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

Delivered:	**09/09/2013**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN

SH

Appellant

-v-

RD

Respondent

BEFORE: Morgan LCJ, Higgins LJ and Coghlin LJ

MORGAN LCJ (delivering the judgment of the court)

[1] This is an appeal by the father, SH, against a decision of Mr Justice Weir who dismissed the appellant's application for a shared residence order under Article 8 of the Children (Northern Ireland) Order 1995 ('the 1995 Order') and granted the respondent mother, RD, leave to remove the child from this jurisdiction to reside in Australia pursuant to Article 13 of the said Order. We dismissed the appeal after the hearing but reserved our reasons which we now give. Nothing may be published concerning this matter that would lead directly or indirectly to the identification of the child, its parents or grandparents.

Background

[2] This is taken from the findings by the learned trial judge. The father is a man of 37 years who lives on a farm owned by his elderly parents. He has an NVQ Level 2 qualification and some GCSE passes. Apart from some temporary employment at the end of the 1990s and in the early 2000s, he has never had a job and lives as a paid carer for his father for which he receives state benefits of approximately £90 per week. The mother is a 39 year old Australian and holds a doctorate in a specialist scientific area. She came to Northern Ireland from Australia in June 2002 to take up a university appointment. The parties met in 2004 or 2005 and around May 2005 they decided to live on the father's family farm in the same house as his parents. K was born in October 2006 as the result of a planned pregnancy. In January 2007 the parties moved to live in a separate farmhouse on the farm that had been renovated for their occupation. The mother had continued with her university work

on a series of short term contracts and following the expiry of her maternity leave around April 2007 she returned to work with the father caring for K on Tuesday, Wednesday and Thursday while the mother was at work and K attending day nursery each Monday and Friday.

[3] In April 2009 the mother was made redundant and has been unable to obtain employment in Northern Ireland ever since. Thereafter she began to seriously consider the idea of moving to Australia where she was hopeful of finding employment. The father became concerned about the possibility of her removing K to Australia without his permission and on 1 July 2009 launched an ex parte application seeking a residence order and a prohibited steps order to prevent the removal of the child from the jurisdiction. At that stage the parents were still residing together but in November 2009 the mother moved out to independent accommodation and on 2 December 2009 the first court application was concluded with a residence order being granted to the mother with contact to the father between Sunday afternoon and Tuesday and an undertaking given that the child would not be removed without a court order.

[4] In January 2010 RH, the paternal grandmother, launched proceedings seeking a contact order and in the following month the father made a third application, on this occasion again seeking a residence order. In March 2010 both those applications were refused by the Family Proceedings Court. The grandmother appealed that refusal to the Family Care Centre with the result that, by consent, on 12 April 2010 she was granted a contact order which enabled her to have three hours contact on a Tuesday. Although it had been agreed that the child would attend a nursery 3 days per week, each parent had ceased to bring her there although neither had informed the other of their actions.

[5] In June 2010 there were further disagreements about nursery attendance. This resulted in a fourth court application on 29 July 2010 when the mother sought a specific issues order to enable the attendance of K at a new nursery school on each of the five week days. The father wanted the child to attend two different nurseries on different days of the week. As a result of that application the contact arrangements were changed so that K could attend at the new nursery school throughout the week, the father would then collect her from the new nursery school on Fridays and she would in turn be collected from his house by the mother on Sunday mornings. The grandmother's contact altered from a Tuesday to a Monday.

[6] On 23 September 2010 the father made a fifth application, this time for the shared residence order the subject of this appeal. The proposal was not supported by the court welfare officer. In a report to the court dated 24 February 2011, she enumerated a number of issues that had arisen between the parents including disagreements about birthday party arrangements, whether K should or should not have dairy products, what primary school she might attend in the future and overnight toileting techniques. She stated that the parties had not indicated an ability to communicate effectively regarding the child. She considered it likely that

the position would become worse with the passage of time and that the child was likely to suffer emotional harm if the situation continued.

[7] On 10 March 2011 the mother applied for permission to relocate to Australia with the child. She had been unsuccessful in obtaining employment in Northern Ireland. She was earning about £2,000 a year by sewing clothes and handbags and received income support. The father provided her with a dozen eggs a week and some firewood. She was struggling financially and felt the persistent litigation had become stressful. There had been tensions with RH over her involvement with the child. She believed that her employment prospects were likely to be much better if she relocated and by the time of the hearing she had a job offer at a salary of £45,000 in Australia starting in February 2012. She intended to live initially with her mother and then look for her own home. She had made detailed arrangements for schooling and social activities. She proposed contact by skype, email and telephone and staying contact in Australia and Northern Ireland at holiday periods.

[8] The father submitted that he had a close bond with the child. Initially he had been the stay at home parent. The child had benefitted from the continuing relationship with the father and his grandmother and there was a danger that indirect contact would not be efficacious with such a young child. It was accepted that something needed to be done to improve relationships over the child's upbringing although it was also agreed that the mother had not obstructed contact while living in Northern Ireland.

[9] On behalf of the grandmother it was agreed that tensions had arisen between her and the mother. Although there was criticism of the mother for not finding employment in Northern Ireland, it was accepted that the academic community was close knit and that this would count against the mother. There was no complaint about the quality of the relationship between the child and the father and grandmother. The child had a close relationship with the extended paternal family. It was accepted that part of the reason for the mother's wish to return to Australia was the on-going court proceedings.

<u>The judge's conclusion</u>

[10] The learned trial judge considered that the only authentic principle governing the approach to these cases was that the welfare of the child was the paramount consideration. He found that each of the parties very much loved the child but they had been quite unable to do so in a way which was complementary. Apart from the contact arrangements, anything that could be disputed was disputed. He saw no prospect of any change in this approach which was likely to impact increasingly on the child.

[11] He concluded that the mother's desire to relocate was motivated by two principal factors, the desire to obtain employment at the level for which she was eminently qualified and to end the depressing series of court cases. If these

continued, the child would become burdened by her mother's unhappiness. The grandmother had taken too prominent a role in the life of the child but would have the consolation of a close relationship with her other grandchildren. The father would be greatly affected by the loss of the level and quality of contact which would be mitigated by skype.

[12] He found that there was no prospect that the child would have a happy, carefree life without conflicting messages or on-going family battles if she remained in Northern Ireland. In Australia she would have a materially comfortable existence with a mother fulfilled in her work and enlivened by the lack of continuing disputes. Having considered the welfare checklist, he reached the firm conclusion that the child's welfare was best met by relocating. At his invitation the parties subsequently agreed satisfactory contact arrangements.

The submissions of the parties

[13] The appellant submitted that although the learned trial judge did not give express consideration to the application for the shared residence order within the consideration part of his judgement, it is clear that in rejecting that application he relied heavily upon the assessment of the social worker that the parties had not been able to negotiate and be flexible in relation to many of the issues that arose in respect of the child's upbringing and were not capable of working cooperatively. It was submitted that this was not the legal test which should apply in relation to the determination of a shared residence order and that in any event the fact that the parties have been able to agree contact arrangements was an indicator that they could negotiate and be flexible. The father's contact with the child amounted to a shared care arrangement and it was acknowledged that both parents were equally capable of providing an appropriate home for the child.

[14] It was further contended that although the learned trial judge purported to adopt as his guiding approach the welfare of the child as the paramount consideration in the determination of the relocation application, he placed such emphasis on the wishes of the mother and the effect on her that he effectively applied the guidance enunciated in Payne v Payne [2001] EWCA Civ 166. There was no evidence that the mother's lack of employment or straitened economic circumstances adversely impacted on the welfare of the child. The learned trial judge wrongly concentrated on the materially comfortable existence which might follow the job which the mother had obtained in Australia. The mother's motivation was to get a job and put an end to on-going court cases but these factors do not relate to the welfare of the child.

[15] There was no medical evidence that the mother was suffering low mood as a result of the on-going court cases. The impact of the refusal of relocation on the mother did not lead to the conclusion that the emotional needs of the child were likely to be affected. There was no evidence that in the event of refusal of relocation the mother would not be able to meet the needs of the child. Even if the mother was

suffering from stress, that could be reduced by attendance with her doctor or eventually getting a job in Northern Ireland.

[16] The learned trial judge indicated that he had taken into account the welfare checklist but did not specifically deal with any of the factors. It was submitted that it is a fundamental emotional need of every child to have an enduring relationship with both parents. That is recognised by Article 9 of the UNCRC. There was no evidence that the conflict between the parents had led to any emotional harm to the child. Even if the risk of harm was present the judge overestimated the likelihood that the disputes would continue. The judge failed to take into account that relocation would have an adverse impact on the quality, intimacy and depth of the future relationship between the father and the child. Indirect and holiday contact would not provide meaningful mitigation. The child would also suffer potential harm as a result of the upheaval involved in her removal to Australia. Recent academic research has added force to such concerns.

[17] Finally, it was submitted that a different outcome would have occurred if the learned trial judge had applied the criteria set out in the Washington Declaration. It was submitted that the Washington Declaration placed emphasis upon the interests of the child rather than the wishes of the carer.

[18] The respondent agreed that the only test imposed by the 1995 Order was that the court's paramount consideration should be the welfare of the child. The respondent also agreed that although the welfare checklist did not strictly apply to an application for relocation, regard ought to be had to it as a starting point. Cases varied widely in the circumstances so the weight to be applied to any factor was a matter for the judgment of the trial judge. An appellate court should only intervene where there was no evidence to support the conclusion or where the conclusion was plainly wrong.

[19] The guidance set out by the English Court of Appeal in Payne had been accepted as binding in subsequent Court of Appeal decisions. The guidance included not just factors that might be taken into consideration but advice as to the weight which should be given to each factor. That was not necessarily appropriate in every case and indeed in shared residence cases, the Payne guidance did not apply. Although decisions of the English Court of Appeal were highly persuasive in this jurisdiction they were not binding. In MK v CK [2011] EWCA Civ 793, Black LJ appeared to accept that the only guiding principle was the welfare of the child. The learned trial judge was entitled to take the same approach.

[20] The mother's evidence as recorded by the learned trial judge at paragraphs 11 and 12 of his judgment provided ample support for his conclusion that she suffered from low mood and was psychologically beaten down by the relentless involvement in disputes with the father and grandmother. The judge set out all the relevant circumstances in his consideration and in his conclusion came to the view that the conflicts between the parents and grandmother were injurious to the child and likely

to become progressively more so. He had a proper evidential base for such a conclusion in the evidence of the experienced social worker. He indicated that he had considered the welfare checklist and he was not required to set out his conclusions in respect of each and every aspect (see H v H (Residence Order: Leave to remove from jurisdiction) [1995] 1 FLR 529).

[21] A shared residence order may be appropriate where a child is spending a significant amount of time with each parent. It can be advantageous in sending a message that neither parent is in control and the court expects the parents to cooperate. The court needs to be vigilant to ensure that such an order does not become an instrument of conflict in the management of the child. Where the judge had decided that this child's best interests lay in relocation, a shared residence order was clearly not appropriate.

[22] The Official Solicitor agreed that an appellate court should only interfere with the evaluation and balancing of relevant factors if the decision was plainly wrong. She further supported the view that the welfare of the child was the only authentic principle. The learned trial judge had properly applied that principle.

The law

[23] The application for a shared residence order is made under Article 8 of the 1995 Order and the application for permission to relocate under Article 13. Article 3(1) of the 1995 Order imposes an obligation on a court entertaining either application to treat the child's welfare as its paramount consideration. In dealing with the shared residence application the court must also take into account the welfare checklist set out in Article 3(3).

> "(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to-
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> > (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
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> > (b) his physical, emotional and educational needs;
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> > (c) the likely effect on him of any change in his circumstances;
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> > (d) his age, sex, background and any characteristics of his which the court considers relevant;

> (e) any harm which he has suffered or is at risk of suffering;
>
> (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
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> (g) the range of powers available to the court under this Order in the proceedings in question."

Although there is no statutory obligation to do so in respect of the relocation application it is good practice to apply the checklist in carrying out the welfare appraisal (see Payne at paragraph 33).

[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.

> "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."
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> 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.

[25] 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.

[26] 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.

[27] 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.

(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.”

[28] 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 subsequently approved in a number of Court of Appeal decisions.

[29] 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 fourteen 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.

[30] Thorpe LJ, giving the first judgement, 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.

[31] 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.

[32] 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.

[33] A shared residence order was often appropriate where the child spent a substantial period of time in the home of each parent. The existence of continuing dispute about detail did not prevent the making of such an order (see D v D (Shared Residence Order) [2008] EWCA Civ 66). Where such an order is in place, day-to-day decisions are taken by the parent with whom the child is residing but important decisions should be taken jointly. The value of a shared residence order was set out by Wall LJ in Re P (Shared Residence Order) [2005] EWCA Civ 1639.

> "Such an order emphasises the fact that both parents are equal in the eyes of the law, and that they have equal duties and responsibilities as parents. The order can have the additional advantage of conveying the court's message that neither parent is in control and that the court expects parents to co-operate with each other for the benefit of their children."

[34] At paragraph 42 of Payne, Thorpe LJ noted that in dealing with a relocation application the court was often faced with an alternative application for a residence order or shared residence order by the other parent. As far as possible, both should be tried and decided together. Black LJ also made the same point at paragraph 145 of MK v CK where she said she would not expect to find cases bogged down with arguments over descriptions of the care arrangements.

Consideration

[35] Although Payne has been said to be binding on the Court of Appeal in England 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.

[36] 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 mechanistic application of the guidance.

[37] 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. In this jurisdiction there are fewer relocation cases than in England and Wales and we 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.

[38] The learned trial judge was exceptionally well placed to make a judgment about the extent to which the parties were capable of working cooperatively in relation to the child's upbringing. He was aware of the detail of the previous applications and also had the benefit of the assessment by the experienced social worker and the reasons for her conclusions. The fact that the parties had been able to make arrangements in relation to contact was only one aspect of the factors that needed to be taken into account. It was expressly taken into account by the learned trial judge. There is nothing else to suggest that his conclusion on the likelihood of the parties being able to work cooperatively in relation to the upbringing of child is open to challenge.

[39] Although there was no medical evidence about the effect on the mother of the on-going court cases, there was evidence that she was receiving medication because

of the stress generated by these cases. She had an expectation on the basis of past experience that the applications to the court would continue. The judge concluded that she was right to expect that to continue. The judge, who heard her evidence in full, including cross-examination, concluded that her mood was suffering as a result of the stress of the on-going disputes. In addition to that, this highly educated woman had been unable to find suitable employment. The judge was entitled to take all of those factors into account without the need for medical evidence.

[40] The learned trial judge did not set out his consideration of each item of the welfare checklist but there was no need for him to do so (see H v H (Residence Order: Leave to remove from jurisdiction) [1995] 1 FLR 529). In his conclusion at paragraph 27, the judge explained the basis of his decision. If the then existing situation was allowed to continue, the child was likely to suffer progressively because of the likelihood of continuing court applications, the effect these would have on the mother and the adverse consequence for the child. He then noted that the change of circumstances caused by relocation would provide the child with a materially comfortable existence with a mother fulfilled in her work and enlivened by the lack of on-going disputes. It is common case that the child was too young for her views to carry weight. He looked at the effect on the child of the removal from her father and the paternal family. He recognised that the child would be compensated to some extent by her relationship with her maternal family. The judge clearly looked at the emotional needs of the child, the likely effect on her of a change of circumstances, the harm which she was likely to suffer and the extent to which the parents could cater for her needs. These were the material issues arising from the welfare checklist. He also noted the effect on the father and grandmother. In doing so he properly took into account the Article 8 rights of the father which include the importance of a role for the father were relocation to occur, the importance of which is supported by Article 9 UNCRC. The mother had shown commitment to contact in the past and had practical arrangements for contact in the future. The judge found that those contact arrangements could mitigate those adverse effects. That was a judgment open to him on the evidence.

[41] The welfare determination that relocation was in the best interests of the child effectively determined the shared residence application. There was nothing further for the judge to consider. The shared residence order was refused for the reasons justifying the granting of the relocation application. The submission that the relocation application was granted because of the wishes of the mother and the effects on her is wrong. Paragraph 27 makes it clear that the emphasis was on the issue of potential harm to the child.

[42] We recognise that relocation is an area in which there is likely to be continuing research. That is clear from work carried out by Professor Freeman and is recognised in the Washington Declaration on International Family Relocation in which an attempt was made to promote a more uniform approach to relocation internationally. It may be that in due course this will require some alteration of the approach to assessing the welfare of children affected by these decisions but at

present we consider that the assessment of the welfare of children is best considered by taking into account the welfare checklist.

Conclusion

[43] For the reasons given we considered that there was nothing to indicate that the learned trial judge's decision was plainly wrong and the appeal was dismissed.