

Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 08/03/11

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

~L~ (Relocation application)

STEPHENS J

Introduction

[1] This case concerns a 3 year old girl, ~L~. Her mother ~M~, a Romanian national, brings this application to relocate with ~L~ to Romania. She seeks a specific issue order under Article 13 of the Children (Northern Ireland) Order 1995. The application is opposed by ~L's~ father, ~F~.

[2] Ms McKeagney appears on behalf of ~M~, Ms McGregor appears on behalf of ~F~ and Ms Pauley appears on behalf of the Official Solicitor. I acknowledge with gratitude the assistance that I received from counsel who ensured that the relevant issues were presented in a helpful and thoroughly professional manner.

[3] Nothing should be published which would identify ~L~ or any member of her extended family.

Legal principles

[4] In determining this application I seek to apply the course which is in the best interests of ~L~ whose welfare is the court's paramount consideration. I have particular regard to the matters set out in Article 3(3) of the Children (Northern Ireland) Order 1995. The application of the welfare test requires the court to consider the individual circumstances of the case including recognising and supporting the function of the primary carer see *Poel v Poel* [1970] 1 WLR 1469 as further considered in *Payne v Payne* [2001] EWCA Civ 166, [2001] 1 FLR 1052. In the latter case Thorpe LJ stated at paragraph 26:

“[26] In summary a review of the decisions of this court over the course of the last thirty years demonstrates that relocation cases have been consistently decided upon the application of the following two propositions:

(a) the welfare of the child is the paramount consideration; and

(b) refusing the primary carer's reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children."

And at paragraph [32]:

"Thus in most relocation cases the most crucial assessment and finding for the judge is likely to be the effect of the refusal of the application on the mother's future psychological and emotional stability."

Thorpe LJ then set out the following discipline at paragraphs [40] – [41]:

"[40] However there is a danger that if the regard which the court pays to the reasonable proposals of the primary carer were elevated into a legal presumption then there would be an obvious risk of the breach of the respondent's rights not only under Article 8 but also his rights under Article 6 to a fair trial. To guard against the risk of too perfunctory an investigation resulting from too ready an assumption that the mother's proposals are necessarily compatible with the child's welfare I would suggest the following discipline as a prelude to conclusion:

(a) Pose the question: is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life. Then ask is the mother's application realistic, by which I mean founded on practical proposals both well researched and investigated? If the application fails either of these tests refusal will inevitably follow.

(b) If however the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some

ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?

(c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

(d) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist insofar as appropriate.

[41] In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well-being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this factor. "

[5] In the same case Dame Elizabeth Butler-Sloss said the following:-

"Summary

[85] In summary I would suggest that the following considerations should be in the forefront of the mind of a judge trying one of these difficult cases. They are not and could not be exclusive of the other important matters which arise in the individual case to be decided. All the relevant factors need to be considered, including the points I make below, so far as they are relevant, and weighed in the balance. The points I make are obvious but in view of the arguments presented to us in this case, it may be worthwhile to repeat them.

(a) The welfare of the child is always paramount.

(b) There is no presumption created by s 13(1) in favour of the applicant parent.

(c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.

(d) Consequently the proposals have to be scrutinised with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.

(e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.

(f) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.

(g) The opportunity for continuing contact between the child and the parent left behind may be very significant."

[6] As I have stated those are the principles that I seek to apply. However I also note recent debate as to the decision in *Payne v Payne* for which see the declaration that emerged from an International Judicial Conference held in Washington in March 2010 under the aegis of (inter alia) the Hague Conference, the decision of Mostyn J in *AR (a child: relocation)* [2010] EWHC 1346, and a conference in July 2010 in London, the principal organiser of which was Professor Marilyn Freeman of the Centre for Family Law and Practice in London together with the speech of Wall LJ entitled "Is the family justice system in need of review?" published 24 September 2010.

[7] I make it clear that the decision that I arrive at in this case would be the same whether I applied the legal principles suggested by Mostyn J in *AR (a child: relocation)* [2010] EWHC 1346 or the principles which I derive from *Payne v Payne*.

[8] The Article 8 rights of all the family members are engaged. Any interference has to be a necessary and proportionate response to the interference with the right to respect for family life

~L~

[9] At an earlier stage a social worker described ~L~ as a bright, alert and happy baby (25/82). She stated that ~L~ was a generally healthy child who was developing emotionally and physically appropriately for her age. She

was meeting her developmental milestones. This positive assessment continues to be appropriate. ~M~ describes ~L~ as a very sharp, very happy child who plays and talks well and who gets on with other children. I accept that assessment and it is a considerable tribute to the love and affection lavished on ~L~ by ~M~ together with her practical care for and the stimulation that she provides to, ~L~.

[10] ~M~ acknowledges that ~F~ has a strong bond with ~L~ and that ~L~ has a strong bond with him. That ~L~ would miss her father very much and that a close relationship between ~L~ and her father was important for ~L~. I find that contact between ~F~ and ~L~ is of good quality, that ~F~ is devoted to his daughter and that ~L~ responds positively and will respond positively in the future to the love and affection that ~F~ lavishes on her.

The plan to move to Romania and ~F's~ response

[11] ~M~ wishes to return to a town in Romania to live in one of her mother and step-father's apartments. She has ambitions to renovate a house in the countryside close to that town. She has researched an English speaking pre-school for ~L~ (17/44) together with medical services (15/42). She would be living close to a city in Romania and looks forward to integrating back into her family and friends in Romania. She has secured employment (2/9/11) in which she can earn €500-€530 per month. During the course of these proceedings she stated that she would facilitate direct and indirect contact between ~F~ and ~L~ in Romania and would also permit direct contact in Northern Ireland.

[12] ~F~ has adduced a considerable volume of evidence suggesting that the standard of living, the education system and health care in Romania is at a lower standard than in Northern Ireland. Even if this was established I do not consider it to be of such a disparity to be a factor or alternatively a significant factor in this case.

[13] ~F~ accepts that if ~M~ remains in Northern Ireland she and ~L~ have to have good regular trips to Romania and that he is prepared to make a very substantial financial contribution towards the costs of those trips. I have confidence that ~F~ will devote his time and energies to providing that financial assistance and will honour his obligations. That in fact he will be able to provide that financial support. I accept that he understands the importance for ~L's~ primary carer to have regular trips to Romania so that she is not cut off from her family and her culture. That he also sees the positive indirect impact that this will have on ~L's~ welfare. I also accept that he understands the importance for ~L~ to have fulfilling contact with her extended maternal family in their own home environments together with an appreciation of her own cultural heritage. There has been a trip to Romania

for ~M~ and ~L~ over Christmas 2010 and the precautions that were put in place in relation to that trip can provide a template for the future.

Factual background

[14] ~F~, who is in his early 40's, was born in Northern Ireland. He has lived in Northern Ireland all his life. He is employed earning £1,120 net per month. In addition he undertakes part-time work earning from this employment £48 per week net. He has always lived in town ~G~ and since his separation from ~M~ he has lived in his mother's house in the same area.

[15] ~F's~ mother and other members of ~F's~ extended family live in the area of town ~G~. ~L~ has a good relationship with her paternal grandmother who is unfortunately at present grievously ill. ~F~ has two brothers and two sisters. His eldest brother has a steady partnership and three children. The children's ages are sufficiently close to ~L's~ age for her to form a close association. The second brother is married. His elder sister is married with two children who are older than ~L~. His younger sister has five children and again some of their ages are sufficiently close to ~L's~ for her to form a close association. There are good family ties available to ~L~ in Northern Ireland.

[16] ~M~, who is in her thirties, was born in Romania. Her mother and stepfather live in the town in Romania. ~M~ speaks five languages and while she has been in Northern Ireland and until the birth of ~L~ she worked in the broad area of healthcare. Since ~L's~ birth she has been in receipt of benefits. She was previously married in England on 8 March 2003. None of her family from Romania attended that wedding. ~M~ and her first husband separated and subsequently divorced in 2005.

[17] ~M~ was educated in Romania. She finished school at the age of 18 in 1996. She then had part-time work as a secretary for 1½ years. She secured a better part time job with a transport company which lasted until 2000. In 2000 she went to England. Her employers in England had an office in Romania. She returned to work in that office in Romania in 2001. There then followed a period during which she did not work between 2001 and October 2003 by which later date she was in Northern Ireland. She then obtained her first full-time job in the broad area of healthcare earning £1,200-£1,300 gross per month.

[18] ~M's~ mother, who is in her 50's, works full time in a local hospital in Romania as a chef in the food department. Her income is 1,329 Lei gross per month (6/16). I was told that this is the equivalent of £400 net per month though at a later stage it was indicated that the equivalent sterling was £233 per month. ~M~ between October 2003 and November 2007 sent approximately £200 - £250 per month to her mother. There is a dispute as to

whether this was for the support of her mother or whether it was to acquire property in Romania. In any event her mother is not financially well off. Her mother does not speak English.

[19] ~M~ has had no contact with her biological father since she was a baby.

[20] ~M~ has no siblings.

[21] ~M's~ stepfather, 58, is retired on a pension of £320.00 net per month. Her stepfather is not financially well off. He does not speak English.

[22] ~M's~ mother and stepfather own two apartments in the town in Romania one of which would be available for use by ~M~ and ~L~ if they were to relocate to Romania. In addition ~M's~ mother and stepfather own a house nearby in the country which is in a poor state of repair. No one has lived in this house for 10 years. ~M~ states that it would cost some €5,000-6,000 to renovate the house.

[23] ~M's~ grandmother, who is in her 70's, also resides close to the town in Romania as do cousins and their children. Her first cousin has two children one of whom is the same age as ~L~ and the other being two years older. They live close to the apartment in the town in Romania in which ~M~ proposes to live. There is another close family member in the same area with two girls aged 12-14. There is a relation who lives in a western European country. In addition to these relatives ~M~ has close friends in the same area in Romania one of whom has twins aged approximately 9 or 10.

[24] There are family ties available to ~L~ in Romania though there is a dispute as to the relationships within the maternal family. It is suggested by ~F~ that the maternal family cohesion is not as close as suggested by ~M~. He points to the lack of visits by some of ~M's~ family to Northern Ireland. He questions the relationship between ~M~ and her step father (22/64/14). I consider that the lack of visits can be explained on financial grounds. I also consider that the differences within the maternal family are not as significant as has been suggested, though I accept that the cohesion in the relationships within the extended paternal family are at a higher level than those between ~M~ and the extended maternal family.

[25] ~M~ moved to Northern Ireland in October 2003 (2/8/5). Upon her arrival she stayed initially with a Romanian with whom she had a short partnership and thereafter she stayed in a house belonging to ~McC~ (22/59/6) for a number of years. I accept that ~M~ was fully integrated into the circle of family and friends of ~McC~ attending weddings, christenings and parties. That she was also a close friend of ~McC's~ daughter, ~J~. ~J~

was ~M's~ maid of honour at her wedding to ~F~ and she is also godmother to ~L~.

[26] ~F~ and ~M~ met in 2004 (22/59/6). They married in 2007. ~L~ was born in 2007. ~M's~ mother had come to Northern Ireland to provide support at the time of ~L's~ birth. She arrived in Northern Ireland and stayed for some 3 months leaving after ~F~ and ~M~ had separated. The relationship between ~F~ and ~M~ is acknowledged by both of them as having been turbulent with cross accusations of violence. ~F~ states that ~M~ would act irrationally flying into a rage of abuse and that this was the cause of the break up of their relationship. That she had anger management difficulties. They separated in January 2008, when ~F~ moved out of the matrimonial home. He has since lived in his mother's home.

[27] At the instigation of ~F~ they have attempted to resolve their difficulties by mediation. ~M~ did not attend the first session and only attended the start of the second session. The mediation failed as she suggested that the mediators were against her and walked out.

[28] ~M~ has lived in Northern Ireland since October 2003 and between then and January 2008 she has had limited direct contact with her family in Romania. Throughout the same period she was happy in Northern Ireland, formed positive relationships with others and secured well paid and steady employment.

[29] Since the separation of her parents ~L~ has remained in the care of her mother who is and will remain her primary carer.

[30] ~M~ has not applied for a job in Northern Ireland as these proceedings were outstanding but she acknowledged in evidence that but for these proceedings she would be back to part time work.

The history of contact between ~L~ and ~F~

[31] On 10 March 2008 a residence order was made settling that ~L~ should reside with ~M~. The Family Proceedings Court also made a contact order providing that ~F~ should have unsupervised direct contact with ~L~ (1/2/2, 20/47 and 22/56). Following that contact order ~F~ attended at the agreed times at the former matrimonial home but there were ongoing disputes between him and ~M~. In view of those disputes there was then a period of eight weeks during the course of which contact broke down and their solicitors were engaged to resolve the issues between them.

[32] In June 2008 ~F~ reluctantly agreed to ~M's~ suggestion of supervised direct contact in a public place that is in a leisure centre in town ~G~ or in a leisure centre in another town. The explanation proffered by ~M~ for the

requirement that contact be in a public place was that there would be play facilities available in those leisure centres for ~L~. I do not accept that as an appropriate explanation given ~L's~ age at the time. I consider that ~L~ needed to be able to form a relationship with her father in an environment in which he was comfortable. ~F~ should also have had the ability to allow ~L~ to know her own extended paternal family in Northern Ireland. This would have been an advantage to ~L~, not only in starting to develop ties with her extended paternal family in Northern Ireland with a sense of belonging and trust but also would have boosted her father's sense of worth and his joy and pride in his role as ~L's~ father. Unfortunately ~M~ objected to ~L~ having any contact with ~F's~ family including his sisters and his mother. I find that was the real reason for the requirement that contact should be in a public place. I also consider that that was a major reason for the requirement by ~M~ that it be supervised so that she could ensure that ~L~ did not have contact with the extended paternal family. I find that there were other reasons for the imposition of a supervision requirement. Those were ~M's~ difficulties in parting with ~L~, disruption to ~F~ so as to affect his ability to form a bond with ~L~ together with a lack of real appreciation of the importance to ~L~ of having a strong bond with her father. I find that the contact that did take place in the leisure centres was not of the good quality that could have been available to ~L~. The contacts were in an inappropriate setting. ~M~ has no insight into the inappropriate conditions on contact which she imposed.

[33] On 5 July 2008 ~F~ applied for a Contact Order. That application came before the Family Proceedings Court on 8 September 2008 (22/57). On that date it was agreed that pending a report from the Court Welfare Officer/Mediator that ~F~ should have unsupervised contact at Town ~G~ leisure centre and at a nearby shopping centre. In the event ~M~ did not permit the contact to be unsupervised but insisted on remaining during contact.

[34] On 29 September 2008 the Court Welfare Officer provided a report to the Family Proceedings Court. In that report she stated:-

“~M~ doesn't want ~F~ to have contact with ~L~ unless she is present as she doesn't feel that he can change or feed the child.

~M~ doesn't want ~F~ to bring ~L~ to her paternal grandparent's house (where ~F~ lives) as she feels that ~L's~ paternal grandmother may present a risk to the child as she failed to send a christening card or attend the child's christening. When ~M~ was advised that this does not mean that the paternal grandmother would hurt ~L~ ~M~ disagreed and felt

that this was a good enough reason to be concerned that the child would be at risk.

~M~ stated that she would permit contact at ~L's~ paternal grandmother's house if she could sit outside in the driveway during the contact."

The reason given by ~M~ for suggesting that the paternal grandmother was a risk is factually incorrect. The paternal grandmother was never a risk to ~L~ nor on any considered analysis could she ever have been perceived to have been a risk. ~M~ knew ~L's~ paternal grandmother extremely well and as she did the rest of the extended paternal family. Unfortunately it is a trait of ~M~ personality to have a high index of suspicion of others, extending to a high index of suspicion of close friends and relatives whom she has known for years. That her high index of suspicion is without substantive reason. ~M~ has no insight into her overly suspicious views of others.

[35] Leanne Spratt in her report also advised that the mediation between ~F~ and ~M~ was unsuccessful due to a high level of tension between ~L's~ parents despite the fact that ~L~ was present. She made a recommendation to the court that ~F~ has increased interim contact which would be unsupervised.

[36] On 30 September 2008 an order was made for increased contact between ~L~ and ~F~ and the contact was to be unsupervised. ~M~ being dissatisfied with that decision appealed but the order was affirmed in the Family Care Centre on 24 October 2008.

[37] Despite the recommendation of the court welfare officer and two court orders that contact should be unsupervised ~M~ felt the need to be in very close physical proximity whilst contact was taking place. Accordingly between 24 October 2008 and 15 December 2008 whilst contact between ~L~ and ~F~ was taking place at the paternal grandmother's house ~M~ stayed outside the house in her car. This was either parked in the driveway of the paternal grandmother's house or the next door neighbour's house.

[38] In her report dated 3 February 2009 a social worker, recorded ~M's~ explanation for this in the following terms:-

"On initially meeting with ~M~ on 11 November 2008 and discussing current and potential future contact arrangements she advised that she felt she needed to stay parked outside ~F's~ mother's home during contact. She wanted to ensure that ~F's~ sister did not visit the home during contact. ~M~ expressed her concern that ~L's~ paternal grandmother also

presented as a risk to ~L~. On exploring the statement with ~M~ she advised that she felt the maternal grandmother has 'turned on her' by not allowing her to park in her driveway and she was concerned that this would mean that she could 'turn' on ~L~. Despite the social worker raising her concern about ~M~ parking on a dark and busy road causing ~F~ to walk with ~L~ in his arms and potentially be at risk from traffic ~M~ did not feel her actions were of concern and felt she needed to continue with this element of supervision and to ensure if ~L~ needed her she would be present."

The paternal grandmother's house is on a narrow but busy country road without footpaths and with no street lighting. Unfortunately ~M~ became embroiled in a dispute with the next door neighbour for parking in her driveway and there was the potential for the police being called by the neighbour. I find there was never any risk from the paternal grandmother or from ~F's~ sister. ~M~ again exhibited a high and disproportionate index of suspicion of others. The effect of ~M~ sitting outside in her car during contact was to create an atmosphere of intrusion and distrust.

[39] On 15 December 2008 there was a further order of the Family Proceedings Court which specified that contact between ~F~ and ~L~ was no longer to be restricted to the paternal grandmother's house and that ~M~ was not to park outside during contact (25/85).

[40] On 3 February 2009 the social worker prepared a report. That report dealt not only with contact but also with issues such as the proposed move to Romania. The social worker interviewed ~F~ and recorded that he felt that ~M~ was suffering from a mental health problem. That having reflected on his relationship with ~M~ he felt that he was living with 'insanity', for which he had been trying to access support. He accepted ~M's~ ability to meet ~L's~ physical needs and advised that ~M~ is a good mother to ~L~.

[41] In relation to ~M~ the social worker reported that ~M~ was reluctant to discuss options for contact in respect of ~L~ and ~F~ should the court not grant her leave to reside in Romania. If she was in Romania then she initially would not commit to a contact arrangement stating it would depend on ~L's~ age. Subsequently she stated that there could be two weeks contact in the summer with ~F~ in Northern Ireland together with indirect contact whilst ~L~ was in Romania.

[42] One of the conclusions/recommendations arrived at by the social worker in her report was:-

"I feel there is potential risk in relation to ~F's~ concern that should ~L~ leave Northern Ireland that ~M~ may not adhere to any direction from the court in relation to defying contact arrangements. ~M~ has historically defined the terms of contact and up to recently felt the need to park outside ~F's~ home during any such contact and has ultimately felt the need to control elements of his contact. I remained concerned that ~M~ has indicated that she feels two weeks per year is an adequate level of direct contact between ~L~ and ~F~."

[43] On 6 June 2009 a family judge sitting in the Family Care Centre made suggestions to both parents for increased contact including overnight contact. I accept the evidence of ~F~ that in the environs of the courthouse on that date ~M~ lost her temper with her own legal advisors.

[44] On 29 June 2009 there was again a further review with judicial encouragement to ~M~ to work towards increased contact.

[45] Similar issues in relation to contact have arisen at reviews before me with encouragement being given to ~M~ to permit increased contact. Those reviews were characterised by various disputes as to dates and times of contact and the duration of contact.

~M~ and the impact on her if a relocation order was not made

[46] ~M~ is a highly motivated and committed mother for her daughter ~L~. She provides an excellent level of practical care for ~L~ and also stimulates and is deeply emotionally attached to her daughter.

[47] In relation to the question as to how ~M~ would respond if she was not permitted to relocate to Romania she stated that she would be unhappy and anxious if she remained in Northern Ireland. That remaining in Northern Ireland in such circumstances would be hard but that she would be able to manage and to gain employment in Northern Ireland.

[48] It is important to consider whether that self assessment is correct. As far as employment is concerned I have no difficulty in holding that ~M~ would be able to secure and maintain employment in Northern Ireland and also that she would have the ability to undertake academic work here to improve her qualifications.

[49] In relation to her emotional well being in Northern Ireland the question is more difficult. ~M~ presents as anxious and concerned. She suffers from psoriasis and hair loss due to stress. The breakdown of her

relationship with ~F~ has caused considerable stress. It is important to determine the degree of stress attributable to having to remain in Northern Ireland, the degree attributable to the breakdown in her relationship with ~F~, whether that part would be present irrespective as to whether she relocated to Romania, the degree attributable to this litigation, and the degree attributable to other causes such as a high level of index of suspicion of others and the effect that has on her relationships with others and whether that would remain even if she relocated to Romania.

[50] I consider that the majority of the stress presently being experienced by ~M~ is due to the breakdown of her relationship with ~F~ and the consequent difficulties she faces in her own relationships with ~F's~ relatives and with those who had been their mutual friends. Those elements of stress would be helped by a move to Romania but I consider that they are capable of resolution within Northern Ireland by gaining employment, sorting out her present housing difficulties, a conclusion to this litigation, forming new friendships and being reassured that there will be good quality long periods available to her and ~L~ in Romania with direct contact with her family and her culture. ~M~ has been happy in Northern Ireland in the past and I consider that her assessment that it will be hard is correct in so far as it refers to an initial period. I accept her assessment that she will manage. As I have indicated she has been happy in Northern Ireland in the past and I consider that despite her present pessimism she can be in the future.

[51] ~M~ does have a high level of suspicion of others. I have found that this was a factor in her relationship with ~L's~ paternal grandmother and the extended paternal family. Another illustration of this high level of suspicion and its negative impact on her ability to form enduring relationships is her friendship with the ~McC~ family. They had befriended her and provided her with accommodation shortly after her arrival in Northern Ireland. Unfortunately that friendship came to an end after ~F~ and ~M~ separated. ~M~ believed that the confidentiality of her conversations with ~J~ was being breached as a result of information being given by ~J~ to ~F~. Her response was abrupt and final and it was to have no further contact with ~J~ and the ~McC~ family. That position has been and will be maintained by her. These were friends who had played an important part in her life and who could have played an important part in the life of ~L~. ~M's~ reaction to this and to a number of other situations is to believe that others are "ganging up on me". She does not make allowances; in this instance for an attempt by a friend to help, but rather takes a wholly negative view of that friend's actions. Her suspicious personality means that she takes precipitate action without consideration as to the potential explanations for the failings or the perceived failings of others. Unfortunately this increases her levels of stress. I consider that this will be the position whether in Romania or in Northern Ireland.

[52] A refusal of ~M's~ application to relocate will in the short term impact adversely on her psychological and emotional stability but I consider that this is a short term response.

The risks to contact between ~L~ and ~F~

[53] I first consider the issue of contact if ~L~ and ~M~ remained in Northern Ireland. As can be seen there have been protracted problems in relation to contact between ~L~ and ~F~. Some parents do not permit contact or they cause difficulties in relation to contact because of a prime motivation to inflict hurt and upset on the other parent. That is not this case. However there has been at the least a degree of indifference on the part of ~M~ as to the effect of her actions on ~L~ and on ~F~ and at the least a lack of any real (as opposed to expressed) appreciation on her part of the importance for ~L~ of a having a bond with her father and her extended paternal family. Such is ~M's~ animosity towards ~F~ that a breakdown in contact from her perspective would at the least not be an unwelcome result.

[54] I find that ~M~ is so close to ~L~ that she is unable to deal with issues in relation to contact proportionately and dispassionately. I consider that that will be an enduring and long term feature. In respect of the history of contact proceedings within Northern Ireland I find that there has never been any volunteered increase in contact by ~M~. That contact arrangements have required input from a court welfare officer, a social worker, legal professional advisors, and numerous court hearings. There have been agreements as to contact which have not been implemented by ~M~. Contact has only been taking place between ~L~ and her father due to repeated recourse to the courts and the close supervision that has been available here in Northern Ireland. It has taken a number of years to develop routines in relation to contact and those routines require supervision and are fragile even within this jurisdiction. Despite the high level of involvement there remain real problems in maintaining contact between ~L~ and ~F~. There is a real risk of contact breaking down even within this jurisdiction. If it did break down I consider that ~L~ would sustain significant harm. There are cases in which contact has to be closely supervised. This is one of them.

[55] I turn to consider the risks to contact if ~M~ and ~L~ relocated to Romania. ~M~ has a particularly close emotional attachment to her daughter. One feature of her evidence clearly emerged when she was being cross-examined about the difficulties that have already occurred in relation to contact. Her response was that when ~L~ was at contact with ~F~ that she "misses her daughter a lot" and that she finds separation from her daughter "very difficult". Another feature of her evidence was her acknowledgement that she was overly worried about ~L's~ diet and routine when in the care of ~F~. Part of the problem in relation to contact between ~L~ and ~F~ has been ~M's~ concerns as to ~L's~ diet during contact with ~F~. These concerns

have caused friction between ~F~ and ~M~. I consider that these acknowledgements by ~M~ of her difficulties are entirely appropriate. I hold that ~M~ finds it extremely difficult to be separated from her daughter even for a limited period of time and even where the distances involved are insignificant. I also find that in a court room environment she has insight into these difficulties but during daily events that insight is not maintained.

[56] ~M~ was asked as to how she would cope with longer separations from ~L~ which would necessarily be involved if she and ~L~ relocated to Romania and ~L~ returned to Northern Ireland for contact with ~F~. She was asked to consider how she would cope with longer separations over a greater distance when she has such difficulties with contacts of short duration and when she is physically near. Her response was that she would be worried and again she acknowledged that she was overly concerned. Despite her insight I do not consider that the levels of worry and concern can be addressed with professional or other assistance including family assistance. I am sure that those worries and concerns would translate into a whole series of reasons why contact should not take place and that contact would rapidly break down when faced with greater geographical distance together with the problems in supervising and maintaining contact with enforcement in two separate jurisdictions.

[57] I consider that both direct and indirect contact between ~L~ and her father would rapidly break down if ~L~ relocated to Romania.

~F's~ fear of flying and its effect on contact if ~L~ relocated to Romania

[58] ~F~ experiences extreme fear of heights as a result of falling out of a tree, a distance of some 40 feet into water when he was 10 years old. As a result he cannot climb more than six feet up a ladder. If at a height he would feel dizzy, his legs would feel like jelly and his heart would pound. He would panic. He does not take lifts in buildings and he would have a feeling of uneasiness, for instance when talking about the world's tallest building. His fear of heights has led to a longstanding fear of flying of which ~M~ is aware. He flew on one occasion to the United States of America and back ten years ago. He saw his general practitioner and took medication before going but had a torrid time in the USA fearing the flight back. He has not flown since.

[59] As ~F~ was giving evidence in relation to his fear of flying his emotional upset was palpable. Fears of this nature can on occasions be overcome especially with professional assistance. However the duration of ~F's~ condition, the initial reason for it, the degree of it together with my assessment of him leads me to the conclusion that he will be unable to fly to Romania for contact with ~L~.

[60] I do not consider that meaningful direct contact with ~L~ in Romania could be facilitated by ~F~ travelling by train or bus and boat to Romania given the amount of time it would take to travel from Northern Ireland in that way, his work commitments in Northern Ireland and his limited means. For direct contact in Romania to stand any chance of success he has to have the ability to travel by air. He does not have that ability.

[61] I have already concluded that contact between ~L~ and ~F~ would rapidly break down if there was relocation to Romania. ~F's~ fear of flying is an additional impediment and an additional reason supporting the conclusion that direct contact in Romania between ~F~ and ~L~ would not take place by virtue of his fear of flying.

Language and its effect on contact between ~L~ and ~F~

[62] I accept and share the concerns of the Official Solicitor that ~L~, if she relocates to Romania could lose fluency in English. This would have an obvious adverse effect on her relationship with her father and her cultural ties with Northern Ireland. I appreciate that ~M~ states that she intends to make a determined effort to teach ~L~ not only English but a number of other languages but given the fractured nature of contact which has occurred in the past and despite her present expressed intentions I consider that English language difficulties could well occur in the future. I conclude that there is a substantial risk to ~L's~ English language skills if she moves to Romania and that this will also be an additional impediment to contact between ~L~ and ~F~.

Discussion

[63] I turn to Thorpe LJ's discipline:

(a) Is the mothers' application genuine in the sense that it is not motivated by some selfish desire to exclude the father from ~L's~ life? Is the mothers' application realistic, founded on practical proposals both well researched and investigated?

I consider that ~M~ does genuinely wish to return to Romania. That is her prime motivation. However she has not promoted or facilitated but has rather placed obstacles in the way of contact. The consequence of a move to Romania of contact between ~L~ and ~F~ breaking down is understood by ~M~. Such is her animosity towards ~F~ that a breakdown in contact from her perspective would at the least not be an unwelcome result. ~M~ still wishes to return to Romania even if as a consequence ~L~ lost all or all meaningful contact with her father. In

that sense I consider that there is an element of “selfish interest” in her desire to relocate.

I consider that the arrangements proposed by ~M~ in Romania are on balance realistic and practical. There are problems which still have to be sorted out. For instance ~M~ proposes to work and also to study to gain qualifications. It is proposed that ~L~ will be going to nursery school in Romania and the proposal is that ~M's~ mother will help with ~L's~ care. How this can be successfully managed when ~M's~ mother works on a full time basis and does not speak English from ~L's~ point of view is open to debate. At present I cannot conclude that every aspect has been well researched and investigated though in my overall assessment I allow a degree of latitude to ~M~ as some aspects of many relocations may have to adapt to the situations as they develop.

(b) Is the fathers' opposition motivated by genuine concern for the future of ~L's~ welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with ~L~ were the application granted? To what extent would that be offset by extension of ~L's~ relationships with the maternal family and homeland?

I consider that ~F's~ opposition is motivated by a genuine concern for the future of ~L's~ welfare. I do not consider that he is driven by an ulterior motive. He has made some wounding comments about his assessment of ~M's~ mental health which were unwarranted. She does not suffer from any mental health issue. Those comments should be seen in the context of mutual verbal animosity. He has been motivated to provide assistance. I consider that he cares for the health and well being of ~M~ and for the physical and emotional well being of ~L~. He is a committed father. If the application was granted then due to his fear of flying, due to language difficulties and to my assessment of contact arrangements being complied with by ~M~ it is my assessment that all meaningful contact between ~F~ and ~L~ would come to an end as would all contact between ~L~ and her extended paternal family in Northern Ireland. This would cause significant harm to ~L~ depriving her of the love and affection which he can lavish on her and her contacts with her extended paternal family and her cultural ties in Northern Ireland. It would also lead to a significant risk of difficulties for her in adolescence and in forming her own adult relationships. I do not consider that this loss would be offset by extension of ~L's~ relationships with the maternal family and homeland.

(c) What would be the impact on the mother of a refusal of her realistic proposal?

I have set out my assessment of the impact on the mother of a refusal of her realistic proposal in paragraphs [46] – [52].

[64] I now turn to Thorpe LJ's fourth discipline that is an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist.

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding).

~L's~ primary carer is ~M~ for whom she has the strongest feelings and to whom she has the closest attachment. She also is attached to her father with whom she has a strong bond.

(b) Her physical, emotional and educational needs

Subject to the qualification which I have set out at paragraph [63] (a) in relation to ~L's~ immediate care on her arrival in Romania I consider that ~L's~ physical and educational needs would be equally well met in Northern Ireland or in Romania. Her emotional needs require a primary carer who is emotionally and psychologically secure in both the short and long term. She needs to maintain her most important relationships that are with both of her parents. In addition she needs to secure and maintain relationships with both of her extended families and with both of her cultural backgrounds. If she relocates to Romania she will lose contact with her father, with her extended paternal family and with her father's cultural background. If she remains in Northern Ireland I am satisfied that proper arrangements will be put in place for her to share with her mother contact with her extended maternal family in Romania and during those contacts to be immersed in her mother's cultural background. I consider that her mother can be secure emotionally and psychologically in the long term in Northern Ireland. The balance is in favour of remaining in Northern Ireland.

(c) the likely effect on her of any change in her circumstances;

Subject to the qualification which I have set out at paragraph [63] (a) in relation to ~L's~ immediate care on her arrival in Romania I consider that if she moves to Romania she would be able to adapt to her new environment. Her primary carer would be at less short term stress in Romania. She would lose contact with her father, her extended paternal family and her father's cultural background. These would be enduring losses and would cause significant harm.

(d) her age, sex, background and any characteristics of hers which the court considers relevant;

I have set out her age, sex and background.

(e) any harm which she has suffered or is at risk of suffering;

She is at risk of suffering significant harm in the short and long term as a result of loss of contact with her father, her extended paternal family and her father's cultural background. She is at risk of suffering harm in the short term due to the stress being suffered by her primary carer as she adapts to remaining in Northern Ireland with the facility of good quality periods in Romania. The balance is in favour of remaining in Northern Ireland.

(f) how capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

Her mother is capable of meeting her needs in Northern Ireland as opposed to in Romania. Her father is capable of meeting her needs in Northern Ireland which needs include good quality visits with her mother to Romania.

(g) the range of powers available to the court under this Act in the proceedings in question.

I will continue to vary the prohibited steps order to permit good quality visits by ~M~ and ~L~ to Romania.

[65] Having reached these conclusions I step back and ask the overall question as to what would be in ~L's~ best interests. I have concluded that they would be best served by her remaining in Northern Ireland.

Conclusion

[66] ~M's~ application for permission to relocate is refused.