takes into consideration those competing constitutional rights and the concern for the best interests of the child and protects the interests simply through correct application of the statutory factors to the case. The Court stated that CRS § 14-10-129(2)(c)(I) and (II) direct the trial court to protect the constitutional rights of parents.

However, the Court ultimately reversed the trial court's ruling and remanded the case, because it found that the trial court abused its discretion in its application of CRS § 14-10-129(2)(c). The

trial court effectively created a presumption in favor of Father, and in doing so, unconstitutionally infringed on Mother's right to travel. According to the Colorado Supreme Court, the trial court "prematurely concluded that it would be in [the child's] best interests to remain in close proximity to both parents. The effect of this conclusion was to create a presumption in Father's favor contrary to the legislative intent of [the statute]."²⁶ By finding that "parenthood results in some sacrifice and it is better off for parents to remain in close proximity,"²⁷ the trial court "gave substantial weight to the impact of the move on [the child's] relationship with Father and to Mother's failure to establish how the move would 'enhance' [the child]."²⁸ The trial court aggravated this error by relying on the general conclusion reached in the Braver article that it is better for children if parents remain in proximity.²⁹ In short, the trial court erred by starting with the assumption that it is better for a child to be near both parents than for a child to move away from one parent.³⁰

Additionally, although the trial court demanded that Mother prove that a move

would "enhance" the child's life, it failed to impose an equal burden on Father to demonstrate the benefits to the child of staying in Colorado. By asking the parents to meet different burdens, the trial court gave a presumption in favor of Father.

Guidance for Trial Courts

The *Ciesluk* opinion includes specific instructions to trial courts regarding how to decide relocation cases. First, trial courts must determine each case using a specific factual analysis considering the factors set forth in CRS §§ 14-10-129(2)(c) and 14-10-124(1.5)(a). Also:

A court must begin its analysis with each parent on equal footing; a court may not presume either that a child is better off or disadvantaged by relocating with the majority time parent. Rather, the majority time parent has the duty to present specific, non-speculative information about the child's proposed new living conditions, as well as a concrete plan for modifying parenting time as a result of the move.³¹

Additionally, the court may consider indirect benefits to a child from the move,



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such as a parent's increased financial stability or family support.

The minority time parent may object to the relocation and seek to become the majority time parent. In the alternative, the minority time parent may object to the revised parenting plan proposed by the majority time parent. In such cases, the minority time parent must propose his or her own parenting plan.

Each parent has the burden of proving that his or her proposal regarding where the child should live and how parenting time should be allocated is best for the child.³² If the court decides that it is not in the child's best interests to relocate with the majority time parent, the majority time parent must propose a new parenting plan if he or she still wishes to relocate.³³

Trial courts should be careful when addressing the statutory factors. Putting too much weight on any one factor could expose an order to appeal on the basis that the trial court imported presumptions or biases into its ruling. For example, if a trial court places too much emphasis on the advantages of the child remaining with the majority time parent, the minority time parent may appeal on the basis that the trial court started with the assumption that a child should remain with the majority time parent.

On the other hand, it is presumably within the discretion of the trial court to determine whether one statutory factor is more important than another in a particular case. The Court of Appeals reached this conclusion in *Ciesluk*,³⁴ however, the Supreme Court in *Ciesluk* did not address this issue.

The trial court might determine, for example, that the extended family factor is not important in a case where the only family in the state, other than the parents, has never been involved with the child. Thus, the trial court may give the extended family factor less weight than other factors.

Additionally, the *Ciesluk* opinion holds that two CRS § 14-10-129(2)(c) factors—the reason the moving party wishes to relocate and the reason the opposing party objects to a move—serve to protect parents' constitutional rights.³⁵ As a result, those factors will tend to be considered more significant than the other factors. However, a tension exists between weighing the statutory factors as appropriate in each case and refraining from imposing presumptions by weighing some factors too heavily.

Constitutional Issues In Ciesluk

As the *Ciesluk* opinion indicates, two constitutional rights are at issue in relocation cases—the constitutional right of the parent requesting a move to travel, and the constitutional right of the non-moving parent to the care and control of his or her child pursuant to the U.S. Supreme Court case *Troxel v. Granville*.³⁶

The parameters of the constitutional right to care and control of a child in the context of divorcing or litigating parents are not defined in *Ciesluk*, which states only that the non-moving parent has a "right to parent."³⁷ This right can be characterized as the right to maintain close association and frequent contact with a child.³⁸

Troxel itself characterizes the right as the right of a parent to be free from the interference of courts or other parties with respect to how to raise his or her child. However, the facts of *Troxel* involved a dispute between a fit parent and a non-parent, rather than a dispute between parents. As such, in the relocation context, the Supreme Court has left open the question of whether both parents have an equal right to "care and control" of a child that can be understood as the ability to determine where his or her child lives. How to balance the competing interests of the parents also is unresolved.

Ciesluk can be interpreted to stand for the proposition that each parent's constitutional rights are protected by CRS § 14-10-129(2)(c). The *Ciesluk* court stated that an analysis of the reasons in favor of and opposing the proposed move as required by CRS § 14-10-129(2)(c) requires the trial court to balance the parents' constitutional rights. Also, the interests of the parents, as well as the best interests of the child, will best be protected if each parent shares equally in the burden of demonstrating how the child's best interests will be impacted by the proposed relocation.³⁹ Addressing the statutory factors when ruling on a relocation request should sufficiently address the constitutional issues.⁴⁰

The Spahmer v. Gullette Case

The *Spahmer* opinion was issued on the same day as the *Ciesluk* opinion. *Spahmer* involved a young, unmarried couple with a child.⁴¹ Both parents resided in Colorado when the child was born. When Mother took the child to Arizona, Father filed an action for allocation

of parental responsibilities and parenting time, as well as a motion for a temporary restraining order requiring Mother to return to Colorado with the child.

The trial court entered temporary orders enjoining Mother from removing the child from Colorado pending further order. Mother then filed a motion to relocate with the child. The trial court found it in the child's best interests for the parents to have joint parental responsibility and for the child and Mother to remain in Colorado. The trial court also imposed limits on where Mother could live in Colorado. In an unpublished decision, a division of the Court of Appeals affirmed the trial court's order on the grounds that the trial court properly applied the best interests standard.

The Colorado Supreme Court reversed and remanded. The Court held that in a proceeding for an initial allocation of parenting time and parental responsibility, (as opposed to a post-decree action such as *Ciesluk*), the trial court does not have authority to order a parent to live in a specific location. The trial court must accept the location in which each party intends to live and allocate parental responsibilities and parenting time according to the best interests of the child.

The Court determined that the trial court abused its discretion by failing to account for the "physical proximity of the parties to each other."⁴² The trial court should have allocated parenting time with the understanding that Mother intended to live in Arizona while Father remained in Colorado. Although the trial court had to create a permanent parenting plan based on Mother's expressed intention to move, the trial court had the authority to issue temporary orders keeping the child in Colorado until permanent orders were issued.⁴³

Understanding the Cases Together

The *Spahmer* and *Ciesluk* cases must be read together to be fully understood. When interpreted together, the holdings of both cases are made clearer, and the unresolved issues in relocation cases are highlighted. *Spahmer* and *Ciesluk* appear to create a bright line between pre- and post-decree cases. However, this bright line appears fuzzy when the holdings are closely examined.

Spahmer holds that in pre-decree cases, the CRS § 14-10-129(2)(c) factors do not need to be applied by the trial court.

Instead, CRS § 14-10-129 applies only to parenting time modification matters. However, the best interests of the child statute, CRS § 14-10-124(a), states that a trial court must review all relevant factors in determining the best interests of a child. If a trial court believes that the post-decree related factors of CRS § 14-10-129(2)(c) are relevant pre-decree, those factors may be reviewed.

Spahmer holds that pre-decree, a trial court must devise a parenting plan assuming a move by the parent who states he or she will move. Likewise, the trial court in a post-decree matter also must evaluate the facts as though the petitioning parent will move.

Ciesluk holds that the trial court cannot use as a starting point a presupposition that a child is better off with two parents than one. Instead, the trial court must make a determination based on what the child's life would look like if the child were to move with the petitioning parent, versus what the child's life would look like if the child stayed with the remaining parent and the majority time parent moved.

The *Ciesluk* court held that in post-decree relocation cases, the constitutional right to travel and the constitutional right to the care and control of children are involved. The *Spahmer* court did not address constitutional issues at all; if a trial court must assume a move pre-decree, then the right to travel is not implicated. However, the *Troxel* constitutional right of care and control of children is still implicated pre-decree. There is nothing in the *Troxel* opinion to suggest that a constitutional right to the care and control of one's child only vests at a certain time or that it changes character once family law orders are issued. Therefore, pre-decree, there are still constitutional issues that can be addressed.

Reading the cases together exposes those issues that are still unresolved, and illuminates what arguments are available in relocation cases. For instance, language in *Spahmer* suggests that in relocation cases, the trial court can order a parent to stay in Colorado. However, the Court stated:

[W]e decline to find that a trial court has authority to order a parent to live in a specific place pursuant to subsection 14-10-124(1.5)(a). Had the General Assembly wanted the trial courts to have the authority to dictate *the domicile of the parents*, then it would have instructed courts to engage in an analysis akin to that set forth in subsection

14-10-129(2)(c).⁴⁴ . . . Subsection 14-10-129(2)(c) incorporates . . . factors for a court to consider before allowing a *parent* to relocate.⁴⁵ . . . [I]n subsection 14-10-129(2), the General Assembly *prohibits majority time parents from relocating*, mandating that a court 'shall not modify' a prior order concerning parenting time unless certain conditions are met. . . .⁴⁶ (emphasis added).

In short, *Spahmer* establishes that pre-decree there is no statutory authority, such as there is in a post-decree relocation case, for a trial court to order a parent to stay in a certain location. Stated differently, in a relocation case, there is statutory authority for a trial court to order a parent to live in a certain place. Additionally, *Ciesluk* holds that the relocation statute itself addresses and sufficiently protects the parent's constitutional issue of the right to travel. Finally, a parent's constitutional rights may be infringed if unfettered exercise of those rights would result in harm to the child.⁴⁷

Together, these cases allow for the argument that a trial court can order a parent to live in a specific place in a relocation case. This proposition was not squarely addressed and stated in *Ciesluk* because the question of whether a trial court could order a parent to remain in Colorado post-decree was not an issue on which *certiorari* was granted.

Practice Pointers

The *Ciesluk* decision did not change the law; *Ciesluk*'s holding instructs trial courts to strictly follow existing law by scrupulously applying the statutory factors of CRS § 14-10-129(2)(c) when deciding relocation cases. However, the decision will significantly change how attorneys argue and judges rule on relocation cases. Before *Ciesluk*, many attorneys viewed CRS § 14-10-129(2)(c) as making it difficult for a parent to obtain an order allowing him or her to move out of state with a child. Many mental health professionals dealing with family law matters approached cases with the presumption that it would be best for children if they could continue to have the benefit of two active parents nearby and, therefore, usually recommended against moves. This was the result of the attention the Braver article⁴⁸ received in Colorado.

Now that courts no longer may presume that children are better off with two nearby parents instead of one, parties cannot successfully oppose relocation by arguing simply that the other party

should not move. Parties must provide evidence that the statutory factors support a finding that a proposed move is in the best interests of the child.

Each relocation case will be fact-specific. Thus, attorneys will have a hard time advising clients as to how a case most likely will be resolved. There will be very little predictability in relocation cases, and cases will require more investigation, evidence, and factual analysis.

Because relocation cases are fact-specific, practitioners must conduct thorough discovery to marshal evidence to show that each statutory factor weighs in the client's favor. This discovery must be conducted in a timely fashion because relocation cases are given priority on court dockets.

Attorneys must be able to provide detailed explanations of what the child's life would be like if the child were to live with their clients, and how that life would be better for the child than that offered by the other parent. The parent opposing relocation cannot prevail simply by arguing that "losing" one parent because of the move would not be in the child's best interests.

Most cases will require the appointment of a child and family investigator ("CFI"). This appointment likely will be the most cost effective way for the trial court to ensure that the statutory factors are addressed. CFIs must look into the particulars of both parents' residences or proposed residences, and address how a move would affect the child's relationship with the left-behind parent, as well as the potential benefits of keeping the child with the majority time parent.

Attorneys should use the "all relevant factors" clause in CRS § 14-10-124(1.5)(a) to bring in evidence unique to the individual family that may not be adequately addressed by a consideration of the statutory factors. For instance, attorneys may wish to bring in evidence of whether the majority time parent actually will move if the court orders that the child remain in Colorado, or whether the minority time parent would move to follow the child.

If there is evidence that one of the parties has not followed court orders, this opposing party should present it. Many trial court judges find this evidence to be particularly salient,⁴⁹ because one parent's failure to follow court orders while in-state may indicate that he or she likely would have difficulty following court orders when out-of-state. Also, the failure of a minority time parent to make use of all

available parenting time is relevant, as is the failure to provide financially for the child.

In original actions, although a trial court may temporarily order a parent who has left Colorado to return pending permanent orders,⁵⁰ as a practical matter, courts may be less likely to do so when the majority time parent has left with the child. However, in modification actions, the attorney who advises a client simply to leave with the child runs a very serious risk of the court finding that the parent cannot follow court orders. This can result in, among other things, a change in the majority time parent.

Conclusion

Pre-decree, a trial court must develop a parenting plan that is workable for parents who may be living far from each other. The trial court must apply CRS § 14-10-124 when developing a parenting plan, which requires the identification of a majority time parent. Parents are on equal ground regarding application of the best interests standard.

Post-decree, a trial court must consider the statutory factors of CRS §§ 14-10-129 (2)(c) and 14-10-124 to determine whether it is in the best interests of the child to move with a majority time parent. Majority time and minority time parents start on equal footing, and the court must protect the constitutional rights of both parents by appropriately applying the statute.

The *Ciesluk* and *Spahner* holdings direct trial courts to make good on the promise of the relocation statute—that parents will start on equal footing when one parent requests to relocate. However, as is often the case when the law disallows presumptions, relocation matters now will be fact-intensive. As a result, investigations and hearings may be time-consuming and complex, outcomes may be unpredictable, and appeals may be likely.

NOTES

1. Although the case law previously referred to these cases as “removal” cases, the Colorado Supreme Court now refers to them as “relocation” cases.

2. Colorado statutes no longer use the term “custodial parent.” What was previously a “custodial parent” is now a “majority time parent” or a “primary residential custodian.”

3. *Ciesluk*, 113 P.3d 135 (Colo. 2005).

4. *Spahner*, 113 P.3d 158 (Colo. 2005).

5. *Spahner* is not actually a relocation case according to its holding; it is an original parenting-time action that involves a parent who wished to move from the state of Colorado.

6. For instance, the courts may rely on social sciences research that indicates that the best interests of the child are best preserved by protecting the child’s relationship with a majority time parent or, alternatively, social sciences research that indicates that the best interests of the child is preserved by protecting the relationship of the child with both parents.

7. See *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996); *In re Marriage of Francis*, 919 P.2d 776 (Colo. 1996).

8. See *Braun v. Headley*, 750 A.2d 624 (Md.Sp.App. 2000).

9. See *Jaramillo v. Jaramillo*, 823 P.2d 299, 306 (N.M. 1991).

10. *McGonigle v. McGonigle*, 151 P.2d 977 (Colo. 1943); *Tanttila v. Tanttila*, 382 P.2d 798 (Colo. 1963).

11. *In re Marriage of McGee*, 613 P.3d 248 (Colo. 1980).



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12. *Francis, supra*, note 7.
 13. *Ciesluk, supra*, note 3.
 14. *Francis, supra*, note 7.
 15. *Id.*
 16. *Id.*
 17. *Id.*
 18. *Id.*
 19. *Id.* at 784.
 20. For the legislative history of the statute, see Senate Bill 29, 2001: Hearings Before the Senate Judiciary Committee, Sixty-Third General Assembly, First Regular Session (Feb. 12, 2001); Senate Bill 29, 2001: Hearings Before the House Committee on Civil Justice & Judiciary, Sixty-Third General Assembly, First Regular Session (April 26, 2001).
 21. The best interests of the child factors are:
- the wishes of the child's parents as to parenting time
 - the wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule
 - the interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interests
 - the child's adjustment to his or her home, school, and community
 - the mental and physical health of all individuals involved, except that a disability alone shall not be a basis to deny or restrict parenting time
 - the ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party
 - whether the past pattern of involvement of the parties with the child re-

flects a system of values, time commitment, and mutual support

- the physical proximity of the parties to each other as this relates to the practical considerations of parenting time
 - whether one of the parties has been a perpetrator of child abuse or neglect under CRS § 18-6-401, or under the law of any state, which factor shall be supported by credible evidence
 - whether one of the parties has been a perpetrator of spousal abuse
 - the ability of each party to place the needs of the child ahead of his or her own needs.
- CRS § 14-10-124(1.5)(a).
 22. CRS § 14-10-129(2)(c).
 23. *Ciesluk, supra*, note 3.
 24. Braver, Ellman, and Fabricius, "Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations," 17 (2) *Journal of Family Psychology* 206 (2003).
 25. *In re Marriage of Ciesluk*, 100 P.3d 527 (Colo.App. 2004).
 26. *Ciesluk, supra*, note 3 at 148.
 27. *Id.* at 149.
 28. *Id.*
 29. Braver, *supra*, note 24.
 30. A division of the Colorado Court of Appeals found that the trial court examined all of the statutory factors and weighed some factors more heavily than others. As a result, instead of starting with a position that was tantamount to importing a presumption into the case, the trial court gave more weight to factors related to the child's relationship with Father and less to the benefits the child would receive by moving, as there was little evidence of such benefits. The Court of Appeals held that the

trial court was within its discretion to weigh some statutory factors more heavily than others.

31. *Ciesluk, supra*, note 3 at 148.
 32. *Id.* at 148.
 33. *Id.*
 34. *Ciesluk, supra*, note 25.
 35. *Ciesluk, supra*, note 3 at 146.
 36. *Troxel*, 530 U.S. 57 (2000).
 37. *Ciesluk, supra*, note 3 at 142.
 38. *Id.* at 146.
 39. *Id.*
 40. *Ciesluk* does say, "Though the best interests of the child are of primary importance in making this determination, they do not automatically overcome the constitutional interests of the parents, which must be weighed against each other in the best interests analysis." *Ciesluk, supra*, note 3 at 147. This can be interpreted to mean that the constitutional rights of parents can be addressed in every relocation case.
 41. *Spahmer, supra*, note 4.
 42. *Id.* at 162.
 43. *Id.* at n.4.
 44. *Id.* at 164.
 45. *Id.* at 162.
 46. *Id.* at 163.
 47. *In re E.L.M.C.*, 100 P.3d 546 (Colo.App. 2004); *In re Marriage of McSoud*, No. 04CA2682 (Feb. 9, 2006).
 48. Braver, *supra*, note 24.
 49. In fact, in many, if not most, other states, evidence that a parent is requesting to move to thwart the other parent's parenting time is the most important evidence weighing against a move, even in states where the custodial parent is given a presumption in favor of a move. See, e.g., *Burgess, supra*, note 7.
 50. *Spahmer, supra*, note 4 at n.4. ■

CBA Paralegal Committee Is Hosting Colorado Paralegal Day*

Free Cocktail Reception

Thursday, May 4, 2006 • 5:30 P.M.

CBA Offices • 1900 Grant St., 9th Floor Lobby, Denver

The CBA Paralegal Committee welcomes participation and sponsorship from paralegal organizations throughout the state, as well as CBA/DBA Sections and Committees.

For complete information, contact Michelle Gersic:
(303) 824-5342, (800) 332-6736, or mgersic@cobar.org.

*House Joint Resolution 04-1060 of the House of Representatives of the 64th General Assembly of the State of Colorado, the Senate concurring, designates May 4 of each year as "Paralegal Day in Colorado."

CLE and Coffee

March 24, 2006 • 1:00-5:00 P.M.

Colorado Association of Legal Support Staff
Presents

NOTARY LAW

by Mike Shea, Director of Licensing and
Enforcement Division for the Secretary of State

Old Mesa County Courthouse
Public Hearing Room
544 Rood Ave., Grand Junction, CO
(use the 6th St. entrance)

For more information, contact Karen Smith:
(970) 242-6262 or ksmith@wth-law.com.