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BISHOP, J., concurring. Although I agree with my colleagues that the judgment of the trial court should be affirmed, I write separately because I would follow a different decisional pathway to affirm that judgment. Let me first state the areas in which I agree with the majority. As the majority opinion notes, the plaintiff's present attack on the temporary custody order entered by the court on September 4, 2001, must fail because it is untimely. As we have been instructed by *Madigan v. Madigan*, 224 Conn. 749, 757, 620 A.2d 1276 (1993), and *In re Shamika F.*, 256 Conn. 383, 385, 773 A.2d 347 (2001), temporary custody orders are final judgments for the purposes of appeal and, if a timely appeal is not filed, the order is not subject to a later collateral attack.

I depart, however, from my colleagues' conclusion that once the court modified the marital dissolution decree, granting the parties joint legal custody of the child and granting the defendant primary physical custody of the child, the decisional route set forth in *Ireland v. Ireland*, 246 Conn. 413, 428, 717 A.2d 676 (1998) (en banc), was no longer applicable. To be sure, there is logic to the majority's view. Because the temporary order modifying custody was an appealable final judgment, it is consistent with the finality of that order to consider the modified custodial status of the parents at the time of the final hearing for purposes of an *Ireland* analysis. In other words, there appears to have been no reason for the court to have accorded the plaintiff the status of custodial parent during the final hearing on the parties' competing motions because, eight months earlier, the court had modified the original dissolution judgment and awarded, inter alia, the parties joint legal custody of the minor child with primary physical custody awarded to the defendant. My difficulty with that analysis is that, in essence, it nullifies the holding and rationale of *Ireland* and would, if correct, have the effect of compelling litigants to appeal from all temporary custody orders that change a child's physical location simply to preserve one's preorder custodial status. I do not think *Ireland* envisions such a result, nor do I think it is a necessary consequence of the cases that hold that temporary custody orders are final for appeal purposes.¹ See *In re Shamika F.*, supra, 256 Conn. 385; *Madigan v. Madigan*, supra, 224 Conn. 757.

I would approach that difficult situation differently. As in this instance, when a party files a postjudgment motion to modify the custody provisions of a marital dissolution decree to permit or to prevent the geographic relocation of a minor child, the court is confronted with both a short-term and a long-term responsibility. While often referring the matter for a family services study and appointing an attorney or

guardian ad litem for the child in anticipation of a final determination of the operative motions, the court must also issue orders concerning the child's immediate legal and physical custody because of the parents' dynamics. In this instance, for example, the court was confronted with the fact that the custodial parent had already moved to North Carolina. Thus, the court was faced with the choice of either conducting an immediate full-scale hearing on the parties' competing custody claims without the benefit of a family services study or the meaningful participation of a child's advocate or guardian ad litem, or making an interim arrangement pending a final hearing for the child either by permitting the custodial parent to relocate with the child or awarding the parent staying behind temporary physical custody of the child. If the court had chosen the first alternative, there is no question that the burden shifting procedure adopted in *Ireland* would have applied. See *Ireland v. Ireland*, supra, 246 Conn. 428. In the latter situation, however, the majority opines that the burden shifting scheme has been made inapplicable by the change in custody made by the interim order. I believe the majority's logic would apply with equal force if the court had permitted the plaintiff to relocate with the child to North Carolina on an interim basis pending a final hearing, so that if the custodial parent had been awarded the right to relocate with the child to North Carolina in September, 2001, by the time of the final hearing in May, 2002, she would no longer have had to prove the reasonableness of that relocation because it had taken place months earlier after which she had been given permission to relocate with the child. That result eviscerates the rationale of *Ireland* because, as we know, in nearly all relocation cases, the court makes interim orders pending the assignment of the operative motions for a final hearing.

Contrary to the outcome determined by the majority, I believe we can honor the relevant holdings of *Madigan* and *In re Shamika F.* and accord *Ireland* its due by holding that at the time of the final hearing on a post-judgment relocation motion, the court should look to the custodial status of each party when the motions were filed and not at the time of the final hearing. See *Madigan v. Madigan*, supra, 224 Conn. 757; see also *In re Shamika F.*, supra, 256 Conn. 385. Thus, the initial burden on the parent seeking to relocate would remain intact. Furthermore, in reaching the question of whether the noncustodial parent has met his or her burden of demonstrating that a well intentioned relocation is not in the child's best interest, the court would have the benefit of the child's experiences up to the day of the final hearing. That is the decisional path followed by the court in this instance. I believe it is the course that is most in harmony with *Ireland* and the one least likely to bring to the court an onslaught of unnecessary litigation and appeals from interim postjudgment custody

modification orders.

For the foregoing reasons, I respectfully concur in the result.

¹ Perhaps I would find the majority's reasoning more compelling had the record shown that the court conducted an *Ireland* analysis before issuing its interim order. To the contrary, however, the record indicates that the court explicitly declined to conduct that analysis. I recognize that prior to issuing interim, stabilizing orders, the court infrequently has the time that is required to conduct an *Ireland* hearing properly.
