I. INTRODUCTION

One of the most famous child custody cases involved the biblical King Solomon granting custody to the mother who would rather forfeit her right to the child than risk any harm to the child. This apparent concern for the best interest of the child has consistently been passed down through the ages and perseveres in the present day. When parents battle in court for custody of their child, the court will consider the best interest of the child when deciding which parent to award custody. While this may seem like a common sense approach, this standard is often difficult to apply as there are many factors a court must consider. Moreover, this difficulty is compounded when one parent wishes to relocate as relocation cases are often the ultimate test for child custody laws. Such was the case when Susan and Gary LaMusga struggled for custody of their children when Susan LaMusga attempted to gain sole custody so that she could move to another state.

In In re Marriage of LaMusga, the California Supreme Court properly stated that when deciding a case, “all the circumstances bearing on the best interest of the minor child” must be examined. Many factors, if not all, were definitely considered by the trial court. Whether each factor was given proper weight, however, is debatable. This note focuses on the shortcomings of the Court’s determination that all factors were considered by the trial court when it decided to award primary physical custody of the children to Gary LaMusga in the event that Susan LaMusga moved to another state. Part II of this note will provide the factual setting the Court relies on in arriving at its conclusion. Part III elaborates on the issues and the holdings of the Court, which is followed by the Court’s analysis in reaching its conclusion in Part IV. Part V discusses and analyzes the dissent’s issues and opinion. Finally, Part VI examines the problems with the majority’s reasoning and provides a more appropriate alternative application of the “best interest” principle.

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1. 1 Kings 3:16-28 (King James).
5. In re Marriage of LaMusga, 88 P.3d 81, 86 (Cal. 2004).
6. Id. at 90 (citing In re Marriage of Burgess, 913 P.2d 473, 478 (Cal. 1996)).
7. Id. at 89.
8. J.D. candidate 2006, Whittier Law School; Member, Whittier Law Review; B.S., Bentley College, Waltham, Massachusetts, 1994. I thank my mother, Bernadita T. Seman, for all her endless love and support. I dedicate all my love to my daughter, Ha’ani Skylar—may I make this a better world for her in my words and actions. Lastly, kudos to my editor, Janine Highiet, for her incredible effort in making this article worthy of Whittier Law Review.