

JEANIQUE VASQUEZ LACOUR

NO. 17-CA-118

VERSUS

FIFTH CIRCUIT

JEREMY LACOUR

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 755-252, DIVISION "B"  
HONORABLE CORNELIUS E. REGAN, JUDGE PRESIDING

October 25, 2017

**FREDERICKA HOMBERG WICKER**  
**JUDGE**

Panel composed of Judges Susan M. Chehardy,  
Fredericka Homberg Wicker, and Stephen J. Windhorst

**AFFIRMED**

**FHW**

**SMC**

**SJW**

COUNSEL FOR PLAINTIFF/APPELLEE,  
JEANIQUE VASQUEZ LACOUR

Gary S. Brown

COUNSEL FOR DEFENDANT/APPELLANT,  
JEREMY LACOUR

Barbara V. Madere

Jeffrey Hufft

**WICKER, J.**

Father-appellant seeks review of the trial court's denial of his rule to relocate his minor child from Louisiana to California. Because we find that the trial judge did not abuse his discretion in determining that it is in the minor child's best interest to remain in Louisiana and in denying the rule to relocate, we affirm.

**PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

Jeanique Vasquez Lacour and Jeremy Lacour, both active duty members of the United States Marine Corps, married in April 2011 in San Diego, California. Prior to marriage, in March 2010, the couple had one child, J.L. In April 2012, Jeremy received orders from the military that he would be transferred from California to Belle Chasse, Louisiana. Jeanique and J.L. followed and moved to Belle Chasse, Louisiana in October 2012.

The parties separated and were subsequently divorced pursuant to a Texas divorce decree on October 30, 2013.<sup>1</sup> During the period of time surrounding the divorce, Jeanique was deployed to Afghanistan and was not present in Texas for the divorce proceedings. The Texas decree granted Jeremy "the exclusive right to designate the primary residence of the child" and further ordered Jeanique to pay Jeremy \$364.00 per month in child support.<sup>2</sup>

On November 9, 2015, Jeanique filed a "Petition to Register Out-of-State Child Custody Order pursuant to La. R.S. 13:1827 et seq. to Modify Custody

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<sup>1</sup> Jeremy testified that he filed for divorce in Texas because Texas is his domicile pursuant to the relevant military guidelines. He testified that, to his knowledge, Jeanique's domicile or origin state under the military guidelines is New York. The record reflects that, for a brief period of time prior to their divorce, Jeremy and Jeanique, with J.L., lived with Jeremy's mother in Dallas, Texas.

<sup>2</sup> Although Jeanique signed the last page of the Texas "Final Decree of Divorce," she claims that she was not provided the entirety of the divorce decree until after the divorce was final and she had arrived in Afghanistan. Jeanique testified that she was under the impression that the proposed decree simply allowed the parties to divorce and allowed Jeremy to have primary custody of J.L. while she was deployed in Afghanistan. At trial, however, Jeanique admitted that she had read the entirety of the Texas decree at the time of a February 24, 2016 hearing officer conference in Louisiana, during which she stipulated to recognizing the Texas judgment as a valid Louisiana judgment without restriction.

Order, to Register Out-of-State Child Support Order Pursuant to La. Ch.C. 1306 et. seq. and to Modify Support Order” in the 24<sup>th</sup> Judicial District Court for the Parish of Jefferson. On February 24, 2016, the parties appeared before the domestic hearing officer and stipulated that (1) the Final Decree of Divorce issued in Texas would be registered and recognized as a Louisiana judgment; (2) the parties would share joint custody of J.L.; and (3) Jeremy would be designated as the domiciliary parent.

On May 16, 2016, Jeremy filed a “Rule to Relocate,” asserting that he received military transfer orders requiring him to relocate to California and that it would be in J.L.’s best interest to relocate to California. In his rule to relocate, Jeremy pointed to the Texas judgment, granting him the exclusive right to choose J.L.’s primary residence, and to the February 24, 2016 judgment registering the Texas judgment as a Louisiana judgment and designating him as the domiciliary parent. On June 21, 2016, the parties appeared before the hearing officer on Jeremy’s rule to relocate. On that date, the hearing officer deferred a recommendation on the rule to relocate. The parties stipulated to undergo a relocation evaluation and further that, pending the relocation evaluation, J.L. would visit with Jeremy in California from July 2, 2016, through August 16, 2016.

On August 11, 2016, Jeremy filed a “Motion for Order Granting Temporary Relocation of the Principal Residence of the Minor Child and Request for Expedited Hearing,” contending that due to circumstances beyond the parties control, the relocation evaluation had not yet occurred. Jeremy alleged in his motion that he enrolled the child into school in California, had family support in California, and that relocation pending evaluation would be in the child’s best interest. The motion was set for a hearing before the hearing officer on August 17, 2016. On that date, Jeremy filed a motion to continue the hearing officer conference, which was denied, alleging that his military supervisors denied his

request for leave to attend the hearing officer conference and he was thus, unable to attend. The record reflects that Jeremy's counsel was physically present and that Jeremy participated by telephone.

Following the August 17, 2016 hearing officer conference, the hearing officer recommended that Jeremy's motion for temporary relocation be denied; that Jeanique have primary physical custody of J.L., who should be registered to attend school in the Greater New Orleans area; that the rule to relocate be deferred until October 3, 2016; and that Jeremy immediately return the minor child to Louisiana and incur the related travel expenses.<sup>3</sup> The recommendations became the interim judgment of the court on August 18, 2016. The trial court appointed Martha Bujanda as a mental health expert pursuant to La. R.S. 9:331 to complete the relocation evaluation prior to the scheduled October 3, 2016 hearing officer conference.

On August 26, 2016, Jeanique filed a motion for contempt against Jeremy, alleging that he failed to return J.L. to Louisiana as stipulated between the parties following the June 21, 2016 hearing officer conference and further as ordered in

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<sup>3</sup> The hearing officer provided thorough written reasons for her recommendations. The hearing officer determined that the Texas court lacked subject matter jurisdiction to determine custody matters under the UCCJEA and, therefore, the February 24, 2016 Louisiana consent judgment was the initial custody determination between the parties. The hearing officer found:

Louisiana's Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") is found at La. R.S. 13:1801, et seq. "Home state" is defined by La. R.S. 13:1802(7)(a) as "the state in which a child **lived with a parent** or a person acting as a parent **for at least six consecutive months immediately before the commencement of a child custody [] proceeding ....**" La. R.S. 13:1806 provides that a child custody determination made by a court of this state **that had jurisdiction under this Act** binds all persons who have been served in accordance with the laws of this state ... **and who have been given an opportunity to be heard.** As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified." [emphasis added].

La. R.S. 13: 1813(A)(l) states, "Except as otherwise provided in R.S. 13:1816, **a court of this state has jurisdiction to make an initial child custody determination only if** (1) This state is the home state of the child on the date of the commencement of the proceeding ... ." [emphasis added] Texas' UCCJEA is believed to be essentially the same as Louisiana's UCCJEA. Louisiana was clearly [J.L.'s] home state at the time the Final Decree of Divorce was rendered in Texas. **The hearing Officer finds that while the State of Texas had jurisdiction to render a Judgment of Divorce between the parties, it lacked subject matter jurisdiction to render a custody decree. Subject matter jurisdiction cannot be conferred by consent of the parties.** For that reason, the Hearing Officer finds that the stipulation on legal custody and the temporary stipulation on physical custody which the parties entered into on February 24, 2016 is the only valid initial determination of custody.

The trial judge drafted a separate judgment reflecting the hearing officer's recommendations, which was signed on September 7, 2016. Neither party seeks review of this ruling on appeal.

the August 18, 2016 interim judgment. In her motion, Jeanique further alleged that Jeremy, without her knowledge, withdrew J.L.'s registration from her Louisiana school, Belle Chasse Academy, and enrolled her into a school in California.

The parties appeared before the hearing officer on October 3, 2016. On that date, the hearing officer recommended that Jeremy be found in contempt of court for failing to return the minor child to Louisiana; withdrawing the child from her Louisiana school; enrolling the child in school in California; and for failing to reimburse Jeanique for one-half of the cost of the airline ticket she purchased to return the child to Louisiana. The hearing officer further recommended that Jeremy be ordered to return the minor child to Louisiana no later than October 14, 2016, and that, should Jeremy fail to return the child by that date, a civil warrant should issue to allow law enforcement officers to retrieve the child from California.<sup>4</sup> The parties subsequently appeared before the district court judge, who found, “[b]ut for the fact that you were not given a copy of the signed interim judgment ordering you to immediately return your daughter I would put you in jail, but...I don’t think I can legally do that today.” The trial judge warned that if Jeremy failed to return the minor child to Louisiana by October 14, 2016, he would find Jeremy in contempt and place him in jail.

The record reflects that Jeremy returned J.L. to Louisiana on October 14, 2016. On November 15, 2016, the matter proceeded to trial on Jeremy’s rule to relocate.

Jeanique testified at trial that she and J.L. live in a three bedroom home with a backyard on the military base in Belle Chasse, Louisiana, which she described as a community environment. Jeanique does not have any family in Louisiana but considers her military friends who live on base to be her family. She explained

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<sup>4</sup> The trial court issued a judgment on November 9, 2016, setting forth the hearing officer’s recommendations and finding Jeremy in contempt. Jeremy does not seek review of this judgment on appeal.

that the military moms help each other in any way they can and that one of her good friends is a military wife and stay-at-home mother who helps frequently with J.L. and is listed as an emergency contact with J.L.'s school. J.L. attends elementary school on the military base at Belle Chasse Academy. Jeanique testified that J.L. has a lot of friends in Louisiana, is enrolled in soccer, and attends church regularly.

Jeanique testified that, although she does not fall within a "non-deployable" classification according to the military guidelines, her supervisor has informed her that she will not be deployed again because her current job position is not needed overseas. Jeanique further testified that she intends to leave the military in 2019, upon completion of her current term, and remain in the New Orleans area. She is registered in online courses to complete her degree in counseling by 2019. She testified that, if she remained in the military and reenlisted in 2019, she would have the option to relocate to California.

Jeanique testified that she has nine brothers and three sisters who primarily reside in New York and Florida. Jeanique was raised by her grandmother and did not have a relationship with her mother as a child, due to her mother's substance abuse issues. She stated that she has recently started to communicate with her mother and that her goal is "to give my daughter everything I didn't have growing up." Jeanique testified that she has been dating someone for several months and hopes to be engaged within the year.<sup>5</sup>

Jeanique testified to her opinion that Jeremy attempted to make her a "weekend mom." She explained that Jeremy consistently withheld information about J.L., including not informing her that he withdrew J.L.'s registration from Belle Chasse Academy in May 2016, where she attended Kindergarten the year

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<sup>5</sup> She did not inform the court-appointed evaluator, Ms. Bujanda, that she hopes to be engaged within the year and Ms. Bujanda did not meet or interview him.

before. She stated she did not learn of Jeremy's actions until mid-August 2016, when she dropped off J.L.'s school supplies and was informed by the school office that J.L. was no longer a registered student.

Jeremy testified at trial that he and Jeanique met while in the military and dated approximately three to four months before she became pregnant. For a period of time after J.L.'s birth, Jeanique worked a civilian job at Capital One and became a weekend reserve. Shortly thereafter, Jeanique received orders that she would be deployed to Afghanistan. Jeremy testified that he took care of J.L. during Jeanique's nearly one-year deployment.

Jeremy testified that, in his new position as a recruiter for the Coast Guard, he is classified in the military as non-deployable. Jeremy disagrees with Jeanique's opinion that she is non-deployable, explaining that there are three classifications of Marines that are non-deployable and that Jeanique does not fit into any of those categories.

Concerning Jeremy's decision to withdraw J.L. from her Louisiana school and enroll her into a school in California, Jeremy testified that he was advised by his previous counsel that because he had the right, under the Texas judgment, to determine J.L.'s primary residence and, further, because he was designated as domiciliary parent in the February 24, 2016 stipulations in Louisiana, the court proceedings for relocation were simply "procedural." According to Jeremy, his counsel advised him to begin the process to relocate his daughter to California and to obtain "all ... documents" to support relocation, such as having suitable housing and enrolling her into an acceptable California school.

Jeremy testified that J.L. adjusted very well during her time in California. J.L. attended summer camp in California and, from mid-August to October 2016, excelled academically. Jeremy testified that he works Monday through Friday from 8:30 a.m. to 4:30 p.m. regularly and had no childcare issues while J.L. lived



with him in California. Additionally, he testified that his mother visited him in California during that time to visit and help with J.L. Jeremy testified that he has cousins and three aunts who live in California, one who lives approximately twenty-five minutes from his home.

Concerning his decision not to return J.L. to Louisiana until October 14, 2016, Jeremy testified that he was unable to attend the August 17, 2016 hearing officer conference because his supervisor did not approve his leave request and he was advised by his attorney at that time that the trial court would grant a 90-day continuance of the hearing officer conference under the Service Members Civil Relief Act. Concerning why he did not return J.L. to Louisiana when he traveled to Louisiana for the October 3, 2016 hearing officer conference, Jeremy testified that J.L. was participating in state testing and he thought it was in J.L.'s best interest to not be absent during the state-wide mandated testing. The record reflects that Jeremy did not return J.L. to Louisiana until the trial judge instructed him that he would be placed in jail if he failed to return J.L. by October 14, 2016.

At trial, Jeremy expressed concern about J.L.'s care in Louisiana. He testified that he has never met Jeanique's boyfriend and does not have a way to contact him in case of emergency.<sup>6</sup> He further expressed concern that he, being in California, doesn't know who is watching J.L. when Jeanique goes out with her boyfriend or friends. He testified that J.L. informed him that a man slept over at Jeanique's house on two occasions, to which Jeanique responded that a male sergeant-friend, who has a daughter J.L.'s age, came over to let their daughters play, and decided to let the girls have a sleepover. According to Jeanique, the male friend slept on the couch.

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<sup>6</sup> Jeremy further testified and expressed concern that he is not on the list of persons authorized to pick J.L. up from school at Belle Chasse Academy.

The record reflects that the parties had a volatile relationship. Jeremy testified that he and Jeanique argued constantly when they were together and Jeanique confirmed that the two had a volatile relationship and that Jeremy “brought out [the] worst” in her. Jeremy recalled one incident when he was lying on the couch holding J.L. as a baby and the two began arguing. He testified that Jeanique smacked him across the face, knocking off and breaking his glasses. He testified that J.L. was scared and began to cry. Jeanique admitted to slapping Jeremy while he was holding J.L. during an argument after she learned Jeremy had cheated on her with another woman. Jeanique denied having any anger management issues, except in her relationship with Jeremy.<sup>7</sup>

Ms. Martha Bujanda, an expert in custody and relocation evaluations, testified as the court-appointed mental health expert at trial.<sup>8</sup> Ms. Bujanda testified that both parents are committed and attached to J.L. and have a major emotional bond to the child and that J.L. is also attached to both parents. Ms. Bujanda testified extensively concerning the factors set forth in La. C.C. art. 134<sup>9</sup> as well as those set forth in La. R.S. 9:355.14.<sup>10</sup> Ms. Bujanda prepared a written report,

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<sup>7</sup> Jeremy further claimed that Jeanique has threatened to commit suicide. He recalled an incident during which he contacted the police after Jeanique locked herself in the apartment bathroom and texted him a picture of a bottle of medicine threatening to take the whole bottle and kill herself. At trial, Jeanique denied that she ever intended to kill herself and that she simply had a migraine and flushed the entire contents of an Excedrin bottle down the toilet because the medicine was expired. Ms. Bujanda opined that the arriving officers assessed Jeanique’s mental state upon arrival and did not feel that she was a threat to herself or others.

<sup>8</sup> Ms. Bujanda interviewed each parent for approximately 4.5 hours. She then interviewed J.L. with Jeremy for approximately fifteen minutes and J.L. with Jeanique for approximately twenty minutes.

<sup>9</sup> La. C.C. art. 134 provides:

The court shall consider all relevant factors in determining the best interest of the child. Such factors may include:

- (1) The love, affection, and other emotional ties between each party and the child.
- (2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.
- (3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.
- (4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.
- (5) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (6) The moral fitness of each party, insofar as it affects the welfare of the child.
- (7) The mental and physical health of each party.
- (8) The home, school, and community history of the child.
- (9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.
- (10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party.
- (11) The distance between the respective residences of the parties.
- (12) The responsibility for the care and rearing of the child previously exercised by each party.

<sup>10</sup> La. R.S. 9:355.14 provides:

introduced into evidence at trial, which ultimately recommended that J.L. remain in Louisiana with Jeanique designated as the domiciliary parent.

Ms. Bujanda testified at trial that both parties are good parents who are loving and devoted to J.L. and can equally provide for her material needs. She placed significant emphasis on the stability and continuity of the community where the child has resided for more than three years. Although she recognized that stability and continuity in a military family is different than a civilian family, she found that J.L. has resided in Louisiana since 2013 and has lived in the same community and attended the same school since that time. Ms. Bujanda also spoke with J.L.'s first-grade teacher at Belle Chasse Academy by telephone, who advised that J.L. appears happy and well-adjusted and is doing well academically.

Ms. Bujanda emphasized that both Jeremy and Jeanique are capable and loving parents. She testified that, if Jeanique were the parent relocating, she would most certainly have recommended that J.L. remain with Jeremy in Louisiana. She did however find that there is "no substitute" for a mother-daughter bond and placed emphasis on the mother-daughter relationship. She stated that while Jeremy claims that he is supportive of J.L.'s bond with Jeanique, his actions in this regard

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In reaching its decision regarding a proposed relocation, the court shall consider all relevant factors in determining whether relocation is in the best interest of the child, including the following:

- (1) The nature, quality, extent of involvement, and duration of the relationship of the child with the person proposing relocation and with the non-relocating person, 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.
- (3) The feasibility of preserving a good relationship between the non-relocating person and the child through suitable physical custody or visitation arrangements, considering the logistics and financial circumstances of the parties.
- (4) The child's views about the proposed relocation, taking into consideration the age and maturity of the child.
- (5) Whether there is an established pattern of conduct by either the person seeking or the person opposing the relocation, either to promote or thwart the relationship of the child and the other party.
- (6) How the relocation of the child will affect the general quality of life for the child, including but not limited to financial or emotional benefit and educational opportunity.
- (7) The reasons of each person for seeking or opposing the relocation.
- (8) The current employment and economic circumstances of each person and how the proposed relocation may affect the circumstances of the child.
- (9) The extent to which the objecting person has fulfilled his financial obligations to the person seeking relocation, including child support, spousal support, and community property, and alimentary obligations.
- (10) The feasibility of a relocation by the objecting person.
- (11) Any history of substance abuse, harassment, or violence by either the person seeking or the person opposing relocation, including a consideration of the severity of the conduct and the failure or success of any attempts at rehabilitation.
- (12) Any other factors affecting the best interest of the child.

B. The court may not consider whether the person seeking relocation of the child may relocate without the child if relocation is denied or whether the person opposing relocation may also relocate if relocation is allowed.

are “incongruent.” She reported that Jeremy has an “entitled ownership attitude” toward J.L. For example, she testified that documents from Belle Chasse Academy reflect that Jeremy withdrew J.L.’s registration from Belle Chasse Academy and enrolled J.L. into a California school prior to the court’s determination on the issue of relocation and without Jeanique’s knowledge or consent. She further discussed Jeremy’s decision to disregard the court order to return J.L. to Louisiana and testified to her opinion that Jeremy “does not view Jeanique as a viable parent figure, and if left to his own would not make the child accessible to the mother.”

Ms. Bujanda reported that J.L. stated a preference to move to California and remain with her father. However, Ms. Bujanda found that, at six years of age, J.L. cannot make that decision. She further explained that, during one of the visits with Jeremy and J.L., Jeremy began to cry and was visibly upset when discussing whether J.L. would relocate to California. She explained that J.L. certainly “feels the conflict of the situation.”

Ms. Bujanda acknowledged that Jeanique has a “quick temper” and her written report recommended that Jeanique attend counseling for co-parenting without anger. Ms. Bujanda admonished Jeanique for slapping Jeremy while holding J.L., but explained that the incident occurred only once, while the parties were married, and did not occur recently. Ms. Bujanda did not contact anyone in Jeanique’s family, but did contact her military supervisor to inquire about any possible anger issues in the workplace. Jeanique’s supervisor indicated that she has been a stable Marine with no outbursts or temper issues in the workplace. Ms. Bujanda further recommended that Jeanique seek counseling for family of origin issues, so as to not repeat the cycle of substance abuse and neglect as her mother.

Although her written report does not recommend any counseling for Jeremy, Ms. Bujanda revised her report during her testimony at trial to also recommend

that Jeremy seek counseling for co-parenting without anger. She described Jeremy as “domineering” and testified that both parties would benefit from counseling.

Ultimately, Ms. Bujanda recommended that J.L. remain in Louisiana to preserve a sense of stability and continuity for J.L. She recommended that the parents have joint custody of J.L., with Jeanique designated as domiciliary parent. She recommended that Jeremy visit J.L. at least once a month either in Louisiana or in Dallas, Texas, where the paternal grandmother resides. Also, she recommended that the parties alternate holidays with J.L. and that J.L. spend the summer with Jeremy, returning two weeks before the school-year begins.

At the conclusion of trial, the trial judge encouraged the parties to reach a compromise concerning relocation and took the matter under advisement. On December 13, 2016, the trial judge issued a written judgment denying Jeremy’s rule to relocate and finding that relocation to California was not in J.L.’s best interest.

On appeal, Jeremy seeks review of the trial court’s denial of his rule to relocate. First, Jeremy contends that the trial court erred in failing to consider the twelve relocation factors under La. R.S. 9:355.14 and requests that this Court conduct a *de novo* review. Second, Jeremy contends that the trial court erred in finding that relocation to California is not in J.L.’s best interest.

## **DISCUSSION AND ANALYSIS**

We first address Jeremy’s assignment of error relating to the applicable standard of review in this case. In brief to this Court, Jeremy contends that the trial judge erred in failing to consider all of the relocation factors under La. R.S. 9:355.14 and in failing to expressly provide oral or written reasons for his determination that relocation is not in J.L.’s best interest.

The Louisiana Supreme Court has directly addressed this issue in *Gathen v. Gathen*, 10-2312 (La. 5/10/11), 66 So.3d 1. The Court in *Gathen* granted a writ

“to determine the appropriate standard of review of a trial court’s decision in a child relocation case, where the trial court does not expressly analyze each factor under La. R.S. 9:355.12 [now La. R.S. 9:355.14] in determining whether relocation is in the best interest of the child.” *Gathen*, 66 So.3d at 2. Upon consideration, the *Gathen* Court held that while the relocation statute mandates that the trial judge consider all twelve relocation factors, a trial judge need not expressly analyze each and every factor in its oral or written reasons for judgment. *Id.* at 9. Rather, the Court ultimately concluded that if it can be “gleaned from the record as a whole that the trial judge followed the law in reaching his ultimate determination,” a *de novo* review is not proper. *Id.* at 13. The Court recognized that while oral or written reasons analyzing each factor certainly “makes appellate review for abuse of discretion somewhat difficult,” it is simply not required. *Id.* at 10. The Court reasoned that the legislature does not impose upon a trial court the requirement to provide written or oral reasons under La. R.S. 9:355.12 and that, should the parties desire to have written and express reasons for judgment, they have the right to request written reasons pursuant to La. C.C.P. art. 1917. *Id.* at 9.

In this case, neither party filed a request for written reasons in the trial court. A thorough review of the record before us is replete with discussion and reference to each and every relocation factor provided in La. R.S. 9:355.14.<sup>11</sup> Accordingly, we review the trial court’s judgment in this case under the abuse of discretion standard of review. The Louisiana Supreme Court has more recently instructed:

Ultimately, the question on appellate review is whether the trial court, having properly considered all of the factors in La. Rev. Stat. 9:355.12<sup>12</sup>, abused its discretion in determining that the relocation would not be in the child's best interest. *Curole*, p. 13, 828 So.2d at 1100; *see also Gathen*, p. 13, 66 So.3d at 9, 2011 La. LEXIS 1121 at \*26 (“the trial court's relocation determination is entitled to great weight and will not be overturned absent a clear showing of abuse of

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<sup>11</sup> In fact, although the mental health expert’s report only discussed 8 of the 12 factors under La. R.S. 9:355.14, the parties stipulated at trial that “there are actually 12 factors that should be considered in La. R.S. 9:355.14” and the remaining factors were discussed at trial.

<sup>12</sup> Effective August 1, 2012, Acts 2012, No. 267, § 1 redesignated the factors provided in La. R.S. 9:355.12 to La. R.S. 9:355.14.

discretion”).

*Gray v. Gray*, 11-548 (La. 07/01/11), 65 So.3d 1247, 1255.

Therefore, absent a clear showing of an abuse of the trial court’s discretion, this Court may not reverse.

We now turn to Jeremy’s second assignment of error—that the trial court abused its discretion in denying his rule to relocate J.L.’s principal residence and in finding that relocation was not in her best interest.

A parent seeking to relocate a child has the burden of proof to establish that (1) the proposed relocation is made in good faith; and (2) is in the best interest of the child. *See* La. R.S. 9:355.10. The Louisiana Supreme Court has explained that “by placing this two-part burden on the relocating parent and placing no burden on the nonrelocating parent, the legislature chose to assign a very heavy burden to the relocating parent to prove that relocation is in the best interest of the child.”

*Gathen*, 66 So.3d at 7-8, *quoting Curole v. Curole*, 02-1891 (La. 10/15/02), 828 So.2d 1094, 1097. In considering whether relocation is in a minor child’s best interest, La. R.S. 9:355.14 provides:

A. In reaching its decision regarding a proposed relocation, the court shall consider all relevant factors in determining whether relocation is in the best interest of the child, including the following:

(1) The nature, quality, extent of involvement, and duration of the relationship of the child with the person proposing relocation and with the non-relocating person, 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.

(3) The feasibility of preserving a good relationship between the non-relocating person and the child through suitable physical custody or visitation arrangements, considering the logistics and financial circumstances of the parties.

(4) The child’s views about the proposed relocation, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct by either the person seeking or the person opposing the relocation, either to promote or thwart the relationship of the child and the other party.

- (6) How the relocation of the child will affect the general quality of life for the child, including but not limited to financial or emotional benefit and educational opportunity.
- (7) The reasons of each person for seeking or opposing the relocation.
- (8) The current employment and economic circumstances of each person and how the proposed relocation may affect the circumstances of the child.
- (9) The extent to which the objecting person has fulfilled his financial obligations to the person seeking relocation, including child support, spousal support, and community property, and alimentary obligations.
- (10) The feasibility of a relocation by the objecting person.
- (11) Any history of substance abuse, harassment, or violence by either the person seeking or the person opposing relocation, including a consideration of the severity of the conduct and the failure or success of any attempts at rehabilitation.
- (12) Any other factors affecting the best interest of the child.

B. The court may not consider whether the person seeking relocation of the child may relocate without the child if relocation is denied or whether the person opposing relocation may also relocate if relocation is allowed.

Although the statute requires that the trial judge consider all twelve factors in its determination, it does not direct the court to give preferential consideration to certain factors. *Curole, supra* at 1097. Rather, the trial court is “free to give whatever weight it deems appropriate” to each of the listed factors. *Gathen*, 66 So.3d at 10. As in all child custody disputes, the best interest of the child is paramount. *Tracie F. v. Francisco D.*, 15-224 (La. App. 5 Cir. 09/21/15), 174 So.3d 781, 794, *affirmed on other grounds*, 15-1812 (La. 3/15/16), 188 So.3d 231.

Upon a thorough review of the record before us, we find that the trial judge did not abuse his discretion in denying Jeremy’s rule to relocate J.L. from Louisiana to California. We address below the evidence and testimony presented as to each relevant factor under La. R.S. 9:355.14 as well as the consideration of the best interest of the child.

### **RELOCATION FACTORS**

- (1) *The nature, quality, extent of involvement, and duration of the relationship of the child with the person proposing relocation and with the non-relocating person, siblings, and other significant persons in the child’s life*



Ms. Bujanda's report reflects that both parents are attached to J.L. and that J.L. has a strong bond with both parents.

Ms. Bujanda's report referenced that Jeanique was deployed in Afghanistan for approximately one year, but that she has returned and that she and Jeremy have had equal time with the child since Jeanique's return. Ms. Bujanda's report also referenced a brief thirty-seven day period of time during which Jeremy was absent for military training and Jeanique cared for J.L. The record further reflects that J.L. has had a consistent relationship with Jeremy's mother, J.L.'s paternal grandmother, who resides in Texas.

*(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*

Ms. Bujanda found that relocation to California would not offer significant changes or improvement from J.L.'s current living arrangements in Louisiana. The record reflects that J.L. has been living in Louisiana for three years, has attended school on the military base and lived in the same community during that time. Ms. Bujanda stated that if both parents were forced to relocate at some point in the future, J.L. would be forced to adjust and relocate. However, at this time, J.L. should be "able to benefit from a stable routine and continuity of care" in Louisiana.

*(3) The feasibility of preserving a good relationship between the non-relocating person and the child through suitable physical custody or visitation arrangements, considering the logistics and financial circumstances of the parties*

As Ms. Bujanda testified, this factor is difficult whether relocation is granted or denied because California and Louisiana are geographically far apart. Although not a substitute for personal interaction, technology in communications does allow either parent to communicate with J.L. via Skype or FaceTime.

*(4) The child's views about the proposed relocation, taking into consideration the age and maturity of the child*

Although J.L. voiced her preference to relocate to California with her father, Ms. Bujanda found that this opinion is not entitled to any weight given J.L.'s age as well as the apparent distress she feels being "tugged" by her parents.

*(5) Whether there is an established pattern of conduct by either the person seeking or the person opposing the relocation, either to promote or thwart the relationship of the child and the other party*

Ms. Bujanda opined that Jeremy has established a pattern of conduct to thwart the relationship between Jeanique and J.L. Ms. Bujanda stated that she placed a very strong emphasis on this factor, given Jeremy's "entitled ownership attitude" over J.L. Ms. Bujanda reported that "perhaps the most concern to this evaluator is Jeremy's disregard for Jeanique's parental role. This will certainly influence the child's mentality." The record supports Ms. Bujanda's findings that Jeremy considers himself to be J.L.'s primary parent, as evidenced by his refusal to return J.L. to Louisiana, even after ordered to do so by a Louisiana court.<sup>13</sup>

Contrarily, Ms. Bujanda found that Jeanique is committed to maintain the father/daughter relationship between Jeremy and J.L.

*(6) How the relocation of the child will affect the general quality of life for the child, including but not limited to financial or emotional benefit and educational opportunity*

Ms. Bujanda opined that both parents are able to provide financially for J.L.'s material needs. Ms. Bujanda found the quality of life in California and Louisiana to be "comparable." However, J.L. is already adjusted and comfortable

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<sup>13</sup> She also viewed text messages from the parties, reflecting that Jeremy did not allow J.L. to visit with Jeanique on Mother's Day. While Jeanique was hesitant on Father's Day, she ultimately allowed Jeremy to visit with J.L. on that day.

in the military base community in Belle Chasse, Louisiana, including her school and church.

*(7) The reasons of each person for seeking or opposing the relocation*

The record reflects that Jeremy is relocating to California as the result of an involuntary military assignment.

*(8) The current employment and economic circumstances of each person and how the proposed relocation may affect the circumstances of the child*

Jeremy and Jeanique are both active duty Marines. Ms. Bujanda found that although Jeremy earns more money than Jeanique, California has a much higher cost of living and, thus, found the parties to be comparable in their abilities to financially provide for J.L.

*(9) The extent to which the objecting person has fulfilled his financial obligations to the person seeking relocation, including child support, spousal support, and community property, and alimentary obligations*

Ms. Bujanda testified that there are no financial obligation or support issues between the parties. Each party financially contributes to J.L.'s support.

*(10) The feasibility of a relocation by the objecting person*

The record reflects that Jeanique has two more years of service in the military, where she is stationed in Louisiana. Thus, at this time, she may not relocate to California.

*(11) Any history of substance abuse, harassment, or violence by either the person seeking or the person opposing relocation, including a consideration of the severity of the conduct and the failure or success of any attempts at rehabilitation*

Ms. Bujanda reported that Jeanique abused alcohol when she was younger, prior to J.L.'s birth, but that she only drinks alcoholic beverages "once in a blue moon" since the parties' separation and does not become intoxicated. Jeremy also has no substance abuse issues. Although the record reflects that Jeanique admitted to hitting Jeremy on one occasion during an argument, Ms. Bujanda found that

because the parties are separated, there is no concern for that type of event to reoccur. There are also no reports of violence by either parent toward the child.

(12) *Any other factors affecting the best interest of the child*

Ms. Bujanda found that no other factors exist that would affect J.L.'s best interest. At trial, Ms. Bujanda thoroughly discussed the best interest factors under La. C.C. art. 134 and ultimately concluded that both parents are loving and dedicated to J.L. and both have an essential role in J.L.'s life.

Upon a thorough review of the record before us, we find that the evidence presented at trial reflects that both parents are capable, loving parents. At this time and based upon the record before us, we find that the trial judge did not abuse his discretion in denying Jeremy's rule to relocate and in determining that relocation from Louisiana to California is not in J.L.'s best interest. Accordingly, we affirm the December 13, 2016 trial court judgment denying Jeremy's rule to relocate J.L.

**AFFIRMED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
ROBERT M. MURPHY  
STEPHEN J. WINDHORST  
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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **OCTOBER 25, 2017** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU  
CLERK OF COURT

**17-CA-118**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
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**MAILED**

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