

IN THE MILTON KEYNES FAMILY COURT

Case No. MK22P00037

Neutral Citation Number: [2024] EWFC 222 (B)

Courtroom No. 3

351 Silbury Boulevard
Witan Gate East
Central Milton Keynes
MK9 2DT

Wednesday, 21st February 2024

Before:

RECORDER STOTT

B E T W E E N:

AQ

and

BQ

MR S RAHMAN appeared on behalf of the Applicant Mother
THE RESPONDENT FATHER appeared In Person

JUDGMENT
(Approved)

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RECORDER STOTT:

Introduction

1. I am concerned with the welfare of two children, LQ, a boy born on [redacted], who is aged eight and NQ, a boy born on [redacted], aged six.
2. The parents of both children are, AQ, who is the mother and BQ, who is the father. They shall be referred to as the mother and the father in this judgment.
3. The mother's new partner of some 20 months is Mr YZ. He resides in a small farming town in rural [redacted], Australia and I have seen property particulars and evidence about this in the mother's statement.
4. This is an *ex tempore* or oral judgment, given under some pressure of time and that should be considered when it is being read in the future.
5. I have heard evidence and submissions over two days on 19th and 20th February 2024, and I give this judgment at 2pm on 21 February 2024.
6. Applications relating to relocation outside the jurisdiction of England and Wales are often difficult applications to determine, especially when there is significant geographic distance between the parents. Such decisions require a careful welfare analysis. The outcome is always binary, permission is given, or it is not given, and it involves a great deal of upset either way, if the application is granted or refused. There is no halfway house.
7. I have reflected carefully on the evidence and given a great deal of thought to the decision I have had to make. There is also a great deal of evidence which I have read and heard and much of which cannot be included or referred to in this judgment. However, I can reassure the parties I have considered their evidence and respective cases with care.
8. I express my genuine thanks to the Cafcass officer, Ms Erica Shaw, for her valuable assistance to the Court and this family during her involvement and in particular during this final hearing. Both children are very lucky to have a Cafcass officer who has the children's welfare continually at the forefront of her mind.
9. This hearing has been somewhat unorthodox, with Ms Shaw being asked to assist with ongoing negotiations for contact arrangements and consideration of other orders during the hearing. However, this has enabled all the parties to have a fair hearing and the Court to make decisions for the children.

Background

10. I do not rehearse the background in any great detail. The father has made an application for a child arrangements order. The mother has made an application for permission to remove the children from this jurisdiction and to relocate to Australia.
11. There have been some preliminary case management issues, which I needed to determine at the start of this hearing. I had no witness template, no statement of issues, and competing

bundles lodged by each party with different pagination, page numbers, and indices. There were no ground rules proposals and there were other case management issues I needed to deal with which I do not need to mention in this judgment. This took some time to resolve on the first day of the hearing.

12. Part of the reason for this is that the father is now a litigant in person, having dispensed with the services of his solicitor late last week. He has been assisted by a McKenzie Friend, [name redacted] on the first and second day of the hearing, but she is not present with the father today.
13. Prior to this hearing, the father has instructed specialist family solicitors over the past two and half years of litigation.
14. The mother has been a litigant in person throughout this litigation between the parents, save for this hearing, where she is represented by direct access counsel, Mr Sami Rahman.
15. I did, thankfully, have position statements from each party, as previously directed.
16. There is a lengthy litigation history between the parties. Non-molestation order proceedings commenced in 2021. Children Act proceedings commenced in 2022 and most recently, the mother's application for permission to remove the children to Australia on a permanent basis, which was issued in December 2023. There have been many interim applications and court hearings.
17. A fact-finding hearing took place before Recorder Patel between 25th and 28 October 2022, some 16 months ago. My judgment, must be considered and read in conjunction with the fact-finding judgment of Recorder Patel, dated 28 October 2022.
18. I specifically refer to paragraphs as to the observations made of each parent made by Recorder Patel. It is important to read paragraphs 20, 25, and 26 as to Recorder Patel's observations of each parent.
19. Recorder Patel also made limited findings as to the disproportionate parenting response by the father to L, whereby the father, had used excessive force at times. There were no findings of intended malice. However, my reading of the judgment is that the father lacked the parenting skills to manage, at times, L's challenging behaviour and, on occasions, reverted to overly physical intervention and acted out of frustration when L was misbehaving. This caused some physical harm to L. A summary can be found at paragraph 54 of the fact-finding judgment.
20. It is important to note that the Court was not satisfied that the majority of the 19 findings sought were found and the door was very much left open to contact between the boys and their father.
21. For reasons I do not fully understand, there was significant delay between the fact-finding decision, and setting up the ICFA following the initial section 7 report. The result is, sadly, that there was a gap of around two years without any direct contact between the boys and their father and it appears that this was for a number of reasons. This gap has not been beneficial, and probably harmful, to the children and both parents.

22. As I have said, the judgment should be read in full, but the differing parenting styles and degree of parental acrimony was certainly a feature observed by Recorder Patel. The different parenting styles is very much a feature which I observed when the parents gave evidence before me. They are very different characters.
23. Since the fact-finding judgment, the father has made significant steps to amend his parenting style and has undertaken various courses to assist him in managing L's behaviour, in particular. I am satisfied he has worked hard to make amends to his parenting to the benefit of the children.
24. Pleasingly, contact has started again, following the ICFA. There have been four supervised sessions and one in the community and I will comment upon contact later in this judgment.

Position of the Parties

Father's Position

25. The father's application is first in time. He is opposed to the children moving to Australia. He seeks a shared 50/50 care arrangement of the children and the mother if they remain in this jurisdiction. If the mother moves to Australia, he seeks to be a primary carer for the children.
26. In his position statement, he effectively seeks for, what I perceive to be a section 91(14) order, so that no application can be made by the mother to relocate for at least 12, if not 24 months.

Mother's Position

27. She seeks to relocate to Australia with both children. She is in a relationship with Mr YZ, who resides in Australia, and I have read a witness statement from him.
28. The mother says that the current child arrangements, her work, and living arrangements are unsuitable and unsustainable.
29. The mother says that she has been offered a job with flexible working in Australia and will be able to dedicate more time to looking after the children.
30. The children have been to Australia and spent time with Mr Z and his son, O, from a previous relationship. The mother says this is tested and positive relationship and she confirmed to me in her evidence, that it was her plan to move to Australia in September 2024, so that the boys could finish school for the summer and be ready to start the school term in Australia in January 2024.

The Law

31. My paramount consideration is the children's welfare, pursuant to section 1 of the Children Act 1989.
32. I have to have specific regard to the Welfare Checklist as set out in section 1(3) of the Children Act 1989.

33. There is no additional principle or approach to consider when determining an application for relocation of children outside England and Wales. However, the Court must carry out a global, holistic evaluation weighing in the balance the different options for the children, consider the positives and negatives of each option on their own and then, when compared against the other options.
34. The case of *Payne v Payne* [2001] EWCA Civ 166, [2001] 1 FLR 1052, referred to me by Mr Rahman, at its highest, is not more than a potential useful guide in helping the Court to undertake a global, holistic welfare analysis. Subsequent case law is clear that it is a welfare decision.
35. I have had regard, in particular to *Re TC & JC (Children: Relocation)* [2013] EWHC 292 (Fam), per Mostyn J, which reiterates there is no presumption in favour of a primary carer.
36. In addition, further, the case of *Re C (Internal Relocation)* [2015] EWCA Civ 1305, a decision of Voss LJ and I refer to paragraph 82 and 83.

“82. In cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional.

83. One of the most difficult aspects of this case has been to establish in the light of previous authority what use, if any, should be made in the process we have just described of the 4 ‘disciplines’ identified by Thorpe LJ at paragraph 40 of his judgment in *Payne v. Payne* (the ‘Payne factors’). In my judgment, one of the valid concerns about the Payne factors is that they do not adequately reflect the gender-neutral approach to these problems that the court will now adopt in every case. Whilst the Payne factors may still be of some utility in some cases, they are no part of the applicable test or the applicable principles. In some circumstances, the judge may find them useful. In others, the judge may not. If the judge finds them a useful guide to some of the factors that he should consider, he will be doing so only as part of the multi-factorial balancing exercise that is required.”

37. In the case of *Re F (A Child) (International Relocation Cases)* [2015] EWCA Civ 882, the Court of Appeal held that in any international relocation case, when determining which proposals are most consistent with the welfare of the child, the Court must undertake a holistic evaluation of each proposal, having regard to the Welfare Checklist set out at section 1(3) of the Children Act, 1989. A holistic evaluation is undertaken by a comparative

evaluation of the realistic options and plans, that is by looking at the pros and cons of each option and balancing them against each other, rather than by considering each option in turn and in isolation.

38. Because Article 8 of the European Convention of Human Rights is engaged by reference to the gravity of the consequence, the Court must also carry out a proportionality evaluation. In practice, this means that the Court should strike a fair balance between the interests of each parent and those of the child and that if those interest conflict, the interests of the child should prevail (See *Re C (Internal Relocation)* [2015] EWCA Civ 1305).
39. I remind myself that cases involving leave to remove are fact-specific and, as I have said, involve a holistic evaluation of the pros and cons of each option, having regard to the totality of the evidence and the Welfare Checklist, as set out in section 1(3).
40. I, therefore, specifically remind myself there is only one principle. The welfare of the child or children, individually, is the paramount consideration in determining an application for leave to remove a child permanently from the jurisdiction of England and Wales.
41. The Court should engage with the long-term welfare issues and address them in a holistic way, i.e. by reference to each parents' options and plans, analysed separately, and evaluated comparatively and proportionately and then come to a decision.
42. Finally, of course, I remind myself of Article 6 and Article 8 and those rights are engaged for the family. An order permitting or refusing removal operates a stark interference in the Article 8 rights of the family and must be necessary and proportionate in considering the right to family life of the child and each of the parents and I must try and strike a fair balance. However, where there is a conflict of interest, the interests of the children prevail.

Evidence

43. I have read the bundle and in particular the fact-finding judgment, the Cafcass reports, contact notes, parental statements, and the statement of Mr Z.

Evidence of Ms Shaw

44. The addendum Cafcass report of Ms Erica Shaw is dated 8 February 2024 and is a thorough and well-balanced report. It contains evidence of direct work with the children and a letter to me from N.
45. I heard oral evidence from Ms Shaw first. She does not support a removal of the children to Australia. Her plan is the application is premature. At present, the relationship between the children and the father has only recently resumed and is in its early stages of reestablishment. Moreover, there remains an outstanding alleged breach of the non-molestation order which requires resolution, as any potential conviction may impact on the father being able to travel to Australia.
46. The current financial and housing situation between the parents remains outstanding. The children need to be supported by both parents to rebuild their relationship with their father and wider paternal family. The relationship between the children and their father needs to be properly reestablished and solidified.

47. I note that the mother has said to Ms Shaw that a significant change will occur in any event, such as potential geography in this jurisdiction or location of where the mother and children might live. I wondered whether that was some attempt at pushing a move to Australia, by saying that there will be a move in any event, that there will be impact on the children in any event and, therefore, suggesting that a move to Australia would be considered against a move from the current location, including schools where the children are.
48. Divorce proceedings or matrimonial financial proceedings remain ongoing and therefore there is no certainty to the financial position of each party, as yet.
49. The family has experienced significant litigation, turmoil and upheaval and the current contact plans mean that there is limited contact, at this stage, between the father and the children.
50. Ms Shaw sets out that the children need to know that they have a positive relationship with their father who loves and cares for them and that is important to their emotional wellbeing now and during their minority. I agree with that opinion.
51. If the relocation to Australia is to work, the children will need to have properly established relationships with their father. Any reluctance to speak with the father, for example, by video call whilst in Australia, is likely to mean that contact slows and eventually stops. Ms Shaw highlights that it is still early days for contact between both boys and their father. The children's understanding that they have a positive relationship, and a positive image of their father is likely to promote contact and the children are simply not at that stage, as yet.
52. In contrast, the relationship with Mr Z appears good and they speak fondly of him. The children are a key part of the future plans of the mother and Mr Z; however, the relationship has not been tested at all by the family living together, or certainly not for any substantial time. In addition, I remind myself that this is not a case whereby a parent is returning home after a relationship breakdown, but rather a new untested endeavour without familial, maternal, or paternal family links to Australia.
53. Ms Shaw agrees that whilst the mother has visited Australia and there appears to be a genuine wish to relocate to Australia, the move is to be with her partner, where she feels supported, loved and she wishes to move away from the previous relationship difficulties.
54. Moreover, Ms Shaw agrees that the father's wish to oppose the application is genuine, as he has a genuine concern for his relationship with the children and the future well-being of the children. The father is, and has been, committed to making amendments to his parenting style.
55. In respect of the father's proposed shared care arrangement, Ms Shaw does not agree that the shared care is realistic. L is displaying resistance to spending time with the father.
56. Evidence of contact is good, but still requires staged transitions at the handovers. L, as I say, has shown resistance to seeing his father, contact is then of good quality, then there is resistance to return to the mother. It seems to me that structure and routine are important. As such, more contact and more work around this is important. In contrast, N appears to transition well and enjoys spending the time with his father.

57. The mother reported to Ms Shaw that she has experienced domestic abuse in the relationship, and I make it clear that the allegations between the parents were not pursued at the fact-finding hearing and therefore, will not be relitigated. However, I accept that the mother may well experience anxiety and apprehension around the children spending time with their father and I recognise that.
58. Ms Shaw is clear, if the children relocate now, then future parenting will likely be problematic. The children will require a significant amount of support. The children are very focussed on living in Australia. It would be a great opportunity for them, but not without risks, and in particular, risks of life-long disruption of the relationship with their father.
59. The children have already had significant disturbance and disruption to their lives following the breakdown of the parental relationship and subsequent period of no contact with their father. They may have more if they move home and potentially school.
60. Accordingly, Ms Shaw was clear that the application in her view was premature. There needs to be evidence of the mother promoting the relationship between the children and their father and for a positive and increased contact so that the Court is able to assess whether a move to Australia will mean that the parental relationship can be properly sustained, i.e. the relationship between the father and the children.
61. Further time will also allow the mother and Mr Z's relationship to develop, and Ms Shaw recognised, of course there were strengths to the application, especially in terms of education and the relationship with Mr Z.
62. Ms Shaw was asked about the contact notes, and she remained concerned about the promotion by the mother as to contact, perhaps subtly, but this may be more indicative of differing parenting styles. I note that the mother disagreed with much of what was contained in the contact notes, but no contact workers were called to give evidence.
63. I have had particular regard to the contact note from 3 February 2024, where L arrived at contact saying: "I hate my dad". This was after periods of positive, good contact. L did not want to go into the community with the father and said, "I don't want to see him at all".
64. It is clear in the notes that the father managed the sibling conflict over a Scalextric set, showing clear evidence of good parenting and evidence of the work he has undertaken to improve his parenting style.
65. When it was time to leave, L again expressed that he did not now want to go into the community. He seemed unsure of what the term meant. He said he was scared because his dad had been mean to him when he was younger. When asked what happened, he did not remember, he was reminded that everything had been going well at contact. He said something definitely did happen, he just cannot remember, and said the contact worker should ask his mum as she "definitely remembers".
66. As I said, the contact worker was not called to give evidence, but the reading of the note of 3 February 2024 shows difficulty, in particular with L, with change and the mother's view

about the paternal family. The mother told the contact worker that the father was not allowed to go to the grandparents' house during community contact, so she hoped he was not thinking about doing it, as it was strictly not allowed. It then appears that L became distressed.

67. I highlight this entry as it accords with Ms Shaw's view that without an established relationship with the father, the children may have developed a negative view about the father and the wider paternal family. The reason for this may be alignment to the mother's views, but it may be for other reasons and in particular, L's individuality due to his increased needs.
68. I am satisfied that Ms Shaw has made detailed enquiries as set out at paragraph 8 to 14 of her addendum report.

Evidence of the Mother

69. The mother has filed a statement along with exhibits, showing a well-researched plan in terms of education, living arrangements, and the location of where she wishes to live in a fairly rural town in [redacted]. She has researched and presented this well. She describes that she can secure a job, housing, and support, but I note that these are all reliant on Mr Z's job at [Redacted]. I note that she would not plan to relocate until September 2024. Visa applications have not been applied for and the divorce settlement is still not agreed.
70. The mother sets out that she has spent time at Mr Z's property in Australia and him at their home in England. This has been during term time as well as holiday periods. She says that the relationship has been tested and, in particular, how the children all get along. She says that Mr Z is a positive male role model to the children and the boys described him as their safe and happy place.
71. The mother says it was the boys who asked if they could move to live in Australia with Mr Z and that they had started saying this from around May 2023. In her statement, she described L and N having developed a loving relationship with Mr Z and his son O.
72. Details of the financial arrangements as set out in her statement, as well as the job opportunity offered to her. The accommodation is to live with Mr Z in his property and there are details of visa costs, as I have already indicated.
73. The mother believes that both children, and in particular, L, will greatly benefit from a change of lifestyle, it will be a quieter, calmer lifestyle to the one that they have experienced already. She also sets out that she cannot stay locally in the UK, the children would need to move schools in any event, whether this be in the UK or Australia. The mother plans, in any event, to increase contact with the father prior to any move and she describes in some detail the lifestyle and leisure opportunities which will exist in rural [redacted].
74. She has been in contact with schools and has made a well-constituted argument as to the benefits that the children will experience if they live in Australia and how their needs can be met.
75. However, I note that the children refer to Mr Z's father as Granddad [redacted]. I note that there is a suggestion of developing some property using joint incomes from the mother and

Mr Z. I note the small size of the school, which has some advantages, but could also have some disadvantages. There are limited alternatives, if that school did not work out for either of the children and for whatever reason, the children seem very firmly aligned to Mr Z and his wider family.

76. I further note, at paragraph 55 of her statement that the mother sets out that the father has yet to take steps to make unsupervised non-community contact safe and therefore, she is not able to set out a definitive framework of permanent contact.
77. The mother has made some broad proposals in respect of travel to and from the UK from Australia. She says that she will be flexible, and she says that she has spent two years recovering from the trauma of the time leading up to the parental separation. She notes that the boys have adapted well to previous moves of home and school because of the relationship that they have with her.
78. She does not support the children living in the full-time care of their father or indeed a 50/50 shared care arrangement. She sets out that the current situation is now unsustainable and major changes are needed in any event.
79. In her evidence-in-chief, the contact report was produced by the father for the community contact, which took place on 17 February 2024. Following receipt of this, the mother produced or attempted to adduce a schedule of covert recording that she had made at the contact handover. I did not permit this to be relied upon. I was not addressed on the law of covert recordings, and I expressed my surprise at the nature in which the handovers were recorded. It was evident from my initial repeated questions to all the parties, that contact was positive between the children and the father, but the transitions remained difficult. This was accepted numerous times by the parents and Ms Shaw. I therefore determined that further exploration of this satellite issue would not help me determine the issues before me, but I clearly expressed to the parties my view as to the impact of covert recordings and trust.
80. I note that the mother gave long answers in her evidence, but I think this is part of her personality and her wanting to paint a full picture to me.
81. She described L as hanging on in his current school and he continues to struggle. There is an offer on the former matrimonial home, but there has been no completion.
82. The mother sets out that L will respond far better to a planned move, that one which is unplanned, and she again reiterated that it was the children's view to live with Mr Z in Australia, which triggered her application some months later.
83. Insofar as the risks around contact are concerned, she did not want the children to become physically hurt. She accepted that the father has been learning something and that she wanted to see more work undertaken in respect of him being able to safely parent the children. She wanted contact to continue to go well. She wanted contact with the paternal family to restart.
84. Whilst I accept she painted a picture of very much promoting contact, I gained an impression of undertones of anxiety and apprehension around contact with the children and their father.

85. Part of this is understandable, but when I look at the risk assessment undertaken by Ms Shaw as part of her work, I am firmly of the view that it is time for contact to really increase and become more natural for the children and their father.
86. I appreciate that communication remains difficult between the parents and that these parents are diametrically opposed in respect of their personalities and parenting styles, and this was very apparent from their evidence. Whilst the mother is anxious about contact, the father is mistrustful and defensive. In addition, as I said to the parties, they must move on and be able to communicate in a way to promote the welfare of their children with each parent over and above their own parental difficulties.
87. The mother, to her credit, moved from her initial position regarding contact and was happy for contact to increase sooner and for the father to have overnights with the children. I asked for a schedule to be drawn up as to her proposals with the input of Ms Shaw to see whether there can be an agreement as to the way forward. Again, I explained to both parents that agreement around contact is far more likely to work for the children and can be beneficial for the children, far more so, than an order imposed by the court.
88. I should add that, in light of the previous allegations, I asked questions on behalf of the father to the mother, the father had prepared pre-prepared, written questions and of course these proceedings commenced prior to the implementation of the QLR process. I noted from the mother's evidence that there was an optimistic tone and scope for increased contact and the relationship between the children and the father.

Evidence of the Father

89. The father's statement was 27 pages, notwithstanding it was limited to 10 pages, and this was prepared whilst he was still instructing his solicitor.
90. It sets out that he has completed the following:
 - (a) Planning together for Children;
 - (b) Who is in charge course?;
 - (c) The Solihull Approach Course: Understanding Your Child with Additional Needs, Level 1;
 - (d) A diploma in Symptoms, Treatment and Management of ADHD.
91. Whilst the father sets out that he believes that L has aligned himself to his mother's view in order to please her, I find that it is a more complicated picture than this. L is a more complicated young person than N. However, I am satisfied that both parents have involved the children in adult issues, and there is an evidentially marked difference in the way that L approaches change, transition, and perceived conflict than that of N.
92. There is a dispute as to why video calls did not take place, but I was clear to the parties that my focus was the future and not the past. There is much criticism of the mother in the father's statement. There is mistrust and anxiety about the future peppered throughout that statement.
93. However, it is clear that the father opposes the children moving to Australia. He is worried about the relationship between him and them continuing and with the wider paternal family.

He seeks a shared care arrangement, is opposed to any change of school, and sets out that impact on the children if something were to go wrong in Australia would be devastating, both physically and emotionally for these children.

94. In his oral evidence, he accepted that the former matrimonial home would soon be sold. He opined that his relationship with the children, having restarted contact, was now just like it was before contact stopped, i.e. positive.
95. He did not accept that he had no previous involvement in the care of both children and of L in particular. He wished to spend more time with them as soon as possible. He would accept the family assistance order. He accepted there were ongoing issues around handover, but that his work allowed him to be flexible, and he could assist with school collection. He wants to move forward, and he told me that it was not unreasonable for him not to consent to the children moving to live in Australia. He said that no parent would want to be parted from their children.
96. In addition, he did not accept that he was prioritising his own needs above those of the children and was supportive of the children having a relationship with Mr Z, although he was worried about some of what L had said about moving to live with Mr Z, even if the mother could not live in Australia.
97. I heard submissions from the parties. The mother suggested that I adjourn the application if I was not with her for permission to relocate the children to Australia. The adjournment would sit alongside an interim child arrangements order with a view to a further hearing in three months' time.
98. In his submissions, the father read out a closing statement, inviting me to refuse to grant permission for the children to relocate to Australia. His submissions were heartfelt and balanced, and he aligned himself with the views of Cafcass. He wished to make an order to stop any further consideration of a relocation for at least 12, if not 24 months.
99. Following submissions, Ms Shaw continued to assist the parties as to contact arrangements and I was provided with an agreed contact schedule.

Discussion and Analysis

100. There are, of course, advantages and disadvantages of the children relocating abroad, and of course, if the children remain in the UK, the benefits are that they will have a continued relationship with their father. He will be able to meet some of the day-to-day needs of the children, be active in their lives and support them. There is a strong support network in the UK with the maternal and paternal families. The father has the support of his employer, he has flexible working, and he could assist more with the children. They will remain in a country they know and have strong ties to, including school, health needs, and they will have some certainty. They will build their relationship with their father and retain friends and support networks. They, of course, will still be able to travel to Australia for holidays and spend time there. Mr Z, and indeed his son, can also travel to visit the family in the UK.
101. Some of the detriments, of course, would be that the decision to stay here would not align with the children's wishes and feelings, bearing in mind their age and understanding. It is the early stages of reestablishment of a relationship with their father and not going may

impact upon this. The mother and the children really wish to go to Australia and, of course, if they remain here, that is likely to have an impact on all of them. The family and the mother will not be able to have the same relationship with Mr Z as they would if they were living together in Australia. If they stayed here, they may need to be moved from the current location. They may move more than once. They will have to continue to experience British inclement weather and not have the opportunities of space and lifestyle that Australia can offer.

102. In contrast, if the children move to Australia, the benefits would be that that mother would be emotionally supported. In addition, I note the maternal grandmother will soon require a medical operation. The mother would have the support of the person with whom she wishes to be with, and the children have a good relationship. The mother is likely to be able to settle financially and work and look after the children more easily in Australia. School has been identified and the children have travelled there, and the school has some specialism in ADHD, and they say they can meet L's needs.
103. From what I have read and heard, I do not doubt, Mr Z is a supportive and understanding person and has a positive relationship with the children. The mother has secured a job and has access to housing. The children will probably have their own rooms. The wishes and feelings of the children is that they want to go and live in Australia and the children will have a family unit and be familiar with the home with Mr Z, his son, and the cat, Smokey.
104. The relationship, certainly on paper, between the mother and Mr Z appears strong, but I remind myself that it is untested and whilst there is a significant time gap between the UK and Australia, the family will still be able to speak whilst in Australia and in the UK.
105. The detriments, of course, that there is no established relationship with the children and their father in the UK. There will be a lack of relationship with the paternal grandparents. The relationship is not yet secure, meaning that the likelihood of the relationship to continue is very uncertain.
106. There is the ongoing criminal charge of the alleged breach of the non-molestation order, and this may impact on the father's ability to travel to Australia. The time difference will mean the video calls will not be straightforward.
107. There is a proposed shared care arrangement with a child who is not subject to these proceedings and an individual who has not had the full scrutiny of the Court. The proposed plan is that there be a two-week on, two-week off period with Mr Z and his son. That has not yet started, and I do not know a great deal about his family dynamic.
108. The mother does not have any direct links to Australia, certainly not family links and therefore, this is a missing protective factor. This is a new relationship, and she is wholly reliant upon Mr Z and his wider family. It is a relationship of 20 months and they do not live together, and it is not fully tested. There is no alternative care plan, if the Court does not give permission to leave or if the relationship broke down.
109. In addition, there would be a life-long loss to the father and paternal family if contact stopped and this would be far more difficult to enforce in Australia if Father is living in the United Kingdom.

The Welfare Checklist

110. I turn to the Welfare Checklist and having considered some of the benefits and detriments, I need to consider this in detail.

The ascertainable wishes and feelings of the children concerned (considered in light of their age and understanding)

111. The children's wishes and feelings are, of course, important, but they are not determinative. I accept that L, in particular, has made a statement about living in Australia, but I am cautious about the weight I attach to his view. Contact is reported to be going well with the father, save for challenges to the periods around transition, both ways.

112. I have read a bit about what L has said and I am concerned that he has said about his father:

“I don't like seeing him, he is horrid, he does not hurt us, but still don't like seeing him, most horrid man on earth. The paternal grandparents don't believe us when the father hurt us when he did.”

113. I have wondered whether L, and indeed the mother, has somewhat of a rose-tinted view of the actualities of living in Australia, and what would happen if things did not go to plan. She appears to be a very positive person.

114. I note that L has said that he would not be near “[redacted]-pants” [Mr Z]. He said he is the best and he makes me happy.

115. L declined to write a letter to me and did not engage in the direct work with Ms Shaw. However, I note that when Ms Shaw and L met again at school the following day after their meeting, L refused to get changed and had now remembered the main part of what the father had done, and this is set out at paragraph 24 of the addendum report. There was reference to the father being mean to him in the past. At paragraph 28, it sets out two worries, going to the father's house and him spending money. At paragraph 32 there are references to thoughts and feelings about the paternal grandparents, “they don't believe he hurt me and are on daddy's side”.

116. I have looked at the pictures drawn and do see that there is some alignment with the mother's views, but again, I cannot unpick the source of this.

117. In respect of N, there is a reference to father bringing lots of presents, but him not allowed to take them home. He knows he is moving house and might move to Australia. He talks about N, Smokey and O and he has been to Australia three times and a big water park.

118. In the direct work, he referred to Granddad [redacted], who is Mr Z's father, and to [redacted]. He says Australia is fun and better than England. He is happy to have a cat and third brother.

119. In his letter to me he says: “Please can you make it so I can move to Australia, I don't really want to spend time with Father”. I asked myself why. He is reported to be scared, but this is not borne out from the contact observed between the Father and N.

120. However, overall, the children want to move to Australia, and I keep asking myself is this their own view or a view aligned with their mother. There are overly strong connections to Mr Z and his family and an optimistic and overly enthusiastic view of what a permanent move to Australia might actually look like.

Their physical, emotional, and educational needs

121. L has ADHD and ongoing toileting issues. N has been discharged from speech and language therapy but may still require some assistance. The mother has identified a school which has some specialisation in ADHD, albeit I think it is only a local school. The school in Australia, of course, has had sight of L's EHCP and say that they can meet his needs and I am very aware of the recent challenging behaviour that L has displayed at school. The current school is meeting the boys' needs, although L requires significant intervention, and the mother describes the school and L, as just hanging on.
122. What is most significant to me is the children's identity needs. If the children move to Australia now, in my judgment, they will lose their relationship with their father and paternal family, and this would be a significant life-long loss to them. I am not satisfied that the current contact arrangements have been sufficient to satisfy me that an enduring and long-lasting parental relationship can be maintained if they move to Australia.

The likely effect on them of any change in their circumstances

123. The children are building a relationship with the father and are soon to reestablish their relationship with the paternal grandparents.
124. A move to Australia will be a massive change for them, school, home, country and be disruptive for them.
125. One matter which I raised is, for example, what happens if L is bullied in Australia, what are the options, what would be the impact on him. What would happen if the relationship broke down between the mother and Mr Z and I have already said, it would be devastating for the whole family, but in particular for both children.
126. If they are there, they will not spend time with the maternal grandmother, they will not be able to build a relationship with the father and be separated from him, and this is likely to have an impact on them now and in the long-term future.
127. As I have said, if I refuse the application, the mother has said the children will need to change school in any event and disruption will occur.
128. I deal with the father's application for a proposal to move to him, now. I note that they have not lived with the father or the paternal grandparents for over two years. A move to live with him would be a significant change, either on a 50/50 basis or of full-time care and there needs to be some further evidence about his ability to be able to fully meet the emotional needs as primary carer of two young children. At present, he has three to five hours of contact each fortnight. The children have not been, certainly to the home he is looking to rehouse in and remind myself that the father lived with the paternal grandparents following the breakdown of the relationship.

129. The children have not had a relationship with the paternal grandparents or paternal cousins outside of school. The children did have an established relationship with the paternal grandparents, but not at present.
130. In addition, I remind myself of L's negative view of the paternal grandparents and whilst the paternal grandparents understand the outcome of the fact-finding hearing and that the father has not maliciously hurt the children, they are prepared to be open with L about that, but that has not yet happened.

Age, sex, background, and any characteristics of the children which the Court considers relevant

131. The children are eight and six years of age and are reliant on child-focused adults. They are reliant upon their parents to meet their physical, educational, and emotional needs.
132. They are at an age where they can adapt and lifestyle in Australia can be seen as a positive factor for these children. Of course, Australia is an English-speaking country, the boys are aware there is a possibility they might go to Australia.
133. In addition, I have, of course, read already about the school struggling to impose boundaries around toileting and other issues.

Any harm with the children have suffered or at risk of suffering

134. Both children have suffered harm, L physical harm and N emotional harm, as found by Recorder Patel.
135. If the application is refused, there is a possibility that they may blame their father for this and contact with him may be affected.
136. The children appear to have their mind set on moving. This may be because they are aligned to their mother's view, but on the evidence before me, I cannot make such a finding on the balance of probabilities. As I have said, it is a far more complex picture than that.
137. Not going will be disappointing and difficult for the children and very difficult for the mother. The mother has said, herself, that if I refuse the application, she will be affected emotionally and physically and financially, which will, in turn, lead to significant changes for the children.
138. There is likely to be an impact on her relationship with Mr Z and the ability to progress future plans and a desire to be a family unit. This may have a significant impact on the children, as for whatever reasons, their minds have been set on going to Australia.
139. However, the mother is reliant on Mr Z, and the connection there for accommodation, contacts, and his expertise in Australia. In addition, if the relationship were to break down or significant pressure placed on the parental relationship or family unit then, as I have already said, will have a significant impact on the children.
140. L has ADHD, which places him at further risk of harm and the impact on him of being able to adjust to change and transition from one activity to another has been well evidence in the case papers.

141. The children are at risk of suffering further harm if their relationship with their father has not properly reestablished and I accept the risk of physical harm to both children has decreased and contact has been positive. I accept the father has addressed his parenting style, attended programmes, and remained committed to the children.

How capable each of the parents and any person in relation to whom the court considers the question to be relevant is of meeting their needs

142. Both children live with their mother, she is able to meet their needs physically, educationally, and emotionally. However, I do have some reservations about whether their emotional needs are fully met in respect of their views as to the father. As I say, I am troubled by the contact note, and I am troubled by the strongly held views about the move to Australia by L, in particular and the overly familiar references to Mr Z and his family and the use of H as a potential surname by L.

143. Ms Shaw identifies that the mother may not be motivated to promote the relationship between the father and the children and in any event, is nowhere near the same way that she appears to be promoting the relationship between Mr Z, O, and the children. If this were to be true, that would be a significant detriment to the children.

144. She told me in her evidence that L can be unpredictable from week to week, and I have read how he can throw chairs and hit out at staff. L has a bespoke curriculum, and the school is struggling to manage his behaviour. Play-therapy has started, and school are using therapists to adapt strategies to help meet his needs. However, there have been half, or one-day exclusions and I understand a formal serious incident letter has been sent to the parents.

145. The father has demonstrated in contact that he can meet the children's needs and their toileting needs. The mother, of course, was concerned as to whether the contact notes were accurate, and whether or not, through her barrister, that the father was able to meet those particular needs.

146. However, there is no reestablished routine of spending time with the father, other than the contact notes where he appears to be able to meet their needs.

147. In addition, clearly, the father has previously found L's behaviour challenging and has been challenged directly by L when L asked the father "why did you hurt me". It is very important to note that the father was able to manage this direct challenge well.

Decision and Conclusion

148. I have considered whether it is appropriate for me to reach a conclusion on the applications today. Neither party has sought to adjourn the final hearing. They have had ample opportunity to advance their own case and respond to the evidence and the views of Ms Shaw.

149. Proceedings have been going on for two and half years now, delay is prejudicial to the welfare interests of the children. However, by not dealing with the applications today, I risk leaving the children in limbo, not knowing what the Court has actually decided. If I did this, I do not think that the parties nor the children would be able to move on, they will be stuck in limbo, and I am not prepared to let them stay in that position.

150. Having undertaken my own welfare balancing analysis and having had regard to the welfare balancing exercise undertaken by Ms Shaw of Cafcass, I am not satisfied that the mother has, as yet sufficiently secure links to Australia. There are no long-term visas, and the family are wholly dependent on their relationship with Mr Z for work, accommodation, support, and parenting.
151. At this stage, a potential move, in my judgment, is with high risk. These risks are not likely to abate over the next six months.
152. In my judgment, and for the reasons following my analysis as part of this judgment, I am not satisfied that it is in the children's best interests to relocate to Australia now. Sadly, even if she uses best efforts, I do not have the confidence that the mother will be able to maintain the relationship between the children and their father if they move to Australia. The relationship with the children is not yet securely reestablished and, as such, the relationship between the children and their father and wider paternal family is not likely to be sustained and that would be a huge loss for these children.
153. One major factor that cannot be overlooked is the relationship between the father and the children, and the need for that to continue as part of lifelong identity work for these children. Whilst the mother says the children have capacity and space for the father and Mr Z, I agree with Ms Shaw that security of the relationship with the children and their father remains tenuous and is not yet strongly established to withstand a move of the children to Australia.
154. I am very much aware of how much my decision will upset the children and the mother and I am sorry for that. I hope their upset will be short-term. However, there is no hiding away from the impact of my decision. The impact of refusal to grant permission to relocate to Australia will be palpable.
155. I, of course, recognise the benefits and opportunities of a move to Australia, but I also must have regard to, and I cannot ignore, the risks of a move and the likely impact on the children's relationship with their father if they move. This is a significant factor and tips the balance.
156. In my judgment, the proposed contact arrangements are not sufficient to meet the needs of the children to have a strong and enduring relationship with their father. It is very important that they have this relationship. If they go now, in my judgment, their relationship with their father and wider family will be extinguished.
157. Therefore, it is with a heavy heart that I refuse the application for the children to relocate to Australia.
158. I have considered whether I should adjourn this case. However, I do not see any merit in adjourning the application. To do so would be unfair on all the parties and the children. The court should strive for certainty, finality, and closure, wherever possible.
159. Whilst there will be some short-term emotional upset by both children, and the mother, about my decision, the longer-term relationship with the children and their father and wider paternal family is a fundamental right to private and family life.

160. In addition, like Ms Shaw, I too worry that the children have been too involved in adult decisions.
161. There is, of course, no reason why the mother cannot continue to travel to Australia and for Mr Z to travel to the UK and whilst it is not the ideal family life that the mother seeks or envisages, it balances her relationship and the relationship between the children and their father.
162. I am pleased that the parents have been able to agree a contact schedule. The children now need to move to longer contact with their father and the wider paternal family. There are no welfare reasons why this contact schedule should not be implemented.
163. I have considered the father's proposal for 50/50 shared care, and I am not going to make that order. I endorse the increase in contact, as agreed between the parties and with the assistance of Ms Shaw.
164. I am not going to make a contact monitoring order pursuant to section 11H of the Children Act 1989, but I am going to make a nine-month family assistance order, to ensure that the contact established continues, so it will benefit both children with their own specific needs.
165. There is still much uncertainty, for example, in respect of the ongoing breach of the non-molestation order proceedings, contact, housing, finances and schooling.
166. I will give some thought as to whether Cafcass should prepare a short report at the conclusion of the family assistance order.
167. During the hearing, there was an issue about the current school being changed. There is no application before me, there is still a great deal of uncertainty around financial proceedings and where the children may live, and I have no details before me in order to make a decision on schooling. However, both parents share parental responsibility, and if they do not agree on any new school, that will have to be decided by the Court. I note that the current school is just meeting the children's needs, in particular L's needs. He is likely to require special school provision. The father in his evidence told me how hard they fought to get L into this particular school.
168. In his position statement, the father seeks a prohibited steps order to prevent the children from being known by a different surname. The children's surname is D, and there is reference to L signing his name as H.
169. This is worrying to me, but the mother explained the reasons why and that she sought to correct him. There is, of course, no application for a change of surname before me, nor any opinion about that from Cafcass. However, the mother told me that she does not seek to change the children's surname at all and is not intending on making any application to do so. The children should not be known by the name of H, as the mother says, because they are both known as D.

170. The children will need a careful narrative of the decision of the Court. I emphasise to both parents that this is decision of the Court and certainly not one of the father. My decision must not impact on the children's relationship with their father. However, I of course remain worried about the impact of my decision and how this will be communicated to them. It is really, really important that it is done with great care and consideration.
171. During the hearing, I have offered to write a letter to each of the children, explaining the outcome of my decision. I remain content to do so, if the parents so wish. I have also indicated that I would be happy to see the children to explain my decision if that will help. However, in light of their age and understanding, my preliminary view is that it would be better if I write a letter to both L and N for them to read when they are a bit older, or they might have some assistance in understanding it.
172. As I have said, it would also help the parents to be able to carefully explain to the children in a child-focussed way that the decision on relocation is mine and mine alone and I bear that burden.
173. I make a child arrangements order for both children to live with their mother and to spend time with their father in accordance with the schedules agreed by the parents. Handovers to take place at the Co-Op or other venue as agreed by the parties.
174. I am not going to make an order restricting any further application by the mother for a period of 24 months, as proposed by the father. However, if there is to be any future application by the mother, this will need careful consideration. Time will need to be considered before any application is made and it should not be made prematurely.
175. I direct that a transcript of my judgment and for the costs to be shared, subject to any submissions I may hear, equally between the parties.
176. That concludes my judgment.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

This transcript has been approved by the judge.