

IN THE FAMILY COURT AT BRISTOL

Tuesday, 26 September 2023

BEFORE:

DISTRICT JUDGE WEBB

BETWEEN:

D

Applicant

- and -

T

Respondent

MS R COOPER appeared on behalf of the Applicant father
MR F SHAMA appeared on behalf of the Respondent mother

JUDGMENT

1. THE DISTRICT JUDGE: This is my extempore judgement following this two-day international relocation case. Before me today I have the case of D and T.
2. The parties have two children: A born in March 2019. A is now four. She is ‘rising five’ and so she started school approximately three weeks ago. She has a younger sister; F who was born in December 2020. F is now two and will turn three later this year. The parties are from different parts of Europe. Mr D is English. Mr D’s family have lived in England in an area south of the location of this court. His mother still lives there with his stepfather and his grandfather. Ms T is German and is from a town in southern Germany.

3. The parties met in 2016. Mr D had been a serviceman for about a decade but by that point was moving out of that scenario. Ms T worked for an international organisation. The relationship commenced in 2017, and in 2018 Ms T relocated to the United Kingdom. The date of her arrival was Boxing Day 2018, and by that time she would have been pregnant with A. Both children were born in Wales where Mr D was working as a civilian for the forces and the parties were to eventually purchase property in Wales, purchased in Mr D's name with Ms T's maternity leave money from Germany. They were living in Wales when F was born. They continued to live there with the two young children until March 2021. They then relocated from Wales to live in a mobile home in the grounds of a small holding south of here, the small holding being owned by Mr D's mother and her husband.

4. The couple split in February 2023. The catalyst for the split was a cooling-off of the relationship, which appeared to have been close to non-existent by February 2023. In particular Mr D became suspicious that Ms T was planning on leaving not only the UK but possibly going to America. He had some grounds for believing that because he overheard conversations taking place on the internet between Ms T and a man in America, and he secured evidence of that by recording a conversation which made it clear that she was at least flirting with the idea of going to the United States. It is fair to say she had made no practical steps to realise this move. Such a move would require a visa at very least and tickets. But she had carried out some exploration as to the practicalities. For example, she had created a balance sheet of pros and cons in relation to two potential towns to live in in America, and she seemed to be au fait with the costs of flights. As such it is not surprising that in early February of this year Mr D made an application to this court for a prohibited steps order to prevent such travel. That order was made on an without notice basis on 13 February, and in the interim period before the matter came before a judge in person, he withheld the children from contact with their mother.

5. On 23 February the matter came before District Judge Brown who continued the prohibited steps order and provided for contact between children and mother, to be

agreed between the parties. The matter came back before my colleague, District Judge Taylor, on 10th May 2023, and at that point District Judge Taylor could see this was a case without a negotiable solution, and so he not only ordered a section 7 report but he also listed this matter for a two-day final hearing, which has taken place before me on 25 and 26 September. The section 7 report was prepared by a Cafcass officer. It is dated 8 September 2023. Both parties have had the opportunity to put detailed evidence before the court and they have both seized that opportunity; there is a bundle which runs to 311 pages, which contains witness statements from both parties where they set out their proposals up for the future lives of their children.

6. I heard the evidence yesterday of Ms T, Mr D and the Cafcass officer, all on oath, all subject to proper and forensic cross-examination. I have further read the bundle, I have received position statements from both counsel, I have heard detailed and persuasive submissions from both sides and I have taken all those matters into account. The fact that I do not refer to a particular piece of evidence or submission made in this judgment does not mean I have not considered it and weighed it into my evaluation of the situation.
7. As I go through this judgment, I will make factual findings. In any case where a factual finding is sought, is for a party who seeks to prove that fact to adduce admissible evidence before a court so that a judge is satisfied on the balance of probabilities, i.e. it is more likely than not that that fact occurred. The factual findings I make are on this basis and are set out in the analysis section as they arise.
8. I do not believe that this is a case where anyone is suggesting that lies have formed an active part of the process. There is suggested to be an element of perhaps tricking or deception. Just for safety and security, I remind myself of the case of *R v Lucas* [1981] QB 720, which indicates that if I do find a person to be untruthful before me, I have to take a further step back and ask whether I can extrapolate from one untruth a more generalised dishonesty. I also need to identify the welfare issue to which such dishonesty goes.

9. **Ms T's position:** She indicates that following the breakup of their relationship, she has undergone a situation where, firstly, she was prevented from seeing her children, and then she has had to see them as provided for on the good graces initially of Mr D and then by a court order. In order to facilitate that, she indicated that she was asked to leave the family mobile home and has had to rent Airbnb's in this country and a hotel on the dates the children are with her, and in doing so she has ensured that she has maintained a relationship with her children. The present order provides that the children spend time with her on Friday, Saturday and Sunday night, living with Mr D for the other four nights of the week.

10. She describes a situation which became ever more difficult when the parties lived in Wales. She describes the events of March 2021 as a mental health breakdown on the part of Mr D and indicates the move from there was borne out of some crises. The accommodation south of here was a mobile home. That mobile home at times had mould. Rat droppings were prevalent in and around the family car, and the accommodation was cold, such that the girls had to have a bed placed in the living room facing close to a fire. She indicated that she accepted that she had had conversations with a man in America within the context of a deteriorating and ending relationship, but these were no more than speculative discussions and there was never any intention to relocate. She indicated that for lengthy periods of time during the relationship, she had taken the children to Germany, where certainly they had been during the summers of 2020 and 2021 for periods of approximately three months each summer.

11. Her position is that the present situation with her relying on Airbnb's and hotel accommodation to allow her to see the children cannot continue. She indicates she has not applied for settled status in the UK and therefore cannot work. She wishes to return to the small town she has identified in rural southern Germany where she describes an idyllic life which the children will enjoy. She would live in an apartment block owned by her mother where she herself owns a three-bedroom flat. Within that block is someone she regards as a close friend or pseudo-grandparent, and indeed her actual grandparent. She has investigated the kindergarten provision, the school provision. She

believes she can work at a good level. She indicates that the children could enjoy the facilities of such a place, be supported by her family and have a close to idyllic life there. She indicates that she will do what she can to support the relationship with Mr D, including if necessary, bringing the children to the UK every other month, supporting holiday contact, indeed even providing him with accommodation at the basement of the block. She says in those circumstances the welfare position is overwhelmingly in favour of a relocation to Germany.

12. **Mr D's Position:** He was deeply concerned by the mother's conduct in February 2023. He does accept that in 2021 things were very difficult. He puts that down to financial pressures because of the mother's failure to apply for settled status and their isolation in Wales. I think it is important we try and remember those times. This was in the midst of the second Covid lockdown and life was very difficult for anyone, let alone someone with a newborn a long way from home. He indicates that he worked hard to build an annex to his mother's property, and he sought work elsewhere when necessary. He accepted that for periods of time he had to work away but explains that that was necessary to provide the funds that the family needed. He was deeply concerned about what appeared to be in his mind a quickly evolving situation where there was a real risk that the children and Ms T would be in America before he could do anything to stop it, and that was the motivation in him making the application to this court. He describes a situation where until he had hold of the children's passports, he felt it was simply impossible to allow contact to take place.

13. Moving on from the court hearing in February, he describes an attempt to work cooperatively with the children spending time with their mother. He describes an increasing role for his mother in terms of the children and indicates that he is delighted that A has settled into a primary school. This is a primary school which has a feeder nursery provision, and F has been attending that nursery since September 2022. It is a provision which requires the children to wear a uniform and to attend the same school. The children in the nursery very much look part of the primary school. He indicates that he has a support network; his mother and two brothers, who live relatively close by. He indicates that the children, particularly A, are doing well in school and that F

will attend the same nursery full time in January 2024. Because of his need to give up all work and provide for the children, he is not working at present. He describes a situation where in January 2024 he will seek work. He is a practical man. He has the forces background and aeronautical experience, and he is confident he will be able to find work.

14. In those circumstances, he puts forward a proposal that the children should live with him in accommodation which would allow the girls to attend the same school. He has very significant concerns about the move to Germany. He indicates that if the move happens, he has a real worry that he will be written out of the girls' lives slowly, and he prays in aid of that submission the fact that Ms T has no contact with her father and paternal grandmother. His position as to where he will live is a little bit uncertain as to detail, but he believes once he gets back into work it would be possible for him to either rent or buy a property. He emphasises the quality of the primary school and of the secondary provision in this area.
15. **The Law** A useful starting point is *Re F (A Child) (International Relocation Cases)* [2015] EWCA Civ 882, [2017] 1 FLR 979. This provides the following framework (as summarised by Mr Justice Williams in paragraph 45 of *Re K (A Child)* [2020] EWHC 488.)
 - a. The only authentic principle is the paramount welfare of the child.
 - b. The implementation of the Children Act 1989 section 1(2)(A) makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent.
 - c. The welfare checklist is relevant whether a case is brought under section 8 or section 13 of the Act.
 - d. The effect of previous guidance in cases such as *Payne v Payne* [2001] EWCA Civ 166 may be misleading unless viewed in its proper context, which is no more than it may assist the judge to identify potentially relevant issues.

- e. In assessing paramount welfare in international relocation cases, the court must carry out a holistic and non-linear comparative evaluation of the plans proposed by each parent.
 - f. In addition to Article 8 rights, indeed probably as a component of the Article 8 rights, the court must factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis, unless this is contrary to his interests. That is in accordance with Article 9 of the UN Convention on the Rights of the Child.
 - g. Furthermore, the court must also take into account the Article 8 rights if the parents. In the usual case, the child's rights will take priority over the parents', but that should not cause the court to overlook the Article 8 rights of others affected, and the court should balance the competing rights.
 - h. It is likely that other family members will be affected by a decision, of course the further removed from the parents and the child the individuals affected the less their rights will be infringed and thus the less weight they are likely to carry in comparison to the parents and of course, at the top of the list, the child.
16. In the case of *L v F (Relocation: Second Appeal)* [2017] EWCA Civ 2121 Peter Jackson LJ confirmed that it was inappropriate to determine the issue of primary carer before deciding the issue of relocation stating:

"54. In contrast, the approach of Russell J was that the court should have been "considering and deciding the question of the child's main carer and child arrangements, prior to considering the application to relocate" [original emphasis] and that it should have carried out "the necessary primary analysis of which parent was best placed to meet those needs." Consistently with this, she remitted the case "for re-hearing in the first instance of the arrangements for D and, thereafter, of any renewed application by the mother to relocate to Italy.

55. *The submission is made that this approach is entirely contrary to authority; it is explicitly linear and would lead to an inappropriate and impractical compartmentalisation that could only distort the proper decision-making process.*

56. *It is then submitted that Russell J fell into error when she referred to a passage from *Payne v Payne* [\[2001\] EWCA Civ 166](#). The passage referred to at [86] (the reference to [80] appears to be a typographical error) cannot be read as requiring the court to determine a "main carer" or make a choice about with whom the child should live before deciding the issue of relocation.*

57. *Finally, it is said that the assumption that a child should have a "main carer" that needs to be determined by the court is outmoded and discriminatory in a way that this Court has repeatedly sought to avoid.*

58. *In my view, each of these submissions is well-founded."*

17. These issues were considered by Williams J in the case of *Re K (A Child)* [2020] EWHC 488 (Fam) at paragraph 48, where he describes the required approach as the 'FKC-Payne composite', and at paragraph 50 he sets out enhanced welfare checklist points for a court to consider. Rather than set those out at this point, I am going to use them as the bedrock of my analysis, I am going to go through each of those criteria and on setting them out, I will then comment upon them, and this is why I apologise to the parties who left this court four hours ago. I spent the entire time doing the welfare analysis comparison, because that is the heart of this judgment. So, let us do that. The relevant factual findings will be set out in relation to each criteria.
18. **(i) The ascertainable wishes and feelings of a child concerned considered in the light of his age and understanding**

A met with the Cafcass officer on 14 July. I realise at this point what I have not done in terms of my summary of the evidence is examine the Cafcass position, and it is remiss that I have not done so earlier. As I have said, in September of this year the Cafcass officer prepared a section 7 report. She is clearly an experienced Cafcass officer. She

has nine years' experience with Cafcass and ten years as a frontline social worker before and she has reported on several relocation cases. She set out the competing positions having spoken to the parents. She met with the father virtually by Teams and met with the mother virtually by Teams and then saw the children on two separate occasions, once with father at a park and once with mother at the hotel/pub where she was staying. She also met A in school. She described her interaction with the children and then she set out the competing positions of the parents. At that point she formed a view that what was likely to be the most significant issue for her was the change in circumstances, and in a case where she said there was no safeguarding to worry about and where we had capable parents for her the main issue was the change in circumstances, and that led her to say a change in circumstances was unwarranted in these circumstances and the children should remain in England with their father and every effort should be made to provide an enhanced form of contact with mother.

19. A met with the Cafcass officer on 14 July, and these are her comments in full:

"6. Upon meeting A at school to ascertain her wishes and feelings, [a member of staff was also present. Using the How It Looks To Me tool, A told me that she lives with her daddy and her sister, and mummy lives far away on an aeroplane. A reported she likes going to school and playing, but when she is with daddy she likes watching him cook food and eating pizza together. A said she also enjoys going to the beach with daddy, where they fish and catch crabs. A reports when she is with mummy she likes playing in the ballpark and going on an aeroplane. A says she feels happy in Germany. She never cries and she has her own bedroom. A told me that daddy speaks to her in English and mummy speaks to her in German.

7. A's views were reinforced using the face emotion stickers where she chose a happy face about being with daddy and a happy face about being with mummy. She chose the excited face about going on holiday to Germany. A told me she is going to Germany in the summer holidays with mummy, stating she loves being in Germany with mummy and she loves being in England with daddy. The only worries A has expressed about her life at the moment was the plane journey and that her two-year-old sister hits her sometimes."

20. It is easy for me to make the first factual finding, and that is I find that A loves both parents equally. A sees no faults in her parents' care of her, and A loves being able to

move between the worlds of Germany and England. A was not asked whether she had a preference to where she lives. Of course, that would have been inappropriate given her age. We do know she is happy where she is. The head teacher at the school describes her as a confident, positive, and sensible member of the preschool class. She has a wide friendship group, and she displays excellent listening and sitting skills and is friendly and polite to others. Her school report says she is happy at preschool.

21. If I take a step back from the dispute the parents find themselves in, it is clear that the parents have protected their daughters from their split and there is no evidence the children have been caught up in any acrimony. That is hugely to the parents' credit that they have protected their children from this situation.
22. It is reasonable to say A would find the prospect of leaving school and moving to a different school system in another language in a different place frightening, but children do move from school to school and indeed from country to country, and usually where parents are in agreement with this, children of this age, the fact that the children are nervous is not a significant factor in the parents' decision to move. It was suggested that her saying that her mum lives in Germany indicates she knows she lives with her dad. I think that is probably taking it too far. The father has had the advantage of always remaining in the family home, so it is not surprising she sees that as his home. Mother does not have a home, so logically mother lives in Germany but since the May 2023 order it is clear that in practical terms his child has lived with both parents.
23. At this age and given A's and particularly F's level of understanding, I find wishes and feelings as being an entirely neutral factor, i.e. one that does not help me in my decision-making process.
24. **"(ii) Physical, emotional and educational needs"**

For a period of time, the children lived in a mobile home which presented a risk to their health. This was at a time when both parents were responsible for their environment. Ms T has provided clear details as to where the children would live in Germany. She

owns her own flat in an apartment block, which appears to provide excellent accommodation. Mr D's position is more complicated. He moved to his grandparents' house and then moved back into the mobile home. He intends to move into an annex in his mother's house, which will require a shared living space with his mother, his stepfather, and his grandfather. These are rather shadowy figures.

Allegations have been made that the stepfather has an alcohol problem, and this was not as far as I am aware challenged. I also do not understand the practicality of Mr D living in a room in the main house and whether that would be safe for the children. That would depend on access from the main house to the annex. It appears the children will share a room, and then there is some indistinct plan to move to a purchased or rented home at some undefined point in the future.

25. In terms of the children's physical needs as far as accommodation, it appears to me that that is best served with them being in Germany where there is an immediate, appropriate permanence of accommodation as opposed to this country, where the position is less clear.

26. **Emotional needs**

The children are heading for an emotional crisis. Ms T was their main carer until February of this year. This was particularly pronounced in the summers of 2020 and 2021, where A and then both children spent three months in Germany in the summer with their mother. In addition, from April to October 2022, Mr D worked away for stretches of time. By contrast, the period where the children had no contact with their mother is only the 17 days from 7 to 24 February. Given the parties' positions, there will inevitably be a loss of primary care giver. An initial assessment indicates the balance of risk here falls in the mother's favour. She has looked after the children without the father for months at a time, but he has not done so. Against that, it is clear that the father has parented the girls excellently since the separation, and that must extend to emotional support. The school chose the word "happy" to describe A. It is to be noted that the period from 7 February would also be one of crisis, and the father

clearly was able to use his skills to minimise upset the children. There is nothing to suggest he would not do so again, even facing a greater challenge.

27. Here it is relevant to look at how emotionally stable the parties are. It is clear that the mother was profoundly unhappy in 2022 into 2023, and that extended to flirting with a move into the unknown in America. She listed pros and cons of living in two locations where her online friend had homes. This is indicative of a risky element to her personality, and this must weigh in favour of the father being in effect the long-term principal carer. It is correct she did not take any practical steps, but it is also clear she was contemplating traveling to America with the children to meet a man whom she did not know. It was suggested that Ms T did not have a relationship with her father and paternal grandmother. As she was not cross-examined on why this was the case, I cannot make any factual findings as to whether this was due to issues on her behalf or on the part of others. It is also clear that the father has experienced at least two periods of emotional turmoil, firstly, he accepts, a psychotic episode in 2018. It is important to note that the GP who wrote the letter, which appears at page 295, did not have access to his medical notes and simply comments:

"There is an entry in 2018 which refers to psychotic symptoms being present. He tells me that he advised his GP at the time that he was feeling very low and was experiencing difficulty transitioning from armed forces to civilian life."

28. Ms T describes a crisis in 2021. She states, "D had a mental breakdown on 21 March 2021, when he screamed at me that he would like to die". She stated that in conjunction with his mother, they determined the family should move from Wales to their current location. Ms T was not challenged on the testimony in relation to this element, though it was clear from Mr D's evidence that he did not accept that his mother played a principal role in moving him as such, but he did accept that he had had periods of mental ill health, and in the absence of his medical notes, the GP's letter is evidentially pretty weak. As such the mother's strong mental health must weigh in favour of the mother becoming a principal carer.

29. I have concerns about both parents exhibiting potentially risky behaviours and vulnerabilities; in those circumstances it is relevant to look at the support network available, as the degree of support they are able to rely upon will be significant. Both parents are lucky to have family members living in effect in the same dwelling. Ms T has her grandparents in the same building and her mother 30 minutes away. Mr D has his mother on the same plot and brothers 30 minutes away. I am not aware of the practical support his stepfather or grandfather can provide, and so I discount them. In his witness statement, Mr D talks of the huge amount of time that the children have spent with his mother recently. However, this is not discussed in any great practical detail. The only practical example he does give is that she cared for the children when he had to attend the High Court in London. Ms T suggested she could only remember one time when the grandmother had taken the children out. By contrast, Ms T spends considerable time describing the practical help and intervention given by her mother, stepfather and grandparents and evidences this with photographs which appear at page 80 to 82 and then 109 to 119 of the bundle. Mr D speaks warmly of his sibling network, and they have clearly provided him with support, particularly over these difficult months since the separation.
30. In terms of familial support my finding is that the evidence supports Ms T having a more active support network. This is based on the proximity of the grandparents and the more cogent evidence of practical support provided by the grandparents and the mother. I find both parents to have vulnerabilities. This is based on the episodes of mental ill-health accepted by the father and the risky behaviour contemplated by the mother. In those circumstances, I find the support network to be an important factor in dealing with the emotional crisis which I have indicated will occur. In those circumstances I find the support network to be important and I find the mother's support network to be stronger.
31. **Educational needs**
- The area the father lives is blessed with excellent primary schools and outstanding secondary provision. The evidence from the mother supports the education provision in Germany being excellent. Both parents conceded there was nothing to choose between

these provisions. A big issue is the transition from the English to the German system. The German system starts at six, and as such a transition would take place next summer. What is difficult to calculate is the loss of the English system and the friendship and the bonds created to date. Ms Cooper is correct in saying that this is a known unknown. How will A react to leaving her school? She will undoubtedly be sad, and how quickly will this heal? I have nothing to suggest the process of healing will not be relatively quick, and indeed the Cafcass officer agreed that she would not be harmed by the process. The question is: what will the effect of that process be? I have no expert evidence on this point. Children are resilient and adaptive when they have a supportive environment in which to deal with adversity and change. A and F have no special needs which makes them less able to do so, and the evidence is they have coped well with this split. However, this is undoubtedly change. My finding is there will be an effect on A, maybe in confidence, maybe in sociability, maybe emotionally. I rely on the Cafcass officer's assessment that that will be a process that is transient. This factor, i.e. that of change, must weigh in favour of the father's position.

32. **(iii) The likely effect on the child of any change in their circumstances. Within this some specific questions might be what changes to housing, schooling and relationships are likely if they remain in England? How realistic is the plan in the sense of how likely is it to be implemented as conceived? Will there be positive effects in respect of the removing parent's ability to provide care for them if they move abroad? What are the other positives and negatives about country X in terms of environment, education, links with family? What will be the impact on the child of moving permanently to another country in respect of their relationship with the left behind parent and other extended family? To what extent may that be offset by on-going contact and extension to other relationships in the new country?**

The Cafcass officer clearly saw this as the key issue:

"Moving to a school in Germany is a change which is not essential... I come down to the least disruptive. They would settle well in Germany. They have a good relationship with everyone on an emotional level, and they would settle in. But there would be

disruption in education. A would not start school until six. Their first language is English. They would have to get to grips with that language. Socially it would be an issue. She has made some very good friends at school. That would be taken from her. On an emotional level, I do not have concerns. I accept that they would adjust fairly quickly to location because they are there with their mum. I feel they would adjust well. It is cultural, educational and social aspects which could be problematical."

Those are quotes from her cross-examination. They do not appear in her report. The Cafcass officer was very thoughtful in her answers. She accepted the move would not cause the children harm but identified disruption in educational, social and cultural ways.

33. There is an element of crystal ball gazing in this element of my judgment. I have to try and work out how a child would cope in a different environment. The best evidence I have on this point is the Cafcass officer's summary: (1) there will be disruption to an established social cultural and educational regime; (2) the present regime works and as such, any change presents risks; (3) these children are resilient and they will adjust over time; (4) there will be an effect on them during the time it takes to adjust. That effect is short of harm but exists. This factor must weigh in Mr D's favour. The question is the weight to be given to it.

34. In terms of the elements of the plan, I find both parents' plans have an essential logic to them. They are both looking at schooling, accommodation and support networks. They are both less clear about work. There has existed a somewhat unusual circumstances since February, when neither parent has worked. This cannot continue. I have an idea of both parents' skill levels but little practicality as to the work they will find. In Germany Ms T's position is perhaps easier as she has a degree and has worked at a high level. Mr D has a more diverse skill set, but it is unlikely he would not be able to find work at the airport or in the aerospace industry. The question is how this fits in with the children. I do not have a clear idea of what childcare looks like for Mr D if he returns to work. I am unclear as to who would mind the children for the wraparound element of their care. I note that F attended a childminder for a period of time and that was not successful.

This uncertainty weighs in favour of the mother's position. Where there was less certainty was in contact plans. Both parents appeared to wish to bend over backwards to appear to be reasonable in relation to contact with the non-resident parent, but that led particularly to Ms T taking up untenable positions. It is simply not possible to take two soon-to-be-school aged children from Germany to O every two months for a weekend. The travel is too wearing on them. It is certainly not cheap to do so. The effect of cross examination on this point was to make Ms T look as if she had not thought the situation out properly. However, the key contact proposals of both parents emerged unscathed from cross-examination. They both wish to support lengthy periods during the holiday with the other parent.

35. In terms of the details provided, I find the degree of detail provided by Ms T in relation to life in Germany to be far better than in many relocation cases. I have a clear idea of what girls' life would look like in Germany. I have a less clear idea of what their life would look like in England. I am uncertain where they would live in the long term, uncertain as to what work Mr D would do and uncertain as to childcare arrangements.

36. **The positive effects of removing parents' ability to care**

I am concerned that a refusal to allow the relocation will cause emotional harm to the mother. I am worried that permission to relocate will cause emotional harm to the father. I have already identified the parents as having vulnerabilities, and I cannot predict how problematical this will be. On the contrary, I am satisfied that if the mother was allowed to move, it would provide her with an ability to improve her parenting from a situation where at present she parents in Airbnb's and hotels. As far as I am concerned, this is not a beauty parade between the Germany and semirural England. I have been presented with an idyllic picture of potential life in Germany. Against this, I have a warm, loving picture of the life father has created here. I am particularly touched by the picture of the girls visiting his grandfather every day. I note that he suffers, from ill health, and clearly that is a very important bond, and I note that they go swimming with their father on a regular basis. If circumstances removed one parent from the scene it is my assessment the children would have a happy life with their mother in Germany and a happy life with their father in England.

37. What will be the impact on the child of moving permanently to another country in respect of their relationship with the left-behind parent and other extended family? The mother has moved heaven and earth to retain a central role in her children's life post separation. I am sure she will maintain a bond if she lives in Germany and the children live in England. The bond will be of a lesser nature. The love will be no less, but she will become a more peripheral figure in the children's life. The same must be true of the father. He has given up work and cared wonderfully well for these girls in what must have been a time of emotional crisis. He has every right to be considered equally, and the loss of the girls in his day-to-day life will be a huge loss to him and the girls. To be fair, both parents accepted under cross-examination that the removal of the other parent was a huge loss to the girls.
38. I cannot compel either parent to amend their plans. I do not know what will happen following my order, and therefore I must accept the parents' position as stated, that the mother will be Germany and the father in England, wherever the children are located. As such, I discern this loss to be equal. How can this be mitigated? Having identified there are travel difficulties, it has to be said these are not unsurmountable. The children could travel three times a year at Summer, Easter and Christmas, whether that is from England to Germany or Germany to England. On the other occasions, the non-resident parent can travel to them, and this will mitigate the effects of the separation. I note the mother was criticised for offering a spare room in the basement of the apartment building. It seemed to me that that was a kind gesture for her to make. As such, I work on the premise that wherever the children are, they will spend at least six weeks of the year with the non-resident parent, and if that parent is prepared to travel for a weekend to the other country, that could be perhaps another three to four times a year. This is perhaps more contact than some non-resident parents have in this country under some orders. What matters here is the commitment of both parents post this order to work cooperatively to maximise the time spent with the non-resident parent. But there will be a loss, and that cannot be hidden.

39. That is an immensely long section, and the way Williams J's judgment is set, it sets in change of circumstances a whole range of criteria, and I think I have said predominantly the change of circumstances must weigh in father's favour, though there are mitigating factors.

40. **(iv) The children's age sex background and any characteristics of his which the court considers relevant**

Here, the key factor is the youth of the children. They are more likely to be able to cope with change than an older group of children with more established routines and friendship groups, to my mind. This makes moving them more possible.

41. **(v) Any harm which he has suffered or is at risk of suffering. There is obviously a significant overlap here with the effects of change and so within this, what may be the impact on the child of the change of their relationship with the left behind parent? How secure is that relationship now and how likely is it to endure and thrive if the child moves? How realistic are the proposals for maintaining contact? What will be the impact on the removing party of having to remain in England, contrary to their wishes? What will be the consequent impact on the child? What will be the impact on the left behind parent of the child moving? Will the ability of either parent to provide care for the child be adversely affected by the refusal or grant of the application and if so to what extent? To what extent will loss of contact with the left behind family be made up for by extension of contact with the family in the new country?**

I find harm is going to occur by dint of the parents' decision to live in different countries. To my mind, if culpability for that harm is a correct word, that falls equally on both parents. If you have children with someone from a different country, you must be aware that in the event of a relationship split, there is some prospect of the parent moving. The harm is the loss of the parent as a constant presence in the child's life. I agree with the Cafcass officer that the move itself does not cause harm. It is the loss of the presence which causes harm. Given the parents are to live in separate countries, we have unavoidable harm. I am confident the relationship with the-left behind parent will remain strong, but it will be of a different character. Why can I make that finding? I

make that finding because of the commitment both have shown to these children, giving up work in father's case, setting up a regime of accommodation in mother's case. I do not have cogent evidence which would indicate that contact would be stopped by either parent. The conduct of both parents since March has been exemplary. It was suggested that the fact mother does not have a relationship with her own father evidences risk, but without further information I do not accept that. So this is a neutral factor.

42. What would be the impact on the removing party of having to remain in England contrary to their wishes? Of course, this is not the mother's position. I cannot speculate if she will stay. At present it is not possible for her to work, but in six to twelve months it should be possible, but the Family Court does not control where adults live. We do not tell people where they live as adults. We determine where the children live. I do find the present position is unsustainable. Both parties have been in limbo, funded by others, waiting for this issue to be resolved. I find the impact of refusal on mother will inevitably be significant. No one questions her bond with these children, and in so far as it is useful to have that concept, for the vast majority of the children's life she was the primary carer. It is likely she will be devastated by a refusal. All the evidence suggests if the position is reversed, it will have a profound effect on the father. I find I have little evidence which would allow me to determine which would have the more significant impact. To do so would be in effect to find one parent loves their children more and so would suffer more greatly as a result. What I do find is that as the principal carer for the majority of the children's lives, to remove this from the mother is likely to have a greater effect on her rather than the father, who has been absent for longer periods, and I emphasize not necessarily of his own choosing.
43. Of course, the effect on the parents is really only relevant in so far as it impinges on their ability to provide care, and so I ask myself: will the ability to be the parent to provide care for the child be adversely affected by the refusal or grant of the application and, if so, to what extent? I find in the short term the parent whose application fails will be adversely affected by this, and this will impact on their ability to care. However, in the slightly longer term I find that they will then make the best of the new normal, I

make this finding on the basis that these parents are essentially capable people. One has lived abroad, has a degree, has held down good work and been a loving parent to two children. The other has served in the military, built a home and, most significantly, supported his daughters through a crisis. On balance, I do have concerns that the effect on the mother may be greater and this will impinge on her parenting ability to a greater extent.

44. **(vi) The capability of the parents, how capable each of them are and any other person in relation to whom the court considers the question to be relevant is of meeting the child's needs. How are the parents currently meeting their needs?**

To a large extent, capability has been removed from my evaluation, as both parents and the Cafcass officer accept the parents are equally capable. I quote the Cafcass officer: "Both parents are capable, they both love their children, they both offer the children equal care". I quote Mr D: "We are both equally capable". I do find capability goes to their ability to support the children through emotional loss. Father has shown an ability to do this, as has the mother after the 17-day break in contact.

45. **Are there any aspects of their ability which may be particularly important in the context of a relocation, for instance their capability of meeting the emotional need of the child for a relationship with the left behind parent? Is the application to relocate wholly or in part motivated by a desire to exclude or limit the left behind parent's role? Is the left behind parent's opposition to the move genuine, or is it motivated by some desire to control, or some other malign motive? Will the parent be better able to care for the child in the new country than in England? What role can the left behind parent play in the future?**

I hear *Payne v Payne* quietly sounding in the background. I will deal immediately with motivation. I find, this is not a case where either parent has behaved maliciously or improperly. Mr D was right to apply for the prohibited steps order in the circumstances as he perceived them to be. He should not be criticised for acting promptly to protect the children. Perhaps he should have been willing to allow a summer holiday to go ahead, but that is an evaluation of risk which perhaps at that point in time he was too close to make. Ms T behaved badly by flirting on the internet and discussing tricking

people. However, the outcome of the discussion appears to be her stated unwillingness to trick and, as I have said, there was no evidence of practical steps being taken. As such, this is not a case where a detailed examination of motivation is required. Ms T genuinely wants to move, Mr D genuinely does not want the children to move, both for perfectly valid reasons. As such, this factor is neutral.

46. **(vii) The range of powers available to the court under this Act. Can conditions of contact be imposed in terms of provision of funds, or frequency of visits? Can court orders be made in the other country, either mirror orders or orders which will allow reciprocal enforcement?**

It appears to me a fund can be made for travel. The proceeds of the Welsh property appear to me adequate to put in place a fund sufficient to remove the cost of travel as a worrying factor in this case. My understanding is that property was bought in effect by mother's money in father's name. In addition a mirror order can be made in the German courts that may assist in this complex post-Brexit world. The existence of these provisions and provisos make a move possible but in my mind do not help me decide on the merits of such a move.

Conclusions

47. I have to take a step back. It is clear from the above analysis that some factors point in one direction, others the other way. This is not a football match; It is not a case of counting factors like goals. I was taken by Ms Cooper's metaphor of a landscape with contours and landmarks, and as I survey that landscape it is abundantly clear that there is not an obvious answer to the question. Both counsel told me there was an obvious answer. They are doing their job. In reality this is a case where there are arguments in favour of both parties' positions. I must therefore look at the status of Cafcass's advice.
48. The officer states change of circumstances is the key factor in what would otherwise be an evenly balanced case. I find she has elevated this factor over the other welfare checklist factors. I also find the age of the children, the inability to pinpoint harm in the move, the very brief involvement in full-time education and the resilience of the

children taken together all support an ability to cope with a move which means this factor should not be regarded as having a magnetic effect on the decision.

49. I also agree with Mr Shama that what was required in the Cafcass officer's analysis was a side-by-side assessment holistically of the options available, and I do not see that in the report. I have huge sympathy for Cafcass, asked to report quickly with relatively limited time, and it has taken two days of evidence to create a holistic side-by-side analysis. It is perhaps unreasonable to expect a Cafcass officer to be able to do that. But what I see is a statement of one party's position, a statement of the other party's position and then a decision. The key sentence in the report is this:

"Taking into consideration that this assessment does not identify any safeguarding issues that would prevent either parent from caring for A or F adequately, this leaves the matter of where the children should live and what arrangement would cause the least impact and disruption to the children, considering the parents would be living in different countries."

50. I just do not agree that that is the test. The least impact and disruption does not reflect a holistic welfare analysis, it elevates the change of circumstances criteria to one of higher significance than the other welfare checklist criteria.
51. I have had the luxury of hearing the parties give evidence and that has highlighted the vulnerabilities of the parties which perhaps was not so evident to the Cafcass officer when she was preparing her report.
52. As such, I find myself in a position where I discern cogent reasons to diverge from the guidance provided by Cafcass. I note the case of *Re E (Relocation: removal from jurisdiction)* [2012] EWCA Civ 1893, which indicates where a court has directed a Cafcass officer's report, the content of that report and the recommendation are going to be very influential on the outcome, but, secondly, a judge is not bound to accept the recommendations of a Cafcass officer but does have to provide cogent reasons for rejecting it.

53. I thus do not regard the officer's conclusion as being conclusive, it is my responsibility to carry out that side by side analysis.
54. Reviewing the points and findings I have made. My key concern in this case is what I find to be the upcoming harm to these girls, and that is the harm of losing a combined principal carer. I find the next year at least will be a sad time for these girls. They will come to realise these parents are not together and cannot both be involved in their lives in an easy, naturalistic way. I have found that the support network for Ms T in Germany and the stability of her accommodation means she is in a position to provide a safe environment surrounded by family to deal with this period of trauma. I note she has cared for the girls alone for long periods, and this gives me great assurance that she will be able to do so again.
55. I note in particular I have found vulnerabilities in the parents perhaps not evidenced fully in the Cafcass report, and in those circumstances to me the support network is of significant importance. I find the support network the father has is less clear and the uncertainties greater. The position in relation to work and accommodation and childcare once work takes place are perhaps the most obvious examples.
56. Against this, I note the changes required and have to factor them in. Where I find the change is not harmful but effectful, I do not find that the effects of change are so great that they will undermine my central assessment that the mother's plan provides the better option to deal with the difficulties the girls are going to experience.
57. I have also found the mother less able to cope with the failure of her application. I find this directly affects her ability to care for the girls should she be the non-resident parent. I have found that good quality contact can mitigate some of the effects of change though not, of course, mitigate the pain. I do say I have found the father to be above all a practical man, and in those circumstances I have some confidence at least he will accustom himself to the new scenario and make it work.
58. In those circumstances, having spoken for far too long and in far too much detail, my assessment on balance is that I shall allow the relocation and dismiss the prohibited

steps order. I recognise that this is a finely balanced decision and my assessment is the mother's proposal presents the stronger case in relation to support which will allow her to support the children as they move forward.

District Judge Webb

26 September 2023