

No Fishing Zone for Non-Custodial Parent

By Herb Fox

The State Supreme Court handed down a sea change in family law "move-away" cases last month, reversing a decision by **Justice Arthur Gilbert** holding that a trial court must provide an evidentiary hearing to a non-custodial parent who objects to the custodial parent's plans to move out of state with the child. The Supreme Court held that a non-custodial parent is not entitled to an evidentiary hearing where he or she is unable to make an offer-of-proof that demonstrates a *prima facie* argument that the move would be detrimental to the child.

The case originated in San Luis Obispo Superior Court, where the non-custodial father filed a motion to restrain mother from moving to Nevada with their 12 year old son. **Judge Donald G. Umhofer** denied father an evidentiary hearing after finding that his offer-of-proof that the move would be detrimental to the child was insufficient to justify restraining mother from moving with the child.

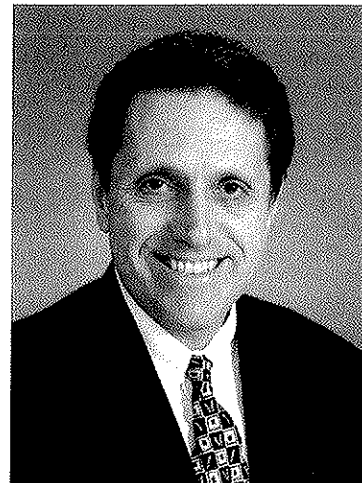
In a split decision, the Court of Appeal reversed the trial court and remanded for an evidentiary hearing. In a majority opinion joined by **Justice Paul H. Coffee**, Justice Gilbert wrote that the fact that mother holds sole legal and physical custody does not deprive father of the right to that hearing (*In re Marriage of Brown*, published at 125 Cal. App.4th 54 (2005)).

Justice Ken Yegan dissented, emphasizing the full rights of the mother and that father was simply on a "fishing expedition", and warned of the danger of the appellate

court's "micromanaging move-away cases."

The Supreme Court granted mother's Petition for Review, and in a unanimous opinion written by **Justice Marvin Baxter**, reversed the Court of Appeal. The Supreme Court held that the trial court did not err or abuse its discretion in denying father an evidentiary hearing, finding that such a hearing in a move-away situation should be held "only if necessary." The Supreme Court concluded that such a hearing serves "no legitimate purpose" where the noncustodial parent is unable to make a *prima facie* showing that the move would be detrimental to the child.

The case is *In re Marriage of Brown* (February 2, 2006) 2006 WL 240533. Appellate specialist **Jeffrey W. Doering** of Huntington Beach successfully represented mother. Appellate specialist **John F. Hodges** of Atascadero, and **Daniel L. Helbert** of San Luis Obispo, and **Vanessa Kirker** represented father.



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In my November 2005 column I recounted the long appellate saga in the case of **Terryl Jamesway**, the disabled teenager who drowned while attending a recreational program operated by the City of Santa Barbara.

The Court of Appeal has finally ruled, issuing an eloquent published tome by **Justice Steven Z. Perren** on the concept of gross negligence in California law as it applies to release agreements. Justice Perren, joined by Justice Gilbert, affirmed in part the order by **Superior Court Judge Tom Anderle** denying the City's motion for summary judgment on the ground that no party can be released from gross negligence as a matter of public policy. Justice Coffee wrote a dissenting opinion.

The case is *City of Santa Barbara v. Superior Court* (January 26, 2006) 2006 WL 177770. **Stephen P. Wiley**, **Janet K. McGinnis**, of the City Attorney's Office, and **Peter Q. Ezzell** and **Nancy E. Lucas** of **Haight, Brown & Bonesteel** in Los Angeles, represent the City. **Roland Wrinkle** of **Grassini & Wrinkle**, in Woodland Hills, represents the Jamesway family.

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