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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Re L (Relocation application)

BEFORE: Morgan LCJ, Higgins LJ and Coghlin LJ

MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal by the mother, a Romanian national, against a decision of Mr Justice Stephens who dismissed her application pursuant to Article 13 of the Children (Northern Ireland) Order 1995 (the 1995 Order) to relocate to Romania with her daughter, L, who is now aged five. Nothing should be published which would identify the child or any member of her extended family.

Background

[2] The appellant was born in Romania and came to England in 2000 when she was in her early 20s. She married in March 2003 but subsequently separated and came to Northern Ireland in October 2003 where she obtained employment in healthcare. She was divorced in 2005. Soon after her arrival in Northern Ireland she arranged to stay at a house owned by a local family and became friendly with J the daughter of the owner. J subsequently became the godmother of the child, L.

[3] The Respondent is from Northern Ireland and has lived here all his life. He met the appellant in 2004 and they were married in July 2007. During that period the appellant had limited direct contact with her family in Romania and was happy in Northern Ireland. She had formed positive relationships with others and obtained secure and well paid employment. The relationship between the appellant and the respondent was acknowledged by both of them as being turbulent with cross accusations of violence. The respondent contended that the breakup of the relationship which occurred in early January 2008 was as a result of the appellant's anger management difficulties. The respondent attempted mediation but the appellant declined to participate because she concluded that the mediators were against her and walked out. The appellant's close friend J intervened but the appellant accused her of disclosing confidences and has not spoken to her thereafter.

[4] On 10 March 2008 the Family Proceedings Court made a residence order providing that the child should reside with the mother who was living in the former

matrimonial home and that the father should have unsupervised direct contact at that address at agreed times. There were disputes between the father and mother as a result of which that contact arrangement broke down. In June 2008 the father reluctantly agreed to the mother's suggestion of supervised direct contact in a public leisure centre. The learned trial judge found that the supervision requirement was imposed by the mother first because she did not want the child to have any contact with the extended paternal family, secondly, because she had difficulty parting with the child, thirdly, so as to disrupt the ability of the father to form a bond with the child and fourthly, because she had no real appreciation of the importance for the child of having a bond with the father.

[5] In July 2008 the father applied for a contact order and in September 2008 it was agreed that he should have unsupervised contact at the local leisure centre and the nearby shopping centre. The mother, however, insisted on remaining to supervise the contact. It transpired that one of the reasons for the mother being concerned about the child meeting the paternal family was that the paternal grandmother had not sent a christening card or attended the child's christening and the mother consequently was of the view that the grandmother represented a risk to the child. The learned trial judge concluded that this provided no basis for considering that the grandmother was a risk and concluded that it was a trait of the mother's personality to have a high index of suspicion of others including close friends and relatives whom she has known for years. The court ordered increased unsupervised contact with the father and that order was affirmed in the Family Care Centre in October 2008 on appeal.

[6] Despite the court orders the mother felt the need to be in very close physical proximity when contact was taking place. Accordingly between 24 October 2008 and 15 December 2008 she stayed outside the grandmother's house parked in the driveway of that house or the next-door neighbour's house while contact was taking place. When asked about this the mother explained that she wanted to ensure that the father's sister did not visit the home during contact. The learned trial judge concluded that there was never any risk from the paternal grandmother or the father's sister and that this was an exhibition of a high and disproportionate index of suspicion of others which created an atmosphere of intrusion and distrust.

[7] On 15 December 2008 the Family Proceedings Court made an Order that the father's contact be no longer restricted to his family's house where he was staying and directed that the mother was not to park outside the house during contact. Shortly thereafter the mother applied for a passport for the child raising fears that she intended to take her to Romania. The father issued an application for a prohibited steps order to prevent the child being taken from the jurisdiction and a social worker reported on 3 February 2009 that the mother had indeed packed her bags to go permanently to Romania and intended to pursue that application through the courts.

[8] The mother initially proposed that any contact that the father would have with the child after she moved to Romania would depend upon the child's age and other circumstances. She then proposed two weeks contact in Northern Ireland per year

with indirect contact when the child was in Romania. The social worker expressed concern that there was a potential risk that the mother may not adhere to any direction from the court in relation to contact arrangements. She noted that the mother has historically defined the terms of contact and considered the mother's proposal inadequate for the child.

[9] On 6 June 2009 a family judge sitting in the Family Care Centre suggested to both parents that there should be increased contact including overnight contact. As a result of discussions contact was increased to include overnight contact on Wednesday and Thursday as well as contact on Saturday from 9 AM until 5 PM. The learned trial judge accepted that in the environs of the courthouse on that day the mother lost her temper with her own legal advisers. At a further review on 29 June 2009 the judge encouraged the mother to work towards increased contact. The learned trial judge noted that encouragement by him to permit increased contact had been characterised by disputes as to dates and times of contact and the duration of contact.

[10] There was no dispute that the appellant was a highly motivated and committed mother and that she provided an excellent level of practical care for the child whom she stimulated and to whom she was deeply emotionally attached. The mother acknowledged that the father has a strong bond with the child and that she has a strong bond with him. The learned trial judge concluded that contact between the father and child was of good quality, that the father was devoted to his daughter and that the child responded positively and would respond positively in the future to the love and affection the father lavishes on her.

[11] It appears that in late 2009 and early 2010 the difficulties over contact subsided. The father indicated that he was prepared to consent to the relocation application as long as he could secure four-week staying contact in the summer and one week at Christmas, Easter and Halloween. He also wished to have unlimited telephone contact when the child was in Romania. He was concerned about enforcement and the parties explored whether this might be secured by mirror orders. It became apparent that once the child was resident in Romania for three months this court would lose jurisdiction and the father would be entirely in the hands of the Romanian court. In light of this the father concluded that he could have no confidence that the contact arrangements would be honoured and he withdrew his consent.

[12] Despite the continuing difficulties over contact the father was prepared to consent to the mother and child visiting Romania in December 2010. The learned trial judge liaised with the relevant judge in Romania. It became apparent that mirror orders would not provide sufficient security and it was necessary for the appellant to give a solemn undertaking which she eventually did. This was the appellant's first visit to Romania since 2006. For a period of 15 months prior to this the mother and child had been living in satisfactory private rented accommodation. On their return from Romania it was discovered that there was flooding to this property as a result of which the appellant was provided with temporary Northern

Ireland Housing Executive accommodation. That was the position at the time of the hearing before the High Court.

[13] The appellant's proposal is that on her return to Romania she would reside in an apartment owned by her mother and stepfather. Her mother works and the stepfather receives a pension. She also has cousins with children who reside close to her parents. There are good relationships with the paternal family although there are some differences within the maternal family. There is a house nearby in the country which would require extensive repair which the appellant would hope to occupy in the longer term. She has identified a nursery for the child and her mother has agreed to provide support.

[14] The mother contends that she would be unhappy and anxious if she remained in Northern Ireland. She had not worked since the birth of the child but accepted that she would be able to gain employment and manage. The learned trial judge examined this self-assessment. He noted that the appellant had suffered from psoriasis and hair loss due to stress. He had a report from her general practitioner dated 10 February 2011 before he made a final order. The GP explained that the appellant was extremely upset by the situation between her and the father. She complained that the father tried to record conversations between her and her daughter. The father admitted that he had tried to record conversations and gave an undertaking not to do so in future. She claimed that she had suffered racial abuse in the past but no details were given. She said that the house to which she had moved as a result of the flooding was damp. She alleged that this was affecting her daughter's health. The judge examined the degree of stress attributable to having to remain in Northern Ireland, the stress attributable to the breakdown in her relationship with the father and whether that would be assisted by relocating to Romania, the effect of the litigation and the stress attributable to her high level of suspicion of others.

[15] He concluded that the majority of the stress she was experiencing was attributable to the breakdown of her relationship with the father and the difficulty she faced in her own relationships and with mutual friends. The learned trial judge concluded that these would be helped by a move to Romania but considered that they were capable of resolution within Northern Ireland by gaining employment, sorting out housing difficulties, forming new friendships and concluding the litigation. He also concluded that it would be important that the appellant was reassured that there would be good quality long periods available to her and the child in Romania with direct contact with her family and culture. He concluded that subject to these matters she could be happy in Northern Ireland in the future. The learned trial judge further concluded that the appellant’s suspicious personality meant that she takes precipitate action without consideration of the potential explanations for the failings or the perceived failings of others. This increases her levels of stress and he concluded that this would be the position whether in Romania or Northern Ireland.

[16] The judge found that the mother was so close to the child that she was unable to deal with issues in relation to contact proportionately and dispassionately. She

lacked any real appreciation of the importance for the child of having a relationship with her father and her extended paternal family. He noted that contact had only been taking place between the father and child due to repeated recourse to the courts and the close supervision that has been available in Northern Ireland. He considered that there was still a real risk of contact breaking down even within this jurisdiction. He found that the mother 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. He considered that she did not have insight into this during daily events. He was satisfied that if she relocated to Romania both direct and indirect contact would rapidly break down.

[17] The father experiences extreme fear of heights as a result of an incident when he was a child. This has resulted in a long-standing fear of flying. He would not, therefore, be able to fly to Romania for contact. The judge concluded that this was an additional reason why direct contact in Romania would not take place. The judge also concluded that there was a substantial risk to the child's English language skills if she moved to Romania which would be an additional impediment to contact between the child and father. This did not, however, feature in his assessment of the relevant factors in reaching his decision.

The judge's conclusions

[18] The learned trial judge concluded that whether he applied the guidance in Payne v Payne [2001] EWCA Civ 166 or the welfare checklist this application should be refused. For the reasons set out in SH v RD [2013] NICA we consider that in relocation applications in this jurisdiction the guiding principle is that the welfare of the child is paramount and that the welfare checklist is an appropriate basis upon which to commence that evaluation. The judge recognised that the child's primary carer was the appellant for whom she has the strongest feelings and to whom she has the closest attachment. She is also attached to her father with whom she has a strong bond.

[19] Although he recognised that the mother's proposals lacked a measure of detail the judge concluded that the child's physical and educational needs would be equally well met in either jurisdiction. He was satisfied that if she remained in Northern Ireland proper arrangements would be put in place for her to share with her mother contact with her extended maternal family in Romania and to experience her mother's cultural background as a result. Conversely this emotional need for her to maintain important relationships with her father and his extended family would be lost if she relocated to Romania. The balance was in favour of remaining in Northern Ireland. The judge concluded that such a loss as a result of relocation would cause the child significant harm.

[20] He recognised that if the application was refused the child was at risk of suffering harm in the short term due to the stress which the mother would experience in adapting to remaining in Northern Ireland. That had to be balanced against the significant harm in the short and long-term as a result of the loss of contact with her father, her extended paternal family and her father's cultural

background. That balance favoured remaining in Northern Ireland. The other welfare issues were neutral.

The submissions of the parties

[21] The primary submission made on behalf of the appellant was that insufficient weight was given to the adverse effect upon the mother of a refusal of relocation. Additional medical evidence has been submitted in respect of this and it is submitted that this demonstrates that the effects are likely to be long-term. It is submitted that the judge was wrong to place weight on the indication by the appellant that she would manage if the application were refused.

[22] The appellant contends that the judge gave too much weight to difficulties over contact in the past. There were inevitably tensions between both parties after separation. There was a period at the end of 2009 and beginning of 2010 where relations were good and that was acknowledged by the father. The judge erred in concluding that contact would stop.

[23] It was submitted that the judge failed to have regard to the benefits for the child in Romania by way of schooling, accommodation and the support of her mother. The judge looked at the application from the point of view of the father including his fear of flying and losing contact. The suggestion that the child would lose fluency in English was entirely speculative. Although the father challenged Romanian lifestyle and society during the hearing and made an attack on the mother's mental health the judge accepted that his motivation was genuine. He did not balance the loss of a relationship with the paternal family against the loss of relationship with the maternal family.

[24] The respondent submitted that the court should only intervene where the ground of appeal was based on the evaluation of the weight to be given to competing factors where the decision was plainly wrong. The judge was entitled to take into account the fact that the appellant had resided in the United Kingdom for more than 10 years, that she had obtained in the past secure employment and that she had developed positive friendships. The medical evidence did not demand that the balance be struck in favour of relocation.

[25] The learned trial judge was particularly well placed to deal with the contact issue. As was clear from the judgment he had been involved in managing a number of the disputes which had arisen in this area. He had carefully considered the motivation of the appellant in resisting contact by the father and had acknowledged the genuine desire of the appellant to return to Romania. The judge had expressly considered the welfare of the child as the paramount consideration and carefully examined the welfare checklist. No criticism could be made of his conclusion.

[26] The Official Solicitor supported the submissions of the respondent. Insofar as the fresh evidence is concerned we accept the submission of the OS that the process to be followed by an appellate court is first to consider whether the trial judge erred in his decision on the evidence then available. If the decision was found to be plainly wrong that would normally result in allowing the appeal (see Re C (a minor) (Care:

Child's Wishes) [1993] 1 FLR 832. Where the welfare of the child required the court to see the additional evidence Ladd v Marshall principles should be relaxed (see Re S (Minors) (Abduction) [1993] FCR 789).

The law

[27] We set out the legal principles in appeals and the determination of relocation cases in SH v RD [2013] NICA. We reproduce these here for ease of reference.

> "[24] Where an appellate court is reviewing the balance struck between several competing factors it should only intervene if the exercise of discretion or judgement is plainly wrong. The principle was stated by Lord Fraser in G v G [1985] FLR 894.
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> "I entirely reject the contention that appeals in custody cases, or in other cases concerning the welfare of children, are subject to special rules of their own. The jurisdiction in such cases is one of great difficulty, as every judge who has had to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge's decision was wrong, and unless it can say so, it will leave his decision undisturbed."

The reasons for that approach were explained by Lord Hoffmann in Piglowski v Piglowski [1999] 2 FCR 481.

> "First, the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts. If I may quote what I said in Biogen Inc. v. Medeva Ltd. [1997] R.P.C. 1:
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> "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance. . . of which time

> and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

The second point follows from the first. The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case but also of a reserved judgment based upon notes, such as was given by the District Judge. These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2). An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

The importance of adhering to that approach and respecting the discretion given by law to the trial judge was emphasised by Baroness Hale in Re J [2005] UKHL 40.

[28] The leading decision in England and Wales on relocation is Payne v Payne [2001] EWCA Civ 166. Thorpe LJ reviewed the relevant case law and set out his conclusion at paragraph 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:
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> (a) the welfare of the child is the paramount consideration; and
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> (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."

He noted that few guidelines in family law had stood so long and concluded that the formulation of guidelines enabled practitioners to give clear and confident advice thereby limiting litigation. That can be particularly beneficial in family disputes.

[29] The justification for the second proposition is the conclusion that the child cannot draw emotional and psychological security and stability from the dependency unless the primary carer herself is emotionally and psychologically stable and secure. At paragraph 35 he concluded that the court's focus upon supporting the reasonable proposal of the primary carer is seen as no more than an important factor in the assessment of welfare. He recognised, however, that if the reasonable proposals of the primary carer were elevated into a legal presumption

that might limit the extent of proper investigation of all the circumstances. He proposed the following discipline at paragraph 40.

> "(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.
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> (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."

He qualified this approach at paragraph 41 by stating that great weight should still be attached to the emotional and psychological well-being of the primary carer.

[30] Dame Elizabeth Butler Sloss stated in paragraph 83 that the underlying principles in such cases as set out by Thorpe LJ gave valuable guidance and had stood the test of time. She noted that they were based upon the welfare of the child as the paramount consideration. At paragraph 85 she stated that all relevant factors had to be considered and offered the following analysis in cases where there was no dispute about the parent with whom the child should live.

> "(a) The welfare of the child is always paramount.
>
> (b) There is no presumption created by s 13(1)(b) 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.
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> (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."

[31] Although the Payne line of authority has been supported by the Court of Appeal in cases where there was an identified primary carer a different approach has been taken in shared care cases. In Re Y (leave to remove from jurisdiction) [2004] 2 FLR 330 the child was 5 1/2 years old and was the subject of an informal shared care arrangement living four nights a week with the mother and three nights a week with the father. The mother was an American who wished to bring him to Texas. He had been brought up and educated in a Welsh speaking area. Hedley J noted that the mother would feel isolated, distressed and frustrated if the application were refused but he considered that he should apply the welfare checklist rather than follow the line of authority leading up to Payne. He refused the application. Re Y was approved in Payne.

[32] Payne was again considered in detail in MK v CK [2011] EWCA Civ 793. The Canadian mother and Polish father married in London in 2004. Two daughters were born in November 2006 and January 2009. The marriage broke down in July 2010. A shared residence order provided that the children were to spend five nights with the father and nine nights with the mother in every 14 day period. The father's working pattern was such that he was able to spend six consecutive days with his daughters when he cared for them unaided. The mother applied to relocate to Canada with the children because she was isolated and stressed in London and wished to live with her parents in an environment where she could receive emotional and material support. The judge at first instance applied Payne and allowed the mother's application. The Court of Appeal allowed the father's appeal.

[33] Thorpe LJ, giving the first judgment, concluded that the trial judge was wrong to apply Payne. In light of the extent to which the father was providing daily care the judge should have applied Re Y. At paragraph 39 he stated that the only principle to be extracted from Payne was the paramountcy principle. The approach set out at paragraphs 40 and 85 of the judgment was guidance as to the factors to be weighed in search of the welfare paramountcy. At paragraph 46 he said that the continuation of the Payne approach depended on the proposition that the applicant was supplying so much of the primary care that she must be supported in her task because the children were dependent upon her for stability and well-being. In a shared care case the position is different.

[34] Moore-Bick LJ noted that Payne was much criticised by some practitioners in recent times on the grounds it was unduly prescriptive in its guidance. He agreed that the only principle enunciated in Payne is that the welfare of the child is paramount. He noted the advantage of guidance in relocation cases particularly in relation to consistency and the avoidance of excessive litigation. He concluded, however, that the decision in Payne was only binding in relation to its ratio. Judges should, however, pay heed to the guidance and depart from it only after careful deliberation and where it was clear that the particular circumstances of the case required them to do so. Judges should, however, avoid an unduly mechanistic approach to the application of the guidance.

[35] Black LJ agreed that the only authentic principle to be derived from Payne is that the welfare of the child is the court's paramount consideration. She agreed, however, that the guidance must be heeded but not as rigid principle or so as to dictate a particular outcome in a sphere of law where the facts of individual cases are so infinitely variable. The effect of the guidance should not be overstated even where the case concerned a true primary carer. There was no presumption that the reasonable relocation plans of the carer will be facilitated unless there is some compelling reason to the contrary. She noted that Thorpe LJ had accepted in Payne that there was no such presumption and accordingly it was inappropriate to treat the second proposition at paragraph 26 of that judgement as if it were a presumption. She did not interpret the matters set out at paragraph 85 by Dame Butler Sloss as disclosing any weighting in favour of any particular factor.

[36] Although Payne has been said to be binding on the Court of Appeal in England and Wales it is not, of course, binding in this jurisdiction. It has, however, been the practice in this jurisdiction to treat decisions of the Court of Appeal in England and Wales as strongly persuasive authority particularly where they involve interpretation of the same or a similar provision (see Beaufort Development v Gilbert Ash [1997] NI 142). There is no dispute about the fact that the welfare of the child is paramount in both applications before the court and that the welfare checklist applies directly in relation to the shared residence application and as a matter of good practice in relation to the relocation application.

[37] We consider that Moore-Bick LJ was correct in MK v CK to draw a distinction between the ratio of Payne which was that the welfare principle applied and the subsequent guidance. We recognise the advantages of consistency and the disincentive to litigation that such guidance can provide but as the review of the case law above demonstrates the guidance can often itself give rise to separate disputes and may distract the judge from the statutory test as a result of a too mechanistic application of the guidance.

[38] We do not consider that guidance of this type carries the same highly persuasive force as does the determination of legal principles. In the criminal sphere this court has always taken into account guidance provided by the Court of Appeal in England and Wales or by the Sentencing Guidelines Council but has not considered itself bound by that guidance. In determining whether to issue guidance or how prescriptive it should be it is always necessary to take into account the need, as

demonstrated by the caseload before the court, in order to assess the benefits and risks from the promulgation of such guidance. We inevitably have fewer relocation cases than England and Wales and do not consider that guidance is appropriate given the small volume of cases. In this jurisdiction we agree with the learned trial judge that in relocation cases the court should focus on the welfare of the child as the paramount consideration. We recognise, of course, that some of the matters identified in Payne may well be relevant in individual cases in determining that issue but the starting point should always be the welfare checklist."

Consideration

[39] The learned trial judge gave the most careful consideration to all of the factors bearing upon the stress which the appellant undoubtedly suffered. He anticipated that the refusal of the application would cause the appellant some stress and that the child would be likely to be affected by that. He had to determine, however, whether the effects on the mother were likely to be long-term. He was entitled to take into account that she had lived in the United Kingdom for a long period and had been able to secure employment and make positive relationships. He was also entitled to take into account against that background the indication from the mother in her evidence that she would manage. This is precisely the sort of judgment which the trial judge is much better able to make than an appellate court. There is nothing to suggest any error in his evaluation of the duration of the mother's difficulty as a result of the refusal of the application and certainly nothing to suggest that his conclusion was plainly wrong.

[40] The medical report of 10 February 2011 identified the consequences of the stress from which this lady suffered and also stated that she was extremely upset when talking about it. There was, however, no analysis of the detailed reasons for her situation which were identified by the learned trial judge. In addition although there was a complaint made about the medical condition of the child it does not appear that the doctor examined her.

[41] The suggestion that the learned trial judge placed undue weight on the indication by the appellant that she would manage is without foundation. The learned trial judge carefully examined whether the self-assessment by her was borne out by the evidence available to him. It was on the basis of his careful consideration of that evidence that he concluded that the effect of the refusal of the relocation application was likely to be short-term. He did, of course, recognise that this lady's high level of suspicion was likely to continue to give her difficulties no matter where she resided.

[42] The judge was plainly aware that there had been a period at the end of 2009 and beginning of 2010 when contact had been satisfactory. He was, however, extremely well-placed to judge whether this was likely to be achieved in the long-term. He had been involved in seeking to promote harmonious contact between the parties. Clearly he had failed to do so and his judgment that contact was precarious and might even be lost in Northern Ireland was properly reasoned on the basis of past experience.

[43] It is wrong to suggest that the judge failed to have regard to the benefit the child would gain from living in Romania. He rejected the father's submission that the standard of living and culture in Romania would be harmful for the child. He accepted that the physical and educational needs of the child could be accommodated in Romania. He was anxious to ensure that the child would have an opportunity to engage with her Romanian family and culture. All of that was consistent with the report from Romanian Social Services. Although the learned trial judge did not expressly refer to the report it is clear that he did take it into account.

[44] The submission that the learned trial judge examined the case from the point of view of the father cannot be sustained. At paragraph 4 of his judgment he made it clear that the welfare of the child was the court's paramount consideration. In his consideration he then went on to examine each item of the welfare checklist. The father's fear of flying was a secondary reason for his conclusion that contact would not be maintained in Romania as a result of which the child would suffer harm. The judge expressly concluded that the child would be supported in returning to Romania to maintain contact with her maternal relatives and the fact that the respondent agreed to such a visit in December 2010 and had been prepared to consider consent to relocation is evidence of his willingness to secure such contact. We do not accept that the appellant has shown any error in the conclusions of the learned trial judge or that his decision was plainly wrong.

Fresh evidence

[45] The first piece of evidence upon which the appellant relies is a medical report from her GP dated 6 July 2011. This notes her stress as a result of her application for relocation being refused. The GP does not make it clear but it appears that he saw her in March 2011 which would have been just after the court's decision. He noted that she was distressed and weepy with low mood with nausea, vomiting and frequent panic attacks. She also complained of hair loss due to stress and felt that her low mood was affecting the health of her daughter. Although the GP does not appear to have examined the child he stated that the child's health was being adversely affected by her unhappiness. He concluded that the situation was having a very detrimental effect on her mental and physical well-being and could develop into a long-term illness.

[46] The judge recognised that the refusal of the application was likely to have a short-term effect upon the appellant. The description of her condition in March 2011 just after the decision had been made is consistent with the expectation of the trial judge. There is no reference to any consultation between March 2011 and 6 July 2011 when the report was dated. The suggestion about a long-term illness is on the face of it no more than speculation. We do not consider that this medical report represents new evidence that could properly have had a bearing upon the outcome of this application.

[47] The other pieces of evidence related to housing issues. After the flooding of her private rented accommodation in December 2010, the appellant and child moved into temporary accommodation with the NIHE. An article in a local newspaper in

late March 2011 described the difficulty the appellant had in obtaining grants for furniture lost by her. In April 2011 she moved into permanent accommodation. In October 2011 she reported problems with a neighbour which he said had been on-going since August. On 2 November 2011 she reported that her house had been egged and gum pushed into the front door lock when she was away. This happened on 31 October 2011 but no suspects were identified. The appellant believed this was a racist incident. On two occasions she complained that washing was nearly dry when liquid had been put over it. She believed that her neighbour was responsible and perceived this as a hate crime. Police who attended the second of these incidents believe that the clothes had become wet as a result of dew or condensation.

[48] In light of these complaints NIHE offered the appellant temporary accommodation on 10 and 15 November 2011 which she refused on the basis that she believed it was likely to be unfit. She was then offered permanent alternative accommodation which was being repaired and was likely to be available in or about December 2011.

[49] A neighbour dispute is obviously unfortunate and a decision to move home can be unsettling. We do not consider, however, that these unfortunate issues could have had any material bearing on the application for relocation in this case. As far as the ancillary orders are concerned it was indicated that any submission in relation to those would be better dealt with by way of variation application.

Conclusion

[50] For the reasons given we dismiss the appeal.