Neutral Citation Number: [2019] EWHC 131 (Fam)

Case No: 2018/0172

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/01/19

Before :

MR JUSTICE WILLIAMS

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Re C (A Child)

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Aidan Vine QC (instructed by **Carpenter Singh**) for the **Applicant**
Jane Crowley QC (instructed by **Avery Naylor**) for the **Respondent**

Hearing dates: 13th December 2018

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Approved Judgment

I direct that pursuant to FPR 27.9 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE WILLIAMS

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Williams :

1. On 25 September 2018 His Honour Judge Sharpe made an order concerning 'C', who was born in 2017. By that order he refused the appellant mother's application for permission to permanently remove C from the jurisdiction of England and Wales to a country in Africa. He made various other orders which the appellant mother also seeks to appeal.

2. The appellant mother was represented at first instance by Aidan Vine QC who has represented her in the appeal. The respondent father was represented by Jane Crowley QC in the appeal as he was at first instance.

3. The order made on 25 September 2018 followed on from a judgment, that was circulated in draft on or about 22 June 2018, and was handed down on 6 July 2018. The order of 6 July extended the time for any appeal such that the 21 days would run from the date of the final order.

4. On 16 October 2018, the mother filed an appellant's notice seeking permission to appeal against the order and in particular the following paragraphs.

   i) Paragraph 17

      permanent removal from jurisdiction: the applicant's application to permanently remove the child from the jurisdiction is refused.

   ii) Paragraph 18

      lives with order: the child shall live with both parties on the proviso that the applicant mother does not return to live in Africa

   iii) Paragraph 19

      spends time with order: the parties must make sure that the child spends time with the respondent father within a regular fortnightly cycle for at least six nights, into blocks of three nights as per the schedule below.

   iv) Paragraph 21

      the applicant mother shall be allowed to take the child to Africa on at least three occasions each year for a period of not more than one month at a time on any visit.

   v) Paragraph 23

      in the event that the applicant mother is unable to remain in the jurisdiction of England and Wales then the following provisions shall apply to this order.

Lives with order: the child shall live with the respondent father.

vi) Paragraph 24

the respondent father shall make sure that the child is available to spend time with the applicant mother as follows:

i) for three periods of two weeks at a time per year to be spent in Wales;

ii) *for 3 periods of one month at a time per year. It is expected that when the child is of school age, those block contact shall take place in the school holidays only*.

vii) and all the consequential provisions which flowed from those orders.

5. The grounds of appeal were as follows:

i) The judgment below was delivered five months after the hearing to which it related and did not sufficiently relate to the particulars of the documentary and oral evidence before the court

ii) The orders below were made a full 7.5 months after the hearing to which it related

iii) The judgment contained a fundamental error as to the mother's immigration status

iv) The judgment contained a finding as to the mother's manipulative personality which was based upon further errors as to underlying fact, suspicion and omissions as to material evidence, and which undermine the judge's findings on this, as well as his approach to the mother generally; in particular the judgment made errors as to:

a) The mother's reasons for calling the police when she first left the father

b) The mother's reasons for asserting her own needs as a breastfeeding mother of an infant

c) The mother's position on interim contact with the father

d) The mother's decision not to leave the country without the child in the interim so as to make a further immigration application

e) The health of the mother's own father in Africa in the interim

f) The mother's position on her interim return to Africa with the child in the early stages of the proceedings

g) The mother's conduct during a meeting with social services during the proceedings

v) The judgment omitted to consider sufficiently the difficulties for the mother to live here (as opposed to Africa), both as a matter of immigration status and means/practicality even if she had status; and in particular the judgment omitted to consider sufficiently the impact on the child of requiring her to do so.

vi) The judgment omitted to consider sufficiently the impact on the child of the separation from the mother should she be required to return to Africa without the child, either as a result of her immigration status or means/practicality even if she had status.

vii) The judgment omitted to consider sufficiently the adequacy and reliability of arrangements for the mother and the child to travel to and from Africa to spend time with the mother should she be required to leave the country.

viii) The judgment and order projected an alternative welfare outcome for the child to live with the father in the event the mother was required to leave the country, when the child's welfare requirements in that event should have fallen to be determined in light of the circumstances at that time.

6. On 2 November 2018 I made an order in which I refused permission to appeal in respect of grounds 1 to 4 and granted permission in respect of grounds 5 to 8. My reasons are set out in that order and were as follows:

1. The appellant is granted permission to appeal on grounds 5,6, 7 and 8 against the order made by HH Judge Sharpe dated 25 September 2018.

Reasons

the arguments that the judge failed to give appropriate consideration to the impact on the child of the mother being forced to remain in the UK or alternatively of the mother having to return to Africa and being separated from the child, the issues which arose from that in relation to contact and the default order have a realistic prospect of success. Given the unusual and complex background and the permutations it is arguable that the situation required a more in-depth assessment of the competing options.

2. Permission to appeal on grounds 1- 4 is refused.

Reasons

Grounds one and two: although the delay in delivering the judgment and in finalising the order is considerable the delay on its own does not amount to a procedural irregularity rendering the decision unjust. Arguments as to the delay and its effect on the assessment carried out by the judge can be made in respect of the grounds on which permission has been given. These grounds have no realistic prospect of success.

ground three: although the judge may have concluded that it was open to the mother to leave and re-enter the jurisdiction at an earlier stage and it may be arguable that this was erroneous the judge's conclusions as to the general uncertainty relating to her current immigration status appear unchallengeable. In the circumstances even if there were an error as to the mother's immigration status in October 2017 it had no material impact on the ultimate decision. This ground has no realistic prospect of success.

Ground four: the judgment taken as a whole contains a detailed analysis of the credibility of the mother and the father and appropriate consideration of their statements, their oral evidence and contemporaneous documents. The judge's conclusions as to the mother's manipulative personality was a matter which he was well placed to determine having seen the parties give evidence and considered the evidence. It is clear from the judgment that the judge was unimpressed by both the mother and the father both as a result of what he had seen and what he had read. A narrow textual analysis of particular aspects of the evidence as deployed by the appellant does not undermine the analysis and conclusions of the judge contained within the judgment. This ground has no realistic prospect of success.

7. On 20 November 2018 the appellant made a request for an oral hearing to reconsider the refusal of permission on ground 4. I directed that that application be heard at the same time as the substantive appeal. At the commencement of the hearing I canvassed with counsel for the appellant and the respondent how that application was to be dealt with and suggested that rather than deal with it as a preliminary issue that each party make their submissions in respect of each of the grounds and I would then give a judgment on all the matters. It appeared to me given the nature of the submissions that were likely to be made in respect of ground 4 that they would take a considerable tranche of the time set aside for the appeal and that it would not be possible to deal with them separately in the one day allowed.

8. Mr Vine QC filed a skeleton argument in support of the eight numbered grounds. Given the nature of ground 4 his analysis of those matters occupied a significant part of that skeleton argument and indeed the majority of his oral submissions. In ground 4, Mr Vine QC identifies seven specific issues or findings which the judge made which contributed to the overall conclusion that the mother had a manipulative personality and formed a significant component of the conclusion that she would not promote the father-son relationship if permitted to relocate. Mr Vine QC characterised these as the 'building blocks 'of which the overall finding was constructed. In respect

of each of them in the skeleton argument Mr Vine QC identified aspects of the appellant's written or oral evidence which he submitted had not been adequately addressed either in the respondent's oral evidence or by the judge in his conclusions so as to enable the judge to reach the conclusions that he did. I shall turn to them in more detail later. In respect of ground five, Mr Vine QC's case was essentially that the analysis that the judge undertook in respect of the likely impact on the appellant of being forced to live in the UK was so attenuated that it could not be said to be a sufficient analysis and plainly did not give appropriate weight to the practical and emotional difficulties that the mother would face if she were not permitted to relocate. Given that the mother had only come to the UK to give birth, had no ties, no relatives, was not permitted to work or access public funds, Mr Vine QC says this was a most unusual case and the impact on the mother was likely to be considerable and required careful analysis. The second component of this was that there was no sufficient analysis of the knock-on impact on the child of the impact on the mother of being forced to live in the UK. In respect of grounds 6, 7 and 8, Mr Vine QC submits that the judgment did not address the issue of the impact on the child of separation from the mother, or the reliability of the spend time with arrangements and that it reached overall conclusions which were not accompanied by the evaluation required by the welfare checklist or general principles.

9. Ms Crowley QC, on behalf of the respondent, submitted a skeleton argument on behalf of the respondent together with a litigation chronology. Her skeleton also was devoted in large part to ground 4 of the appeal and contains significant extracts from the judgment which address the relevant findings together with the respondent's analysis of the building blocks which Mr Vine QC seeks to demolish. On behalf of the father, she identified the findings in the judgment and aspects of the documentary evidence in the bundle which she maintains provided a proper foundation for each of the conclusions on the building blocks that the judge reached. In respect of ground five, Ms Crowley QC submits that the judge had conflicting evidence from the mother as to her financial position in the UK and her ability to provide for herself and the child. He had also heard evidence as to her immigration position and had taken the view that she could have done more to regularise her situation. Ms Crowley QC identifies that the judge did consider the impact upon the mother at various stages and also identified the possible impact on the child as well as the mother's acceptance that if she were unable to return to Africa she would remain in the UK. Together with his finding that the child ideally needed the shared care of both of his parents this fully justified his rejection of the mother's application. Ms Crowley QC notes that at the time of the hearing the child was still only six months of age. In respect of grounds 6 – 8, Ms Crowley QC submits that the judge was entitled to determine the child arrangements in the event the mother was deported and that it is implicit in his reasoning that he found the father would be more likely to facilitate contact, that there would be an impact on the child of being separated from his mother. He plainly took into account his conclusion that if the child were allowed to leave with the mother it would terminate the relationship with the father. In particular in relation to ground 7,

Ms Crowley QC submitted that if the mother were unable to enter the jurisdiction following deportation, she could apply for a variation of the spend time with order. Ms Crowley QC submits that it was not unreasonable for the judge to deal with the default position because if the mother were to be deported there would need to be in place a clear and unambiguous plan to deal with the child is living arrangements. She submits that the judge had ample evidence upon which to make his conclusions.

Appeals: the approach

10. FPR 30.12(3) provides that an appeal may be allowed where the decision was wrong or unjust for procedural irregularity.

11. In Re F (Children) [2016] EWCA Civ 546 Munby P summarised an approach to appeals,

> *22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they hpave won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."*
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> *23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in Piglowska v Piglowski [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):*
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> > *"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."*

> *It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".*

12. Lord Hoffmann also said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372:

> "*If I may quote what I said in Biogen Inc v Medeva Plc [1997] RPC 1, 45:*
>
> *'... [S]pecific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'*
>
> *... The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed."*

13. So far as concerns the appellate approach to matters of evaluation and fact: see Lord Hodge in *Royal Bank of Scotland v Carlyle* [2015] UKSC 13, 2015 SC (UKSC) 93, paras 21-22:

> *"21 But deciding the case as if at first instance is not the task assigned to this court or to the Inner House ... Lord Reed summarised the relevant law in para 67 of his judgment in Henderson [Henderson v Foxworth Investments Ltd [2014] UKSC 41, [2014] 1 WLR 2600] in these terms:*
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> *"It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."*

14. See also the Privy Council decision in *Chen-v-Ng* [2017] UKPC 27:

> *Recent guidance has been given by the UK Supreme Court in McGraddie v McGraddie [2013] 1 WLR 2477 and Henderson v Foxworth Investments Ltd [2014] 1 WLR 2600 and by the Board itself in Central Bank of Ecuador v Conticorp SA [2015] UKPC 11 as to the proper approach of an appellate court when deciding whether to interfere with a judge's conclusion on a disputed issue of fact on which the judge has heard oral evidence. In McGraddie the*

Supreme Court and in Central Bank of Ecuador the Board set out a well-known passage from Lord Thankerton's speech in Thomas v Thomas [1947] AC 484, 487-488, which encapsulates the principles relevant on this appeal. It is to this effect:

> *"(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."*

Relocation: the law

15. The most recent and authoritative appellate decision on the approach to permanent overseas relocation cases is *Re F (A Child) (International Relocation Case)* [2015] EWCA Civ 882 [2017] 1 FLR 979. The material paragraphs of the judgment are 3, 4, 30-35 (Ryder LJ) and 45-52 (McFarlane LJ). Re F together with the earlier authorities of 'Payne, Re F, K-v-K and Re C (Internal Relocation) makes clear that that whether the applications are configured under s.8 or s.13 Children Act 1989 the following framework applies.

(a) The only authentic principle is the paramount welfare of the child
(b) The implementation of section 1(2A) Children Act 1989 makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent
(c) The welfare checklist is relevant whether the case is brought under s.8 or s.13 Children Act 1989
(d) The effect of previous guidance in cases such as 'Payne' may be misleading unless viewed in its proper context which is no more than that 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. In complex international relocation cases this may need to be of some sophistication and complexity.
(f) In addition to Article 8 rights – indeed probably as a component of the Art 8 ECHR rights and s.1(2A) one must factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis (unless

that is contrary to her interests) in accordance with Article 9 of the *United Nations Convention on the Rights of the Child ("UNCRC")*.

(g) Furthermore, the court must also take into account the Article 8 rights of the parents. In the usual case the child's Art 8 right will take priority over the parents but that should not cause the court to overlook the Art 8 rights of others affected and the court should balance the competing Article 8 rights.

(h) The effect of an international relocation is such that the Article 8 rights of a child are likely to be infringed and the court must consider the issue of proportionality of the interference. There remains some degree of uncertainty as to how the proportionality evaluation is to be applied in relocation cases. In Re F it was said one should be undertaken, In Re Y [2015] 1 FLR 1350 it was said in private law cases it doesn't need to be, The Court of Appeal in Re C (Internal Relocation) expressed doubts about how it was to be undertaken. I consider that in most cases in practice the proportionality issue will be subsumed within the overall holistic evaluation in particular when considering effect of change and risk of harm. In reality in the judicial consideration of the welfare checklist it simply is likely to mean the judge will be that much more alert to the importance and thus weight to be afforded to the child's right to maintain contact with the left behind parent and their rights to a stable and secure family life with their primary carer, if there is one.

16. Insofar as it may assist in identifying the relevant issues a court may (but is not obliged to) deploy what may be described as the **'**F, K, C, Payne' composite**.** This is no more than an integrated approach to the welfare checklist and the 'Payne' guidance/discipline incorporating within the welfare checklist relevant Payne criteria and any other particular features of the individual case which appear relevant. Of course in some cases it may be that one or more particular aspects will emerge as carrying significantly more weight than others – a contour map with high peaks and low valleys; in others the factors may be much more evenly weighed and present a gently undulating landscape. In the former the balance may fall more obviously in one direction if it is dominated by peaks with no valleys in others the peaks may be balanced by the valleys creating a finer balance. In the latter the overall undulations may make the balance a very fine one. Ultimately every case is fact specific. This case is a paradigm example of that.

Analysis

Ground 4

17. Mr Vine QC invites me to revisit my earlier refusal of permission on this ground. The decision which the mother challenges is the finding as to the mother's manipulative personality. This finds expression in the final order in recital 15 which reads:

i) *(vii) that the court has noted its grave reservations about the applicant mother and a particular theme of manipulation so as to suit events for her own purposes and*

ii) *that the court was satisfied that the applicant mother's conduct which led to the court hearing on 20 November 2017 was a deliberate attempt by her to force a decision about the child being removed from the jurisdiction and*

iii) *(viii) that the court has found that the applicant mother in its judgment is selfish, self-absorbed and intent upon doing only what she wants and that she is not going to change*

18. Those conclusions derived principally from that part of the judgment where the judge addresses the capability of the parents when considering the welfare checklist. In that section, taken together with parts of the judge's recital of the background, the progress of the litigation and the evidence of the parents can be found the material (evidential and analysis) which led to the conclusions. The judge is highly critical of both of the parents in relation to their criticism of each other; this infecting the whole of their evidence *'neither parent has demonstrated any ability to moderate or temper their criticisms of each other and neither missed any opportunity to find fault during the course of the hearing.'* The judge also says:

i) *reviewing all of the evidence in this case as well as the procedural history of this litigation I have formed a very clear view regarding this mother and it is not a positive one. In my judgment this mother is determined always to achieve her own objectives and pays little heed to the views of others…The common theme is of a mother consistently attempting to manipulate events to suit herself and to promote her own agenda.*

ii) *The mother in my judgment is selfish, self-absorbed and intent upon doing only what she wants, this is not simply a reaction to the difficult circumstances in which she has found herself since May 2017 but is part and parcel of her personality.*

iii) *This assessment of the mother is of critical importance in my judgment because someone will have to take responsibility for ensuring that C in the future has proper relationships with both parents and that his relationship with his absent parent can overcome the difficulties which are likely to be present in the form of current mutual parental dislike as well as geography*

19. Although it is not part of Mr Vine QC's criticism of the judgment I note that whilst the judge was highly critical of the father who for instance had suggested that he could not live in Africa because the mother would try to have him murdered; which allegation the judge concluded show the father was either deliberately lying to paint the mother in the worst possible light or unable to distinguish between irrational fear

and reality, the judge did not go on to draw his conclusions together in respect of the father's ability to promote the child's relationship with the mother in the same way that he did in respect of the mother. Such a conclusion might not have been essential to the determination of the father's application for a shared residence order or the mother's application for permission to permanently relocate but it almost certainly was essential if the father was to become the sole carer for the child with the mother living in Africa. I shall return to this later.

20. Mr Vine QC relies upon the Privy Council decision in *Chen-v-Ng* [2017] UKPC 27 for the proposition that if a judge is to disbelieve a witness on a matter of fact the grounds on which the judge disbelieves her ought to be put to her. The following extracts illustrate I hope the Privy Council's conclusions.

52. In a perfect world, any ground for doubting the evidence of a witness ought to be put to him, and a judge should only rely on a ground for disbelieving a witness which that witness has had an opportunity of explaining. However, the world is not perfect, and, while both points remain ideals which should always be in the minds of cross-examiners and trial judges, they cannot be absolute requirements in every case. Even in a very full trial, it may often be disproportionate and unrealistic to expect a cross-examiner to put every possible reason for disbelieving a witness to that witness, especially in a complex case, and it may be particularly difficult to do so in a case such as this, where the Judge sensibly rationed the time for cross-examination and the witness concerned needed an interpreter. Once it is accepted that not every point may be put, it is inevitable that there will be cases where a point which strikes the judge as a significant reason for disbelieving some evidence when he comes to give judgment, has not been put to the witness who gave it.

[54] ...It appears to the Board that an appellate court's decision whether to uphold a trial judge's decision to reject a witness's evidence on grounds which were not put to the witness must depend on the facts of the particular case. Ultimately, it must turn on the question whether the trial, viewed overall, was fair bearing in mind that the relevant issue was decided on the basis that a witness was disbelieved on grounds which were not put to him.

55. At a relatively high level of generality, in such a case an appellate court should have in mind two conflicting principles: the need for finality and minimising costs in litigation, on the one hand, and the even more important requirement of a fair trial, on the other. Specific factors to be taken into account would include the importance of the relevant issue both absolutely and in the context of the case; the closeness of the grounds to the points which were put to the witness; the reasonableness of the grounds not having been put, including the amount of time available for cross-examination and the amount of material to be put to the witness; whether the ground had been raised or touched on in speeches to the court, witness statements or other relevant places; and, in some cases, the plausibility of the notion that the witness might have satisfactorily answered the grounds.

21. The Privy Council referred to the well-known passage from Lord Hoffmann's judgment in *Piglowska*. They allowed the appeal because the issue on which the

appellant was disbelieved was central to the proceedings and the grounds on which he was disbelieved were obvious and had not been put.

22. Part of Mr Vine QC's criticism (indeed a central part) in respect of the judge in respect of the building blocks was that the mother's evidence in respect of them had not been properly tested in oral evidence and thus the judge ought to have accepted her written case; had he done so several of the building blocks could not have been concluded against the mother as they were. As the Privy Council pointed out in Chen in an ideal world all of the contested factual matters will be tested in oral evidence and will be separately identified and adjudicated upon by the trial judge. However we do not operate within an ideal world but a world in which the court is mandated to deal with matters proportionately. This inevitably means that the parties accept that the judge will not be able to explore every contested matter of fact. In this case both parties wanted an early determination of the applications. The mother not only had an application for leave to remove but also challenged the jurisdiction of the court to make any orders her case being that the child was habitually resident in Africa, and that the courts of that country should conduct the welfare enquiry. As both Mr Vine QC and Ms Crowley QC accepted the time estimate for such issues to be fully explored was far in excess of two days. However both parties took the view in January 2018 that they did not want the case pushed back many months in order to secure that sort of time estimate. The mother therefore has to accept that her ability to have all of the evidence tested orally and the depth of the enquiry that His Honour Judge Sharpe would be able to undertake into the facts was necessarily far more constrained than would have been possible in a four or five-day hearing. The courts are now accustomed to more abbreviated hearings, to assessing documentary evidence and dealing with disputes of fact in a more summary way. Provided that the court is satisfied that justice can be done and that an appropriate welfare determination can be achieved it is perfectly proper for the court to determine factual matters with limited exploration of contested issues or largely on the papers. This is particularly so if the parties invite the court so to do or do not suggest to the court that the hearing should be adjourned in order to enable a fuller enquiry to be undertaken.

23. The manipulation finding was of course made up of a number of building blocks and I do not accept Mr Vine QC's submission that in the absence of oral testing of each, the judge ought to have accepted the mother's contentions. Firstly in respect of each aspect of the building blocks I do not consider that it would have been proportionate to fully explore each but in any event those building blocks are selections from a far wider landscape of factual issues that the judge was considering. The issue of whether the mother was manipulative and hostile to the father having a relationship with the child was a central issue and was covered in the evidence including the Cafcass report [D25xiv] [E27iv] [E29,7.2]. It was a focus of Ms Crowley QC is closing submissions [B149, 13], [B151, 19], [B153]. There were several examples which might also have been selected. Were each to be fully explored in oral evidence? This would have been completely impossible within the timeframe that the judge was confronted with at the

party's election. He's not be criticised for not testing each and every aspect of the evidence in this regard.

24. The manipulation finding was not constructed solely of the building blocks but also consisted of the more general findings that the judge made in respect of the mother's credibility and attitude to the father. It inevitably also incorporates other evidence and impressions created from reading the evidence, seeing the parties give oral evidence, being exposed to their approaches in the interim hearings which cannot be expressed in a judgment but comprise the penumbra which surrounds it and which appellate courts have long recognised as being one of the unique advantages that a trial judge has over the appellate court particularly where the judge has case managed the applications to the final hearing.

25. In respect of the particular 'building blocks' that Mr Vine QC relies upon I would observe as follows:

i) Calling the police on 4 September 2017. The judge concluded that the call to the police was both unnecessary and surprising and thus it contributed to his conclusion that the mother was manipulative. Mr Vine QC says that not only did the court disregard the mother's first and third witness statements but the police records log the incident as possible coercive controlling behaviour. The police record which is contained within the Cafcass report at D4 is no corroboration at all for the mother's case. It merely records that there had been a report from the mother about her husband's behaviour and that the police (I assume it was they rather than the mother) applied the description coercive and controlling behaviour. It was assessed by police as medium risk. I do not believe that one can sensibly extrapolate from that anything which corroborates the mother's account; all the police were doing was reflecting what the mother had told them. That is not corroboration. Given the other evidence which the judge heard which indicated the mother was not fearful of the father (she later requested that only she and he be present for handovers) the judge was entitled to reach the conclusions that he did which was that it suited the mother to generate an impression of fear and intimidation which is entirely contrary to that which she genuinely felt. The judge concluded the father presented no risk of violence. In respect of the call to the police, there is no basis for me to interfere with that conclusion.

ii) Asserting her own needs as a breastfeeding mother of an infant. Mr Vine QC submits that at no stage did the mother seek to vary the interim contact provisions by asserting her need. Rather he submitted her case had been that the court should consider the impact on the child and that the judge was wrong to reject this case and to use this issue as a building block for concluding that the mother had sought to manipulate contact by unreasonable reliance on this issue. He submits that the way the judge characterised the mother's evidence in respect of breastfeeding was belittling and placed far too much emphasis on

the issue being used to limit contact. Without a transcript of the mother's evidence or submissions, I cannot know how often the issue came up during the hearing but it is clearly a matter which was raised at the hearing, had been raised at earlier interim hearings and troubled the judge. It is clear from the previous orders for contact and the mother's statements in support of variations [B3/4], [B6/7] that she had relied on breastfeeding as a reason for varying the orders. The father's response [C23] referred to the fact that the mother could have expressed breastmilk but was choosing not to and that the parties had previously given the child formula as well as breastmilk. In those circumstances the judge's conclusions during the interim hearings that the mother was seeking to rely on breastfeeding to achieve a variation was certainly within the range of conclusions that he was entitled to reach and those earlier decisions refusing to vary interim contact on these grounds were not appealed. The judge appears to have accepted that the mother's reliance on the issue was inconsistent with the solution the father had proposed and he was entitled to infer that there was another motive for the argument having been deployed. I therefore do not accept that this issue required very careful consideration and clear reasons if they were to be rejected.

iii) The appellant's position on the respondent's interim contact. The conclusion that the mother had been intent on providing as little contact as possible forms part of the manipulation finding. Mr Vine QC criticises the judge for not engaging with the rest of the evidence the appellant provided in the earlier stages as to why she had sought to change arrangements; namely the father's family were caring for the child during some contact and there were difficulties with handovers. The judge's conclusions were based on the earlier interim decisions which had not been challenged, his assessment of the progress of contact and the mother's reasons for seeking variations, which he considered to be unfounded, and changes in her position is as pointed out by Ms Crowley QC. An example is insisting on accompanied handovers because of her fear of the father and later seeking handovers only between herself and the father. It was an entirely legitimate inference that the mother had not been supporting contact and had been seeking excuses for varying it (always a reduction never an increase). Given the hostility expressed by the mother towards the father and her criticism of his interest in his son and his capability it was hardly a great leap to conclude that the mother had been seeking to limit the father's contact. Given that the judge concluded that the father was a capable father his conclusion that the mother unjustifiably wished to limit the relationship was well within the findings that were open to him. It did not require detailed exploration or more careful consideration than the judge gave it.

iv) Not leaving the country without the child in the interim so as to make a further immigration application. The evidence in respect of the mother's position was

not clear for some considerable time. On the morning of the hearing a document was received from the Home Office which [E1] stated that the mother '*had a Visa on condition that she does not enter the UK for more than 180 days in a 12 month period'* . The judge was unsure of the effects of her Visa. He concluded it was a moot point as to whether she would have been entitled to re-enter immediately if she had left the jurisdiction for a day or whether she would have had to wait for another six months before entering. It may be that the judge was incorrect in thinking that the mother could have left and immediately re-entered. It may have been harsh to have expected her to leave if she was genuinely uncertain as to whether she would be readmitted given that she would have been leaving behind a tiny baby. However that is only part of the picture because it was not simply the issue of not leaving prior to 30 October but also not taking steps with the Home Office direct to regularise her position. It is certainly clear that he considered the mother had not taken reasonable steps that were open to her to regularise her immigration position and that he concluded that she had done so as a strategic choice to in effect put a gun to the court's head. Her witness statement contained evidence that she had sought immigration advice about regularising her position and had been unable to afford it. Interestingly the evidence confirms that she was advised to write herself to the Home Office seeking to explain the position. It does not appear that this was done. Whether the court was right in respect of her ability to leave the country and immediately return is neither here nor there. The fact was that by February 2018, some five months after the separation, the mother had not done anything to regularise her position. Nor had anything been done in the course of the litigation to do so. It is standard practice in such cases to either have made the application to the Home Office or to have sought advice from an immigration expert to inform the court as to the options available to that party to regularise their status and the likely outcome. None of that had been done. Indeed I was told by Mr Vine QC that even now no application has been made. Whilst I accept that from 25th September onwards when the order was promulgated that its contents might have been detrimental to the application, or even from July when the judgment was handed down that an application might have stood less chance. But what about the period prior to that? The mother said she could not afford it. However the judge concluded that the mother's financial position was obscure. The contents of her last statement suggested that her family had sufficient resources to fund an application. Therefore the conclusion that the judge reached that the mother had used her immigration position in a manipulative way to put pressure on the court was one which was open to him on the evidence. Whether that issue was fully explored in evidence was not of such a central importance as to render the overall conclusion unsafe given the other components.

v) The health of the appellant's own father in Africa in the earlier stages of the proceedings and the appellant's position on her interim return to Africa with the child. The judge had concluded that the earlier urgent application for temporary leave to remove the child to visit her sick father was an illustration of the mother seeking to manipulate the court process. This was determined by His Honour Judge Sharpe on 14 November 2017. The fact that it followed on from earlier attempts to obtain interim leave to remove based on her immigration position combined with the unsatisfactory evidence from Africa in support of her father's illness led the judge to conclude that he was not satisfied that the mother had established on the evidence that there was an urgent need to go. Mr Vine QC submits that this suggests the decision was based on suspicion rather than the proper binary approach to underlying facts. I cannot agree with this conclusion. If the judge was not satisfied the evidence was genuine he was not satisfied on the balance of probabilities that the mother's father was ill. The fact that he did not conclude it was definitely false is different. The conclusion that the mother had made an application for reasons which were not supported by the evidence and which had led to a refusal of interim leave on the basis of a risk that she would not return was a perfectly proper matter for the court to take into consideration in determining whether the mother was manipulative. Again I do not consider that this was such a central issue that testing of the evidence in detail was a necessary precondition for the judge relying on this aspect. Nor did the evidence in respect of her father's ill-health require careful consideration and clear reasons to be given in the judgment. Ms Crowley QC pointed out that by the time this was determined in February the father's ill-health was not relied upon by the mother at all and no further evidence had been deployed by the mother suggesting that her father's ill-health played any part in her need to return home. More importantly no appeal had been made against the interim determination of His Honour Judge Sharpe. He was therefore entitled to take it into account.

vi) The appellant's conduct during a meeting with social services. The Cafcass officer gave evidence as to the meeting with social services and spoke to the minute taker at that. The judge's conclusion that the mother was obstructive or awkward arose from that evidence. The mother denied this. Mr Vine QC says that the absence of the minute taker herself means the judge should not have rejected the mother's account. However, the judge is entitled to take into account hearsay evidence and as far as I am aware Mr Vine QC did not require the minute taker to be present to give evidence. The Cafcass officer gave evidence on this issue. The judge was entitled to reject the mother's account and to rely on the minute and the further evidence gleaned by Cafcass.

26. To these particular building blocks that Mr Vine QC attacks must also of course be added the unchallenged finding that the mother had applied for a passport for the child

without telling the father she had done so and that he only discovered this when his mother unwittingly opened the envelope containing the passport when it arrived.

27. I therefore see no reason to depart from my initial decision to refuse permission to appeal. Despite Mr Vine QC's valiant efforts to persuade me that the judge's approach to the building blocks of which the manipulation finding was constructed was wrong, I do not consider that he has established this ground. Like a Jenga tower even if he is right in respect of one or more of the building bricks and they must be removed the construction may still remain intact. The conclusion that the mother had a manipulative personality and was hostile to the father's relationship to the child was a conclusion that the judge was entitled to come to in all the circumstances and having regard to the oral evidence he had heard and the written documentation he had considered. The individual building blocks were in my view conclusions the judge was individually entitled to reach on the evidence. Even if one or more of them were to fall away, the remaining building blocks taken together with the other evidence the judge heard, his decisions on interim contact his conclusions on the mother's highly critical approach to the father and his ability to care for the child all would have justified the conclusion that the judge reached in any event. In the context of the hearing, configured as it was these findings were open to the judge to make. I do not consider this to be a Chen case where the manipulation conclusion hung on one or two particular points not adequately addressed in the evidence. There was a far greater constellation of material on which the finding is based and it is unchallengeable. I therefore refuse permission to appeal on this ground.

Ground 5

28. The issue of central importance for the mother in this appeal is covered in ground five and that is her challenge to the judge's refusal of her application for permission to remove the child permanently from the jurisdiction.

29. The challenge to this decision centres on His Honour Judge Sharpe's evaluation of the difficulties the mother would face living in the UK both as a matter of immigration status and means/practicality and in particular the impact on the child of requiring her so to do. Mr Vine QC argues that the judge failed to consider sufficiently the difficulties the mother faced and the judge omitted to consider sufficiently the impact on the child of requiring her to remain in Wales

30. His Honour Judge Sharpe set out the correct approach in law at paragraphs 100 to 103. He referred to the main authority (Re F) and he correctly identified the status of the Payne guidance. He noted that the evaluation of the welfare of the child was to be undertaken not only by application of the welfare checklist but through the undertaking of a holistic balancing exercise whereby competing proposals were considered on their merits with their various positive and negative aspects analysed then looked at as against each other before then considering the proportionality of the proposal. He noted that no priority is to be given to any particular option or any

particular proposer. He also reminded himself of section 1 (2A) Children Act 1980. Mr Vine QC does not criticise the judge's summary of the law. In oral submissions he reminded me of what Lord Justice McFarlane (now the president of the family division) said in Re F. There he identified that a holistic welfare analysis might in some cases be short and very straightforward (where a contact handover was to take place) but that *in international relocation cases the factors that must be given due consideration and appropriate weight may be such as to require an analysis of some sophistication and complexity*. Mr Vine QC submitted that the analysis undertaken by His Honour Judge Sharpe did not demonstrate the sophistication and complexity that the unusual features of this case required.

31. The President's comments about the sophistication and complexity of the analysis do not require a complete rehearsal of the evidence heard and all of the submissions made to the judge leading to an argument by argument determination of every issue. They require that a judge considers the relevant welfare checklist factors as they emerge on the facts of that particular case. The prominence given to particular factors is a matter for the trial judge. The extent to which the judge analyses evidence earlier set out is also a matter for the judge. In looking at the sophistication and complexity of the analysis undertaken an appellate court must also bear in mind not only the Piglowska guidance but must look at the circumstances in which the judgment was delivered. It is reasonable to expect that a judgment delivered at the conclusion of a five-day case, where the judge has had a day or two days to consider and prepare his judgment, will contain a more detailed analysis than a judgment following a case given a time estimate of two days. Provided the material factors are evaluated a more attenuated judgment and analysis is not only acceptable but is to be expected in such a situation.

32. In looking at the judgment in respect of this issue one cannot compartmentalise the judge's conclusions. The judgment has to be read as a whole considering the evidence which was relevant both to the leave to remove but also to the jurisdictional issue. Conclusions or analysis conducted in respect of one issue can be imported into another without repeating it or even expressly referring back to it. The judgment must be taken in its totality. A narrow textual analysis or compartmentalisation is likely to distort the overall effect.

33. Mr Vine QC suggested that the brevity of the analysis from paragraphs 131 -150 is simply too short to do justice to the complexities of this case. He is right that this was an unusual case. Neither the mother or the father had planned on settling in the UK. Both had planned on settling in the Middle East. The father had family connections in Wales and in England but had not made his life here for some time. The mother was here essentially only to give birth to the child and has no friends family or connections with this jurisdiction. The application came on for hearing when the child was only six months old and as Ms Crowley QC pointed out this was a very different situation to a child who had developed an attachment to both his parents. The

mother's immigration position and the prohibition on her working or accessing public funds plainly made her situation (whilst that persisted) more difficult. The father and mother were both highly critical of each other and the prospect of them working together successfully even within this jurisdiction were not good.

34. His Honour Judge Sharpe undertook an analysis of the welfare checklist factors before turning to a discussion in which he compared the mother's proposal with the father's proposal. The fact that he focused on particular issues and gave particular weight to them, for instance his conclusions on the mother's likely attitude to the father-son relationship does not make the exercise a linear exercise or indicate that he failed to give sufficient weight to particular matters. On the facts of any particular case certain relevant factors may assume more significance and deserve more weight. In others the factors may all be more evenly balanced. In this case based on his finding as to the mother's attitude to the father-son relationship it was bound to assume considerable prominence.

35. The judge did not adopt a linear approach of considering the mother's proposal and ruling that out being left by default then with the father's option.

36. Mr Vine QC is right in saying that the judge's assessment of the impact on the mother of having to remain living in the jurisdiction was brief. In his analysis of the welfare checklist factors under the likely effect of any change in circumstances the judge said that the refusal of the mother's application is likely to be deeply upsetting for the mother being contrary to what she has been determined to achieve. In his analysis he identifies that each would have to turn their minds to securing work and that the mother was under a disability because of her immigration status. Mr Vine QC is right in identifying that even if the mother were to blame for her inability to work or access public funds and the consequent effect that was likely to have on her this was not about blame but rather about the effect on the mother and the child of the objective reality that she would face. He submits that the tenor of the judgment is to focus more on blame of the mother than on the likely impact on the child. I do not agree that that is the overall effect of the judgment. Plainly the judge thought that the mother was able to support herself notwithstanding her Visa limitations and considered that the regularisation of her Visa position would improve her position. Thus, if she had been able to manage for the six months since the separation he was perfectly entitled to conclude that she would be able to manage going forwards. Earlier in the rehearsal of the evidence the judge had identified that the mother's accommodation and finances were a source of concern to her. However, this was tempered by the fact that he concluded she had withdrawn her application for assistance with housing and finances from the local authority; which she would have been entitled to notwithstanding her Visa conditions because she was caring for the child. He also had referred to the fact that she had been able to provide housing for herself albeit there had been no evidence of funds passing through the bank account she had produced evidence of. There was of course evidence in her third witness statement that set out the funds that the trust

might have given access to her which were not quantified but the trust assets were reasonably substantial as were her family's business interests. The judge had also considered the circumstances in which the mother and father came to be in the UK and what their future intentions were when he was looking at the jurisdiction issue. He had concluded that neither the mother or the father intended to settle in the UK but rather that the intention was to return to the Middle East. Of course, the judge had concluded that the mother had wished to get away from Africa as well.

37. True it is that His Honour Judge Sharpe could have set out in more detail in his judgment aspects of the evidence he had read and heard in respect of the likely impact on the mother. Equally he could have set out more evidence for instance from the Cafcass officer about her evaluation of the mother, her motivation and behaviour. But one has to return to the context of this judgment. It was given after a two-day case in which a host of complex issues fell to be considered. The mother and father had both urged the judge to deal with them in February rather than later in the year at a longer hearing. At the conclusion of the two-day hearing the parties had only just completed the evidence. Written submissions had to be provided to the judge the judgment then had to be considered. In the judgment not only did the judge have to address the issue of habitual residence dealing with both the law and the facts, but also had to deal then with the child arrangements applications.

38. Across a 35-page judgment running to some 157 paragraphs he did that. Within that judgment he identified the relevant factors for determining the mother's relocation application and the father's shared live with application. He considered the respective merits of each of those proposals and within that the relevant factors he was required to consider. Some aspects were shorter some aspects were longer. I do not consider the brevity of his analysis in relation to the difficulties the mother would face living in this jurisdiction undermines the overall comprehensive and holistic evaluation that he undertook.

39. The factors which ultimately appeared to him to be of most weight were the child's age and the need for him to develop a relationship with each of his parents which was only possible in this jurisdiction. In addition he had concluded that the mother was not likely to promote the relationship if she were permitted to relocate. These factors in many cases would outweigh the likely impact on the applicant of the refusal of a leave to remove application. Having conducted the exercise that he did the judge was perfectly entitled to reach the conclusion that he did and I do not consider that the assertion that he failed to consider sufficiently the difficulties for the mother to live in the UK and the impact on the child of requiring her to do so is made out. Given the two factors identified above it would have required an impact on the mother and consequent impact on the child of a very considerable magnitude to have tipped the scales the other way and there was no evidence before the judge which suggested that sort of impact. I therefore do not consider that the judge failed to give sufficient weight to the difficulties the mother would face living in the UK nor did he fail to

consider sufficiently the impact on the child of requiring her to do so. I therefore dismiss the appeal in respect of ground five.

Ground 6,7 and 8

40. All of these relate to the default order that His Honour Judge Sharpe made to deal with the possibility that the mother would either be removed or have to leave the UK due to her immigration position. It was not an option which either party pressed in their closing submissions or which was centre stage. The mother contended for permission to remove the child to Africa and for there to be international contact. The father sought a shared care arrangement with both parents and child remaining in Wales. His Honour Judge Sharpe recognised the possibility of the mother being forced to leave the UK but it was not an option which either party urged him to give much attention to. The written closing submissions of the parties both understandably focus on their principal cases.

41. In the judgment at paragraph 151 the judge says:

'...as referred to above the best option for [the child] in terms of his welfare, albeit not that which is mother would prefer, would be for him to remain in this jurisdiction being cared for by both parents. Such an outcome is dependent upon the view taken by the immigration officials over which this court can have no control albeit I shall give permission for such information from these proceedings to be disclosed as will assist the mother if she attempts to secure a more permanent resident status here.

[154] if contrary to her adopted position the mother is not able to remain in this jurisdiction then the following arrangements will pertain:

a. The child shall live with the father; the. The mother shall have the opportunity to spend three periods of two weeks in this country, which shall be supported by the provision of financial assistance from the father, during which time she shall have the sole care of [the child] C. The child shall also be taken to Africa for three periods of one month in the course of each calendar year (to be non-consecutive)'

42. Unusually for a case where this issue was in play there was no expert immigration advice before the court. Technically such advice may not be a matter of part 25 expertise, it relating to a matter of English law but that nicety aside it is relatively standard for that to be sought. In this case the issue had not been addressed prior to Mr Vine QC's arrival on the scene for the final hearing in January 2018 and when that was adjourned an application was made to the Home Office to clarify the mother's immigration status.

43. In any event the position of the mother being forced to leave the UK was very much an unknown quantity. The courts are well aware that (unsatisfactory though it may be) immigration overstayers may remain in the jurisdiction for many years. Ms Crowley QC said that His Honour Judge Sharpe had been concerned as to what the position

would be if the mother was suddenly removed and he was right to be concerned. However whether this required him to make a default child arrangements order which settled the live with and spend time with arrangements for the child were that eventuality to arise is another matter.

44. More importantly though, was His Honour Judge Sharpe equipped with the evidence and submissions to enable this issue to be addressed? Plainly it potentially would have medium to long term welfare consequences for the child. If it were to come to pass a default order might settle the child arrangements for the whole of the child's minority. Would the mother be able to litigate child arrangements from Africa if she were unable to enter the jurisdiction? That being so it was a welfare decision of very considerable importance. To reach a decision on what was in the child's welfare interests were that eventuality to come to pass required a further holistic examination of the competing options; on the one hand the child remaining in England with his father and having contact with his mother, on the other the child returning with his mother to Africa and having contact with his father.

45. It is self-evident from the judgment that this sort of side-by-side evaluation which is mandated by the authorities on relocation did not take place. The side-by-side evaluation in respect of the mother and father and child all remaining in England or the child moving to Africa with the mother did take place as is set out above in my consideration of ground five.

46. However, the same process was not gone through by His Honour Judge Sharpe in this eventuality. There is no analysis of the impact on the child of being separated from his mother. There is no analysis of the viability of the spending time with arrangements whether from a cost or entry to the UK perspective. There is no analysis of the risk that the father might undermine the relationship between the child and the mother. This was a central component of the refusal of the mother's application. Ms Crowley QC is right to point out that the judge's findings in relation to the father were less harsh than in relation to the mother but at no stage does he undertake the assessment of the likelihood of the father promoting the relationship were the mother to be deported. Given he had found that the father was highly critical of the mother (albeit not of her parenting of the child) and had lost no opportunity to criticise her (including suggesting that she might have him murdered) this was plainly something that needed to be factored into a holistic analysis of the options. Ms Crowley QC is right to say that the distinction between the judge's findings in respect of the mother and the father are such that it is probable that he would have concluded had he undertaken the analysis that the father was more likely to promote contact than the mother albeit there would have been risks but this is only part of the holistic analysis. What if the evidence had established that the mother was unable to travel to the UK for immigration related reasons? What if the evidence that established that the finances were not available on the mother's side to make the spending time with arrangements realistic? What was the evidence of the impact on this very young child

of being separated from his mother to whom he almost certainly had his primary attachment at that stage? When all of the relevant welfare checklist factors were weighed in favour of the two options in this scenario where did the balance fall? The exercise was not undertaken and was probably incapable of being undertaken in the way required to reach a properly founded welfare determination.

47. It is hard to avoid the conclusion that in this respect the judge did lapse into a linear exercise. Having earlier ruled out the child moving to live in Africa with the mother in favour of him remaining in this country with both his father and his mother the only real explanation for the conclusion that the judge summarily reached at paragraph 154 must be that having ruled out the child moving to Africa in his earlier holistic evaluation of the two competing options he imported that ruling out into his determination of the default position if the mother were to be deported to Africa. That I do not think was permissible because different issues fell to be considered in that eventuality and an entirely separate holistic evaluation of the option of the child remaining in Wales with his father and having contact with his mother either in the UK or in Africa as against the option of the child moving to Africa with his mother and having contact with his father in Africa the UK or elsewhere needed to be considered. Part of that evaluation, as I've set out above would have required a conclusion on the likelihood of the father promoting the mother-child relationship. Whilst the judge made observations on this he did not draw the threads together into a conclusion as he did for the mother. He had not had to in the earlier holistic evaluation but it would have been a necessary component of this.

48. Although no doubt His Honour Judge Sharpe considered and determined the default option out of a desire to tie up all of the loose ends and to provide a clear way ahead for the child in this respect I conclude that in this determination he did fall into error and that he did not undertake the holistic welfare evaluation of some complexity in order to determine where the child is paramount welfare lay. Had it been done it may have resulted in the same outcome but equally it might not. In particular had the parties' and the judge's focus been on those two competing options I would wonder whether merely embarking on the process of analysing it would have led to the conclusion that the material was not available and perhaps the time was not right to undertake it at all.

49. For those reasons I agree with Mr Vine QC and conclude that ground 6,7 and 8 are established and I would allow the appeal to that extent and set aside the default provision orders.

Conclusions

50. For the reasons set out above I conclude that:

    i) Permission to appeal in respect of ground four is refused.

ii) The appeal is dismissed in respect of ground five.

iii) The appeal is allowed in respect of ground 6,7 and 8.

iv) The orders made in respect of the mother being unable to remain in the jurisdiction of England and Wales are discharged. For the sake of clarity this includes paragraphs 23 – 27.

51. The parties invited me to substitute my own decision if I were to allow the appeal. In respect of ground 6, 7 and 8, I do not consider that the material was before the court to enable me to determine where the child's paramount welfare lies in the event of the mother's deportation.

52. In the event that the mother is removed suddenly for immigration related reasons the existing order provides for the child to live with the father for short-term periods under the shared live with order. The arrangements for the child in the medium to long term will need to be determined by the court on the basis of the evidence as it then appears. In the event that the mother receives notification that she is to be removed for immigration related reasons the mother or the father must restore the case for further consideration.

53. Plainly it would be better for all concerned if the mother's immigration status were clarified. The clear conclusion of His Honour Judge Sharpe was that this child needed both of his parents in his life. Equally it is clear (albeit the magnitude has not been finally determined) that there would be a risk to the maintenance of the mother/child relationship were she to be deported. That clearly would have article 8 implications for the child. How the parties choose to deal with the issue in terms of seeking a court order will have an interface with the progress made on clarification of the mother's immigration position. However, I cannot determine that within the confines of this appeal. At the moment, I'm not sure it could be dealt with at first instance. Further clarity probably needs to be achieved in a number of areas in order to properly determine that issue.

54. That is my judgment.