

IN THE FAMILY COURT SITTING AT BRISTOL

BS23P71065

BETWEEN

D

Appellant

-and-

T

Respondent

JUDGMENT

Introduction

1. I am concerned with the father's application for permission to appeal a private law order made by District Judge Webb on 26 September 2023 following a two-day hearing. The order provided for the children, A (aged 4) and F (aged two), to live with the mother and for her to be given permission to relocate with them to Germany. For convenience, I shall refer to the parties as the father and the mother. The father was represented by Ms Cooper and the mother by Mr Shama. Both have provided written submissions for the purpose of this application for which I am grateful.

Background

2. The father is British and the mother German. The mother moved to Wales in December 2018 prior to A's birth. Both children were born in Wales and lived in England. By agreement they spent extended time in Germany with their mother and extended family. The children are bilingual. A started school in Y in September 2023 and prior to this attended pre-school. F was to commence the same pre-school in January 2024. There appears to be no dispute that whilst the mother has not applied for settled status, such would be likely to be granted.
3. In February 2023 the father issued an urgent application to prevent the mother from removing the children from the jurisdiction. This was granted and the children lived primarily with the father spending time with the mother at weekends. The mother then issued an application to relocate with the children to Germany. At one point she claimed they were habitually resident in Germany but quickly withdrew this before making the application heard by the judge. The mother was always clear that she would relocate even if the children were not able to go with her.
4. A CAFCASS officer prepared a report and recommended that both children lived with the father and spent time with the mother during school holidays.
5. The procedural history to the appeal is set out in Mr Sharma's skeleton argument at paragraph 8. I have already referred to the decision of the judge. There was no request for permission to appeal at the hearing and the application was made at the end of the 21 day time limit.

The law

6. An appeal does not operate as a stay of any order or decision of the lower court unless the appeal court orders otherwise. In deciding whether or not to grant a stay the essential question is whether there is a risk of injustice to one or other of both parties if the court grants or refuses a stay (*Hammond Suddard v Agrichem International Holdings Limited* [2001] EWCA Civ 2065). The court must therefore carry out a

balancing exercise. There is further assistance as to the relevant principles which were distilled in *Wenden Engineering Services C Ltd v Lee Shing UEY Construction Co Ltd* HCCT 90/1999 in which it was stated:

‘From these authorities I derive the following five principles ... First, the court must take into account all the circumstances of the case. Second a stay is the exception rather than the general rule. Third, the party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted. Fourth, in exercising its discretion the court applies what is in effect the balance of harm test in which the likely prejudice to the successful party must be considered. Fifth, the court should take into account the prospects of the appeal succeeding. Only where strong grounds of appeal or a strong likelihood of success is shown should a stay be considered.’

7. The rules in relation to appeals are set out in rule 30 FPR 2010. The court will only grant permission to appeal where either:
 - the court considers that the appeal would have a real prospect of success; or
 - there is some other compelling reason why the appeal should be heard.
8. A real prospect of success is one that is realistic rather than fanciful.
9. As for some other compelling reason, ‘there can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, the court may take the view that the case raises an issue where the law requires clarifying’ (*Smith v Cosworth Casting Process Ltd* [1997] 1 WLR 1538).
10. The appeal court will only allow an appeal where the decision of the lower court was (a) wrong or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court. The court will not interfere with findings made by a

trial judge unless the decision was plainly wrong namely that the decision under appeal is one that no reasonable judge could have reached.

11. The appellate court must be mindful of the privileged position of the first instance court (*Piglowska v Piglowski* [1999] 2 FLR 763).
12. The evaluation of balancing factors is a matter for the trial judge and only where it is apparent that a judge has given far too much weight to a particular factor should the appellate court interfere (*Re J* [2006] AC 80.)

Stay

13. Whilst the father has made an application for a stay, he has provided no evidence in his support of his application. The only reference to a stay is at paragraph 12 of Ms Cooper's skeleton argument which refers to a stay maintaining the status quo and avoiding disruption for the children.
14. In considering the application, I have taken into account all the circumstances of the case. A stay is an exception rather than the norm. Rather than provide evidence that the appeal would be rendered nugatory, the father has taken the law into his own hands and retained the children's passports. If the appeal is successful, then this would disrupt the mother's ability to relocate. When considering the balance of harm test, the parties agreed the move would take place during the October half term (paragraph 8 of the order). It appears the father accepted that any delay with the move would be harmful particularly from an educational point of view for the children and for this reason it was agreed half term was preferable rather than the move taking place at say Christmas. It cannot be in the interests of A for there to be any further delay from an education point of view if she is to move to Germany. F is also to start nursery in January. Finally, for reasons to which I will return I am not persuaded the appeal has strong grounds. Whilst a temporary stay was granted by HHJ Willsted on 25 October 2023, it would be open to me to refuse the application at this stage. However, in order to be completely fair to the father, I have continued the stay for 7 days should he seek an oral hearing.

Preliminary observations

15. I understand that on the first day of the hearing the judge heard evidence from the mother, the father and then the Cafcass officer. On the second day the parties made submissions and judgment was given after an adjournment for the judge to consider the application (there is reference in the judgment to the judge considering the matter for some four hours).
16. The judgment sets out a chronology following the couple meeting in 2016 until their separation in February 2023. The judge set out the events leading to the father's application which was motivated by what he thought was the mother's intention to relocate to America. The judge went on to state that even if he did not refer to every piece of evidence, he had weighed it into his evaluation. He gave himself a *Lucas* direction although, rightly, did not consider such to be strictly necessary. He set out the parties' positions namely for the children to remain in England with the father (with the mother returning to Germany) or the children relocating with the mother. In light of some of the submissions made by the father, it is important to note that the judge was only faced with two options.
17. The judge summarised the law referring to *Re F (A Child) (International Relocation Cases)* [2015] EWCA Civ 882, [2017] 1 FLR 979 in which specific reference was made to the welfare paramountcy principle; section 1(2)(A) and the welfare checklist; *Payne v Payne* [2001] EWCA Civ 166 and the caution required in its application; the need to undertake a holistic and non-linear analysis of the parties' proposals which in relocation exercises may be one of some complexity and the Article 8 rights of the children and the parents.
18. Reference was made to *L v F (Relocation: Second Appeal)* [2017] EWCA Civ 2121 and the caution required in respect of applying *Payne v Payne*.
19. The judge referred to *Re K (a child)* [2020] EWHC 488 (Fam) in which Williams J described the FKC-Payne composite and a number of enhanced welfare checklist points for the court to consider.

20. The judge made reference to the Cafcass officer's report, noted the author's qualifications and the number of relocation cases with which she had dealt. The officer's view was that the most significant issue for her was the change in circumstances and in a case where she had no safeguarding issues, with capable parents, she considered a change of circumstances not to be in the children's interests and recommended that the children should remain with the father and there be enhanced contact with the mother.

The report is not in the bundle, but I have read it with care.

21. The judge addressed each aspect of the enhanced checklist:

The ascertainable wishes and feelings of the child concerned considered in light of his age and understanding.

22. The judge quoted the officer's comments when she met the children and determined that A loved her parents equally and loved being able to move between the Germany and England. He noted that appropriately A was not asked where she would prefer to live. The judge observed that she was happy where she is and doing well at school and socially. The prospect of leaving her current school and moving to a new school where a different language is spoken was likely to be frightening for her.

23. F's wishes and feelings were considered to be neutral and given her age this was hardly surprising.

Physical needs.

24. The judge noted with some concern the children's circumstances when they lived in a mobile home which presented a risk to their health. The mother was noted to have provided clear details of where the children would live in Germany. The father's position was noted to be more complicated. A reference was made to 'rather shadowy figures' in respect of the father's family. The step-father was noted to have an alcohol problem (this was not challenged). The judge was also concerned about the father potentially living in the main house and the children in the annex. The father's plan to

move to either a purchased or rented home was undefined and this certainly appeared to be the case in terms of timescales. On the basis of the evidence before him, the judge considered the mother to be better placed to meet the children's physical needs.

Emotional needs

25. The children were noted to be heading for an emotional crisis. The judge set out the caring responsibilities of both parents. He observed that the mother was very unhappy in 2022 and 2023 and this extended to her 'flirting with a move' to America. The judge noted this was indicative of a risky element to her character which weighed in favour of the father being the long-term principal carer. The lack of relationship between the mother and her father and paternal grandmother was also noted.
26. The father was noted to have experienced at least two periods of emotional turmoil which weighed in favour of the mother being the principal carer. The judge therefore had concerns about both parents' potential risky behaviours but both were noted to have family members nearby although the mother's evidence in respect of practical support was more apparent and better evidenced which was considered to be important and weighed in her favour.

Educational needs

27. The schools in England and Germany were noted to be excellent. The children would however have to transition from the English to German system if the mother's application was allowed. The judge found that A would be affected possibly in her confidence, socially and emotionally. He relied on the Cafcass officer's report, accepting the process would be transient and the element of change weighed in favour of the father.

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 to 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 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 ongoing contact and extension to other relationships in the new country?

28. The judge referred to this being the key issue for the officer and quoted what she had said in cross-examination. Four factors were quoted (1) disruption to an established social cultural and educational regime (2) the present regime works and as such, any change presents risks (3) that the children are resilient and will adjust over time (4) that there will be an effect on them during the time it takes to adjust. The effect was said to be short of harm but nevertheless was present. These factors weighed in the father's favour, but the question remained as to the appropriate weight to be attached.
29. The judge had concerns about the father's plan to return to work and how this would fit in with the children. The mother's plans for the children spending time with the father were noted to be untenable although it was clear that both parents supported lengthy periods during the holidays with the other parent. Overall, the judge had a clear idea as to what life would look like for the children and a less clear idea as to how it would look in England.

The positive effects of removing parents' ability to care

30. The judge spent a lot of time considering this aspect of the enhanced checklist. He was concerned about the impact of the outcome of the application on both parents. If one parent did not exist, he was satisfied the children would have a happy life either with the father in England or the mother in Germany. Both parents would be impacted by the children not being in their care and the loss would be equal. He noted that neither parent could be forced to change their plans (there were therefore only two options to consider). On balance the change of circumstances weighed in the father's favour although there were mitigating factors.

The child's age, sex, background and any characteristics of his which the court considers relevant?

31. The children were noted as a result of their young ages to be more likely to cope with change than older children with more established routines. A move was therefore possible.

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 ensure 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?

32. Harm, the judge stated, was bound to occur as a result of the parents deciding to live in different countries for which both had to take responsibility. It was not the move itself that would cause harm but the loss of the presence. The judge was confident that the relationship with the left behind parent would remain strong albeit it would be different. The judge considered the mother's lack of relationship with her father which the father asserted evidenced risk. He did not accept this was the case. The judge noted the mother was not going to stay in England regardless of the decision in respect of her application. Both parents would be devastated unless the outcome of the application went in their favour. However, as the mother had been the primary carer for the majority of the children's lives on balance she would be more adversely affected. Only in the short-term would it adversely impact upon their ability to care. In the longer term both would adjust but again on balance the judge considered the mother would be more affected in respect of her parenting ability.

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 need. How are the parents currently meeting their needs?

33. Both parents were said to be capable of meeting the children's needs.

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 part motivated by a desire to exclude or limit the left behind parent's role? Is the left behind parent's opposition 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?

34. Motivation was considered and discounted as being relevant. The father's application for a prohibited steps order was appropriate and once again the mother's flirting with the idea of going to America was considered. As no practical steps had been taken the judge formed the view there was no trickery on her part. Overall, it was a neutral factor.

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 order or orders which will allow reciprocal enforcement?

35. The judge was satisfied a fund could be put in place for travel as could a mirror order. However, this did not assist with regard to his decision as to the merit of the move.

36. The judge then set out his conclusions. He referred to taking a step back and referred to some factors weighing in favour of the father and some in favour of the mother. He reminded himself it was not simply a case of totting up the points in order to determine whether the application should succeed or not. He reminded himself he was assessing a landscape and the answer was not obvious, contrary to the advocates' submissions which inevitably suggested an outcome in their client's favour.

37. The judge then returned to the Cafcass officer's key factor relating to the change and set out the reasons as to why he considered she had wrongly elevated this factor. He was not satisfied the Cafcass officer had carried out a side-by-side holistic analysis. He referred to the key sentence in her report (paragraph 21):

'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.'

38. Having considered this passage, the judge was clear this was not the test and reiterated the legal test to be applied. The judge referred to *Re E (Relocation: removal from the jurisdiction)* [2012] EWCA Civ 1893 and noted he was not bound by the recommendation but had to provide cogent reasons for any departure. The judge was plainly concerned about the upcoming harm to the children stating:

52. 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 think 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 be involved in their lives in an easy, naturalistic way. I have found 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.

53. I note in particular I have found the vulnerabilities in the parents perhaps not evidenced fully in the CAF/CASS report, and in those circumstances to me the support network becomes of increasing importance. I find the support network here 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.

54. 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 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.

55. 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 ...

56. ... in those circumstances I have some confidence at least he will accustom himself to the new scenario and make it work ... my assessment on balance is that I shall allow the relocation and dismiss the prohibited steps order.'

Application for permission to appeal

Ground 1 – *The judge erred in finding that there were cogent reasons to diverge from the recommendations made of CAFCASS, as set out in the section 7 report, and was therefore wrong to order that the children would live with their mother and that permission to relocate the children to Germany would be allowed. The judge was plainly wrong to exercise his discretion as he did in the circumstances where there were no cogent reasons to depart from a clear recommendation from CAFCASS provided in both her written evidence to the court and orally.*

39. The father reminds the court that the Cafcass officer is an officer of the court. Further, her evidence was said to be clear and cogent and her recommendation remained having given oral evidence. Ms Cooper refers to the officer's analysis including the children's wishes and feelings; her understanding of the safeguarding issues; any change of circumstances; and the full extent of that would not be apparent until the arrangement was in place. She noted that living in Germany is very different to spending time there.

40. The change of circumstances was also noted to be an important factor. This the father says tipped the balance against allowing the mother's application. I am referred specifically to paragraphs 27 and 29 of her report:

27. 'It is likely that the children experienced a degree of uncertainty and confusion when their parents separated in February and adjustment and additional nurturing would have been needed at that time. In my view, further significant change and disruption would not be in the children's best interest unless there were serious safeguarding concerns about them living with Mr D, which there are not.'

29. 'The children ... have already experienced significant changes to their everyday living and routines from their parent's separation, and they are likely to be feeling settled with their current arrangements ... Any further significant changes to the children's living situation are likely to confuse and/or unsettle them again unnecessarily, regardless of the emotional support they would receive from both parents.'

41. The Cafcass officer could not support the mother's application given the change already suffered by the children absent serious welfare concerns of which there were none. In conclusion, the Cafcass officer concluded:

'having carefully weighed up the advantaged and disadvantages of what arrangement would be in the children's best interest and cause the least disruption to their lives from a child impact perspective, I am of the view that the children's needs will best be met by continuing to live with their father in the UK and spending time with their mother in Germany.'

42. The father says when the report is read in full, it is clear that the Cafcass officer had undertaken a side-by-side analysis of the competing options before the court.

43. I have already set out the judge's comments in respect of the officer's analysis. This is where the father says he fell into error as the officer did not apply a test on the basis of what would cause the least disruption and impact, rather she considered what was in

the children's best interests. The change of circumstances took into account the change already suffered and the unknowns of the future arrangements in Germany.

44. The mother says the father's ground is an error of fact as opposed to law. I am reminded that various criticisms were made of the officer by the mother as follows:

- She had prioritised the impact of change above all other factors.
- Having confirmed the children would settle fairly quickly and she had no concerns on an emotional level, she again placed too much weight on the impact of change which in her oral evidence is said to have come down to a change in education, culture and social integration. Having concluded that no harm would be suffered she was wrong to place so much significance on the issue of change.
- Change dominated her assessment when compared with the other significant parts of the welfare checklist.
- She was too preoccupied with the father being the primary carer when this had only been the case since February and after May the mother had the children for three nights a week.
- She had not considered there would be a change in any event as the mother was moving to Germany regardless and so the children would be travelling to see her regularly.
- She had not conducted anything near a global holistic analysis comparing the proposals side by side.

45. It is unclear whether this ground is an appeal on the law or the facts. If it is said to be an error of the law, I am not persuaded that can be right. In my view the judge carefully considered the report and the oral evidence of the officer as well as that of the parties. It is apparent that the officer was asked at length about the focus of her recommendation being on the change of circumstances. The judge was aware of the importance of the officer's evidence. However, he was entitled to depart from it so long as he gave clear reasons for doing so. It is apparent he did not consider the officer's recommendation undertook a side-by-side analysis that holistically considered the parties' proposals. In the judge's view the decision of the officer focused on change and her recommendation could not be justified.

46. I have already referred to the key sentence in the officer's report as the judge saw it. This demonstrated the flawed analysis that absent any safeguarding issues a change of circumstances could not be justified. The judge cannot be criticised in this respect. It was a view he was entitled to reach and was well-supported by the reasons in his judgment.
47. In any event the judge undertook his own analysis which was a careful and full analysis of all the welfare factors. The decision was well within his discretion and it was in accordance with the law as set out above. Permission to appeal is refused on this ground.

Ground 2 – The judge fell into error in his analysis of the facts of this case and, as a result, the judge's decision to grant the mother's application to relocate the children was wrong. In particular, the judge fell into error in his assessment:

- (a) The parents' ability to meet the children's physical needs.*
- (b) The parents' ability to meet the children's emotional needs.*
- (c) The parents' plans in respect of the childcare if the party's return to work; and (d) The impact on the parties of the decision.*

The factual errors in the analysis underpinning his decision renders the decision wrong.

48. The father says the judge considered the children's physical needs to be best met in Germany as the accommodation was clear and the father's plans were less clear. Accordingly, there was no evidence for the judge to form such a view when the father had met their needs since February. The father says there was no explanation as to how this differed given that the children would be moving to Germany. It is submitted that the judge placed too much weight on 'shadowy figures' in the paternal grandmother's home and there was no explanation as to how this impacted on the father's ability to meet the needs of the children.
49. As for the children's emotional needs, the father asserts the evidence did not suggest any safeguarding issues in respect of his care. However, despite no questions being asked about the father's mental health, the judge within his own assessment

considered the father's health to be vulnerable which was considered equivalent to the mother's vulnerability to influence from people she met online. The judge is said to have failed to make an assessment of the mother's application for the summary return of the children to Germany which was a factor considered by the officer. The risk of the mother being able to meet the children's emotional needs was therefore flawed. The judge is also said to have attached weight to the mother's support network which in reality was not in place.

50. The judge is said to have fallen into further error when he considered the parents' plan in respect of childcare if they returned to work. The judge did not have a clear idea of what the father's plan was yet did not ask the mother about her care arrangements for the children when there was no evidence as to whether her grandparents could provide any care.
51. Finally, the assessment of the impact is said to be wrong. Not only was it wrong to find the impact on the mother was greater, when stepping back and considering all aspects of the welfare checklist the mother's application ought to have been refused.
52. The mother asserts that the judge undertook a holistic analysis and by following the correct legal approach he asked himself the correct questions and ensured each part of the checklist was properly considered in a way the officer did not.
53. In respect of the children's physical needs, the mother is said to have provided much detail whereas the father is said not to have fully particularised how he would meet the children's accommodation needs. Whilst there was reference to moving to another property it was not clear why this had not happened already. The judge was said to have questioned this. He also had concerns about the step-father's use of alcohol (which was not challenged by the father) and grandfather whose physical condition might impact the children. These were said not to have been considered by the officer. The father's proposals were said to have lacked practicality. The suggestion at trial that the father would move closer to the school was not sharply defined. It was therefore according to the father open to the judge to prefer the mother's evidence in respect of meeting the children's physical needs.

54. As for the children's emotional needs, the mother asserts the judge noted that each proposal would see the loss of a primary caregiver. He noted that prior to February the mother had been the primary caregiver although noted the father's increased role. It was therefore more finely balanced and more so than recognised by the officer. The judge went on to consider both parent's ability to care for the children and noted the risky element of the mother when she had considered moving to America. The judge also noted the concerns in respect of the father and his mental health although the letter from his GP was considered to be evidentially useless. It was not a live issue, but a potential vulnerability related to the mother's behaviour in respect of relocating to America which was addressed and ruled out as being a safeguarding concern. She had simply 'flirted' with the idea but it was no more than that. The mother asserts that her application under the Hague Convention was considered and noted to be inappropriate but was not found to be evidence of any hostile intentions towards the father. The father's concerns of her being estranged from the paternal side of her family were said by the mother not to have been explored in evidence. The mother says there were no concerns about her not adhering to a court order. The treating of their respective vulnerabilities is said therefore to have been entirely within the judge's discretion. However, the judge is said to have gone further by considering the mother's support network which was well evidenced. This was contrary to the father's support network which was lacking in detail. This was important when he planned on returning to work.

55. The parties' plans if they returned to work were said by the mother to have weighed in her favour and the father had every opportunity to outline how he would manage.

56. The mother further asserts that the issue of impact upon the parties and in turn the children was part of the FKC Payne composite exercise.

57. In conclusion the mother asserts that the father attacks four aspects of the analysis which must be considered in the context of the entire welfare checklist.

58. In my view, the judge carried out a complete and thorough analysis of the welfare checklist which I have set out in some detail earlier in this judgment. From this it is clear that some factors he found were neutral for example the children's wishes and

feelings; some favoured the mother such as in respect of the children's physical needs and emotional needs and some in favour of the father i.e. educational needs.

59. In my view, it cannot be said that judge was wrong in his assessment of the meeting the children's physical needs given the extent of the evaluation undertaken. I have set out the salient extracts of the judgment above.
60. The judge went to great length to consider the children's emotional needs in light of the changes they had faced to date. He went to consider the emotional stability of the parties and their respective vulnerabilities and the importance of their support networks. The issue in respect of the mother moving to America was fully considered as was the father's previous mental health difficulties (which the father accepted) meant the judge had concerns about both parents. The issue in respect of the father's family members was a view which the judge was entitled to form on the evidence before him. His findings cannot be criticised.
61. Care was also taken when considering the parents' plan if they returned to work and the mother had provided significant detail which was supported by evidence which he accepted.
62. The impact of the decision was again considered in detail and was not confused and plainly wrong. Such an assertion is not supported by the judgment in which the judge considered the impact on parents. The judge started by considering the impact on the mother if the children remained in England and could not form the view that she would stay and in any event it was not for the court to determine where she should live. The impact on the mother would therefore be significant as she had been the primary carer for the majority of their lives she would be devastated by a refusal and accordingly, the impact was likely to be greater than on the father. However, allowing the children to move would have a profound effect on the father. The judge then reminded himself that when considering this part of the checklist he had to consider it in the context of the parents' ability to care for the children. In the short term this would impact upon both parents but in the longer term the mother was more likely to

be adversely affected. On balance the judge concluded this aspect of the checklist fell in favour of the mother and gave appropriate reasons for reaching that conclusion.

63. Having considered the individual parts to this ground I have also stepped back and considered the matter holistically. In carrying out this exercise and having considered the judgment as a whole, the judge had plainly reached a reasoned decision considering the landscape as he was required to do and attributing the weight to each factor as he considered it relevant. Permission to appeal is refused on this ground.

Ground 3 – The judge erred in law in that his analysis failed to provide set out (sic) how the decision was proportionate in light of the interference it would cause to the children’s Article 8 ECHR rights. This being a highly relevant factor in circumstances where the mother would be able to live and work in the UK if she applied for EU settled status and the father would not be able to live and work in Germany due to linguistic and legal barriers, and additionally where it is the father that supports the children’s relationship with their mother’s paternal family in Germany.

64. The father submits that the judge failed in his analysis to consider the proportionality of his decision in light of Article 8 ECHR. The father asserts that the judge was wrong in failing to consider the mother’s ability to remain in the UK when living in Germany was not an option for the father. Had the court considered the proportionality of the interference provided by the parties’ proposals, the officer’s recommendation would have been the preferred option. The father also asserts no cross-check was undertaken. Further, the judge was wrong not to consider the relationship with the maternal grandfather if they relocated. This was supported by the father as a result of the maternal grandfather and the mother being estranged.

65. The mother says the judge was clearly alert to the parties’ and children’s article 8 rights. It was referred to in the law even if there was subsequently no further reference.

66. In my view the judge was clearly aware of the need of the Article 8 rights of both the parents and the children and need for any order to be proportionate. He has referred to

this in the law to be applied. I have set out the law he applied above. The judge made several references to the left-behind parent and to the harm of each parent's option. There was no requirement for there to be some specific reference to Article 8 or a separate analysis when this clearly formed part of his assessment.

67. Any suggestion that the judge ought to have taken into account the mother's ability to remain in the UK was not a proposal put forward by the mother in the same way that the father did not propose moving to Germany. There were two options for the judge

to consider side by side which is the exercise he undertook. To suggest that the mother could have remained in England is not an avenue open to the father on appeal when the case was not presented to the judge on that basis.

68. As for the maternal grandfather's relationship with the children seems to be an odd point when the father's evidence was that he would maintain this. The primary consideration has to be in respect of the parties themselves. Permission to appeal is refused on this ground.

Conclusion

69. Permission to appeal will only be granted where the court considers that the appeal would have a real prospect of success; or there is some other compelling reason why the appeal should be heard. It follows that I am not satisfied on any of the grounds that the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court. This experienced District Judge gave careful thought to the application and both parties' positions which is apparent from his lengthy and considered judgment. His decision was made having made findings which he was entitled to make and having correctly applied the law. Accordingly, the application is dismissed.

70. That is my judgment.