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Misinterpreting the Child’s Best Interests Standard: A Closer Look at *In re Marriage of Guthrie* and Illinois Child Removal Law

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I. INTRODUCTION

Divorce can be difficult for all parties involved. In Illinois, and throughout most of the United States, there are nearly half as many divorces in a given year as there are marriages.¹ Although divorce alone can be troubling, the experience becomes even more complicated when children are involved.² In Illinois, parents who receive sole custody of their children

1. CENTERS FOR DISEASE CONTROL AND PREVENTION, MARRIAGE AND DIVORCE RATES BY STATE: 1990, 1995, AND 1999-2002, <http://www.cdc.gov/nchs/data/nvss/mar&div.pdf> (last visited Jan. 4, 2010).

2. See 750 ILL. COMP. STAT. 5/609(a) (2002).

can move anywhere within the state without court approval,³ but must seek permission from the court to permanently remove a child from the state.⁴ Such petitions for removal are only to be granted by a court if the removal is in the best interests of the child.⁵ Illinois courts rely on several factors to determine whether removal is in the best interests of a child, and these factors have become the backbone of Illinois child removal law.⁶ The resolution of a removal case should focus on balancing considerations of the quality of life enhancements to the child and custodial parent, along with the effects on the child's relationship with the noncustodial parent and the ability to create a reasonable and realistic visitation schedule.⁷

In the recent case of *In re Marriage of Guthrie*, a mother wanted to remove her son from Illinois following a divorce so that she could move to Arizona.⁸ The father opposed the move on the grounds that he believed the move would not benefit the child, and that it would in fact harm the child due to the impairment of the father-son relationship.⁹ The mother's petition was granted by the trial court and affirmed by the Fifth District, even though a true analysis of the best interest factors established by *In re Marriage of Eckert* leads clearly to the opposite conclusion.¹⁰

The facts of this case are unique as it involved a mother and a father who could not afford the expenses for the amount of air travel required by the visitation order, and thus, the father's rights were all but eliminated, especially because most of the travel-burden was placed on the father, who was not the moving party, rather than the mother.¹¹ The *Guthrie* decision thus condones a visitation schedule that drastically eliminates nearly all individual and quality visitation time the father will be able to spend with his son.¹² When the proper best interests of the child analysis, as described in detail in this Note, is conducted using the facts of *Guthrie*, it is clear that the Fifth District failed to adhere to the best interests of the child by approving an unrealistic and infeasible visitation schedule and by incorrectly de-

3. 750 ILL. COMP. STAT. 5/609(a) (2002). See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1044-45 (Ill. 1988) (interpreting and applying § 609 of the Illinois Marriage and Dissolution of Marriage Act).

4. 750 ILL. COMP. STAT. 5/609(a) (2002). See *In re Marriage of Collingbourne*, 791 N.E.2d 532, 544-45 (Ill. 2003) (noting that custodial parents must seek permission to remove children from the state).

5. See *Collingbourne*, 791 N.E.2d at 544-45.

6. See, e.g., *Eckert*, 518 N.E.2d at 1045; *In re Marriage of Smith*, 665 N.E.2d 1209, 1214 (Ill. 1996); *Collingbourne*, 791 N.E.2d at 544-45.

7. See *Collingbourne*, 791 N.E.2d at 546.

8. See *In re Marriage of Guthrie*, 915 N.E.2d 43, 44 (Ill. App. Ct. 2009).

9. *Id.*

10. See *Eckert*, 518 N.E.2d at 1045; *Guthrie*, 915 N.E.2d at 44.

11. See *Guthrie*, 915 N.E.2d at 47 (holding an unrealistic visitation schedule valid).

12. *Id.* at 44.

ciding that enhancement of the general quality of life for both the custodial parent and child would occur. In so doing, the court set dangerous precedent for fathers' visitation rights in the Fifth District of Illinois. In order to prevent this flawed reasoning and misapplication of the best interest of the child standard from spreading to other districts, this Note analyzes *Guthrie* from an objective stance detailing the correct application of the best interest of the child standard in Illinois.

II. HISTORY

The following historical information is intended to be a brief overview of the history of child removal jurisprudence and codification in Illinois. The history begins with a look at early jurisprudence, followed by the codification of the best-interests standard, including codification into the Illinois Marriage and Dissolution of Marriage Act, followed by landmark Illinois Supreme Court cases that shaped and refined the analysis for child removal cases.

A. EARLY CHILD REMOVAL JURISPRUDENCE AND CODIFICATION IN ILLINOIS

The Illinois Supreme Court, in *Miner v. Miner*, addressed its first case concerning child removal in 1849.¹³ At the time, there was a strong presumption of custody in favor of the father, but in *Miner* the father had a history of serious misconduct toward the mother, and thus the lower court granted custody to the mother.¹⁴ However, the mother also wanted to remove the child out of Illinois.¹⁵ The court held that, upon divorce, a child essentially becomes a ward of the state and cannot be removed from the Illinois jurisdiction in a unilateral move by one parent.¹⁶ The court reasoned that, “[w]hile the custody of the child is given to the mother, the father must not be wholly deprived of its society, but must be allowed access to it upon all reasonable occasions.”¹⁷ As a result of *Miner*, Illinois courts repeatedly denied petitions for removal by custodial parents.¹⁸

After a century of applying a bright-line rule against child removal in Illinois, the court became sympathetic to the harsh effects the rule was hav-

13. *Miner v. Miner*, 11 Ill. 43 (1849). For a brief discussion on *Miner*, see Schmidt v. Schmidt, 105 N.E.2d 117, 120 (Ill. App. Ct. 1952).

14. *Miner*, 11 Ill. at 43.

15. *Id.* at 44.

16. *Id.* at 51.

17. *Id.*

18. Lance Cagle, Comment, *Have Kids, Might Travel: The Need for a New Roadmap in Illinois Relocation Cases*, 25 N. ILL. U. L. REV. 255, 258 (2005).

ing on custodial parents.¹⁹ In 1952, an Illinois appellate court decided to reconsider its stance on removal in *Schmidt v. Schmidt*.²⁰ In *Schmidt*, a divorced custodial mother sought to remove her son to New York because she had plans to remarry there.²¹ The trial court allowed the removal because it found that the move was in the best interest of the child, based on the ability of the new husband to care for her son.²² However, the court did require the mother to allow visitation rights to the father during the summer, spring break, and winter break, and ordered the mother to pay for costs of transportation for the visitation.²³ Nonetheless, this case represented a stark change in the way child removal cases were handled in Illinois.²⁴

After the *Schmidt* decision, the Illinois General Assembly followed the court's view and codified the best interests of the child standard.²⁵ The statute stated that, "[t]he court may grant leave, before or after decree, to any party having custody of the minor child or children to remove such child or children from Illinois whenever such removal is in the best interests of such child or children."²⁶ This language was later adopted in section 609 of the Illinois Marriage and Dissolution of Marriage Act.²⁷

B. SECTION 609 OF THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT

Section 609 of the Illinois Marriage and Dissolution of Marriage Act establishes the statutory guidelines for determining whether to grant or deny a custodial parent's petition to remove a child from Illinois when the non-custodial parent contests such removal.²⁸ The Illinois legislature originally passed Section 609 of the Illinois Marriage and Dissolution of Marriage Act in 1977.²⁹ This Act requires courts to ask whether removal is *in the best interests of the child* when confronted with a petition for removal from the jurisdiction.³⁰ Following several amendments in the decades since its enactment, the Act in its present form states that following:

19. *Id.*

20. *See* *Schmidt v. Schmidt*, 105 N.E.2d 117, 120 (Ill. App. Ct. 1952).

21. *Id.* at 118-19.

22. *Id.* at 119.

23. *Id.*

24. *Compare* *Miner v. Miner*, 11 Ill. 43 (1849) (creating a strict rule against child removal), *with* *Schmidt*, 105 N.E.2d at 120 (recognizing that child removal cases are too complex for a bright-line rule).

25. ILL. REV. STAT. ch. 40, ¶ 14 (1959) (current version at 750 ILL. COMP. STAT. 5/609(a) (2002)).

26. *Id.*

27. *See* 750 ILL. COMP. STAT. 5/609(a) (2002).

28. *Id.*

29. *Id.*

30. *Id.*

The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal. When such removal is permitted, the court may require the party removing such child or children from Illinois to give reasonable security guaranteeing the return of such children.³¹

The language of the statute directing when to grant a removal is entirely ambiguous.³² The only guidance the legislature has given is that removal should be granted when it “is in the best interests of such child or children,”³³ which is lacking because it does not give lower courts any factors or other considerations to determine what is actually in the best interests of the children. This decision by the Illinois legislature left much deference to the Illinois courts to determine what factors should be considered when deciding what is in the best interests of a child. Prior to the Illinois Supreme Court weighing in on the issue, the lower courts applied a variety of tests and factors to decide whether removal from the jurisdiction was in the best interests of the child, and thus proper.³⁴ The confusion was a result of the ambiguous language in the statute combined with a wide variety of different factors being applied, depending on the facts of the case.³⁵ Courts were also unclear as to which party had the burden of proof until a 1982 amendment to section 609 added the explicit language, placing this burden on the petitioning party.³⁶

C. THE SUPREME COURT OF ILLINOIS ESTABLISHES FACTORS

In re Marriage of Eckert was decided by the Illinois Supreme Court in 1988.³⁷ The Illinois Supreme Court was faced with an ambiguous statute, and the only guiding principle was whether removal was *in the best interest of the child or children*.³⁸ The decision created a list of factors that courts

31. 750 ILL. COMP. STAT. 5/609(a) (2002).

32. *See id.* (giving no elements or factors to be used to determine the best interests of a child).

33. *Id.*

34. *See In re Marriage of Eckert*, 518 N.E.2d 1041, 1044 (Ill. 1988).

35. *Id.* *See also* *Schmidt v. Schmidt*, 105 N.E.2d 117, 119 (Ill. App. Ct. 1952).

36. *See Eckert*, 518 N.E.2d at 1045 (noting the additional language explicitly putting the burden of proof on the moving parent).

37. *Id.* at 1044.

38. *Id.* at 1045.

should consider when determining whether removal actually is *in the best interests of the child*.³⁹ At the time, it was unknown whether these factors were meant to be exhaustive or open,⁴⁰ but today these factors are still followed by Illinois circuit and district courts and form the backbone of Illinois child removal law.⁴¹

Carol and Mark Eckert were married in 1976 and had one child, a son named Matthew.⁴² The marriage failed, and in 1983, the couple decided to have the marriage officially dissolved, at which time custody of Matthew, seven years old at the time, was awarded to Carol.⁴³ However, Mark was granted “rather extensive visitation rights.”⁴⁴ Two years after the divorce in 1985, Carol petitioned the circuit court for leave to remove Matthew out of Illinois to Yuma, Arizona.⁴⁵ In support of this request, Carol offered two bases for the move: (1) employment advancement for Carol, including an increased salary; and (2) the health of her son, Bernie, from a previous marriage.⁴⁶ Mark alleged that the removal was not in the best interests of Matthew and that it would, in fact, severely injure the close father-son relationship between himself and Matthew.⁴⁷

The trial court denied Carol’s petition to remove on several grounds: (1) that Carol had not sought employment in the St. Louis area; (2) that no evidence showed how the move to Arizona would improve Bernie’s health; and (3) that Mark and Matthew had an exceptional relationship, and the removal would significantly harm this relationship, making all but an occasional visitation practically impossible.⁴⁸ The appellate court reversed the decision of the trial court, holding that denial of the removal was against the manifest weight of the evidence.⁴⁹ The appellate court held that the relevant

39. *Id.*

40. *See In re Marriage of Smith*, 665 N.E.2d 1209 (Ill. 1996) (holding the *Eckert* factors are not exclusive).

41. *See Eckert*, 518 N.E.2d at 1045; *In re Marriage of Stahl*, 810 N.E.2d 259, 267 (Ill. App. Ct. 2004) (applying the *Eckert* factors); *In re Marriage of Johnson*, 815 N.E.2d 1283, 1289-92 (Ill. App. Ct. 2004) (using the *Eckert* factors to determine whether removal should be granted).

42. *Eckert*, 518 N.E.2d at 1042.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* Carol’s son Bernie Plassmayer had asthma, and Carol alleged that the climate of Arizona would be better for his health. *Id.* at 1043. Further, she alleged that Illinois’ climate was “unfavorable to asthmatics.” *Id.*

47. *Eckert*, 518 N.E.2d at 1042. Mark had never missed a visitation with Matthew. *Id.* at 1043. There was also evidence that Carol had made attempts in the past to interfere with Mark’s visitation. *Id.* Further, a court-appointed psychologist gave his opinion that it was in the best interests of Matthew for him to remain in Illinois. *Id.*

48. *Id.* at 1043.

49. *Id.* at 1043-44.

standard was that a petition for removal should be granted “unless rather strong negative circumstances militate against it.”⁵⁰ The Illinois Supreme Court subsequently granted leave to appeal.⁵¹

The Illinois Supreme Court held that the appellate court had inappropriately placed a substantial portion of the burden of proof on the non-petitioning parent, and had thus acted against the express legislative intent to place the burden of proof on the petitioning parent.⁵² The Illinois Supreme Court also stated that deciding what is in the best interests of a child requires looking closely at a number of factors.⁵³ After determining that the appellate court had committed error, the Illinois Supreme Court outlined several factors to be used in determining whether removal from the jurisdiction is in a child’s best interest.⁵⁴ The *Eckert* factors are: (1) the likelihood of removal enhancing the general quality of life for both the custodial parent and the child,⁵⁵ (2) the motives of the custodial parent in seeking the removal to determine especially concerning whether the custodial parent is attempting to frustrate visitation,⁵⁶ (3) the motive of the non-custodial parent in objecting to the removal,⁵⁷ (4) the effects removal will have on the visitation rights of the non-custodial parent,⁵⁸ and (5) whether a “realistic and reasonable” visitation schedule is possible.⁵⁹ The court explained that these factors must be applied on a case-by-case basis, with different factors holding more weight depending on the case before the court.⁶⁰ After an analysis of these factors compared to the evidence concerning Matthew’s best interest, the Illinois Supreme Court held that removal was not in his best interest.⁶¹

50. *In re Marriage of Eckert*, 499 N.E.2d 627, 515-16 (Ill. App. Ct. 1986) *rev'd*, 518 N.E.2d 1041 (Ill. 1988). Detailing one of the main reasons for reversing the lower court, the Illinois Supreme Court stated that, “The appellate majority found that a *prima facie* showing is made when a proper custodian states a desire to remove, shows a sensible reasons for the move, and makes at least a superficial showing that the move is consistent with the child’s best interest.” *Eckert*, 518 N.E.2d at 1045.

51. *See Eckert*, 518 N.E.2d at 1045.

52. *Id.*

53. *Id.* *See also* D’Onofrio v. D’Onofrio, 365 A.2d 27 (N.J. Super. Ct. 1976) (applying the best interests analysis early in its usage).

54. *Eckert*, 518 N.E.2d at 1045-46.

55. *Id.* at 1045. *See also* Gallagher v. Gallagher, 376 N.E.2d 279 (Ill. App. Ct. 1978) (emphasizing the importance of finding benefits to the child resulting from the removal from Illinois).

56. *Eckert*, 518 N.E.2d at 1045. *See also* Winebright v. Winebright, 508 N.E.2d 774 (Ill. App. Ct. 1987) (noting the importance of preventing custodial parents from frustrating noncustodial parents’ visitation rights).

57. *Eckert*, 518 N.E.2d at 1045.

58. *Id.*

59. *Id.* at 1045-46.

60. *Id.* at 1045.

61. *Id.* at 1046-47.

D. *IN RE MARRIAGE OF SMITH*: THE *ECKERT* FACTORS ARE NOT EXCLUSIVE

Following the *Eckert* decision, Illinois courts began applying the established factors to the removal cases presented before them.⁶² However, confusion and disagreement began to develop among the appellate districts about whether or not the *Eckert* factors were exclusive or if other significant factors, depending on the facts of a case, could be considered in determining what is in the best interests of a child.⁶³

In *Smith*, Cheri Mayer sought petition to remove her two daughters from Peoria, Illinois to New Jersey.⁶⁴ Prior to this action, Cheri shared joint custody of the children with her ex-husband, Thomas Smith.⁶⁵ The trial court applied the *Eckert* factors, and denied removal of the children from Illinois because it believed that the move to New Jersey would be extremely detrimental to the mental health of one of the daughters, Courtni.⁶⁶ Based on the facts of the case presented, the trial court placed significant weight on the mental health of Courtni in determining that the move was not in her best interest.⁶⁷ Cheri Mayer appealed, alleging that the denial of her petition for removal was against the manifest weight of the evidence, and, that under the *Eckert* factors alone, removal was in the children's best interests.⁶⁸

The Illinois Supreme Court affirmed the decision of the trial court, holding that denying the petition for removal of Cheri's children was not against the manifest weight of the evidence.⁶⁹ The court stated that when, "the evidence shows that a child will be severely damaged by removal as a result of the child's emotional problems, this is a factor which weighs heavily against allowing the removal."⁷⁰ The court further pointed out that not only did the mental health of the child indicate that the removal would not be in the children's best interest, but actually went further to show that the

62. See *In re Marriage of Collingbourne*, 791 N.E.2d 532, 534 (Ill. 2003) (applying the *Eckert* factors); *In re Marriage of Main*, 838 N.E.2d 988 (Ill. App. Ct. 2005) (using the *Eckert* factors); *In re Marriage of Ludwinski*, 727 N.E.2d 419, 425 (Ill. App. Ct. 2000) (noting the importance of the *Eckert* factors to child removal situations).

63. See *In re Marriage of Pfeiffer*, 604 N.E.2d 1069 (Ill. App. Ct. 1992) (struggling with whether to include non-listed factors such as the indirect benefits to the child).

64. *In re Marriage of Smith*, 665 N.E.2d 1209, 1210-11 (Ill. 1996).

65. *Id.* at 1210.

66. *Id.* at 1213. The court-appointed psychotherapist testified that he believed Courtni was a very troubled child after performing an evaluation upon her. *Id.* The psychotherapist further recommended that the family attempt to minimize as much stress and pressure as possible. *Id.*

67. *Id.*

68. *Id.*

69. See *Smith*, 665 N.E.2d at 1214-15.

70. *Id.* at 1214.

removal may cause significant harm to the child, a clear indicator that the first *Eckert* factor is also not met.⁷¹

E. INDIRECT BENEFITS TO THE CHILDREN CAN BE CONSIDERED
FOLLOWING *IN RE MARRIAGE OF COLLINGBOURNE*

Soryia and Geoff Collingbourne divorced after fourteen years but had two sons, Geoffrey, and his younger brother Tyler.⁷² As part of the divorce settlement, Soryia and Geoff had joint custody of the children, but Soryia had sole physical custody of the younger son Tyler, and Geoff had sole physical custody of Geoffrey.⁷³ Soryia petitioned the court in 2001, seventeen months following the divorce, to remove Tyler from Illinois to Massachusetts.⁷⁴ Soryia alleged that the quality of her life, as well as Tyler's, would be "significantly enhanced" by the financial opportunities that would result from the move to Massachusetts;⁷⁵ moreover, she would have more time to spend with Tyler and there would be more extra-curricular activities available.⁷⁶ Geoff contested the removal and claimed that the move would only improve the quality of life of Soryia, and further that, in contrast, Tyler's life would be adversely affected because the move would harm his relationship with his father and his older brother Geoffrey.⁷⁷ As part of her

71. *Id.* at 1215. The first *Eckert* factor is the likelihood of removal enhancing the general quality of life for both the custodial parent and the child or children. *See In re Marriage of Eckert*, 518 N.E.2d 1041, 1045 (Ill. 1988).

72. *In re Marriage of Collingbourne*, 791 N.E.2d 532, 533-34 (Ill. 2003).

73. *Id.* at 533. The post-divorce custody agreement provided that the day-to-day decisions were to be decided by the parent with sole physical custody, but that with decisions concerning "education, recreation, health care and religious training," both parents would have "equal rights and responsibilities." *Id.*

74. *Id.* at 534.

75. *Id.* In support of her petition for removal, the mother Soryia alleged that she was engaged to Mark Rothman, who owned and operated his own business in Massachusetts. *Id.* If Soryia moved to Massachusetts, she would earn \$75,000 a year working for Mark, with the possibility of making \$100,000 per year in the future. *Id.* At the time of the hearing, Soryia was employed making only \$50,000 per year. *Id.* She further alleged that the company she was currently working for was making significant employment cuts, and that she feared she would lose her job. *Id.*

76. *Id.* at 534. Soryia alleged that based on her current work schedule, it was difficult for Tyler to participate in extra-curricular activities and that if removal to Massachusetts was granted, Tyler would have to spend less time in day care and would be able to participate in sports, music, and other activities. *Id.* Soryia also alleged that the Massachusetts school district was "significantly better" than his current school district in Illinois. *Id.*

77. *In re Marriage of Collingbourne*, 791 N.E.2d 532, 535 (Ill. 2003). Geoff alleged that he was actively involved in Tyler's life and that the move would significantly harm their relationship. *Id.* He did, however, admit that his work conflicted with his scheduled visitation time with Tyler on some occasions. *Id.* Further, Geoff also asserted concern for the relationship between Tyler and his older brother Geoffrey, but Soryia contested this and stated that they hardly share any interests. *Id.* at 537.

petition, Soryia proposed a visitation schedule that would provide Geoff with more visitation time than he had under the current agreement.⁷⁸ However, the visitation schedule contained more extended visitations of less frequency than the current arrangement; a factor that Geoff believed would interfere with a close, on-going relationship with his son.⁷⁹

After reviewing all of the evidence, the trial court granted Soryia's petition and allowed the removal of Tyler to Massachusetts.⁸⁰ The trial court stated that the removal would allow Soryia to marry Mark Rothman, to move into his home in Massachusetts, and to work for him at a greater salary than she was currently earning.⁸¹ The circuit court reasoned that these benefits to Soryia would lead to significant indirect benefits to Tyler, such as being able to attend a school system that offered "superior opportunities" to those at his school in Illinois.⁸² Further, the court reasoned that the proposed visitation schedule offered "comparable" amounts of visitation time to the current visitation schedule, even if the schedules were not similar in nature.⁸³ In making its decision, the circuit court relied heavily on the indirect benefits to Tyler in deciding that the move was in his best interests.⁸⁴

The Second District Appellate Court found that removal was not in the best interests of Tyler, and thus removal was improper.⁸⁵ The court reasoned that it was in error to weigh indirect benefits so heavily and also that the first *Eckert* factor required that the quality of life of Tyler be improved by more than by just indirect benefits.⁸⁶ By giving less weight to the indirect benefits and the less improved quality of life, the appellate majority

78. *Id.* at 534. The "realistic and reasonable" visitation schedule factor from *Eckert* has often been controversial, and is weighed differently among the courts when considering the best interests of the child. Compare *In re Marriage of Matchen*, 866 N.E.2d 683 (Ill. App. Ct. 2007), with *In re Marriage of Guthrie*, 915 N.E.2d 43 (Ill. App. Ct. 2009).

79. *Id.* at 539-40.

80. *Id.* at 541.

81. *Id.*

82. *In re Marriage of Collingbourne*, 791 N.E.2d 532, 541 (Ill. 2003).

83. *Id.* at 541-42 "The [circuit] court considered the actual visitation time available to Geoff and Tyler under the proposed visitation arrangement as opposed to the existing visitation schedule, and found that the arrangements were 'comparable.'" *Id.* The circuit court also found that the time involved traveling between Tyler's current residence in Illinois and Massachusetts would not be substantially greater than it the traveling time if Soryia moved Tyler to Southern Illinois. *Id.* However, the appellate court later asserted that the trial court failed to consider the substantial travel time involved and that the trips would be "time consuming" and "burdensome" making the proposed visitation schedule not in Tyler's best interest. *In re Marriage of Collingbourne*, 774 N.E.2d 448, 455 (Ill. App. Ct. 2002) *rev'd* 791 N.E.2d 532 (Ill. 2003).

84. *Id.* at 541.

85. *Id.* at 542.

86. *Id.* at 543.

found that the evidence of indirect benefits to Soryia and Tyler did not outweigh Tyler's interest in keeping his family relationships in Illinois intact.⁸⁷

The Illinois Supreme Court reversed the decision of the Second District and granted Soryia's petition for removal of Tyler to Massachusetts.⁸⁸ The Illinois Supreme Court stated that in the *Eckert* decision, the court had made no distinction between *direct* and *indirect* benefits, and that such a distinction is not helpful in the analysis of the best interests of a child.⁸⁹ The Illinois Supreme Court held that the key question when analyzing the first *Eckert* factor is "whether the child's general quality of life will be enhanced by the move."⁹⁰ Further, the court held that there is a "nexus between the quality of life of the custodial parent and the quality of life of the child."⁹¹ For the case at bar, the court pointed out that even though the appellate majority had not found a *direct* benefit from the move, it had stated that Tyler would receive a "substantial 'indirect' benefit" from the improvement of his mother's quality of life.⁹² The court thus determined that, based on the benefits to Tyler, whether characterized as direct or indirect, his quality of life would be enhanced.⁹³ Following this decision, appellate courts were not to consider whether benefits to the child are direct or indirect, but rather whether the overall quality of life of the child would be enhanced by whatever benefits he may receive, whether these benefits flow directly to the child or stem from benefits to the custodial parent that invariably influence the child's life, all weighed against the possible harm from the move.⁹⁴

The Illinois Supreme Court went on to consider the proposed visitation schedule that the trial court had accepted.⁹⁵ The court determined that under the proposed schedule, the amount of visitation time between Geoff and Tyler would not decrease, but rather would stay approximately the same, and as such the visitation schedule was realistic and reasonable; additionally, the schedule did not pose potential harm to Tyler or his relationship with Geoff.⁹⁶ However, the court did explicitly hold that an analysis of the quantitative time under a visitation schedule is not enough; rather the qualitative nature of the visitation must also be called into question.⁹⁷ In the instant case, the court reasoned that, although the visitation schedule was different,

87. *In re Marriage of Collingbourne*, 791 N.E.2d 532, 543 (Ill. 2003).

88. *Id.* at 552.

89. *Id.* at 546-47.

90. *Id.* at 547. *See also In re Marriage of Eckert*, 518 N.E.2d 1041, 1045 (Ill. 1988).

91. *Collingbourne*, 791 N.E.2d at 548.

92. *Id.* at 546.

93. *See id.* at 549 (eliminating the distinction between direct and indirect enhancements to quality of life).

94. *Id.* at 546-49.

95. *Id.* at 550.

96. *Collingbourne*, 791 N.E.2d at 550 (Ill. 2003).

97. *Id.* at 551.

consisting of less frequent but more extended durational visitations, it was not against the manifest weight of the evidence for the circuit court to hold that a “realistic and reasonable” visitation schedule could be established.⁹⁸

F. SUMMARY OF THE SUPREME COURT OF ILLINOIS JURISPRUDENCE

In *Eckert*, the Illinois Supreme Court laid out the factors that courts should use to analyze whether a custodial parent’s request to remove his or her child from the Illinois jurisdiction to another state is in the best interests of the child.⁹⁹ The *Eckert* factors are: (1) the likelihood of removal enhancing the general quality of life for both the custodial parent and the child,¹⁰⁰ (2) the motives of the custodial parent in seeking the removal to determine especially concerning whether the custodial parent is attempting to frustrate visitation,¹⁰¹ (3) the motive of the non-custodial parent in objecting to the removal, (4) the effects removal will have on the visitation rights of the non-custodial parent, and (5) whether a “realistic and reasonable” visitation schedule is possible.¹⁰² The court in *Smith* expanded upon the factors to include any other relevant factor that may apply given the case-by-case analysis necessary to determine the best interests of a child.¹⁰³ In *Collingbourne*, the court reasoned that there is no reason to delve into whether there are *direct* or *indirect* benefits, but rather to analyze whether, as a whole, the benefits are enough so as to enhance the child’s quality of life enough to outweigh any possible negatives.¹⁰⁴ Today, many debates about how to apply the best interests standard have been settled, but there are still some cases where appellate courts are too lenient with the custodial-parent in applying the *Eckert* factors and severely injure a noncustodial father’s right to see his child.¹⁰⁵

98. *Id.*

99. *In re Marriage of Eckert*, 518 N.E.2d 1041, 1045 (Ill. 1988).

100. *Eckert*, 518 N.E.2d at 1045. *See also* *Gallagher v. Gallagher*, 376 N.E.2d 279 (Ill. App. Ct. 1978) (emphasizing the importance of finding benefits for the child resulting from the removal from Illinois).

101. *Eckert*, 518 N.E.2d at 1045. *See also* *Winebright v. Winebright*, 508 N.E.2d 774 (Ill. App. Ct. 1987) (noting the importance of preventing custodial parents from frustrating noncustodial parent’s visitation rights).

102. *Eckert*, 518 N.E.2d at 1045-46.

103. *See In re Marriage of Smith*, 665 N.E.2d 1209, 1214 (Ill. 1996).

104. *See In re Marriage of Collingbourne*, 791 N.E.2d 532, 549 (Ill. 2003).

105. *See In re Marriage of Guthrie*, 915 N.E.2d 43 (Ill. App. Ct. 2009) (affirming removal despite an unrealistic visitation schedule).

III. STATEMENT OF THE CASE

Krystal and Brian Guthrie were married in Phoenix, Arizona on August 14, 2006.¹⁰⁶ A month later, in September 2006, the couple moved to Illinois.¹⁰⁷ Krystal and Brian Guthrie had one child during their marriage, a son, born on January 20, 2007.¹⁰⁸ On March 28, 2007, after a falling out of the marriage, Krystal left Illinois and took the child with her to Arizona, but she returned a month later and filed a dissolution marriage petition in an Illinois circuit court on April 23, 2007.¹⁰⁹ On July 11, 2007, the circuit court issued a temporary order granting custody to Ms. Guthrie.¹¹⁰ Mr. Guthrie was provided visitation during the daytime of every Tuesday, Wednesday, and Thursday.¹¹¹ Ms. Guthrie next petitioned the court for leave to remove the child from the Illinois jurisdiction so that she and the child could move to Arizona.¹¹²

On December 20, 2007, the circuit court held a hearing on Ms. Guthrie's petition for removal.¹¹³ The record of this case was established through the testimony of both parents and of other parties concerned, such as the grandparents.¹¹⁴ At the time of the hearing, Ms. Guthrie was twenty-one years old and Mr. Guthrie was twenty.¹¹⁵ Their son was only eleven months old.¹¹⁶ Following the parties' marriage, Mr. and Ms. Guthrie lived with Ms. Guthrie's mother in Arizona for a month, and then moved to Illinois and lived with Mr. Guthrie's parents for three months.¹¹⁷ Following a dispute with his parents, Mr. and Ms. Guthrie were kicked out of the house, at which time Ms. Guthrie stayed with her mother in a hotel room in Illinois and later an apartment; it is unclear from the facts where Mr. Guthrie stayed during this time.¹¹⁸

106. *Id.* at 44.

107. *Id.*

108. *Id.*

109. *Id.* The suit was filed in the circuit court of Jefferson County, Illinois. *Id.* It is not entirely clear from the record what caused Ms. Guthrie to want a divorce; the record does indicate that the couple had made an attempt to reconcile the marriage, but that the reconciliation efforts had failed. *Id.*

110. *Guthrie*, 915 N.E.2d at 44.

111. *Id.* The visitation schedule also allowed Ms. Guthrie to take the child on vacation to Arizona to visit her family in the month of July. *Id.* The vacation took place from July 3, 2007 to July 24, 2007. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 44-47.

115. *In re Marriage of Guthrie*, 915 N.E.2d 43, 44 (Ill. App. Ct. 2009).

116. *Id.*

117. *Id.*

118. *Id.*

The employment history of both parents was dismal at best.¹¹⁹ Ms. Guthrie testified that she had been unsuccessful in her attempts to secure employment in Illinois due largely to the fact that she had no one to watch the child while she would be working.¹²⁰ Ms. Guthrie contended, on the other hand, that if removal was allowed and she moved to Arizona, she would be able to work as a cashier at a grocery store.¹²¹ This position, however, was a minimum-wage job paying only eight dollars per hour without any benefits,¹²² and the record is unclear as to whether she would have someone available to watch the child while working in Arizona, making this situation different from the positions she rejected in Illinois, as even Ms. Guthrie's mother works during the day.¹²³ At the time of the hearing, Ms. Guthrie was receiving funds from public aid.¹²⁴ Mr. Guthrie's financial situation was not much better, but he did have a minimum-wage job at the time of the hearing.¹²⁵

Ms. Guthrie stated that if removal were granted, she and her child would be able to move into her mother's three-bedroom house in Phoenix.¹²⁶ Her mother testified that she would be able to help Ms. Guthrie raise the child, but also stated that if removal were not granted, she would likely move to Illinois to help Ms. Guthrie anyway.¹²⁷ Mr. Guthrie and his father testified about his visitations with the child and how he enjoyed taking care of the child and spending time with him, including bathing, feeding, and changing his diapers.¹²⁸ Mr. Guthrie's father also testified that, if the child were to remain in Illinois, he and his wife would help the young parents raise him.¹²⁹

The circuit court entered a judgment of dissolution of the marriage on February 7, 2008.¹³⁰ Further, the court awarded Ms. Guthrie custody, granted her permission to remove the child to Arizona, and included visita-

119. *Id.* at 44-45.

120. *In re Marriage of Guthrie*, 915 N.E.2d 43, 44 (Ill. App. Ct. 2009).

121. *Id.*

122. *Id.* at 48 (Wexstten, J., dissenting). Further, the job was also not definite. *Id.* Ms. Guthrie had been told by a manager at the Safeway grocery store in Arizona that the store would make an effort to rehire her, but could not make any definite offer. *Id.*

123. *Guthrie*, 915 N.E.2d at 44. Ms. Guthrie's mother claimed that Ms. Guthrie's fourteen year old sister could help take care of the child but no evidence that she had helped before was given. *Id.*

124. *Id.*

125. *Id.* at 48-49 (Wexstten, J., dissenting).

126. *Guthrie*, 915 N.E.2d at 44.

127. *Id.*

128. *Id.* at 45.

129. *Id.*

130. *Id.*

tion rights to Mr. Guthrie.¹³¹ This decision was based on what the trial judge considered to be improvements in the quality of life to the mother and child, citing an employment opportunity and the presence of Ms. Guthrie's immediate family.¹³² The Fifth District affirmed the order of the circuit court to grant Ms. Guthrie's petition for removal.¹³³ The majority concluded that removal to Arizona was in the best interests of the child because Ms. Guthrie had "more realistic employment opportunities in the State of Arizona" and because, although the distance would be relatively greater between the child and the father, a reasonable and realistic visitation schedule was still possible.¹³⁴ The dissenting opinion noted a lack of enhancement to the child's quality of life as a result of the move, as well as problems with the visitation schedule being too unrealistic.¹³⁵

IV. ANALYSIS

A. HOW TO CORRECTLY APPLY THE BEST INTERESTS OF THE CHILD STANDARD

The guidance given to Illinois trial courts is to look to what is in the best interests of the child in order to determine whether a parent's petition for removal of the child from the jurisdiction is proper.¹³⁶ The *Eckert* court emphasized that "[i]n removal cases the paramount question is whether the move is in the best interests of the child."¹³⁷ Further, "the mere desire of the custodial parent to move to another State, without more, is insufficient to show that the move would be in the children's best interest."¹³⁸ An Illinois court is trusted with the responsibility to determine what is in the best interests of children in divorce and removal situations, and the court should consider any and all evidence to make that determination.¹³⁹ To determine whether removal is in the best interests of the children, courts should not only consider the *Eckert* factors,¹⁴⁰ but should also consider other factors relevant to the case and make its determination on a case-by-case basis ac-

131. *In re Marriage of Guthrie*, 915 N.E.2d 43, 45 (Ill. App. Ct. 2009). For an in depth discussion of the visitation schedule, see *infra* notes 179-209 and accompanying text.

132. *Id.*

133. *Id.* at 46-47.

134. *Id.* at 45.

135. *Id.* at 49-50 (Wexstten, J., dissenting).

136. *In re Marriage of Eckert*, 518 N.E.2d 1041, 1044 (Ill. 1988).

137. *Id.*

138. *Id.*

139. *Id.* at 1045.

140. See discussion *supra* notes 55-59.

ording to the facts presented.¹⁴¹ Further, “no individual factor is controlling and the weight accorded each factor will vary according to the facts of each case.”¹⁴² In *Guthrie*, the court conducted its best interests analysis improperly because it failed to appropriately balance all the *Eckert* factors and made conclusions about the quality of life of the mother and child not supported by the evidence.¹⁴³

Reversal is only appropriate when a decision was against the manifest weight of the evidence, but a manifest injustice was done to the father in *Guthrie* given the weight of the evidence against removal, and the court’s misapplication of the balance of the best-interests standard must be highlighted so similar mistakes in reasoning are not repeated.¹⁴⁴ The Supreme Court of Illinois stated that child removal petitions should be analyzed in accordance with the purpose of the Illinois Marriage and Dissolution of Marriage Act, which is to “secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children during and after the litigation.”¹⁴⁵ As will be shown below in an analysis of the *Eckert* factors in respect to *Guthrie*, the Fifth District lost sight of this purpose when analyzing the best interests of the Guthrie child.¹⁴⁶

The first *Eckert* factor is “whether the proposed move will enhance the quality of life for both the custodial parent and the children.”¹⁴⁷ The court based its decision to weigh this factor in favor of Ms. Guthrie for essentially three reasons: that (1) Ms. Guthrie had “more realistic employment opportunities in the State of Arizona,” (2) Ms. Guthrie would have had extra help raising the child from Ms. Guthrie’s mother, and (3) Ms. Guthrie was the primary caregiver of the child since his birth.¹⁴⁸ The record indicates, however, that these findings, and this factor overall, are in far greater dispute than the majority asserts it to be, and each of these justifications will be

141. See *In re Marriage of Collingbourne*, 791 N.E.2d 532, 545-46 (Ill. 2003); *In re Marriage of Smith*, 665 N.E.2d 1209, 1213 (Ill. 1996).

142. See *In re Marriage of Hansel*, 852 N.E.2d 548, 551 (Ill. App. Ct. 2006); see also *Collingbourne*, 791 N.E.2d at 545-46; *In re Marriage of Smith*, 665 N.E.2d 1209, 1213 (Ill. 1996).

143. See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1045 (Ill. 1988); *In re Marriage of Guthrie*, 915 N.E.2d 43 (Ill. App. Ct. 2009).

144. See *Eckert*, 518 N.E.2d at 1044.

145. *Id.* at 1046; ILL. REV. STAT. 1986 ch. 40, par. 102(7) (current version at 750 ILL. COMP. STAT. 5/609(a) (2002)). See also *In re Marriage of Bednar*, 496 N.E.2d 1149, 1154 (Ill. App. Ct. 1986) (noting the purposes of the Act).

146. See *In re Marriage of Guthrie*, 915 N.E.2d 43 (Ill. App. Ct. 2009).

147. *In re Marriage of Stahl*, 810 N.E.2d 259, 267 (Ill. App. Ct. 2004). See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1044 (Ill. 1988).

148. *Guthrie*, 915 N.E.2d at 45.

evaluated in turn.¹⁴⁹ The reality is that the child will realize little to no benefits from the move, and further, that unlike the usual situation where the custodial parent will realize significant enhancements to the quality of life from the move that would thereby increase the quality of life for the child,¹⁵⁰ even Ms. Guthrie's quality of life will not be significantly enhanced by the move.

The court held that Ms. Guthrie had "more realistic employment opportunities in the State of Arizona,"¹⁵¹ but this statement is entirely misleading and should not have been used to support a decision to grant removal. The employment opportunities that the court refers to should actually not be pluralized, as it is a single hypothetical chance at employment with a Safeway grocery store that pays only eight dollars per hour.¹⁵² This position is a minimum wage job with no benefits, and there is no evidence in the record that similar positions did not exist in Illinois.¹⁵³ Given that courts have held that an increase in expendable income, income far greater than at issue in this case, is still not enough to find in favor of removal when weighed against the harm done to the child's relationship with the non-custodial parent, it is hard to imagine that a minimum-wage job can be translated into any foreseeable benefit to the child.¹⁵⁴ Unlike cases allowing removal where the employment opportunities were significant enough to enhance the lives of both the parent and child,¹⁵⁵ this case is more similar to *In re Marriage of Gibbs*.¹⁵⁶ The court in *Gibbs* found that "[the mother's] employment situation would not be different in either state and [her] financial situation would not be significantly different if they were not allowed to move to [another state]."¹⁵⁷ The court thus held that minor enhancements to salary or employment hold little weight in the determination of whether the move will enhance the child's life.¹⁵⁸ The same is true in the instant case, where Ms. Guthrie's possible, but not guaranteed, minimum-wage position as a grocery store cashier is not convincing evidence that the move will enhance the child's life.¹⁵⁹ The *Collingbourne* court warned lower courts to stray away from allowing any miniscule enhancement in the quality of life for the custodial parent to translate automatically into an enhancement in

149. *See id.*

150. *See, e.g., In re Marriage of Collingbourne*, 791 N.E.2d 532, 549 (Ill. 2003).

151. *Guthrie*, 915 N.E.2d at 45.

152. *Id.* at 49-50 (Wexstten, J., dissenting).

153. *Id.*

154. *In re Marriage of Stahl*, 810 N.E.2d 259, 267-68 (Ill. App. Ct. 2004).

155. *See, e.g., Collingbourne*, 791 N.E.2d at 549.

156. *See In re Marriage of Gibbs*, 645 N.E.2d 507, 514 (Ill. App. Ct. 1994).

157. *Id.*

158. *Id.*

159. *In re Marriage of Guthrie*, 915 N.E.2d 43, 46 (Ill. App. Ct. 2009).

the child's quality of life, or to believe that any improvement in quality of life automatically justifies removal.¹⁶⁰

The court also relied on testimony that, if removal were granted, Ms. Guthrie's mother and fourteen-year-old sister would be able to help care for the child.¹⁶¹ This testimony, however, is overstated by the majority for several reasons. First, Ms. Guthrie's mother testified that if her daughter's petition for removal were denied, she would have moved to Illinois anyway to help Ms. Guthrie care for the child.¹⁶² This direct contradiction would seem to eliminate this particular justification for declaring the first *Eckert* factor to favor removal, but the majority disagreed, albeit through a rather quick glance at the first factor as if it were almost assumed to have been met.¹⁶³ Even in situations where removal would allow a mother to stay at home with the children at all times, removal is still often not granted because this does not necessarily correlate into a significant benefit to the child in the absence of other benefits.¹⁶⁴ As if this were not enough to call the court's conclusion into doubt, Mr. Guthrie's father testified that if removal were not granted, he and his wife would also be available to help the parents raise the child.¹⁶⁵ The third justification for granting removal given by the court was that Ms. Guthrie had been the primary caregiver of the child since his birth.¹⁶⁶ However, given that at the time of the trial court hearing the child was only eleven months old,¹⁶⁷ it is manifestly unfair to hold this conclusion against Mr. Guthrie because, although Ms. Guthrie may have been the primary caregiver for the first eleven months of the child's life, Mr. Guthrie maintained employment during this time to support the family while Ms. Guthrie did not.¹⁶⁸ Had Mr. Guthrie also been unemployed, he likely would have spent more time caring for the child, especially since he exercised his visitation diligently following the divorce.¹⁶⁹ The only reasonable conclusion is that at best, this factor comes out neutral, but certainly

160. *Collingbourne*, 791 N.E.2d at 549.

161. *Guthrie*, 915 N.E.2d at 46-47.

162. *Id.*

163. *Id.* The majority concluded that the first factor was met in one paragraph; the only justifications given for this conclusion were the three articulated above, all of which are in controversy. See *In re Marriage of Guthrie*, 915 N.E.2d 43, 49-51 (Ill. App. Ct. 2009) (Wexsten, J., dissenting).

164. See *In re Marriage of Matchen*, 866 N.E.2d 683, 693-94 (Ill. App. Ct. 2007) (finding that removal would not enhance the children's quality of living even though the mother would no longer have to work and the family would live in a home on an eighty-eight acre parcel of land).

165. See *Guthrie*, 915 N.E.2d at 44.

166. *Id.* at 45.

167. *Id.* at 44.

168. *Id.* at 44-45.

169. *Id.*

not in favor of removal. Because the court relied on three justifications for removal that were all erroneous and against the manifest weight of the evidence, the court's final determination on the balance of the *Eckert* factors was incorrect.¹⁷⁰

The second and third *Eckert* factors concern the motives of the custodial parent in seeking the petition for removal and of the non-custodial parent in resisting the removal.¹⁷¹ The court correctly found that there were no improper motives in this case.¹⁷² Motives are often not an issue in child removal cases because both parents usually have a legitimate reason for either petitioning or opposing the removal of their child.¹⁷³ Because of this, these factors are generally neutral and do not affect the balance of the remaining factors. As such, the fourth and fifth factors are critical in determining the best interest of the child, and these factors weigh heavily against removal of the child from Illinois.¹⁷⁴

The fourth and fifth *Eckert* factors both concern the effect on the non-custodial parent's visitation rights.¹⁷⁵ Given that the purpose of the Illinois Marriage and Dissolution of Marriage Act is to "secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children during *and after the litigation*," these factors strike at the very heart of the Act itself.¹⁷⁶ In *Eckert*, the court reasoned that because it is in the best interests of a child to maintain a close and healthy relationship with both parents, courts should "carefully consider" the effects that a relocation would have on the visitation rights of the non-custodial parent.¹⁷⁷ It is beneficial to analyze the fourth and fifth factors together and, to make more logical sense, in reverse.¹⁷⁸ The fifth *Eckert* factor asks whether "a realistic and reasonable visitation schedule can be reached if the move is allowed."¹⁷⁹ The fourth *Eckert* factor is the effect on the non-custodial parent's visitation rights.¹⁸⁰ If the fifth factor

170. *In re Marriage of Eckert*, 518 N.E.2d 1041, 1044 (Ill. 1988).

171. *Id.* at 1045.

172. *In re Marriage of Guthrie*, 915 N.E.2d 43, 47 (Ill. App. Ct. 2009).

173. *See In re Marriage of Main*, 838 N.E.2d 988, 989-90 (Ill. App. Ct. 2005); *In re Marriage of Collingbourne*, 791 N.E.2d 532, 549 (Ill. 2003) (noting motives are rarely at issue).

174. *Guthrie*, 915 N.E.2d at 46-47.

175. *See Eckert*, 518 N.E.2d at 1044-45.

176. ILL. REV. STAT. 1986 ch. 40, par. 102(7) (current version at 750 ILL. COMP. STAT. 5/609(a) (2002) (emphasis added).

177. *Eckert*, 518 N.E.2d at 1045.

178. *See Collingbourne*, 791 N.E.2d at 550. Although the court does not explicitly state this assertion, it refers to the fourth and fifth factors as "the final *Eckert* factors" and analyzes them together. *Id.*; *see also In re Marriage of Hansel*, 852 N.E.2d 548, 552 (Ill. App. Ct. 2006); *In re Marriage of Gibbs*, 645 N.E.2d 507, 514 (Ill. App. Ct. 1994).

179. *Eckert*, 518 N.E.2d at 1045-46.

180. *Id.* at 1045.

weighs against removal, then it follows that the fourth factor will probably demonstrate significant negative effects on the non-custodial parents' visitation rights.

The *Guthrie* court did not, by any stretch of its interpretation, create a "realistic and reasonable" visitation schedule when it granted Ms. Guthrie's petition for removal.¹⁸¹ Further, the Illinois Supreme Court has stated that, "[a] reasonable visitation schedule is one that will preserve and foster the children's relationship with the noncustodial parent."¹⁸² In order to determine what is realistic and reasonable, both trial and appellate courts usually look to the amount of visitation granted prior to the removal action as compared to the amount of visitation that will result after a removal petition is granted.¹⁸³ There is no bright-line rule to guide courts as to what percentage reduction in visitation is unreasonable, but reduction of visitation is still one factor that courts have and certainly should continue to consider.¹⁸⁴

Following the divorce proceeding, Mr. Guthrie was not awarded custody but was awarded visitation rights granting visitation "during the daytime on every Tuesday, Wednesday, and Thursday."¹⁸⁵ The *Guthrie* court failed to adequately compare this visitation schedule to the one proposed and eventually accepted by the court for post-removal.¹⁸⁶ Although most courts have struggled with the task of assigning equivalent visitation schedules to non-custodial parents after removal proceedings,¹⁸⁷ many courts, especially those within the Second District,¹⁸⁸ deny removal outright be-

181. *Eckert*, 518 N.E.2d at 1045. See *In re Marriage of Guthrie*, 915 N.E.2d 43, 49-51 (Ill. App. Ct. 2009) (Wexstten, J., dissenting).

182. *In re Marriage of Stahl*, 810 N.E.2d 259, 273 (Ill. App. Ct. 2004) (citing *Eckert*, 518 N.E.2d at 1046).

183. See *Tysl v. Levine*, 662 N.E.2d 915 (Ill. App. Ct. 1996) (pointing out a reduction of visitation by fifty percent); *In re Marriage of Johnson*, 660 N.E.2d 1370 (Ill. App. Ct. 1996) (determining that a reduction of fifty percent was unreasonable); *In re Marriage of Berk*, 574 N.E.2d 1364 (Ill. App. Ct. 1991) (finding that a reduction of eighteen percent was unreasonable under the circumstances of the case).

184. See *In re Marriage of Zimmer*, No. 2-00-1163, 2001 WL 34072596, at *6 (Ill. App. Ct. Oct. 2, 2001).

185. See *Guthrie*, 915 N.E.2d at 44.

186. *Id.*

187. See *In re Marriage of Hansel*, 852 N.E.2d 548, 552 (Ill. App. Ct. 2006); *In re Marriage of Stahl*, 810 N.E.2d 259, 267-68 (Ill. App. Ct. 2004); *In re Marriage of Repond*, 812 N.E.2d 80, 87-89 (Ill. App. Ct. 2004).

188. The Second District has hesitated to grant removal petitions in the past when the father has diligently exercised his visitation rights. See *In re Marriage of Matchen*, 866 N.E.2d 683 (Ill. App. Ct. 2007) (denying mother's request for removal to Wisconsin); *In re Marriage of Johnson*, 815 N.E.2d 1283 (Ill. App. Ct. 2004) (denying request for removal to Arizona); *In re Marriage of Stahl*, 810 N.E.2d 259 (Ill. App. Ct. 2004) (denying mother's petition to remove children to Wisconsin); see also *In re Marriage of Repond*, 812 N.E.2d 80, 87-89 (Ill. App. Ct. 2004) (allowing removal to Switzerland primarily because the father refused to allow the children to live with him in Illinois).

cause of the change in the duration and nature of the visitation.¹⁸⁹ Meanwhile, the courts that do allow removal scrutinize the new schedule to ensure its fairness to the non-custodial parent.¹⁹⁰ In either scenario, the established rule for Illinois appellate courts appears to focus on ensuring that a similar, not necessarily the same, relationship between the non-custodial parent and the child can be fostered and maintained.¹⁹¹ The *Guthrie* court failed to adequately address any of Mr. Guthrie's concerns regarding the visitation schedule, and also did not embark on a similar discussion as noted above on the nature of the visitation; it is therefore necessary to discuss the consequences of the visitation schedule on Mr. Guthrie and his son.¹⁹²

The removal order significantly altered Mr. Guthrie's visitation rights from three days a week to two weeks in June, three weeks in July, and one week in the remaining months *in the state of Arizona*, unless Mr. Guthrie pays to fly to Arizona and fly with the child to Illinois and the return trip.¹⁹³ At first blush, this visitation schedule may seem comparable and even perhaps reasonable due to the consistent visitation periods, but the reality is that there are several insurmountable flaws with this schedule.¹⁹⁴ The new schedule failed to adequately conserve the prior visitation rights afforded to Mr. Guthrie because he used to have approximately 156 daytime visitations but now has only an approximate fifteen weeks or 105 days of visitation.¹⁹⁵ This amounted to a significant reduction in visitation by approximately one-third, which should have been more seriously considered by the court.¹⁹⁶ Not only is the amount of visitation reduced, but the duration between visits is increased as well. As noted by the court in *In re Marriage of Sale* regarding a similar visitation schedule, such a schedule would "not only reduce the number of actual days the respondent sees his son but also leave large gaps in time between visits," and the court determined that this would se-

189. See *Matchen*, 866 N.E.2d at 687.

190. See *In re Marriage of Main*, 838 N.E.2d 988 (Ill. App. Ct. 2005) (allowing removal because the father had not diligently exercised his visitation rights and thus, although the proposed schedule contained less visitation than he was previously entitled, it contained more than he had exercised); *In re Marriage of Parr*, 802 N.E.2d 393 (Ill. App. Ct. 2003) (granting removal because the quality of life enhancements for the mother and child greatly outweighed the only minor flaws with the visitation schedule).

191. See *In re Marriage of Collingbourne*, 791 N.E.2d 532 (Ill. 2003).

192. See *In re Marriage of Guthrie*, 915 N.E.2d 43, 44 (Ill. App. Ct. 2009).

193. See *id.* at 49-50 (Wexstten, J., dissenting).

194. See *Guthrie*, 915 N.E.2d at 47.

195. *Id.*

196. *Id.* This reduction information only depicts the potential visitation days that Mr. Guthrie has, but not the number of visitations that are actually feasible given the time-constraints and expenses. *Id.* The actual reduction in visitation will likely be much greater given those considerations.

riously frustrate the father's ability to maintain a close relationship with his son and thus denied removal.¹⁹⁷ Further, the Illinois Supreme Court also requires courts to look beyond the mere quantitative result and to analyze the effects of removal on the quality of the visitations.¹⁹⁸ The first major qualitative problem is that in order for Mr. Guthrie to exercise his non-summer visitation rights, he has to travel to and stay in Arizona for one week per month because the visitation schedule demands that the monthly visitations be conducted in Arizona or else Mr. Guthrie is additionally responsible for the airfare of the child to and from Illinois as well as traveling with the child on those trips.¹⁹⁹ It is highly unusual for a visitation schedule, ordered in Illinois, to require a non-custodial father to exercise half of his visitation time in a state other than his residence.²⁰⁰ This places a great burden of travel on Mr. Guthrie while none at all on Ms. Guthrie.²⁰¹

Another qualitative problem with the visitation schedule is that because much of the visitation is required to be in Arizona, the visitation will most likely take place at the mother's residence since Mr. Guthrie does not have a home in Arizona.²⁰² This will not give Mr. Guthrie the chance to create a separate relationship with his son apart from the mother. There is a long list of potential problems with this ranging from sleeping arrangements to decisions regarding the child during the visitation period to the ability of Mr. Guthrie to spend individual, private time with his son.²⁰³ This will greatly hinder Mr. Guthrie's ability to foster a loving and caring relationship with his son when most of the time he spends with his son is also spent with his ex-wife.²⁰⁴ These issues illustrate that the visitation schedule cannot be considered reasonable, and thus, it was against the manifest weight of the evidence to allow removal when this visitation schedule was to be used.

197. *In re Marriage of Sale*, 808 N.E.2d 1125, 1130 (Ill. App. Ct. 2004). *See In re Marriage of Johnson*, 815 N.E.2d 1283 (Ill. App. Ct. 2004) (denying request for removal to Arizona because the visitation schedule would not allow the noncustodial father to maintain a close and nurturing relationship).

198. *See In re Marriage of Collingbourne*, 791 N.E.2d 532, 550-51 (Ill. 2003).

199. *See In re Marriage of Guthrie*, 915 N.E.2d 43, 47 (Ill. App. Ct. 2009). Mr. Guthrie would also have to accompany the child for this trip because the child was only eleven months old at the time of the hearing. *Id.* at 44.

200. *Compare Guthrie*, 915 N.E.2d at 47 (forcing the father to have visitation in Arizona unless he personally flies the child to Illinois), *with Collingbourne*, 791 N.E.2d 532 (granting the father all his visitation in Illinois); *In re Marriage of Main*, 838 N.E.2d 988 (Ill. App. Ct. 2005) (granting removal but giving father all of his visitation in Illinois). In *Guthrie*, the father will have to spend nine out of his total fifteen weeks of visitation with his son in Arizona rather than in Illinois. *See Guthrie*, 915 N.E.2d at 47.

201. *See Guthrie*, 915 N.E.2d at 47.

202. *Id.*

203. *Id.* at 45.

204. *Id.*

Visitation schedules in Illinois, following a granted removal petition, are supposed to be not only reasonable, but they must also be realistic.²⁰⁵ A realistic visitation schedule is best understood as one that is feasible and likely to be followed.²⁰⁶ Although Mr. Guthrie was granted visitation rights, it is unlikely that he will be able to exercise them.²⁰⁷ Mr. Guthrie does not have the income to sustain the travel arrangements that the court would require of him to see his son.²⁰⁸ The court attempted to mitigate this problem by ordering Ms. Guthrie to pay a portion of Mr. Guthrie's travel expenses and to allow Mr. Guthrie to spend his visitation time at Ms. Guthrie's mother's home in Arizona, but both of these proposed solutions do little to improve Mr. Guthrie's situation.²⁰⁹ It is difficult to believe that Ms. Guthrie, with no employment and only the slight prospect of a minimum-wage position in Arizona, will be able to pay any portion of Mr. Guthrie's travel costs.²¹⁰ Further, although Ms. Guthrie once claimed that she could receive free airplane flight vouchers through her father, a claim upon which the trial court relied, the record indicates that it is unlikely she could actually acquire these vouchers for herself, let alone for her ex-husband.²¹¹

The circumstances surrounding this case are far from similar to other cases where the non-custodial parent would have difficulty paying for travel expenses. For example, in *In re Marriage of Ludwinski*, removal was granted when the custodial father petitioned to remove his children to Utah and offered to pay for all of the airline tickets associated with the necessary travel arrangements for the mother to exercise all of her visitation with the children.²¹² Similarly, in *In re Marriage of Zimmer*, a visitation schedule was found realistic, although it called for much air travel because the mother offered to cover all of the air travel expenses for the children by using free round-trip air travel provided to her by her former employer.²¹³ Unlike the nonexistent travel vouchers that Ms. Guthrie claimed to have access to, but later shown to have been entirely speculative, the free air travel was a concrete certainty from her former employer and thus actually alleviated financial concerns for the non-custodial father, whereas in *Guthrie*, the tra-

205. See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1046 (Ill. 1988).

206. *Id.* at 1045.

207. See *In re Marriage of Guthrie*, 915 N.E.2d 43, 49-50 (Ill. App. Ct. 2009) (Wexstten, J., dissenting).

208. See *Guthrie*, 915 N.E.2d at 44.

209. *Id.* at 47.

210. *Id.*

211. *Id.*

212. See *In re Marriage of Ludwinski*, 727 N.E.2d 419, 425 (Ill. App. Ct. 2000) (granting removal partly because the custodial father offered to pay for all air travel expenses).

213. See *In re Marriage of Zimmer*, No. 2-00-1163, 2001 WL 34072596, at *5 (Ill. App. Ct., Oct. 2, 2001).

vel expenses will have to be shared by both destitute parties at cost.²¹⁴ The expenses of air travel for Mr. Guthrie, combined with the monthly visits and highly segmented summer visitations, leads to a completely impractical visitation schedule for Mr. Guthrie.²¹⁵ Given that Mr. Guthrie will likely be able to afford only a few, if any, airline tickets in any given year given his current salary, the segmented summer visitation, as opposed to one long six-week visit, is another added obstacle, because instead of paying for travel arrangements for one visitation over the summer, he would have to make three times the arrangements in order to receive his entitled summer visitation.²¹⁶ Given that up until the removal proceeding Mr. Guthrie had diligently exercised his visitation rights with his son, the *Guthrie* court should have been harder pressed to accept such an unrealistic and unfair visitation schedule.²¹⁷

It is possible that, to a family such as the one involved in *Collingbourne* with significant income to afford the enormous number of flights and hotel stays for extended periods to avoid visitations being held at the custodial parent's household, a visitation schedule such as the one in *Guthrie* could potentially be considered fair.²¹⁸ But Mr. Guthrie does not only get short-changed on the expenses, but also on the time spent to make arrangements and actual travel time.²¹⁹ If this were a removal action in Illinois that did not involve air travel, but rather only driving, there is little support for the notion that the noncustodial parent is responsible for the bulk of the travel.²²⁰ However, under the court ordered arrangement at issue here, only Mr. Guthrie is required to travel, an entirely unfair holding considering that he is not the parent who chose to move away from Illinois.²²¹ Thus, although this proposed sharing of costs might be reasonable, Mr. Guthrie is still left to handle the majority of the burden.²²² Courts have found problems with visitation schedules that were far less obvious than those at issue in *Guthrie* as cause for denying removal petitions, including to places as close as Wisconsin, because of difficulty coordinating sche-

214. *Id.* See *Guthrie*, 915 N.E.2d at 44.

215. *Guthrie*, 915 N.E.2d at 47.

216. *Id.*

217. *Id.*

218. See *In re Marriage of Collingbourne*, 791 N.E.2d 532, 545 (Ill. 2003).

219. See *Guthrie*, 915 N.E.2d at 47.

220. See *In re Marriage of Matchen*, 866 N.E.2d 683, 693-94 (Ill. App. Ct. 2007) (finding the mother's proposed visitation schedule unreasonable even though she offered to drive the children to and from Wisconsin for visitations); *In re Marriage of Elliott*, 665 N.E.2d 883 (Ill. App. Ct. 1996) (finding the visitation schedule unreasonable and impractical despite the fact that the custodial mother offered to drive the children from Ohio to Illinois every other weekend).

221. See *Guthrie*, 915 N.E.2d at 47.

222. *Id.*

dules, and even to the same state at issue here, Arizona, due to the effects on the quality of visitation that would occur from the move.²²³ The court is supposed to resolve each case on an individualized basis, with the outcome hinging on the specific facts of each case,²²⁴ and given the facts of *Guthrie*, this visitation schedule is both unrealistic and unreasonable as Mr. Guthrie will rarely see his young child, and thus the removal petition should have been reversed.²²⁵

Given that Mr. Guthrie's involvement with his son will be greatly diminished by the move, the court should have looked into the harm that will result to the child.²²⁶ The *Eckert* court stated that, "when removal to a distant jurisdiction will substantially impair the noncustodial parent's involvement with the child, the trial court should examine the potential harm to the child which may result from the move."²²⁷ The court should have examined the negative effects on the child as a result of the diminished relationship with his father, especially given the sensitive age of the child,²²⁸ and included in this examination should have been an overview of testimony from court-appointed psychologists who interview the parties and discuss their conclusions regarding the potential harms the removal may inflict on the child.²²⁹ Because the court failed to analyze the harms to the child, and because the existence of psychologists and accompanying testimony regarding the child is absent from the *Guthrie* record, a generalized discussion of the harms relative to a child being raised without a father is included within the practical implications discussion.

B. PRACTICAL IMPACT OF THE *GUTHRIE* DECISION

This Illinois Fifth District case, although merely an appellate decision, is dangerous precedent in the eyes of divorced fathers. Following a divorce, it is understandable that one party may want to move away from their resi-

223. See *In re Marriage of Stahl*, 810 N.E.2d 259, 267 (Ill. App. Ct. 2004) (denying removal because noncustodial parent was a fireman who had an unusual work schedule); *In re Marriage of Johnson*, 815 N.E.2d 1283 (Ill. App. Ct. 2004); see also *In re Marriage of Hansel*, 852 N.E.2d 548, 552 (Ill. App. Ct. 2006) (finding that the visitation schedule was "fair" but still denying removal because the contacts between the noncustodial parent and child were diminished).

224. See *In re Marriage of Collingbourne*, 791 N.E.2d 532 (Ill. 2003) (citing *Eckert*, 518 N.E.2d at 1046).

225. See *Guthrie*, 915 N.E.2d at 47; *In re Marriage of Mouschovias*, 831 N.E.2d 1222 (Ill. App. Ct. 2005) (noting that when a court's findings for a removal petition are arbitrary or unreasonable, reversal is appropriate).

226. See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1046 (Ill. 1988); *Guthrie*, 915 N.E.2d at 44.

227. *Eckert*, 518 N.E.2d at 1046.

228. See *Guthrie*, 915 N.E.2d at 47.

229. See *In re Marriage of Smith*, 665 N.E.2d 1209, 1211-12 (Ill. 1996).

dence for legitimate reasons, but these requests should not eliminate the noncustodial parent from a child of the marriage's life.²³⁰ The Fifth District approved a visitation schedule that grants Mr. Guthrie a reasonable amount of potential visitation time, however, the actual visitation schedule is entirely unrealistic and impractical for Mr. Guthrie, and thus he will hardly be able to exercise any visitation at all with his son.²³¹ This could cause great harm to the child, and when harm may result to a child as a result of the impairment of the father-child relationship, a closer look at the proposed visitation schedule is necessary and great effort should be expended to allow a father to foster and maintain a significant, nurturing, and caring relationship with his children.²³² The Fifth District failed to take a close look at the visitation schedule and its practicality, and given that Mr. Guthrie's rights as a father have significantly decreased, so too will the rights of many other fathers who come before the Fifth District seeking to ensure a fair visitation schedule.²³³

Moving forward, courts must stray from the *Guthrie* decision and continue to decide cases using a fair and objective balancing of all of the *Eckert* factors, as well as any other factors pertinent to the specific facts of a case.²³⁴ It should be unacceptable for trial or appellate courts to ignore an important factor that weighs heavily against removal, and with little else balancing against it, without making some effort to correct the problem, either by reversal, or at the very least, remanding with orders to modify the unrealistic visitation schedule.²³⁵ The opportunity to be a true part of his son's life was taken away from Mr. Guthrie, and it is important for Illinois courts to recognize that, if fathers' visitation rights are not given true consideration, the wrong decision in a child removal action can follow quickly behind.²³⁶

230. *In re Marriage of Collingbourne*, 791 N.E.2d 532, 554 (Ill. 2003).

231. *See Guthrie*, 915 N.E.2d at 48 (Wexstten, J., dissenting).

232. *See Eckert*, 518 N.E.2d at 1046.

233. *See Guthrie*, 915 N.E.2d at 48 (Wexstten, J., dissenting).

234. *See Eckert*, 518 N.E.2d at 1046; *Collingbourne*, 791 N.E.2d at 543-44.

235. *See Eckert*, 518 N.E.2d at 1046. The purpose of the Illinois Marriage and Dissolution of Marriage Act is to "secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children during and after the litigation." ILL. REV. STAT. Ch. 40, Para. 102(7) (1986) (current version at 750 ILL. COMP. STAT. 5/609(a) (2002)).

236. *See Guthrie*, 915 N.E.2d at 48 (Wexstten, J., dissenting).

C. THE POTENTIAL HARMS OF BEING RAISED FATHERLESS

In the United States, there are nearly seventeen million single-parent families having custody of a child.²³⁷ More than thirteen million of these families are single-mother families.²³⁸ In 1995, nearly two out of every five children in America did not live with their biological fathers, and the more recent 2000 census information indicates that this trend has likely not changed drastically.²³⁹ There are several documented correlations between single-parent families²⁴⁰ and the harms to children being raised without much contact from a father.

Fatherless children are more likely to have emotional or mental problems than children that have both parents involved in their lives.²⁴¹ The numbers are often drastic, as one study indicates that children in lone-parent households are two-and-a-half times more likely to be unhappy and are more than three times as likely to report lower self-esteem, and sixty-three percent of all youth-suicides are attempted by fatherless children.²⁴² Some courts have taken the initiative and ensured that harms to the child from being separate from the father are investigated, as in *Smith*, where the court denied a mother's petition for removal because of professional testimony that the move would be detrimental to the daughter's already unstable emotional health.²⁴³ According to the Center for Disease Control, 85% of all children that have behavioral disorders come from fatherless households.²⁴⁴ This means that children from fatherless households are at a much greater risk of attempting to commit suicide.²⁴⁵ Fatherless children are also at risk academically. Information from the National Principals Association report

237. See *Analysis of Data from U.S. Census Bureau, 2000 Census Summary File 1 (Table P29 and P36)*, POPULATION REFERENCE BUREAU, <http://www.kidscount.org/census/> (Follow "Profiles" hyperlink; then follow "United States" hyperlink under "What kinds of reports can I generate?").

238. *Id.*

239. Joseph P. Shapiro et al., *Honor Thy Children*, U.S. NEWS & WORLD REP., Feb. 27, 1995, at 38, 39.

240. Single-parent families are predominately headed by females at a ratio of approximately 3.8:1 in the United States. See *Analysis of Data from U.S. Census Bureau, supra* note 237.

241. Rebecca O'Neill, *Experiments in Living: The Fatherless Family*, INST. STUDY OF CIVIL SOCIETY, London, England, Sept. 2002, at 5, available at <http://www.civitas.org.uk/pdf/Experiments.pdf>.

242. *Id.* at 7 (citing MONICA COCKET & JOHN TRIPP, THE EXETER FAMILY STUDY: FAMILY BREAKDOWN AND ITS IMPACT ON CHILDREN 19 (1994)); *USA Suicide Deaths 1979-1996*, COMMON SENSE & DOMESTIC VIOLENCE, Jan. 15, 1998, at 2, available at http://fathersforlife.org/fv/DV_news_letter_980130.htm.

243. *In re Marriage of Smith*, 665 N.E.2d 1209, 1212-14 (Ill. 1996).

244. *USA Suicide Deaths, supra* note 242, at 2.

245. *Id.*

reveals that “71% of all high school dropouts come from fatherless homes.”²⁴⁶ Unfortunately this is not the only academic related problem with single parent and fatherless homes. In her report on fatherless children, a psychologist reports that “after controlling for other demographic factors, children from lone-parent households were 3.3 times more likely to report problems with their academic work, and 50% more likely to report difficulties with teachers.”²⁴⁷ In respect to violence, one study showed that eighty percent of rapists who were motivated by displaced anger came from fatherless homes.²⁴⁸ Further, one of the best predictors for future criminal activity has been found to be absence of a father in adolescence.²⁴⁹

Although statistics cannot predict the future of every child, courts should still consider these trends before approving an order that eliminates most, if not all, of a father’s visitation rights.²⁵⁰ It is not enough to merely consider the harm done to the father by losing his rights, but rather, courts in Illinois should always also consider the potential harms to the child resulting from the impaired father-child relationship.²⁵¹

V. CONCLUSION

When determining whether a removal petition should be granted or denied, Illinois courts are to look to the best interests of the child or children.²⁵² There are often times when the best interests of the child would be served by allowing the custodial parent to remove the child from Illinois, however, there are just as many scenarios where a similar move would not be in the best interests of the child.²⁵³ In order to determine whether removal is proper, courts should weigh the concerns about maintaining and preserving the child’s relationship with the non-custodial parent against the enhancement of the quality of life for both the custodial parent and the

246. *The Impact on Our Children*, COMMON SENSE & DOMESTIC VIOLENCE, Jan. 30, 1998, at 3, available at http://fathersforlife.org/fv/DV_news_letter_980130.htm.

247. O’Neill, *supra* note 241 at 7 (citing MONICA COCKET & JOHN TRIPP, *THE EXETER FAMILY STUDY: FAMILY BREAKDOWN AND ITS IMPACT ON CHILDREN 24-25* (1994)).

248. See Raymond A. Knight & Robert A. Prentky, *The Developmental Antecedents and Adult Adaptations of Rapist Subtypes*, 14 *CRIMINAL JUSTICE AND BEHAVIOR* 403, 403-26 (1987).

249. See Shapiro, *supra* note 239, at 38-39.

250. See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1046 (Ill. 1988); *In re Marriage of Collingbourne*, 791 N.E.2d 532, 540-41 (Ill. 2003); *In re Marriage of Smith*, 665 N.E.2d 1209, 1211-12 (Ill. 1996).

251. See *Smith*, 665 N.E.2d at 1211-12; *Collingbourne*, 791 N.E.2d at 541.

252. See *Eckert*, 518 N.E.2d at 1046.

253. See *In re Marriage of Matchen*, 866 N.E.2d 683, 694 (Ill. App. Ct. 2007) (finding removal to Wisconsin was not in best interest of the child); *In re Marriage of Repond*, 812 N.E.2d 80, 87-89 (Ill. App. Ct. 2004) (finding removal to Switzerland was in the best interests of the child).

child.²⁵⁴ This closely follows the Supreme Court of Illinois' vision that "[w]hen removal to a distant jurisdiction will substantially impair the non-custodial parent's involvement with the child, the trial court should examine the potential harm to the child which may result from the move."²⁵⁵ In *Guthrie*, the first *Eckert* factor may have been neutral on its own, but given that the child will lose almost all contact with his father, and given the lack of any real enhancement to the child's quality of life from the move, the child may actually suffer significant harm from the move to Arizona.²⁵⁶ Had the *Guthrie* court conducted the best interest standard properly and balanced the factors correctly, *Guthrie* would likely have been decided differently.²⁵⁷

The major flaw with the *Guthrie* decision is the court's neglect of the fairness and reasonability of the visitation schedule, especially when compared to the minimal benefits the child would gain by the move.²⁵⁸ A visitation schedule does not have to be perfect. In fact, if removal were only allowed when there was a potentially perfect visitation schedule, then removal would never be granted and custodial parents would never be able to move out of Illinois' jurisdiction.²⁵⁹ But visitation schedules in Illinois need only be reasonable and realistic to be satisfactory in the eyes of the law.²⁶⁰ However, for Mr. Guthrie, the visitation schedule given to him by the court is a death sentence for his relationship with his son.²⁶¹ Between the quality of life enhancements for Mr. Guthrie's custodial ex-wife and his son and the impairments to his own relationship and involvement with his son due to an unreasonable and unrealistic visitation schedule, the scale is so imbalanced that it is clear that a manifest injustice has been done.²⁶² The Fifth District's interpretation of the *Eckert* factors in this case must be ignored by future courts if the rights of Illinois fathers are to be preserved at all.²⁶³ This imbalanced approach to creating visitation schedules violates clearly determined values in protecting fathers' visitation rights and, if followed by oth-

254. See *In re Marriage of Parr*, 802 N.E.2d 393, 399 (Ill. App. Ct. 2003).

255. *Eckert*, 518 N.E.2d at 1046.

256. See *In re Marriage of Guthrie*, 915 N.E.2d 43, 48-49 (Ill. App. Ct. 2009) (Wexstten, J., dissenting).

257. See *Id.* at 44, 47.

258. See *id.*

259. See *In re Marriage of Collingbourne*, 791 N.E.2d 532, 540-41 (Ill. 2003).

260. *Id.*

261. See *Guthrie*, 915 N.E.2d at 46-47.

262. *Id.*

263. See *In re Marriage of Eckert*, 518 N.E.2d 1041, 1046 (Ill. 1988); *Collingbourne*, 791 N.E.2d at 540-41.

ers, will likely result in the severe decline of visitation rights for divorced fathers in Illinois in the coming years.²⁶⁴

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264. See *Eckert*, 518 N.E.2d at 1046; *Collingbourne*, 791 N.E.2d at 540-41; see also *Guthrie*, 915 N.E.2d at 47-48.

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