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

Delivered: 11/01/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

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IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

BETWEEN:

WA

Applicant;

and

KA

Respondent.

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KEEGAN J

**Nothing must be published which would identify the children or their families. The names that I have given to the children in this judgment are not their real names.**

[1] This case relates to two children one aged 8 and one aged 3. This is a relocation case. The eldest child was born in 2010 and I will call her Emily. Emily's younger brother was born in 2015 and I will call him Conor. The mother seeks a residence order pursuant to Article 8 of the Children Northern Ireland Order 1995 ("the Order") and leave to remove the children from the jurisdiction of Northern Ireland to reside with her on a permanent basis in the United States of America ("the USA").

[2] On the 5<sup>th</sup> of December 2018 I delivered an interim ruling whereby I made a residence order in favour of the mother. I adjourned the relocation application and I asked the parties to take a breathing space over Christmas and to see if they could reach a resolution between themselves. I also asked them to discuss three matters in particular i. their relationship ii. the finances and iii. contact. I took this course for a number of reasons which will be apparent from the substance of this ruling not least the finely balanced nature of a decision such as this. I was also struck by the fact that both parents presented as well motivated, they have been through stressful litigation in the USA and they have limited funds. I asked that the father provide financial support for the mother and the children over the Christmas period. I adjourned the matter until 11 January 2019.

[3] I am grateful to Ms Hughes BL who sent a brief note of update on behalf of the Official Solicitor on 8 January 2019. It is encouraging to hear that both parties remain on good terms whilst also separated. I also note that the parents are confident that there is the capacity to have the finances resolved but are of the view that they require a formal decision of this court on relocation. What follows is my complete judgment dealing with all of the issues.

## **Background**

[4] The parents of the children are married. The mother is an American, the father Northern Irish. The parents met when the mother came to visit a friend in Northern Ireland in 2001. She met the father whilst travelling on a Stena Line ferry. They struck up a conversation and thereafter began a relationship which involved the mother travelling to Northern Ireland on regular occasions. She decided to move to Northern Ireland permanently to be with the father in March 2003. They married in December 2003 and the children were born thereafter in 2010 and 2015.

[5] The mother stated that they talked about how they would like any children they had to experience life in the USA by growing up there. The father disputed that that was the actual position although he accepted that there were some conversations about living in the USA. In any event the fact that the respondent's mother was elderly and suffered from dementia was a determining factor. By virtue of that the family were bound to Northern Ireland and it is common-case that the mother assisted over the years in caring for her mother in law. This lady died in December 2017.

[6] The mother forged a career for herself and given that she has a teaching qualification she obtained employment at a local school. The father is self-employed working with maintenance of computers in schools. The family lived together on modest levels of income. They lived in a home which is mortgaged. The father has also obtained his mother's home. The father told me that he is due an inheritance. He also bought two investment properties in Bulgaria.

[7] After Emily was born in 2010 the father suffered from a stress reaction. He has a history of anxiety and he has required mental health services on numerous occasions. But after Emily was born it is clear that the father had a difficulty coping and his anxiety worsened. This obviously led to a stress within the family. There was no dispute that the father did not cope well with the birth of the first child. This was illustrated most starkly by the mother's recount of the fact that when Emily was born the mother slept downstairs on a mattress for a period of time at the father's request so that he would get his sleep. This pattern continued and when the second child was born the mother reduced her hours at work so that she could take more time looking after the children.

[8] In her evidence the mother described a life at home which was very difficult. She said that she was on tenterhooks because of the father's anxiety and mental

health difficulties. She said that he would take to his bed and that he could not cope with the children being around. She made the case that he was not a hands-on parent and that she had to leave the house for long periods of time to occupy the children out of the house. The mother also explained that the house was not kept in a very good condition; it was a small house with a lot of clutter from the father's computers. The mother described a very limited social life and she gave evidence about three occasions when she did go out that she had to go home early. The father came to get her because he could not cope with the children. The mother also explained that on the plane home from the USA Emily came down to the mother's seat to say that Conor had soiled himself and needed changed.

[9] Matters seem to have come to a head on 17 March 2017 when the mother's grandmother passed away in the USA and she was in Northern Ireland. The mother was not able to attend the funeral and she found this very difficult. At this time her mother was also in the USA and she was suffering from a heart complaint and her stepfather had Parkinson's disease. So at this time the mother wanted to spend more time in the USA and she actively raised this with the father. What followed was an agreement that she would travel to the USA for a month in July 2017 with the children. Thereafter there were discussions about a longer period of time being spent in the USA. It is clear that at this stage cracks were beginning to show in the marriage and the mother expressed to the father that she was unhappy and was missing her family. Also at this time the mother told the father that she was going to ask her employer in Northern Ireland to agree a career break and that she wanted the entire family to move to the USA and to see if this would help fix the marriage, provide financial stability for the family and also to allow her to assist her mother with her health problems.

[10] There was no consensus and so on 17 August 2017 the father obtained an Ex Parte Prohibited Steps Order at Ballymena Family Proceedings Court preventing the mother from travelling to the USA. To the credit of both parents there were discussions after this Order which led to an agreement being reached whereby the mother would travel with the children in mid-September 2017 to the USA for a trial period until 23 June 2018. As a result the Prohibited Steps Order proceedings were withdrawn.

[11] Upon arriving in the USA the children and the mother stayed with her mother and stepfather in their home until the mother obtained a 3 bedroom rented home close to her own mother's home which was owned by her brother and rented out to her. She obtained a job in a highly regarded local school and her daughter attended that school and her son a Montessori nursery. The mother describes how both children thrived in this environment but particularly that her daughter became more confident and enjoyed the stimulation provided by the school that she attended. The mother registered the children with healthcare and private medical insurance and she maintained that her life was much better in the USA because she had more disposable income. She said that she could also provide childcare in the

afternoons which she could not do in Northern Ireland and she had family support around her.

[12] After the mother moved in September 2017 the father visited on a regular basis for the 10 months on the following dates. 28 September 2017 to 5 October 2017, 26 October 2017 to 7 November 2017, 21 December 2017 to 4/5 January 2018, 15 February 2018 to 22 February 2018, 26 March 2018 to 3 April 2018 and 14 May 2018 to 21 May 2018. This is a clear indicator of his commitment. It is also clear from the papers that the visits progressively became more strained. But in any event the father accepts that he was welcomed into the family home and that he tried to get to grips with what was happening with his relationship. There was a problematic visit in Easter 2018 which was emotional for all concerned probably because the father realised at that stage that the marriage really had broken down.

[13] Then the mother effectively decided that she did not want to return on 23 June 2018. There is some issue about how this was communicated to the father because I note some messages that were sent by way of email in May 2018 whereby the mother expressed her love for the father but yet on 2 June 2018 she brought an application in Northern Ireland which read as follows that "I would ask this court to grant me permission to remain temporarily in the USA pending adjudication on the substantive issue of relocation." The application is detailed as it sets out the unhappy history in Northern Ireland. It also sets out the positive features of life in America. Finally the mother refers to the state of the father's home which a friend visited and photographed and to which she was expected to return. During these proceedings I have seen various photographs which confirm that the home was kept in an untidy state inside and out by the father. The grass was overgrown to an obvious extent and the inside of the home was clearly not in a satisfactory condition for children. Unfortunately, that situation did not seem to improve when the children returned illustrated by the fact that Conor's bedroom doubled as an office for the father and the clutter remained in view.

[14] Since the parties have lived separately Emily has returned to her previous school and Conor is cared for by the mother. The father avails of contact twice per week. This is for a couple of hours mid-week and for extended hours during the day at weekends with flexibility as to time. The mother has no income at present however the father pays the outgoings on the home and he paid a lump sum of £2000 to her recently.

### **The progression of this application**

[15] Counsel have helpfully provided a chronology of what happened after this C1 was issued as follows:

- 2 June 2018 - C1 application approved, signed, dated and posted to Northern Ireland by the applicant.
- 7 June 2018 - application received in the post from the USA.

- Application lodged in a Family Proceedings Court on 7 June 2018.
- 21 June 2018 - email to Family Proceedings Court chasing a listing date.
- 21 June 2018 - telephone call to the courthouse – if respondent’s solicitor can accept service they can list on 28 June 2018 for First Directions.
- 28 June 2018 - First Directions hearing at Family Proceedings Court transferred to Family Care Centre.
- 3 July 2018 - telephone call from Family Proceedings Court case listed on 10 June 2018 at Family Care Centre.
- 10 July 2018 Family Care Centre transferred to the High Court – await listing date.
- 25 July 2018 – applicant advised by District Attorney that they would be filing a petition under Hague in the US.
- 2 August 2018 - letter from the High Court confirming matter listed for First Directions on 24 September 2018.
- 15 August 2018 - applicant notifies her solicitor that the father had filed Hague Convention proceedings.
- 23 August 2018 - Hague proceedings are before the US courts – applicant sought a continuance of the Hague hearing scheduled for 4 September 2018 extension granted to 14 September 2018.
- 14 September 2018 – Hague proceedings hearing in US – Return Order made.
- 14 September 2018 – both parents and children return to Northern Ireland.
- 17 September 2018 - applicant’s C2 at the High Court seeking emergency Residence Order application.
- 18 September 2018 – C2 hearing scheduled for 15 October 2018.
- 15 October 2018 – hearing.

[16] A number of issues arise in relation to this. Firstly, a case such as this which involves an international element should be brought to the High Court on an emergency basis. This is not a case where the mother decided to unilaterally overstay. She brought an application to the court which raised the matter before her agreed time in the USA ran out. It is unfortunate that some mediation was not attempted or a welfare hearing did not take place. However, it seems that the Hague proceedings overtook everything and a summary return was ordered.

### **The Order of the Californian Court**

[17] The Superior Court of California heard the case on 14 September 2018 and a written ruling has been made available. Both the mother and father were present. Ultimately the court found that there was unlawful retention. The court rejected the mother’s argument that there had been acquiescence by quoting from her application of 2 June 2018 whereby she states:

“I do not believe that the respondent will consent to me moving permanently with the children to the USA. He has often said that he wants us to return home to Northern Ireland, even booking seats for us to get onto

the flight with him when I requested we stay longer. This is way I am now seeking adjudication from the court.”

Unsurprisingly, the Californian Court therefore decided that the mother was aware in advance of the wrongful retention or removal date that the father was not agreeable to the children staying in the USA.

[18] Unfortunately, this led to summary return and interim custody effectively being given to the father. That led to a particular stress for the children who were separated from the mother on the return flight home and upon return to Northern Ireland. The matter is highlighted in stark terms by the Official Solicitor who was appointed by the court to obtain the wishes and feelings of the children.

### **The reports of the Official Solicitor**

[19] Ms Coll of the Official Solicitor’s Office was appointed by the court to ascertain the wishes and feelings of the two children. Understandably she did not speak to the 3 year old child but she did speak to the 8 year old child Emily and outlined her view in an initial report which is dated 15 October 2018. This describes Emily coming to the Official Solicitor’s Office with her father. The Official Solicitor asked the child about her experiences and it is clear that the child became distressed when explaining the position as regards her mother. But at this stage the child had been living largely with her father and only seeing her mother after school and at weekends.

[20] I quote from this Official Solicitor’s report at paragraph 6:

“Emily became very tearful at this point and she told me that she feels sad and “I miss her”. She explains that doesn’t get to sleep with her mum like she normally does. Emily was really very upset and we took a break for a few minutes and I tried to reassure her. When we resumed I asked her if she had enjoyed living in America and she confirmed that she had. I then asked her how she finds living in Northern Ireland and she replied ‘good’. I asked her in which place she would prefer to live and she replied America and when asked why she replied ‘there are cool neighbours lots of friends and my grandma’. I asked her when she had been in America had she missed seeing her daddy and she told me that she had and I asked if she would miss him if she went to live in America again and she confirmed again that she would but when pressed she said she still would prefer to live in America. Again Emily broke down and became very tearful and I felt that it was inappropriate to continue. I asked her if she felt that it would be better for

her mummy and daddy and the adults to make the decision and she agreed. Finally before returning Emily to her father I asked her what she would prefer to happen if it was decided that they should remain in Northern Ireland. Emily clearly told me I want to be with my mum. She confirmed when I asked her that she loves both her parents but added 'I would rather be with my mummy'. I reassured Emily that she must try not to worry and that the adults would sort everything and that the big decisions were not her responsibility."

[21] Upon reading this report I was so concerned that I asked the parties to immediately consider the interim arrangements. I am grateful to the lawyers who advised the parties and the parties themselves for realising that the arrangement whereby the children lived with their father in the interim was not working. I am concerned that the father did not fully recognise the effects upon Emily. In any event the father agreed to leave the home and the mother moved back into it with the children. I am very pleased to say that after this change the Official Solicitor presented a much happier picture of this family.

[22] I now turn to the second report filed by the Official Solicitor. This report is dated 14 November 2018. The context of this is that after hearing the evidence I asked the Official Solicitor to conduct a more detailed inquiry by contacting the various people that the parties had referred to in evidence and also by updating me on the wishes and feelings of the children. The Official Solicitor notes that a Welfare Report would normally be carried out by a social worker but due to time constraints the court felt it would be more beneficial not to incur further delay and await a social worker report. This report comments on the position of Emily and as the Official Solicitor states she was very distressed during her first meeting and therefore it was not warranted to question her again. However, the Official Solicitor also comprehensively reported on the father's contact with the children which she described as positive.

[23] At paragraph 9 of this second report she refers to the young boy Conor during contact as follows:

"Conor was delighted to see his dad, he gave him a big smile and told me very proudly and affectionately "this is my daddy". He then went on to show his dad the hamster and took it out of the cage to show him. He sat on the sofa with his dad and cuddled into him. At one point I noticed that he touched his dad's face quite tenderly and then went on to gently play tickles with him. This affection was initiated by Conor and the father responded warmly and appropriately."

[24] The Official Solicitor then contacted various people who had filed witness statements but did not give oral evidence to the court. These people largely verified what they had said in writing in support of the case made by both the mother and the father. The Official Solicitor then cites the welfare checklist and sets out her conclusion at paragraph 100 as follows:

“Having taken all of this information into account I feel that this is a very finely balanced application. Should the court take the view that the application for relocation should be granted the key factor for the children will be the minimisation of potential risk of harm to the relationship with their father. Should the court refuse the application it would not be unreasonable for extended holidays for the children to be permitted in America to allow them to maintain links with extended family and friends there.”

### **Evaluation of the evidence of the parents**

[25] Both parents gave comprehensive evidence to me. They adopted their statements of evidence and expanded upon those and were cross-examined on the main issues. The mother presented as a very sincere and thoughtful person. It is clear that she is an intelligent woman, who is highly educated. I believed the mother when she said that life in Northern Ireland for her was not happy after the birth of the children. I totally accept her case about how difficult it was to manage with two young children. I also accept her evidence that the father was not able to cope with having the children around and also that he was absent to a large extent. I believed the mother whenever she said that the father was not “hands-on” and that she could not expect him to be in the future.

[26] I was also struck by the fact that this woman dedicated 13 years of her life to helping care for the father’s mother who had dementia. That cannot have been an easy task. Then when she had her own children it seems to me that she had very little support either emotionally or financially. This is not a family with any spare income at all and I accept the mother’s case that she struggled financially. There was a ring of truth to the mother’s description of her situation when she said that she had “not really looked up” until March 2017 when her own grandmother died and it was only then that she could see “the wood for the trees”.

[27] In my view this woman tried to work with the father to come to a resolution of where the children would live but it seems to me that he could not deal with the conversation and that led to a situation where the separation was badly handled. I accept the mother’s evidence about the father’s mental health difficulties however it seems to me that she may have exaggerated this to some extent. In my view the father has some fragility but that is not as determinative a factor as the mother alleges because to his credit the father has always sought help. I can understand the



mother's point that the father's erratic behaviour has affected Emily on some occasions. I accept that evidence but I am not completely satisfied that the connection can as yet be made between this and medical interventions for the child.

[28] I accept the mother's case that life in the USA was good. In my estimation, she did not necessarily have the most in-depth relationship with her family or the USA until the cracks came about in the marriage. However, I am entirely convinced that she established good family and social relationships when she went to the USA for the trial period. The schools that she found for the children are of high quality, her job is of high quality, her finances are much more secure in the USA, her accommodation is much better and she has some family support around her in that environment. I also accept her evidence that there is no real family support in Northern Ireland.

[29] The mother has apologised for the retention in the USA. That clearly led to a breakdown in trust. To her credit she did bring an application prior to the Hague proceedings and in one sense it is not her fault that that was not adjudicated upon at an earlier stage in Northern Ireland. However, I am not sure she was entirely upfront with the father about what was actually happening. In my view there is an element of her stringing him along in the hope that he would agree to her staying in the USA. I also accept there is a planned element to her taking a career break until September 2019.

[30] The father came across as rather frantic and pedantic in presenting his case. He did accept his anxiety problems and I commend him for the fact that he said that he always sought help in relation to this. I consider that the father exaggerated his input with the children for the purposes of this hearing. He accepted that he wanted his wife to sleep downstairs on a mattress when the first child was born. It was also clear to me that the father could not cope when the mother was away. I was unimpressed by the evidence about the physical state of the house and also his financial provision for the family.

[31] The father obtains credit from this court by virtue of the fact that he in no way detracted from the mother's capabilities. It is also obvious that he is a loving father who wants to do what is best for his children. He said that the USA was a good place and that he had visited many times and seen what was there. Overall, the father gave me the impression that he is desperately sad that the relationship has broken down. He did not question the motivation of the mother. Understandably he grounded his case upon the fact that if the mother was allowed to go to the USA he would have much less contact with the children and practically he could not travel the extent of times he did during the 10 month period. So my overall view of the father is that he is not a malevolent or malicious man but he has some character traits which mean that he will have difficulty dealing with stressful situations. In my view this will lead to ongoing tension between the parents which will likely be felt by the children.

[32] I have also considered the various witness statements and testimonials provided by both of the parents. These support their respective cases however I do not place determinative weight upon any of these opinions as they have not been tested in evidence.

### **Legal principles**

[33] I have been extremely impressed by all junior counsel in this case who have conducted this very difficult case in an exemplary way. Counsel for the both parents filed very focussed skeleton arguments but more importantly they conducted examination-in-chief and cross-examination with efficiency, respect and focus. This was a model of how a family case should be presented.

[34] There was no real dispute about the legal principles at issue. This area of law has been examined in the Court of Appeal in our jurisdiction in a judgment of the Lord Chief Justice in the case of SH v RD [2013] NICA 44. In that case the Court of Appeal considered the leading decision in England and Wales on relocation of Payne v Payne [2001] Fam 473.

[35] The debate which ensued following Payne is illustrated in a number of cases which followed. In particular there was a concern that this case established a presumption in favour of the relocating parent (usually the mother). That theory was roundly dispelled in a number of cases before the courts including NK v CK [2012] Fam 137 where the resounding view was expressed that the only principle enunciated in Payne is that the welfare of the child is paramount. Black LJ agreed that the only authentic principle to be derived from Payne is that the welfare of the child is the court's paramount consideration. She agreed however that the guidance must be heeded but not as a rigid principle or so as to dictate a particular outcome in this field of law where the facts of individual cases are so infinitely variable.

[36] The effect of the guidance should not be overstated even where the case concerned a true primary carer. There was no presumption that the reasonable relocation plans of the carer will be facilitated unless there is some compelling reason to the contrary. Black LJ noted that Thorpe LJ had accepted in Payne that there was no such presumption and accordingly it was inappropriate to treat the second proposition at paragraph 26 of that judgment as if it were a presumption. She did not interpret the matters set out at paragraph 85 by Dame Butler-Sloss as disclosing any weighting in favour of any particular factor.

[37] At paragraph 35 of SH, The Lord Chief Justice explains the position in our jurisdiction as follows:

“Although Payne has been said to be binding on the Court of Appeal in England Wales it is not, of course, binding in this jurisdiction. It has, however, been the practice in this jurisdiction to treat decisions of the Court

of Appeal in England and Wales as strongly persuasive authority particularly where they involve interpretation of the same or a similar provision (see Beaufort Development v Gilbert Ash [1997] NI 142). There is no dispute about the fact that the welfare of the child is paramount in both applications before the court and that the welfare checklist applies directly in relation to the shared residence application and as a matter of good practice in relation to the relocation application.

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

[38] It follows from the above that the welfare of the children at issue is the paramount consideration. In a case such as this the court is enjoined to look at the welfare checklist which assists in reaching a welfare determination. However, the court must look at the particular facts of the case in reaching a holistic overall view. It must also be borne in mind that cases such as this engage the Convention and the rights of various parties including the children.

### **Consideration**

[39] Relocation cases such as this present an extremely difficult exercise for any Family Judge. That is because there is a binary decision either the application succeeds or it does not. There is no in-between and one adult will ultimately lose. I do not underestimate the heartbreak that these cases cause.

[40] The factual matrix of this case highlights a number of particular characteristics. This is a recent separation case and I think a separation badly handled to date. There is a new landscape of mother and father living separately and arranging contact between each other. It is to their credit that arrangements have proven to be conducted in a very civil manner. It is also clear to me that this is a case whereby the mother has been the primary carer of the children and will remain so. I do not want to get distracted by labels but I cannot ignore the fact that she is the person who will undertake the majority of the childcare. In reality the father will have a role as the non-custodial parent. That is not insignificant because the children have a right to know both parents and the mutual benefit of children having a good relationship with non-custodial parents is well recognised.

[41] In this case the parents are two well-motivated people. There was no real dispute that the mother's plans to go to the USA are good, well formulated and would provide a good life for the children in terms of health, education and general well-being. By the same token there was no dispute that the father's objection rooted in his having less contact with the children is well motivated.

[42] I bear in mind the logistical difficulties which are inherent in this case. We live in a smaller world however the travel arrangements between this part of the USA and the UK must be borne in mind in terms of looking at what realistic contact would shape up to be. It is clear from the Official Solicitor's report that the father needs some reassurance on this issue. Direct contact must be maintained but at a realistic level. Indirect contact is important and it is much better in the modern era however it must also be workable. I have noted some difficulties with Skype in the past which I am going to have to bear in mind.

[43] There are also a number of financial considerations in this case. I am grateful to the Official Solicitor for collecting information about this. Overall I can see that there is not more surplus income on either option however it does appear that the family would have some greater financial stability in the USA by virtue of arrangements there.

[44] There was no medical evidence filed in terms of the effect on the mother if I were to refuse the application. However I observed the mother in the witness box and it goes without saying that she would be devastated and unhappy if this application were refused. I do not underestimate the effect of her feeling trapped in a country with no supports if she were refused. However I cannot say that her upset would be at such a level that the care of the children would be seriously compromised.

[45] There is some medical evidence in relation to the father's anxiety which makes it clear that if the children were to relocate he would have a difficulty coping. On the positive side, he is a man who is willing to seek help and rationalise these matters and he is also a man who has his own resources through work whereby he keeps himself occupied.

[46] I now turn to the welfare checklist as an aide to reaching an overall conclusion and looking at the various parts of the welfare checklist my views are as follows:

- (a) *The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).*

I cannot actually utilise the wishes and feelings of the children to any great extent in relation to where they should live. Obviously Conor is too young for his wishes and feelings to be taken into account at all. In relation to Emily she has expressed a preference to be in America but in my view that should

not be determinative. Her preference is really to be with her mother and it is rather than any preference to be in the USA.

(b) *His physical, emotional and educational needs.*

It seems to me that physical needs would be met appropriately in both jurisdictions. I consider that the educational needs would be met in both jurisdictions. I do not have the evidence to make a more qualitative analysis of the two schools. In terms of emotional needs it seems to me that the balance might just be tipped in favour of the USA rather than Northern Ireland because I have concerns about the emotional needs of the children being affected if the mother stays in an environment whereby the father may place demands on her on an ongoing basis and also there is financial strain.

(c) *The likely effect on him of any change in his circumstances.*

It seems to me that the children would be able to adapt to a move to the USA. They adapted very well to their time in the USA so I cannot see that that would cause any particular difficulty even though they have been returned from that jurisdiction.

(d) *His age, sex, background and any characteristics of his which the court considers relevant.*

I do not consider that there is anything particular there that I need to take into account.

(e) *Any harm which he has suffered or is at risk of suffering.*

I consider that the children may suffer emotional harm going forward if they have to live in a stressful environment. That risk pertains to them living in Northern Ireland. They may also suffer emotional harm if prevented from having a meaningful relationship with both parents. That risk pertains to the USA.

(f) *How capable of meeting of his needs is each of his parents and other person in relation to whom the court considers the question to be relevant?*

It seems to me these are both dedicated parents but I do have to bear in mind that the mother is the more capable and a primary carer. I do not think that the father could actually cope with looking after the children for long periods of time.

(g) *The range of powers available to the court under this order in the proceedings in question.*

I do not think that there is any option other than to grant or refuse the relocation application.

[47] I do not consider that the mother is motivated by a selfish desire to exclude the father from the children's lives. I simply think that she wants to go home. I consider her application is realistic particularly as she is returning to a familiar environment which seemed to work for her and the children over the 10 months she was there with them.

[48] The father is not motivated by an ulterior motive he simply wants to maintain his relationship with the children. I do consider there would be an impact on the mother of a refusal of a realistic proposal and the extent of that is relatively hard to assess because I consider that the mother would probably make the most of it in Northern Ireland but that might be unfair on her. I am concerned about the immediate position here because the mother is not working and I read concerns in the position papers about finances so it seems to me that maintenance will have to be paid on an urgent basis.

[49] Before I reach my conclusion the other important factor to take into account is what the shape of contact would be on either proposal. If I were to allow relocation to the USA it seems to me that it would be unrealistic to set direct contact at anything more than 4 times a year. By that I mean that the mother would travel to Northern Ireland for say 4 weeks in the summer and the father would travel three times to the USA. There would have to be weekly Skype contact and other forms of indirect contact but I think that is probably the most that could be maintained. On the other side of the equation, if the mother were to stay here it seems to me she should be able to go to the USA on a regular basis for long periods of time. I would have thought that should be probably 4 weeks in the summer and at three other times of the year. There would have to be some workable arrangement in terms of paying for these flights.

[50] I have also thought about whether any relocation decision should be postponed. There is some strength in this argument given that the separation is recent. However, against that the children's schools in the USA cannot be held indefinitely and I am assuming that the same goes for the mother's job. So, I am swayed against putting off the decision any further.

## **Conclusion**

[51] This case is very finely balanced. I have had to stand back and take an overall holistic view of welfare. Having heard all of the evidence and considered the papers and applying welfare as the paramount consideration, I have decided that the balance is tipped in favour of relocation to the USA. I say this primarily because I believe the mother, who is the primary carer, can offer the children a better life there which is more secure and where she has family support. By contrast it seems to me that life in Northern Ireland would involve greater hardship and stress for the

children. I also believe that the mother will facilitate contact and that the father can maintain a good relationship by regular travel or he may even consider moving to the USA in the future.

[52] I have already made a residence order in favour of the mother pursuant to Article 8 of the Children (Northern Ireland) Order 1995.

[53] I will also grant leave for the mother to remove the children to California, USA to live under Article 13 of the Children Order but subject to the following conditions being satisfied:

- (i) The mother's job must be confirmed in writing, to commence immediately upon her return.
- (ii) The children's schools must be confirmed in writing immediately upon return.
- (iii) The accommodation must be confirmed in writing immediately upon return.
- (iv) The return is not to happen before a date to be fixed by the parties or the Court.
- (v) The father must have proper and meaningful contact with the children and this must also be realistic. The parties should have an opportunity to agree contact terms. I have offered some suggestions above which the parties may reflect upon. I am open to the parties reaching their own arrangement. If they cannot agree I will adjudicate upon any area of disagreement.
- (vi) Once the contact terms are settled they will be comprised in a contact order. The mother must provide evidence that this can be made a mirror order in the relevant local court in California.
- (vii) The mother must vouch that she has funds to pay for the bulk if not all of the fathers travel each year and the mother must pay for her travel and that of the children to Northern Ireland.

[54] Finally, I stress that some care needs to be taken with how the children are informed of this decision and so I direct that should be guided by the Official Solicitor who has been of invaluable assistance in this case. I suggest that the parties take 2 weeks to try to finalise the terms and by that stage they can indicate whether the court needs to adjudicate further on any particular issue.