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# ***TRAHAN V. KINGREY: AN ANALYSIS OF LOUISIANA'S RELOCATION STATUTE***

John H. Leech, Jr.\*

## I. BACKGROUND

*Trahan v. Kingrey*<sup>1</sup> involves the question of relocation of the minor child, Devon, of Douglas Anthony Trahan and Elizabeth Donald Kingrey Romero. Devon was born on January 3, 2005 in Lafayette, Louisiana. Devon's mother, Elizabeth Kingrey, was unmarried at the time of Devon's birth and paternity was in question until DNA testing confirmed that Douglas Trahan was Devon's biological father.<sup>2</sup> After confirmation by DNA testing, Trahan fully accepted the obligations and responsibilities of parenthood.<sup>3</sup> Two months after Devon's birth, Trahan and Kingrey entered into a consent judgment which stated that they were to share equal joint custody of Devon on a one-week rotating basis.<sup>4</sup> Kingrey was designated as the domiciliary parent.<sup>5</sup>

Kingrey subsequently married Timothy Romero on July 21, 2005, who was her husband during the proceedings surrounding this case.<sup>6</sup> Romero's employer, The Wood Group, was in the process of shutting down its facilities in Louisiana.<sup>7</sup> Romero was offered a promotion to stay with The Wood Group, but that promotion required his relocation to West Virginia.<sup>8</sup> Rather than filing a "Notice of Relocation," as required by Louisiana Revised

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1. *Trahan v. Kingrey*, 2011-1900 (La. App. 1 Cir. 5/4/12), 98 So. 3d 347.

2. *Id.* at 349.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

Statutes 9:355, et seq., Kingrey filed a “Rule for Custody” on July 15, 2009, stating that the move to West Virginia was required for her husband (Romero) to keep his employment.<sup>9</sup> In her “Rule for Custody,” Kingrey alleged that the move to West Virginia would require a change to the shared custody arrangement.<sup>10</sup> Trahan filed a “Rule for Change of Custody” in opposition to Kingrey’s request for relocation of Devon, alleging that it was in the child’s best interest that he be named domiciliary custodial parent rather than Kingrey.<sup>11</sup> Trahan filed a subsequent pleading which alleged that Kingrey failed to follow the statutory requirements of Louisiana Revised Statutes 9:355 et seq. because she failed to give him notice of the proposed relocation and failed to provide the address, telephone number, date of move, proposed revised schedule of visitation, and a statement informing him that an objection to the proposed relocation should be filed within thirty days of the receipt of the notice.<sup>12</sup> While awaiting judgment, Trahan and Kingrey entered into an interim consent judgment on September 4, 2009, wherein they agreed that they would share custody of Devon on a twenty-eight day rotating basis.<sup>13</sup>

The trial court entered judgment granting the parties joint custody of Devon with Kingrey designated as the domiciliary parent, subject to visitation in favor of Trahan, pursuant to a Joint Custody Plan confected by the trial court.<sup>14</sup> Devon was to reside with Kingrey in West Virginia.<sup>15</sup> In written reasons for judgment, the court stated that, because all prior judgments issued in conjunction with this matter were by consent of the parties, and that there had never been a “considered decree” rendered in the case, “each party need only prove a change in circumstances

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9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 349-50.

materially affecting the welfare of Devon and that any proposed changes to the previous child custody decree are in the best interest of Devon.”<sup>16</sup> The court also stated that it had considered the factors listed in Civil Code article 134 which are to be used to determine the best interest of a child for custody purposes and that the court came to its determination that Kingrey be the domiciliary custodial parent of Devon, subject to visitation with Trahan, based on those factors.<sup>17</sup>

Trahan filed a motion for new trial with the trial court, which was denied.<sup>18</sup> Appeal to the First Circuit subsequently followed.<sup>19</sup>

## II. JUDGMENT OF THE COURT OF APPEAL

### A. *Standard of Review*

The Court determined that this case was to be reviewed *de novo*. The Court proceeded with its determination that the trial court ruling should be reviewed *de novo* by quoting from *Evans v. Lungrin*:<sup>20</sup> “where one of more trial court legal errors interdict the fact-finding process, the appellate court should then make its own independent *de novo* review of the record.”<sup>21</sup> The legal error the appellate court identified was the failure of the trial court to analyze this case based on the relocation statutes (Louisiana Revised Statutes 9:355 et seq.).<sup>22</sup> Instead, the trial court used the “best interest” factors for awarding custody (Louisiana Civil Code article 134).<sup>23</sup> The trial court may have reasoned that Civil Code article 134 was the proper law to analyze this case due to the fact that Kingrey’s rule only requested a modification of custody rather

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16. *Id.* at 350.

17. *Id.*

18. *Id.*

19. *Id.*

20. 708 So. 2d 731, 735, *citing* *Lasha v. Olin Corp.*, 625 So. 2d 1002, 1006 (La. 1993).

21. Trahan, 98 So. 3d at 351.

22. *Id.* at 350.

23. *Id.*

than a true relocation. The practical effect, however, of Kingrey's rule for modification of custody was to create a relocation. The appellate court determined that the relocation factors should have been analyzed by the trial court, despite the improper filing by Kingrey.<sup>24</sup> Thus, legal error was committed because the trial court applied the incorrect principles of law, and such errors were prejudicial, which caused deprivation of substantial rights to Trahan.<sup>25</sup>

### *B. Burden of Proof*

The appellate court made note that the burden of proof in this case was different than what the trial court assumed.<sup>26</sup> In relocation cases:

The relocating parent has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child. In determining the child's best interest, the court shall consider the benefits which the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life.<sup>27</sup>

Therefore, the appellate court determined that Kingrey had to not only show that the relocation was done in good faith, but that such relocation was also in Devon's best interest.<sup>28</sup>

### *C. Good Faith*

The party seeking relocation—in this case Kingrey—bears the burden of showing that the relocation is made in good faith.<sup>29</sup> The appellate court made the initial determination that Kingrey was in good faith when she first relocated with her husband, Timothy

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24. *Id.* at 350-51.

25. *Id.* at 351.

26. *Id.* at 352.

27. *Id.* at 352, *citing* LA. REV. STAT. ANN. 9:355.13 (2010) (now La. Rev. Stat. 9:355.10, with language revised by Acts 2012, No. 627, §1).

28. Trahan, 98 So. 3d at 352.

29. *Id.*

Romero.<sup>30</sup> However, the facts changed after the initial move. Originally, Kingrey relocated to West Virginia because her husband was forced to take a job there in order to retain his employment with The Wood Group.<sup>31</sup> At the time of trial, however, Romero no longer worked for The Wood Group.<sup>32</sup> He had resigned his position in March of 2010, and accepted work with a competitor, Seaboard International, located in West Virginia.<sup>33</sup> There was no evidence that Romero attempted to find comparable employment in Louisiana.<sup>34</sup> Therefore, the Court was left questioning whether Kingrey remained in good faith.<sup>35</sup>

#### *D. Best Interest*

Louisiana Revised Statutes 9:355.14<sup>36</sup> lists twelve factors which the court shall consider when evaluating whether a proposed relocation is in the child's best interests.<sup>37</sup> The twelve factors are as follows: (1) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the non-relocating parent, 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 any special needs of the child; (3) The feasibility of preserving a good relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances

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30. *Id.*

31. *Id.* at 349.

32. *Id.* at 352.

33. *Id.*

34. *Id.* at 352-53.

35. *Id.*

36. LA. REV. STAT. 9:355.14 is where the relocation factors are located as of August 1, 2012. This case references the relocation factors as LA. REV. STAT. 9:355.12, which is where the relocation factors were located at the time of this case. This case note will refer to the relocation factors as LA. REV. STAT. 9:355.14.

37. LA. REV. STAT. ANN. § 9:355.14 (2012).

of the parties; (4) The child's preference, taking into consideration the child's age and maturity level; (5) Whether there is an established pattern of conduct of the parent seeking the relocation, either to promote or thwart the relationship of the child and the non-relocating party; (6) Whether the relocation of the child will enhance the general quality of 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 for each parent in seeking or opposing the relocation; (8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child; (9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations; (10) The feasibility of a relocation by the objecting parent; (11) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation; and (12) Any other factors affecting the best interest of the child.<sup>38</sup>

The court is required to consider these factors, as opposed to Louisiana Civil Code article 134 which lists factors that a court may consider when determining a child's best interests in custody matters.<sup>39</sup>

The Court weighed factors one, three, five, six, seven, eight, and ten in favor of Trahan.<sup>40</sup>

The first factor in Louisiana Revised Statutes 9:355.14 concerns the nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the non-relocating parent, siblings, and other significant

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38. LA. REV. STAT. ANN. 9:355.14 (2012).

39. Trahan, 98 So. 3d at 353.

40. Trahan, 98 So. 3d 347 (La. App. 1st Cir. 2012).

persons in the child's life.<sup>41</sup> The Court found that the sheer distance between Louisiana and West Virginia would inhibit the relationships between Devon and his numerous family members, especially that of his grandparents.<sup>42</sup> The Court considered also that while Trahan had no relatives in the West Virginia area, Kingrey did have relatives in Louisiana in the form of her new adoptive parents in Lafayette.<sup>43</sup> The presence of family in Louisiana provided Kingrey with more opportunities to visit Devon in Louisiana than it would Trahan in West Virginia.<sup>44</sup>

The third factor concerns the feasibility of preserving a good relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.<sup>45</sup> According to the visitation schedule the trial court devised, Trahan was responsible both for picking up Devon and returning him back to West Virginia, and was to incur all of the associated costs.<sup>46</sup> The sheer distance in miles and travel time from West Virginia to Louisiana burdened Trahan to the point that the Court believed that even if such travel was financially feasible, it would greatly decrease both the frequency and the amount of time that Devon would be able to see his father, his paternal grandparents, and other family.<sup>47</sup>

The fifth factor concerns whether there is an established pattern of conduct of the parent seeking relocation, either to promote or thwart the relationship of the child and the non-relocating party.<sup>48</sup> The Court noted that Kingrey, in the past, had refused to disclose Devon's daycare/school names and locations to Trahan.<sup>49</sup> Kingrey also would not put Trahan as an emergency contact for Devon's

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41. LA. REV. STAT. ANN. 9:355.14 (2012).

42. Trahan, 98 So. 3d at 355.

43. *Id.* at 355-56.

44. *Id.* at 356.

45. LA. REV. STAT. ANN. 9:355.14 (2012).

46. Trahan, 98 So. 3d at 357.

47. *Id.*

48. LA. REV. STAT. ANN. 9:355.14 (2012).

49. Trahan, 98 So. 3d at 357.

schools and instead placed her husband, Romero, as an emergency contact.<sup>50</sup> The Court also took note of Kingrey's hostility toward Trahan and his parents during her testimony, and it stated that there were concerns that she would attempt to thwart Trahan's relationship with Devon.<sup>51</sup>

The sixth factor of Louisiana Revised Statutes 9:355.14 considers whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including, but not limited to, financial or emotional benefit or educational opportunity.<sup>52</sup> Because Kingrey is the parent who relocated, she carried the burden of proof to show that there was a benefit to the child, Devon, in this move.<sup>53</sup> Both housing locations were suitable for Devon.<sup>54</sup> The schools available to Devon in West Virginia and in Houma were seen as equal in the Court's eyes.<sup>55</sup> There was an assumption that the move to West Virginia resulted in an increase in salary for Romero, but the Court noted that there was nothing in the record indicating what he was making in Louisiana and, therefore, there could not be a calculation of any salary increase.<sup>56</sup> Kingrey did not claim that she was unable to obtain any employment while in Louisiana.<sup>57</sup> Given this information, the Court determined that Kingrey did not meet her burden of proving that the move to West Virginia enhanced Devon's general quality of life and considered this factor to weight against allowing relocation.<sup>58</sup>

Factor seven of Louisiana Revised Statutes 9:355.14 considers the reasons for each parent in seeking or opposing the relocation.<sup>59</sup> The Court stated that Kingrey's request to relocate originally was

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50. *Id.*

51. *Id.* at 358.

52. LA. REV. STAT. ANN. 9:355.14 (2012).

53. Trahan, 98 So. 3d at 358.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 359.

59. LA. REV. STAT. ANN. 9:355.14 (2012).

in good faith, because it was due to the fact that her husband, Romero, either had to make the move to West Virginia or lose his job with his company, which was closing its business in Louisiana.<sup>60</sup> However, that good faith was in question due to the fact that Romero subsequently accepted another job in West Virginia with another company and there was nothing to indicate that he attempted to find employment in Louisiana.<sup>61</sup>

Factor eight considers the current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child.<sup>62</sup> Originally, the move to West Virginia was due to the fact that the company that Romero worked for<sup>63</sup> was closing its offices in Louisiana and told him that, in order to keep his position with the company, he would need to transfer to West Virginia.<sup>64</sup> Kingrey, herself, did not need to make the move for her own employment.<sup>65</sup> Therefore, the Court determined that Kingrey had failed in meeting her burden of proving that the relocation was necessary to improve her circumstances.<sup>66</sup>

The tenth factor requires the court to consider the feasibility of a relocation by the objecting parent.<sup>67</sup> The Court speculated that Trahan, who is a registered nurse, could likely obtain employment in West Virginia.<sup>68</sup> However, the Court noted that Trahan also did not wish to leave his family<sup>69</sup> behind to move to West Virginia.<sup>70</sup>

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60. Trahan, 98 So. 3d at 359.

61. *Id.*

62. LA. REV. STAT. ANN. 9:355.14 (2012).

63. The Wood Group.

64. Trahan, 98 So. 3d at 349.

65. *Id.* at 359. It is important to remember that Romero had also ceased working for The Wood Group and there was no evidence provided that he had attempted to find employment in Louisiana before accepting another position in West Virginia. *Id.*

66. *Id.*

67. LA. REV. STAT. ANN. 9:355.14 (2012).

68. Trahan, 98 So. 3d at 360.

69. Consisting of approximately ninety relatives in or around Houma.

70. Trahan, 98 So. 3d at 360.

The Court found that factors two, four, nine, eleven, and twelve weighed in favor of neither party.<sup>71</sup>

The second factor considers 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 any special needs of the child.<sup>72</sup> The Court determined that, as to Devon's health and educational concerns, there was no evidence that either West Virginia or Louisiana was more beneficial than the other.<sup>73</sup>

The fourth factor of Louisiana Revised Statutes 9:355.14 is the child's preference, taking into consideration the child's age and maturity level.<sup>74</sup> Because of Devon's young age and the fact that both parents seem to have a good relationship with Devon, the Court determined that this factor did not weigh in favor of either Trahan or Kingrey.<sup>75</sup>

Factor nine evaluates the extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations.<sup>76</sup> The Court noted that Trahan had always timely paid his child support obligations and there was no judgment or holding that Trahan had ever been in contempt for failing to make child support payments.<sup>77</sup>

Factor eleven considers any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.<sup>78</sup> The parties in this case, in the past, had abused drugs, and both alleged past instances of violence by the other.<sup>79</sup>

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71. *Id.* at 347.

72. LA. REV. STAT. ANN. 9:355.14 (2012).

73. Trahan, 98 So. 3d at 356.

74. LA. REV. STAT. ANN. 9:355.14 (2012).

75. Trahan, 98 So. 3d at 357.

76. LA. REV. STAT. ANN. 9:355.14 (2012).

77. Trahan, 98 So. 3d at 360.

78. LA. REV. STAT. ANN. 9:355.14 (2012).

79. Trahan, 98 So. 3d at 360.

The Court also noted that since Devon's birth, there were no allegations of either drug abuse or violence by either party.<sup>80</sup> The past custody agreement in which the parties split time with Devon evenly indicated that Kingrey did not consider Trahan to be a threat to Devon.<sup>81</sup> Therefore, the Court found that that factor did not weigh in favor of either party.<sup>82</sup>

The final factor, factor twelve, is a catch-all provision requiring the court to evaluate any other factors affecting the best interest of the child.<sup>83</sup> The Court here found no other factors affecting the best interest of the child that had not already been covered.<sup>84</sup>

The Court found none of the twelve factors in Louisiana Revised Statutes 9:355.14 to weigh in favor of Kingrey.<sup>85</sup>

#### *E. Other Suggestive Factors*

Louisiana Civil Code article 134 provides twelve factors that are used in determining the custody of a child and were suggestive in this relocation case.<sup>86</sup> The Court considered most of what is provided for in Louisiana Civil Code article 134 by looking at the mandatory factors in Louisiana Revised Statutes 9:355.14, but the Court evaluated some of the factors in article 134 that were not explicitly covered.<sup>87</sup>

Factor 1 of Civil Code article 134 requires a court in a custody proceeding to consider "the love, affection, and other emotional ties between each party and the child."<sup>88</sup> Factor 2 of Civil Code article 134 requires a court in a custody proceeding to consider "the capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and

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80. *Id.*

81. *Id.*

82. *Id.*

83. LA. REV. STAT. ANN. 9:355.14 (2012).

84. Trahan, 98 So. 3d at 360.

85. *Id.* at 347.

86. LA. CIV. CODE art. 134.

87. Trahan, 98 So. 3d at 361.

88. LA. CIV. CODE art. 134.

rearing of the child.”<sup>89</sup> Factor 3 requires a court to consider “the capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.”<sup>90</sup> The Court compared the availability of each party for the care of Devon and found that both parties were available to care for Devon, even though both parties required the aid of others in their households (Kingrey required help from Romero, and Trahan required the help of his parents, with whom he lived).<sup>91</sup>

Factor 4 of Civil Code article 134 requires a court in a custody proceeding to consider “the length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment. Factor 5 requires a court to consider “the permanence, as a family unit, of the existing or proposed custodial home or homes.”<sup>92</sup> The Court noted that Kingrey was born in Seoul, South Korea, and subsequently moved to California when she was adopted.<sup>93</sup> She then moved with her adoptive family to Louisiana and lived in Morgan City, Lafayette, Broussard, Youngsville, and Houma.<sup>94</sup> She then moved to West Virginia with her husband, Romero, as part of his relocation for work.<sup>95</sup> Trahan was born, raised, and still lived in Houma.<sup>96</sup> Devon was also born in Louisiana (Lafayette) and had spent half of his life either in Lafayette or Houma, up until the time his mother moved to West Virginia, relocating with her prior to this case.<sup>97</sup> The Court noted that Devon had a stable and supportive family structure in Louisiana and was of the opinion that it would be desirable to maintain that environment.<sup>98</sup>

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89. *Id.*

90. *Id.*

91. Trahan, 98 So. 3d at 361.

92. LA. CIV. CODE art. 134.

93. Trahan, 98 So. 3d at 361.

94. *Id.*

95. *Id.*

96. *Id.* at 361-62.

97. *Id.* at 362.

98. *Id.*

*F. Holding*

The Court concluded that Kingrey did not meet the burden of proof required of her as the relocating parent in a relocation case.<sup>99</sup> In addition, the Court found that Trahan was more likely than Kingrey to provide Devon with a “stable and permanent” residence in Louisiana.<sup>100</sup> The Court further noted that both Trahan and Kingrey were capable of being available for Devon as far as custody was concerned.<sup>101</sup>

The Court reversed the judgment of the 32nd Judicial District Court and rendered judgment in favor of Trahan as domiciliary parent of Devon.<sup>102</sup> The Court determined that the parties should have joint custody of Devon and that visitation of Devon should be awarded in favor of Kingrey.<sup>103</sup> The Court determined that the previous visitation schedule devised by the trial court for Trahan should stand, with Kingrey rather than Trahan as the visiting parent.<sup>104</sup>

## III. COMMENTARY

The Court approached this decision very methodically and provided an excellent framework for the way in which Louisiana Revised Statutes 9:355.14 and Louisiana Civil Code article 134 operate in conjunction with each other. The Court arrived at the correct decision by the letter of the law, and it seems the judgment is also equitable considering the facts and circumstances. Nonetheless, there are a few areas of this decision that present an opportunity to ask questions as to how the outcome could have been improved.

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99. *Id.*  
100. *Id.*  
101. *Id.*  
102. *Id.*  
103. *Id.*  
104. *Id.*

To begin with, it should be noted again that Louisiana Revised Statutes 9:355.14 was revised in 2012, just after this case was heard.<sup>105</sup> It was previously Louisiana Revised Statutes 9:355.12. Louisiana Revised Statutes 9:355.14 comment (a) states that the revision changed the opening language of the statute to make it clear that a court does not need to make a factual finding on every factor.<sup>106</sup> Here, this Court made a finding as to each of the twelve factors. Such analysis was not needed then, and certainly is clearly not needed now, per comment (a).<sup>107</sup> Failure to analyze each factor does not constitute an error of law triggering a *de novo* review.<sup>108</sup> The court is free to give whatever weight it deems appropriate to any of the relocation factors.<sup>109</sup>

Second, the visitation schedule that was assigned to Kingrey was exactly the same as that was originally assigned to Trahan by the trial court. The Court addresses that visitation plan while analyzing factor three,<sup>110</sup> and expresses its concern that the sheer distance between Louisiana and West Virginia would have led to a substantial decrease in the amount of time Trahan could spend with Devon because of the financial constraints of such travel.<sup>111</sup> The assignment of that same visitation plan to Kingrey does not remove the principal problem that the Court addressed. The Court merely shifted the burden that Trahan bore in the visitation plan to Kingrey. This action does not alleviate the problem created for the child's relationship with his non-domiciliary parent.

That being said, Factor 3 does concern the preservation of the relationship of the non-relocating parent with the child, and that "non-relocating" parent is not Kingrey. Therefore, the Court may

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105. *See supra* note 36.

106. LA. REV. STAT. ANN. 9:355.14, cmt. (a) (2012).

107. *See* Poe v. Stone, 118 So. 3d 1227, 1229 (La. App. 4th Cir. 2013), *citing* Gathen v. Gathen, 66 So. 3d 1, 9 (mentioning that a court is not required to expressly analyze each of the twelve relocation factors).

108. *Id.*

109. Poe, 118 So. 3d at 1229.

110. *See supra* Part II.D.

111. Trahan, 98 So. 3d at 357.

not be concerned with the financial constraints that traveling from West Virginia to Louisiana puts on Kingrey because she is the relocating parent. Moreover, it is certainly understandable that it is extremely difficult to devise a visitation schedule for two parents separated by roughly a thousand miles that is both feasible financially and fosters a good relationship between the non-domiciliary parent and the child.

The ultimate concern in cases such as this should be what is best for the child. It is the author's opinion that the visitation schedule does not adequately help foster a good relationship between Kingrey and the child. It does seem equitable that Kingrey, as the relocating parent (taking into account also that living in West Virginia is no longer required for Kingrey and Romero), should incur the cost of travel for visitation. Kingrey is only granted thirty-five days in the summer and, not including the holiday rotation, thirty hours per month. The thirty hours per month seems profoundly low. While devising a visitation schedule that is fair and does not put the child in strenuous situations is difficult, in these kinds of predicaments more could probably be done. Even just providing an additional weekend per month in which Kingrey could visit Devon if she were to travel to Louisiana rather than have Devon travel to West Virginia might suffice. Understandably, Kingrey may not have the ability to finance her or Devon's traveling from Louisiana to West Virginia, or vice versa, but the option to do so should be there. Thirty hours per month, which includes travel time, is just not enough to maintain a healthy relationship between a parent and a child.

Third, Kingrey has a nuclear family structure that seemed to be overlooked. Kingrey is married to Romero and Kingrey has two other children, Jade and Noah, who visit during the summer and holidays (the same time as Devon), and Romero has two children that live in Lafayette.<sup>112</sup> Therefore, through his mother's side of

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112. *Id.* at 355.

the family, Devon has two half-brothers, a step-brother and a step-sister. While it is a very scattered family unit, the presence of a married couple running a household and the connection with siblings is valuable for a young child and seemed to be overlooked.<sup>113</sup> Meanwhile, Trahan is not married, lives with his parents, and has no other children (albeit he has a rather large extended family).<sup>114</sup> This could have been a circumstance that helped Kingrey's case, had it been considered in either Factor 1 or Factor 12 of Louisiana Revised Statutes 9:355.14, or even in Factor 5 of Louisiana Civil Code article 134. Perhaps, however, the Court felt that preserving and cultivating Devon's relationships with his paternal extended family outweighed the need to do so with his siblings.<sup>115</sup>

Even had the Court addressed these two concerns, undoubtedly the outcome would have been the same. The only change that may have been warranted is minor tweaking to the visitation schedule in order to better foster Devon's relationship with his mother as long as she continues to reside at such a distance from Devon.

#### IV. CONCLUSION

In this author's opinion Trahan should have been named the domiciliary parent, as the Court decided. However, the visitation schedule is far too inadequate for the minor child. A mere thirty-five days in the summer, rotating holidays, and a scant thirty hours per month, which includes travel time for the child, is simply not sufficient to foster a healthy relationship between Devon and his mother.

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113. See *Cucchiara v. Cucchiara*, 543 So. 2d 638, 640 (La. App. 1st Cir. 1989) (evaluating custody and considering the fact that the child would live in a nuclear family by residing with his mother).

114. *Trahan*, 98 So. 3d at 355.

115. See *Franklin v. Franklin*, 763 So. 2d 759, 764 (La. App. 3rd Cir. 2000) (considering the child's relationship with his siblings and also other significant persons in the child's life in evaluating custody).

It seems as if the aim of the Court was simply to hand back to Kingrey that which had been handed to Trahan by the trial court. The Court even made reference to the fact that the visitation plan the trial court gave to Trahan was inadequate to foster a relationship between Devon and Trahan.<sup>116</sup> While it seems that Kingrey may well have been trying to use the relocation, after her husband no longer needed to reside in West Virginia for work, to remove Trahan from Devon's life as much as possible (and the court points out the fact that she had attempted to do so in the past<sup>117</sup>) retaliation for such acts should not be the aim of a visitation schedule. The main concern is, and always should be, the child's best interests. The author is of the opinion that, whenever possible, and in the best interests of the child, having both parents' influence in a child's life is better than having just one or the other, or a limited amount of one or the other. It does not seem that a full effort was put into devising a visitation schedule here that would be best *for the child*.

The fact that Kingrey is the relocating parent and that she (and perhaps her husband) no longer has any good reason to remain in West Virginia should be taken into consideration. But that consideration should only be in regard to which parent becomes the domiciliary parent and who bears the costs of transportation, not as to how the visitation schedule breaks down.

The rigors of long distance travel on a young child must also be considered. And perhaps this is why the Court stuck with the trial court's visitation schedule. For a young child, traveling from Louisiana to West Virginia once every month can be extremely stressful. Therefore, making the child travel every other weekend to West Virginia would not be in the best interests of the child. But visitation time with his mother is certainly in Devon's best interest. For that reason, it is the author's opinion that an equitable solution would have been to simply add to the visitation schedule that

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116. Trahan, 98 So. 3d at 357.

117. *Id.* See also LA. REV. STAT. ANN. 9:355.14, Factor 5 (2012).

Kingrey could also travel to Louisiana herself once per month, on a weekend, and have an additional thirty hours of visitation with Devon, with all costs to be incurred by her. While, financially, she may not be able to afford such travel on a consistent basis, at least the option would have been afforded her, and that would certainly serve the best interests of Devon. While Kingrey may have been conspiring to remove Trahan from Devon's life, there was no mention by the Court that Kingrey was an unfit mother and, thus, there is no reason to deprive Devon of the influence, guidance, and relationship with his mother any more than necessary to make this custody plan work.

Besides the slight tweaking of the visitation plan, the author is of the opinion that this case is a superb example of the way in which the relocation factors (in Louisiana Revised Statutes 9:355.14) and the best interests factors (in Louisiana Civil Code article 134) operate in conjunction with one another. The Court does an excellent job of breaking down the case by each particular issue and analyzing each in a very methodical manner. Moreover, it serves as a stark reminder to attorneys that if the proper procedure is not followed in relocation scenarios, the results can be devastating for the client.