



# Science and Technology for Judges Trends in 2003: Virtual Visitation — Is This A New Option for Divorcing Parents?

Knowledge and Information Services  
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## Introduction: What Is Virtual Visitation?

“Virtual visitation” involves using tools such as videoconferencing, Web cams, and other technologies to supplement face-to-face visits and court-ordered phone contacts between a noncustodial parent and a child. Many divorced parents already use virtual visitation—not under court order but because it helps them maintain ties with distant children. From miles away, parents can assist their children with their homework, e-mail photographs, and play games. Virtual parenting is seen not as a panacea, but as a way to permit a relationship to continue for the noncustodial parent.

## Effect on Courts

For better or for worse, the long-distance powers of Internet technology are expected to play an expanding role with custody cases in the state courts. The questions are: Should the prospect of virtual visitation make it easier for a custodial parent to move? How does virtual visitation affect custody decisions in courts?

As the world gets smaller and moving cross-country becomes routine, courts are increasingly considering virtual visitation for noncustodial parents in divorce cases. The New York Court of Appeals noted, “Like Humpty Dumpty, a family, once broken by divorce, cannot be put back together in precisely the same way.”<sup>1</sup>

Among divorce lawyers, move-aways are the often bitter disputes that occur when parents with the custody of children try to relocate far from ex-spouses with visiting rights. No federal laws govern move-aways; they are resolved on a case-by-case basis by court precedents and state legislation. Courts follow the long-held family law standard, “the best interests of the child.”<sup>2</sup> They often differ in the way they approach that standard when deciding cases where the custodial parent is petitioning the court to move out-of-state. Some courts require the custodial parent to prove the move is in the child’s best interests, while others shift the burden to the noncustodial parent. In recent years, some courts have made it easier for custodial parents to relocate. In California, for example, a parent previously had to show urgent circumstances; now, it is a demonstration that the move is in the child’s best interest.

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In *McCoy v. McCoy* the New Jersey Court of Appeals reviewed the virtual visitation issue when it reversed a lower court’s denial of a custodial parent’s request for permission to locate to California with her daughter. In her visitation proposal, the mother proposed to build a Web site,

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<sup>1</sup> *Tropea v. Tropea*, 665 N.E.2d 145, 151 (N.Y., 1996).

<sup>2</sup> See: [http://www.ncsconline.org/WC/FAQs/KIS\\_CustodFAQ.pdf](http://www.ncsconline.org/WC/FAQs/KIS_CustodFAQ.pdf) for a definition of “best interests of the child.”

which would include the use of camera-computer technology, to give her former husband and his family and friends the ability to communicate face-to-face with the child daily. The New Jersey appeals court ruled that online visiting, along with face-to-face contact, would be a “creative and innovative” way for the father to stay in touch with his nine-year-old daughter, if the man’s former wife moved to California over his objection. This court found that the lower-court judge treated the suggested use of the Internet dismissively and failed to adequately consider alternative plans that could accommodate and preserve the relationship between the child and the extended family.<sup>3</sup> The New Jersey Court of Appeals noted that every time a custodial parent moves to a distant location, the ability of the noncustodial parent to exercise visitation rights is adversely affected. However, that fact alone may not be contrary to the best interests of the child, so long as an alternative visitation schedule can be created that continues and preserves the relationship between the child and the noncustodial parent.<sup>4</sup>

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In *Kaleita*, a Florida Circuit Court judge took custody of a ten-year-old girl from her mother, the primary residential parent, and gave it to her father. The court constructed a very unique visitation schedule in which it ordered both parties to install a new, separate telephone line into the child’s bedroom in each respective home, for her exclusive and unrestricted use until her 18th birthday. This court also ordered each party to purchase a separate state-of-the-art computer system installed together with appropriate computer furniture, and featuring video-conferencing equipment and software, including a video camera with audio capabilities, for the child’s use (to contact her other parent) via the Internet and e-mail systems.<sup>5</sup>

According to Tom Harrison, publisher of *Lawyers’ Weekly USA*, “Lawyers are telling us this is the cutting edge of divorce law. We believe that virtual visitation will become accepted and possibly even commonplace over the next few years.” In a case before the Tennessee Court of Appeals, the couple was moving only 70 miles apart and the father was already getting physical visitation on alternate weekends and two months during the summer. “What’s really new here is the court accepted Internet visitation even though this was a ‘routine’ divorce where the couple already shared physical visitation,” said Harrison. “The parents are using the Internet not to replace physical closeness, but to supplement it.”<sup>6</sup>

## Trends

In the United States, recent studies estimate that the rate of divorce is as high as 50 percent of all marriages. An estimated 18 million children have separated or divorced parents, and an additional 17 million children’s parents never married according to the Children’s Rights Council. At least 25 percent of all of these children have a parent living in a different city. Courts are increasingly implementing virtual visitation when deciding these child-related cases in a manner that recognizes the critical need for a child to have both parents in his or her life.

Judges will not be able to ignore the new technology as they weigh conflicting pleas from divorced parents. Advocates of virtual visitation say communicating over the Internet is especially helpful in cases that involve supervised visits. It is also being used as a remedy for noncustodial parents to remain in contact with their children. Because virtual visitation is a relatively new trend, we will likely be seeing many other ways it can be used. For example, the monitoring of the care of the elderly in nursing homes and pets in their off-premises care facilities are new possibilities for using virtual visitation.

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<sup>3</sup> *McCoy v. McCoy*, 764 A.2d 449 (NJ Super.Ct. App. Div.2001).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Lawyers Weekly USA*, September 17, 2001.

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This document has been published as an article in  
**The 2003 Edition of the Report on Trends in the State Courts**