

Change vs Placement

How are the courts balancing change versus the child being settled in placement, (1) in contested Special Guardianships and (2) in international relocations for lengthy periods?

Christopher Hames QC



Re M'P-P [2015] EWCA Civ 584, [2015] Fam. Law 1040

- J (paternal aunt; SGO) v Y (foster carer; adoption)
- J met children twice; Y permanent carer since just after birth
- Appeal about relative weight of factors of “status quo” and “family”
- Judge had not engaged “*with the effect on the children of moving them from the care of their primary, and only, attachment figure with the value to them of maintaining that relationship*”

Re E-R (Child Arrangements Order) [2015] EWCA Civ 405

- M terminally ill
- Friends (Testamentary Guardians; SGO) v Father
- Friend become primary carer for 10 months v F lost contact
- Judge stated
'The argument in favour of the status quo therefore is not strong enough to displace the proposition that the father as a capable parent should assume T's care upon her mother's death.'

Court of Appeal

- *“If one translates the term of art ‘status quo’ into something more meaningful by relating it directly to the welfare of a child, it simply refers in the broadest sense, to the current living arrangements of a child. For T, the status quo is that place where she is living and settled, in a familiar environment, cared for by people upon whom she can rely and who are currently offering her the love, security and consistency she needs to enable her to cope with the loss of her mother.” para 34*

D v E [2016] EWFC 3 at 104 and 127

- 11 year old child with specific physical, emotional and educational needs; moderate attention deficit hyperactivity disorder with global developmental delay; dyslexia; resulting in academic and social impairment; and some physical disability.
- Maternal Aunt (SGO) v Father (CAO)
- MA primary carer for over 2 years: F sporadic involvement mainly through telephone contact and untested as carer. Other issues!

- *‘Allowing C to remain in the care of his aunt will allow his relatively complex needs to continue to be met to a very high standard indeed by an established network of familial and professional support. By contrast, the change of circumstances constituted by C moving to the care of his father will constitute a move into considerable uncertainty, both in respect of professional and educational support available to C and the father's ability to parent him to the standard required to meet his needs.’ Para 127*

See also

- Northamptonshire County Council v M, F, A (by his Children's Guardian, Lynda Beat), GM, SG [2017] EWHC 997 (Fam) at 46
- *Re G (A Minor)* [1992] 2 FCR 279 per Balcombe LJ
'I would agree that this is not a matter of presumption in the legal sense but, nevertheless, when dealing with the custody of small children undoubtedly, as a working rule, one does not disturb the status quo unless there is a good reason to do so.'

Re F (A Child) (International Relocation Case)
[2015] EWCA Civ 882 [2017] 1 FLR 979

- The judge allowing the mother to remove the parties' 12 year old daughter permanently to Germany. The father was Jewish while the mother, having converted, reconverted back to Catholicism following separation. The child met the judge to express her wishes and feelings, including her views on faith and belief. The father appealed

- *'In particular at no stage does the judge take account of any erosion in the quality of the relationship between father and daughter if L were to move to live in Germany. High on the list of important questions should have been an evaluation of the harm, on the one hand, to L of leave being refused as against, on the other, the harm that would result from separation from her father should she move.'*
paragraph 38

Re K (A Child) (International Relocation: Appeal against Judge's Findings of Fact) [2016] EWCA Civ 931 [2017] 1 FLR 1459

- CA dismisses appeal against permission to relocate
- *“That wish [of the child to relocate], although not determinative, will have had implications for the weight to be given to the status quo; the benefits of a status quo that no longer accords with the wishes of child of A's age may weigh differently from a status quo to which no exception is taken.” para 62*

Re C (Older Children: Relocation) [2015]

EWCA Civ 1298 [2016] 2 FLR 1159

- Mother refused permission to relocate with 16 and 14 year old boys to New York (17 and 15 at appeal)
- Shared care
- Boys were initially unenthusiastic or undecided about moving.
- Then elder was all in favour of going, while younger, who wanted to live with both parents, did not want to be left behind if the mother and brother went.
- The overall picture was that the children would be happy staying in London if the mother was not insisting on going to New York, but that if push came to shove, they would want to be with her.
- *'Ms Demery of Cafcass advised that it would be ideal if a way could be found for the mother to remain in this country at least until each boy completed his secondary education. Her final view was that this was an enormously difficult case and that the risks of the children staying may be less than the risks of them going.'*

- *'In my view, the recorder cannot be charged with failing to take account of all the components of this somewhat unusual situation. In favour of relocation, he considered the mother's stated need to move for financial and career reasons, the likely availability of adequate housing and schooling, and the boys' decision to throw in their lot with her. Against relocation, he weighed the boys' settled existence, the presence of both parents here, and the consequences of granting or refusing the application. He did look critically at the loose ends in the mother's plans, as he was required to do. She was proposing a fundamental change in the family arrangements and it was incumbent upon her to deal with these issues satisfactorily'. (para 67)*

Re C (Internal Relocation) [2015] EWCA Civ 1305 [2017] 1 FLR 103

- Historically external and international relocation had been treated separately
- Same principles should apply to both – as above: namely the welfare principle.
- No test of exceptionality
- M applied, in shared care case, for specific issue order to relocate 10yr old child C to Cumbria

The judge found

- *‘relationship between C and the father was very good and sufficiently well established to continue essentially as it is now, even if there were to be a change in the quantum of contact.’*
- *‘the change [in care arrangements] would be quantitative not qualitative and that relationships could be kept up at weekends.’*