

New Standard for Child Relocation Applications in New Jersey

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Baures v. Lewis Standard for Relocation

For just over 16 years, [Baures v. Lewis](#) was the standard in New Jersey for allowing a parent to permanently relocate out-of-state with a child against the other parent's wishes. [N.J.S.A. 9:2-2](#) provides that a parent seeking to relocate and remove a child from New Jersey without the other parent's consent must show "cause."

Pursuant to [Baures v. Lewis](#), a parent designated as the Parent of Primary Residence (PPR) could show cause to relocate the children out of state by: 1) demonstrating a good-faith reason for the move, and 2) that the move would "not be inimical to the child's interests." The New Jersey Supreme Court has now abandoned that standard in favor of a best interest of the child standard.

New Jersey Supreme Court Sets New Child Relocation Standard – Best Interests of the Child

In [Bisbing v. Bisbing](#), the New Jersey Supreme Court held that the outcome of contested relocation determinations must be made pursuant to the best interests of the child standard in place of the [Baures v. Lewis](#) standard. In all contested relocation disputes, courts should conduct a best interests analysis to determine "cause." The best interests of the child standard is the new standard whether the custody arrangement designates a Parent of Primary Residence and a Parent of Alternate Residence, or provides for equally shared physical custody.

Bisbing v. Bisbing

In [Bisbing v. Bisbing](#), pursuant to the terms of a Marital Settlement Agreement (MSA), the divorcing parents agreed that the Mother would have primary residential custody of their twin daughters. The MSA also included a relocation provision stating that "[n]either party shall permanently relocate with the children from the State of New Jersey without the prior written consent of the other."

Several months later, the Mother informed the Father that she intended to marry a Utah resident whom she had been dating prior to the granting of the divorce. However, the Father refused to consent to the permanent relocation of the children to Utah.

As a result, the Mother filed a motion seeking an order permitting her to permanently relocate the children to Utah. The Father contended that the Mother had negotiated the MSA in bad faith, securing his consent to her designation as the Parent of Primary Residence without informing him that she intended to relocate.

Applying the standard established in [Baures v. Lewis](#), the trial court granted the Mother's application for relocation, finding she presented a good-faith reason and that the move would not be inimical to the children's interests. Thereafter, the Mother moved with the children to Utah.

The Father appealed the trial court's decision. The Appellate Division reversed and remanded, finding that there was a genuine issue of material fact as to whether the Mother negotiated the custody provisions of the MSA in good faith. The Mother returned with the children to New Jersey. The trial court ordered the parties to abide by the residency provisions in the MSA.

Supreme Court Finds “Special Justification” to Abandon Baures Standard

The Supreme Court recognized a “special justification” to abandon the standard it had established in [Baures v. Lewis](#) for determining the outcome of contested relocation matters. In place of the [Baures](#) standard, courts should conduct a best interests analysis to determine “cause” under N.J.S.A. 9:2-2 in all contested relocation disputes in which the parents share legal custody.

The Court remanded to the trial court for a plenary hearing to determine whether the custody arrangement set forth in the parties' MSA should be modified to permit the relocation of their daughters to Utah.

No Waiver of Interstate Child Relocation

The Court declined to agree with the Father's assertion that by consenting to the interstate relocation provision of the MSA, the Mother waived her right to a judicial determination of her relocation application under N.J.S.A. 9:2-2. However, the Mother must demonstrate changed circumstances to justify modification of the MSA.

Further, because the requested relocation is permanent, the Mother must demonstrate that there is “cause” for an order authorizing relocation, which shall be determined by a best interests analysis considering the factors in N.J.S.A. 9:2- 4(c).

Notably, because the best interests standard applies to the determination of “cause” notwithstanding the designation as the Parent of Primary Residence, the Trial Court need not decide whether the Mother negotiated the parties' MSA in bad faith.

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