

Relocation: How do you persuade a court to keep a child in the UK if a parent relocates to another country – school, family, wishes, feelings?

JASON GREEN
Harcourt Chambers

NJ v OV [2014] EWHC 4130 (Fam) per Mostyn J § 4:

It is my opinion that outside the sphere of State intervention for the purposes of child protection, the hardest decision that a judge ever has to make in the field of family law, or, for that matter, in any field, is a relocation decision...

Re G (Leave to Remove) [2008] 1 FLR 1587 § 19 per Thorpe LJ:

These cases are particularly traumatic for the parties, since each of them conceives so much as being at stake. They are very, very difficult cases for the trial judges. Often the balance is very fine between grant and refusal. The judge is only too aware of how heavily invested each of the parents is in the outcome for which they contend. The judges are very well aware of how profoundly the decision will affect the future lives of the children and how difficult it will be for the disappointed parent to adjust to the outcome.

Law

- There is only one legal principle applicable to relocation disputes, namely that the welfare of the child concerned is the paramount consideration
- Within this broad principle, the courts have laid down guidance about how relocation cases should be approached
- The key is to understand both what the guidance means and how it applies to individual cases, and also what it does not mean and how to avoid falling into error using it

The application

- A parent seeking to move internationally requires the court's permission to do so, failing agreement of the other parent. This can either be done through a specific issues order under s.8 CA 89 or, where a child arrangements order is in force, a free standing leave to remove order under s.13 CA 89. In practical terms, no difference as to the test to apply. Still use welfare checklist even though only technically necessary for s.8.
- There is no automatic restriction on moves within the jurisdiction, but the court might be concerned with several different orders to regulate a proposed relocation, all under s.8 CA 89.
- Examples:
 - i. specific issues order allowing the child's relocation;
 - ii. prohibited steps order prohibiting the child's relocation;
 - iii. specific issues order concerning an issue such as schooling, which has a determinative or substantive effect on the issue of relocation;
 - iv. child arrangements order which either resolves the question of the relocation or which contains conditions made pursuant to s.11(7) CA 89 where those conditions determine the relocation (i.e. imposing a geographic restriction on the child's place of residence).

Law

- *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793; [2012] 2 FLR 880
- *Re F (A child) (permission to relocate)* [2012] EWCA Civ 1364; [2013] 1 FLR 645
- *Re F (International Relocation Cases)* [2015] EWCA Civ 882; [2017] 1 FLR 979
- *Re C (a child) (Internal Relocation)* [2015] EWCA Civ 1305; [2016] Fam 253

Re F (International Relocation Cases) [2015] EWCA Civ 882 – *Ryder LJ*

- Reliance on the well-known and formerly leading case of *Payne* without a broader legal analysis of welfare, may amount to an error of law
- There are limitations in the *Payne* reasoning.
- The impact of the article 8 ECHR rights of the parties and children on the welfare analysis and the possible requirement for a specific proportionality evaluation?
- The requirement to focus on a ‘holistic analysis’ of welfare (para 28) which, understood in the same way as it is in the public law context (para 29), requires the court to engage in an evaluation of all the options, avoiding a linear approach

Proportionality

- *Re C (a child) (Internal Relocation)* [2015] EWCA Civ 1305 – Ryder LJ
- *Re K (A Child) (International Relocation: Findings of Fact)* [2016] EWCA Civ 931 – Black LJ
- *Re C (Relocation: Appeal)* [2019] EWHC 131 (Fam) - Williams J

What will the Court be interested in?

- Motivation of the applicant
- Motivation of the respondent
- Existing care arrangements
- Level of planning the applicant has put into the proposals
- The respondent's alternative plan
- The proposals that each parent puts forward for promoting the continued involvement of the other parent in the child's life
- Child's own wishes and feelings
- The effect of the changed, and usually reduced, relationship between the child and the respondent parent
- Effect on the parent of a refusal to relocate.

- **Motivation**

- Disruption/control
- Lifestyle
- Going home
- Employment/opportunity
- Partner

Care arrangements and plan

- Shared care?
- Planning and organization
- Relationship between left behind parent and child(ren)
- Present contact arrangements
- Proposed contact arrangements

Child's wishes and feelings

- Section 7 report/ISW
- Separate representation?
- Child focus (*“Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child”*) Black LJ *K v K*

Other considerations

- Preparation
- Timing
- ADR

Thank you

jgreen@harcourtchambers.co.uk