

Neutral citation: [2024] EWFC 230 (B)

IN THE FAMILY COURT
(Sitting at East London)

Case No. ZE22P00316

11 Westferry Circus
London E14 4HD

Date: Wednesday, 24 January 2024

IN THE MATTER OF THE CHILDREN ACT 1989

Before:

HER HONOUR JUDGE REARDON

G v H (Relocation to Australia: Immigration Issues)

MS M WHELAN (instructed by Expatriate Law) appeared on behalf of the Applicant.

MS C WILLIAMS (instructed by Pennington Manches Cooper) appeared on behalf of the Respondent.

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

HHJ REARDON:

- 1 The parties to this application are the applicant G (“the mother”) and the respondent H (“the father”). They are the parents of X, who is of primary school age. X is a lively and very intelligent young boy. He also has autism which brings with it a range of additional needs, including a dietary condition called “avoidant restrictive food intake disorder” and sensory modulation difficulties.
- 2 This is the final hearing of the mother’s application for permission to relocate with X to live in Town L, Australia. The application is opposed by the father. Both parents are of Asian origin. The father grew up in Asia; the mother lived from her early years in Australia, living in City B until she was about 19 and then moving to Town L. In his six years of life X has lived for substantial periods in Asia, Australia, and the United Kingdom.
- 3 In June 2023 I gave a judgment at the conclusion of a fact-finding hearing in these proceedings, which was listed to determine allegations of domestic abuse. In that judgment I set out a full background to the parents’ relationship prior to their separation in 2022. I will not repeat that background and so it is important that both of these judgments are read together.
- 4 In my fact-finding judgment I made no findings on the mother’s allegations of domestic abuse against the father beyond some limited admissions that he himself had made. I found that the mother was overall the more dominant character in the relationship and held the balance of power.
- 5 Relevant findings for the purposes of this welfare hearing were as follows. I found there had been occasions during the parties’ relationship when arguments escalated to physical violence. There was one occasion when the father threw a rolling pin at a wall and an incident in January 2022 which precipitated the separation when the mother hit the father with a metal plate. I found that the mother had exaggerated and on occasion fabricated her allegations against the father. I found that the mother had demonstrated rigid, demanding, and inflexible behaviour, and controlling behaviour over contact. I found that the mother had been unjustifiably critical of the father and had showed a lack of insight or even interest in his feelings.
- 6 Since the fact-finding hearing both parents have continued to live in South London, in homes which are very close together. Contact has been extended and now takes place on alternate weekends for three nights and additionally for one night each week, so that X spends five nights per fortnight with his father. The contact arrangements have not gone entirely smoothly, and it will be necessary a little later in this judgment to review how they have worked.

The Law

- 7 X’s welfare is my paramount consideration in these proceedings and I must have regard to the factors in the welfare checklist in section 1 (3) of the Children Act. The presumption in section 1 (2)(a) of the Act applies in this case. That requires the court to presume, unless the contrary is shown or where specific exceptions apply, that the involvement of both parents in the child’s life will further the child’s welfare. There is a line of case law which deals with issues specific to relocation cases. There is no issue between the parties as to the law and it is an area with which I am familiar.

I have reread the key authorities which are *Payne* in 2001, *K and K* in 2011, *Re F* [2017] 1 FLR 979, and *Re C* [2017] 1 FLR 1052. A more recent decision of *Williams J V v M* [2020] EWHC 448 (Fam) provides a helpful summary of the previous authorities.

- 8 Those authorities set down two key principles. First, the court is required to undertake a broad welfare evaluation, including not only the factors in the Children Act welfare checklist but also a range of other factors which arise frequently in relocation applications. Those are set out in paragraph 50 of the judgment in *Williams J in V and M*. They include consideration of the motivation and the plans of the relocating parents, the impact on that parent and consequently on the child of the application being refused, and the impact of a relocation on the child's relationship with the left behind parent. Determining those issues necessarily involves a careful and thorough analysis of each side's proposals and the advantages and disadvantages of each option.
- 9 Secondly, as part of the process of carrying out the welfare evaluation, the court must have regard to the proportionality of each proposed option. That is because one or both options in relocation cases are likely to involve a significant interference with both the child and the parents' Article 8 rights to respect for their private or family life. Such interference can only be justified if it is a necessary and proportionate response, grounded in the child's best interests.

The Evidence

- 10 The bundle prepared for these proceedings has been unfortunately much longer than was necessary, and in addition to the core bundle I have been provided with what the parties have called a "supplementary bundle", in direct contravention of the rules. It is agreed between counsel that I need not read the supplementary bundle and I have not done so. I think out of 1,000 pages in that bundle I was taken to two during the course of this hearing. I make it clear that I have not read anything else, so this breach of the rules has not directly impacted on me or on the trial process; all it has done, I am afraid, is unnecessarily escalated the parties' costs.
- 11 The 700 pages in the core bundle include some useful documentary evidence in the form of school reports and medical evidence that sheds light on the issues I have to decide, in particular X's needs. This evidence has been of particular importance because of X's autism, and it has been necessary to understand how that impacts his needs. The bundle also includes expert evidence on immigration issues. The parties have been given permission to instruct two experts: one to advise on each parent's immigration status in the United Kingdom, and the other on immigration issues connected with a potential move to Australia. The immigration evidence is unchallenged and so neither expert has given live evidence. It is, of course, significant, and I intend to deal with it a little later when I consider each parent's immigration status here, and the options for them to live and travel elsewhere.
- 12 I heard oral evidence from three witnesses: each of the parents, and an independent social worker Melissa Wright, for whose instruction permission was granted after the fact-finding hearing. Her report is dated 27 September 2023. I regret to say that it has been some time since I read a report of such poor quality. It has significant, obvious, and fundamental flaws. I intend to highlight only the most troubling ones. Ms Wright had no idea about the status of the findings made by this court in June 2023. She referred in her evidence to my fact-finding judgment on several occasions as a "report". When the nature of a judgment was explained to her, and it was put to her that she had expressed views that were directly contradictory to my findings, she said simply that she needed to draw her own conclusions.

- 13 Ms Wright's report included the startling assertion that there were "likely elements of alleged domestic abuse perpetrated by the father, despite the allegations being denied". She went on to say that the fact-finding "investigation", as she called it, had concluded that there was no evidence of domestic abuse, "due to lack of evidence, for example, not having police incident reports or photos". When it was put to her that this paragraph was inconsistent with any possible reading of my judgment, she argued that that was not the case, and insisted that she had in fact read my judgment several times.
- 14 The report contains no analysis of the mother's ability or willingness to support X's relationship with his father. Given my findings that was obviously a crucial issue. In her oral evidence Ms Wright repeatedly gave the bland and generic response to questions about this, that the parents needed to put their differences aside and work together for the sake of X. That is no doubt true, but what was needed and expected from an independent social worker was an analysis of their ability to do that.
- 15 There was no consideration in the report of the arrangements for contact if the relocation were to take place. Ms Wright, it seems, had not even considered the travel options and in her oral evidence did not appear to see why that would be a relevant issue. There was therefore no consideration at all of the likely impact of a relocation on X's relationship with his father, and finally no balancing of the advantages and disadvantages of each option.
- 16 Unfortunately, Ms Wright's oral evidence did not fill any of those gaps and only increased my concerns. More than once she doubled down on her assertion that it is likely that the father perpetrated domestic abuse against the mother, saying for example that "we will never know what has happened behind closed doors". She dismissed my findings about the parents' respective roles in the relationship, the mother's criticism of the father and her lack of insight, telling me simply that she had to stand by her own views. It should not need saying that it is simply not open to a witness, including an expert witness, to reject the court's findings of fact.
- 17 Beyond that, I formed the view that Ms Wright's conclusions were themselves poorly reasoned and that she was repeatedly unable to give any basis for opinions that she asserted. In some instances the basis for her opinion was the mother's bare assertion, and she had to admit she had not considered any of the other evidence, including messages passing between the parties that might shed a different light.
- 18 I have considered whether it is any mitigation for Miss Wright that this was her first relocation case. I do not think it is. In my judgment, it was not because this was a relocation case that she went so wrong. The errors are more fundamental. Her evidence displayed a misunderstanding of her role and that of the court and a tendency to express views that were based, as far as can I see, on nothing of any substance.
- 19 The inevitable conclusion is that I cannot give any weight to Ms Wright's conclusions and recommendation. I make it clear that I do not disregard her evidence entirely. I can put some weight on some limited parts of her evidence. She spent some time with X and spoke to other professionals, including his school. She has recorded the information that she gathered in her report. The expectation, of course, is that this would enable her to build up a picture of X's needs and to inform the court about issues, including the impact of his autism on his relationships and functioning. To an extent Ms Wright did that; however, even those parts of her evidence need to be treated with some caution. That is because, in my view, there were aspects of her approach even to ordinary social work issues that were unusual. Just one example is that she seemed to place great weight on X's expressed views, could not entertain any possibility that the underlying reality might be more nuanced, and referred

more than once to what she described as X's "decision" about a relocation, as though this were in some way determinative.

- 20 It is a great shame for the parties that they spent money on this expert and have gained so little value from her report. She was not, I can see, the first choice of either of these experienced firms of solicitors. For reasons I have not been able to go into, it seems that they found it very difficult to find an independent social worker with availability to complete the work.
- 21 The mother's evidence sets out in a witness statement in some detail her reasons for pursuing the application. Town L is where she lived from 2012 until 2016, and again with X during the Covid lockdowns from 2020 to 2021. Most importantly it is where her parents still live, and she has there a small but close network of others in the community and friends. The mother's case for a relocation is primarily focused on the instability of her current circumstances. Her financial position is insecure and she faces some difficulties in securing immigration status in the United Kingdom.
- 22 Given the content of my fact-finding judgment, it is inevitable that there would be some focus at this hearing on the mother's ability to support X's relationship with his father if a relocation takes place. I was therefore surprised to see that there was no acceptance or even acknowledgment of my findings in the mother's witness statement. Indeed, the theme of criticism of the father persisted, and it was quite hard to ascertain from the mother's written statement what, if any, value she saw in X's relationship with his father. I therefore approached the mother's oral evidence without any initial confidence that she had taken anything on board. In fact, as the mother's oral evidence progressed I thought I discerned some modest changes in approach. She was able on occasion to look back at some of her past responses to the father's actions and to admit the possibility that she had been mistaken. On one occasion she told me spontaneously, and I think genuinely, that she had enjoyed looking through the photos the father had produced of his time spent with X because in her words they "showed me a very different H from what I have seen".
- 23 I fully acknowledge given the limited time since the fact-finding hearing and the obvious forensic advantage to the mother in demonstrating a change in perspective on this important issue, that I must treat these impressions with some caution, but I did consider that the mother's oral evidence demonstrated at least the beginnings of a shift in approach.
- 24 The father's evidence was much as it was during the fact-finding hearing. He opposes a relocation for what I am satisfied, and I do not think it is disputed, are entirely genuine and rational reasons. He has been delighted to have spent much more time with X since the fact-finding hearing and to have been able to progress his relationship with his son whom he loves very deeply. He was able to express frustration and disappointment at some of the mother's behaviours, especially the behaviours that were the subject of a fact-finding hearing, but also able to accept that these were part of her personality and that he needed nevertheless to find a way of co-parenting with her in the future.
- 25 In considering the father's evidence and his case overall, I need to bear in mind that the parties have only lived in London for two years and that they came here originally for the father's job. That job is, of course, significant because it is his livelihood, but I know from the evidence I have reviewed at this hearing, and the more detailed evidence about the parties' backgrounds, which I considered during the fact-finding hearing, that when the family moved to London it was not the only option for them. The father was honest enough to acknowledge that, and to accept that while he likes living in London and it is a good fit

for him, particularly professionally, he has not yet established deep-rooted connections here himself.

- 26 Overall, my impression of each parent's evidence was that each had focused, particularly in their written evidence, on the strength of their respective cases rather than the weaknesses. In particular, I considered that the mother had underestimated the impact on X's relationship with his father of a move to Town L and had not given sufficient attention to the arrangements that would be necessary to sustain that relationship.
- 27 On the father's side I thought he had underestimated the financial and immigration difficulties that the mother faces if she and X are to remain here, and had not given sufficient attention at least until this hearing as to how, if at all, those issues could be mitigated. Although they were skirted around by the parties, those difficulties with each party's case are unfortunately glaring and stark and are issues that I will have to grapple with when I come to balancing up all of the factors that are relevant to X's welfare.
- 28 My evaluation of the welfare factors is broad. There are many issues, some within the welfare checklist and some not, that bear upon the decision that I have to make. I will deal with those welfare issues in turn. After that I intend to undertake a balance sheet exercise, weighing up the advantages and disadvantages of the options before the court, before making my decision.

The parents and their relationship with each other

- 29 I start with this issue because it enables me to pick up from the fact-finding hearing and review what has happened since then. A key focus, for obvious reasons, has been the progression of the contact arrangements since my direction after the fact-finding hearing that the supervision requirement should be lifted with immediate effect. After the fact-finding hearing it took the parents nearly three weeks to reach agreement on the interim arrangements for X. Fortunately they did, and making some allowance for the dust to settle after that hearing I do not think this was an unreasonable period of time.
- 30 I am much more concerned about the evidence of ongoing difficulties in recent months. In particular, there is a lengthy string of correspondence around the arrangements for the October half-term and again for the Christmas holiday period. Having read the correspondence I have been dismayed by the letters written by both solicitors on both sides. What is particularly troubling is the level of detail. There are whole paragraphs devoted to issues like packed lunches and football practice that firstly should not be issues at all, and certainly should never appear in letters written by lawyers.
- 31 In November the father suggested that he should take X on holiday over Christmas. The mother did not agree. In writing, prior to this hearing, the concern she raised was the possibility that the father might not return. That concern was very obviously ill-founded. In oral evidence the mother admitted, I thought honestly, that she could not see why the father should have a holiday with X when she herself was struggling financially and unable to pay her bills. It is, I suppose, the case that the mother was not putting X's best interests first when she resisted the proposal for a holiday, but I think her reaction was human and probably understandable.
- 32 There has been some progress in terms of the mother involving the father in issues to do with parental responsibility. It is important to recognise that for much of X's life it is the mother who has been in the driving seat when it comes to issues around his health and education. It can sometimes be hard for a parent in that position to adjust their approach

after separation and allow the other parent to play a full role. I have some concern that the messages between the parents indicate that the mother has not always fully welcomed the father's involvement. She has not, for example, told him about the homework app used by the school. There is an argument that the father might have found out some of these things for himself, but the spotlight in this application for obvious reasons is on the mother's willingness to go out of her way to welcome and proactively support the father's involvement in X's life, and in my judgement she still has some way to go on this issue.

- 33 There was an incident, I think in December, when the mother insisted on coming to the father's home during his weekend with X to put balm on X's leg. I am satisfied it was unnecessary for her to do so. The father took a photo of this. He explained that he was worried that allegations might be made against him. I think it was unwise for him to do that, but this incident was instigated by the mother and demonstrates her ongoing lack of confidence in the father as an equal parent to X. On this occasion that message inevitably will have been communicated to X himself.
- 34 There was another occasion in December around X's birthday when it seems that he refused to go to contact with his father. From the evidence it seems that this incident was not handled particularly well by either parent. I accept, however, that it was a one-off and in the end contact did take place, although on a different day.
- 35 Having reviewed the interactions between the parents since the fact-finding hearing, I acknowledge that on the whole agreement has been reached on the issues between them and that contact has taken place after the arrangements for X were agreed. However, in a case of this nature the court will usually be looking, as I have said, for a flexible, proactive and problem-solving approach, in particular on the part of the parent who wishes to relocate, if it is to have confidence that post relocation the child's relationship with the left behind parent will be sustained. Again, the evidence suggests that approach, as yet, is missing in this case.
- 36 If the point that the parents have reached when they are living so close together and under the spotlight of a relocation application is limited, inevitably that does not give the court much reassurance for the future if the parents are going to be living on different sides of the world. I am left, I am afraid, with a real concern about how far the mother will be prepared to go to keep the father's role in X's life alive.

X and his Needs

- 37 Autism does not define X's needs, but it certainly informs them and it is necessary, therefore, to pay particular attention to his neurodiversity and how that impacts on his life. The evidence from X's school where he is now in Year 1 is that it took him additional time to settle but that he has now done so. Initially in reception he did not engage with his peers very much, but he is now beginning to communicate with them and to interact independently with them. He is confident with familiar adults.
- 38 Dr S is a paediatrician who carried out the neurodevelopmental assessment of X that led to his diagnosis of autism. Dr S has reviewed X's progress in September 2023. Through his reports it is possible to identify X's particular need for routine and order, his attention to detail, social anxiety and noise sensitivity as key features of his autism. X can have meltdowns when overwhelmed by social or communication demands, and he needs help managing his emotions and his sensory responses. X has seen a dietician for his food intake disorder. His dietary issues have led to constipation in the past. The picture from the evidence is that these issues are gradually improving and his food intake is expanding, although this issue still requires careful attention from his carers.

- 39 Both parents agreed that X struggles with change. He needs a predictable routine. When faced with an activity for which he has not been properly prepared, or which he does not want to do, he can be forceful in resisting. It is important to recognise that X has past experiences which are likely also to impact on his needs. At the fact-finding hearing I found that he had been exposed to a parental relationship which was characterised by high levels of conflict. Previous welfare evidence, which was available to me at the fact-finding hearing, suggested that when the parents were arguing in the home X would remove himself from the situation using headphones and an iPad to block out noise and calm himself. Those experiences are likely to have impacted on his sense of psychological safety, and the consequences may well be felt in the longer term.
- 40 X is a member of an international family. In his short life he has lived in three countries. Aside from his parents, his wider family are mostly located in Asia and Australia. If his parents had remained together it is very possible that the family might have moved again at some point during his childhood.
- 41 X's cultural heritage is Asian. His parents follow a religion that is of significance to both of them. X's primary dependence is on his mother. During the parties' relationship, as the non-working parent, she provided the majority of his day-to-day care and since the separation, although the father has played an increasing role in his life, that pattern has continued. The mother therefore provides X with the crucial stability that he needs to function well in everyday life and to reach his potential.
- 42 X's additional needs make it particularly important that he maintains a relationship with both of his parents. He can struggle to form relationships and needs a lot of support. To have strong, consistent and enduring relationships with the people who are most important to him, that is his parents, will be very important for his long-term psychological wellbeing. X also clearly has a close and loving relationship with his maternal grandparents, particularly his maternal grandmother.
- 43 Because of his age X's wishes and feelings about a potential move to Australia carry only limited weight. To the extent that the independent social worker tried to suggest otherwise, I reject that. He has an idea of Australia as a pleasant place, but he has not been there since he was three and certainly he has no capacity to understand the reality of what a permanent move would mean. That was illustrated in his conversations with Ms Wright when it became apparent that he was assuming that if he went to Australia his father would be there, too.
- 44 There was some discussion in the hearing about the extent to which X has been influenced by his mother's views. It is reasonably clear that she has spoken to him about Australia, probably to a greater extent than would have been sensible, and he has picked up on her wish to move. However, I do not think this has had any very significant impact on X and certainly if the move does not take place I consider it likely that any disappointment he may feel in his own right will be short lived.
- 45 In the longer term I do have concerns about the scope for the mother to exert significant influence over X's wishes and feelings. Until he is very much older he will be very susceptible to his mother's opinions. That is obviously relevant in the context of my findings about the mother's attitude to the father.

The Parents' Capacity Generally to Meet X's Needs

- 46 In most ways the mother is a highly competent and attuned parent. She has had to adjust, as all parents of an autistic child do, to a different type of parenting and to managing responses that often lie outside the norm. The mother has done that very well. She has met X's needs for his autism to be recognised and accommodated, and she has borne the lion's share of the burden in advocating for him in healthcare and educational settings. As a result, X is making excellent progress. His mother's love for and commitment to him are unquestioned.
- 47 At the fact-finding hearing I found that there had been real and significant failures in the mother's parenting of X in the context of her attitude to his father. I consider there have been some shifts in the mother's approach, but that there is still some way to go and that there remains a risk that the mother will not prioritise the father as a significant figure in X's life.
- 48 The mother's parenting capacity is also affected by external factors such as her finances and her immigration status. I will come to those issues a little later when I consider the mother's situation in London.
- 49 The father has also been on a parenting journey in respect of X's autism but has not had the opportunity until quite recently to play as much of a hands-on role as the mother.
- 50 There are suggestions in Ms Wright's report that there are some limitations to the father's parenting capacity more generally. She makes some observations that his home was not particularly child-friendly and that he did not always meet X's needs in respect of his food intake and dietary considerations. To be fair to the mother, she herself did not place undue weight on these issues in her oral evidence, although they were raised in her written statement.
- 51 I have to be cautious about the independent social worker's evidence, firstly because of my views about her report and approach generally, but also because of the date when that report was prepared. It was filed at the end of September when the father had only been having unsupervised contact with X for a couple of months. The father himself said that it had been a learning curve for him after contact had become unsupervised at the end of the fact-finding hearing. Food is a particularly difficult issue for X. The correspondence traces the progress that the father has made as X has become used to food being prepared by his father as well as by his mother, and to slightly different approaches.
- 52 In any event, I consider that the father has both the capacity and willingness to continue to make improvements in his parenting capacity. He was prompted by the independent social work report to undertake an Open University autism course. I am not entirely convinced that that was necessary, but on the whole it can only have been of benefit to the father and to X. I consider that the father has the ability to deal with X's needs in terms of stimulation and food and that these are unlikely to be issues of significance going forwards. Overall, this is a committed, loving and devoted father.
- 53 The only other limitation on the father's parenting capacity comes, as the mother said, from his job. The father said in his witness statement that he has some flexibility in terms of his working hours, but the correspondence around contact does not quite bear that out; for example, it has not been possible for the father to commit on a regular basis to collecting X from school at the end of the school day. There can be no possible criticism of the father in this regard and the mother does not make any. She herself pointed out that it is very necessary that the father should keep his job because the family's livelihood, the father's immigration status, and for the time being the mother's and X's, depend on it. However, the

evidence suggests that the father has only limited flexibility and that he is less able than the mother to make himself available to meet X's needs on a day-to-day basis.

The Mother's Current Situation in London

- 54 The mother faces some very significant challenges in maintaining a home and a life for herself and X in London. First, the mother's case is that she is struggling financially. I fully accept that there are some cases where a party's presentation of their financial position and their earning capacity may be tainted by strategic considerations. I am satisfied that is not the case here. As it happens, I dealt with a legal services payment order application much earlier in these proceedings so I had the opportunity to consider the parties' overall financial positions in more detail than is often the case in a case of this nature. I consider that the evidence supports the mother's case on this issue. Her earnings are limited and even though her housing is modest – she and X share a one-bedroom flat – she faces a substantial shortfall each month in expenditure over income. She has no capital. All of the assets are in the father's name and they are not hugely extensive. Given the shortfall that she has, it is no surprise to hear that she is now in debt.
- 55 The mother says that for some time she has relied on her parents for direct financial support. That support is drying up because their resources are not infinite. It is correct that I do not have direct evidence from the mother's parents, but in circumstances where the financial viability of a party's living arrangements has been dependent on the generosity of family members the court should be slow to query an assertion that that support is not unlimited.
- 56 The mother's income is limited both by the nature of her work as a health care professional but also more significantly by her responsibilities to X and his additional needs. The father challenges this aspect of the mother's case and says that she could work full time in London if she used wraparound childcare. However, both parents have described how X's autism means that he needs additional support with day-to-day routines. I accept the mother's case, because the evidence from the school paints the same picture, that it took a long time to settle him into the normal school routine and that the mother has not yet been able to put him into wraparound care. She tried a childminder, but that was not successful and so at the moment X has to be taken to and collected from school by the mother, at the normal school times. That is why the mother's parents have been spending so much time in the UK, because in order for the mother to work at all she needs some support with childcare, and X needs that care to be provided by a family member that he knows well.
- 57 I accept, therefore, that X's particular needs mean that for the foreseeable future at least, childcare outside the home would be a step too far for him, and that that puts a significant restriction on the mother's earning capacity.
- 58 I also accept the mother's case that the support that has been provided by her parents is not sustainable in the longer term. When X's grandparents come here they travel on short-term tourist visas. The UK is not their home. They have lives and work commitments elsewhere. The maternal grandmother gave up her job as a nurse to spend a period of several months in this country, but she intends to return to work and it is, of course, entirely reasonable that she would wish to do so. The fact that X's grandparents have spent such a long period of time in London demonstrates the extent of the mother's need for their support, but it does not, in my judgement, lead to a conclusion that these arrangements can continue indefinitely.
- 59 It is necessary, therefore, to look carefully at what if anything can be done to improve the mother's employment and financial prospects in London. On the first morning of the hearing the father made a proposal to provide the mother with additional financial support

on the basis that she and X remain in London. In addition to the current maintenance which he is paying, of £1,500 per month, he has offered the mother a lump sum of £20,000 and a commitment to pay her rent up to the amount that he spends on his own rent for a period of two years, to be reviewed at the end of that time.

- 60 It was unhelpful that the father's proposal came only on the morning of this hearing. The father's explanation for that was that he did not know the full extent of the mother's difficulties until her witness statement was filed in late December. He may not have known the exact figures, but it was clear to me as long ago as the LASPO application earlier this year that the mother was financially stretched and that, as a basic proposition, ought to have been clear to the father as well.
- 61 I recall that the father's case throughout these proceedings has been that the mother could and should improve on her own financial situation through her own resources, but for the reasons I have given that is not a position that I can accept.
- 62 The father's proposal, to an extent, will help the mother. It would probably allow her to find better accommodation than she has now, probably a two-bedroom flat rather than a one-bedroom flat in the South London area, which would enable X to remain in his current school. I accept in principle that there are means by which the father's proposal can be made enforceable, either as a Schedule 1 order or, probably a more straight forward route procedurally, if it is given as an undertaking. However, it is likely that at the end of the two-year period of support that the father has offered, the expectation on his side will be that the mother should have achieved a considerable degree of financial independence. For the reasons I have given, I do not think that is realistic. It is likely, therefore, that the father's proposal will alleviate the position only in the short term and will leave the mother facing similar financial insecurity in a couple of years' time. In the longer term, the difficulties that the mother faces in establishing a career which would give her some prospect of financial independence will remain.
- 63 The mother has not led on social isolation, but she is undoubtedly experiencing a degree of isolation in London. In many cases it is reasonable to expect the parent of a school aged child to develop social networks and integrate into the community. For what it is worth I consider the mother to be the sort of person who in ordinary circumstances would be quite well placed to do that. However, it is much harder for her to do that as X's parent. She has, I accept, worked to develop friendships and a community network, but these are often based on friendships between children and those clearly come much more slowly for X than for a different child. A small piece of evidence was the fact that he has been invited to just two birthday parties since he has been at primary school. That, I think, is an indication of the struggle that he experiences in forming the friendships that other children of his age are making relatively easily.
- 64 Overall, I accept the mother's case as to the difficulties she faces in terms of financial insecurity and a lack of support while she and X are living in London.

The Mother's Immigration Issues

- 65 The summary of the immigration position, as set out in the expert report, is as follows. At present the mother's immigration status is dependent on the father's, and he is in London on a work visa as a skilled worker. Now that the parties have separated the mother has lost that entitlement, in principle if not yet in actuality. She has notified the Home Office of the separation, as she is required to do, but there has not yet been any response.

- 66 The expert advice is that the mother now has two potential routes to a visa that would allow her to remain living in the United Kingdom. The first of those routes is to obtain work under which she could apply herself for a skilled work visa. I am doubtful whether this is a realistic option for the mother. All else being equal there ought to be employment available to her, but it seems that to meet the minimum threshold for earnings she would need to work full time or at least considerably more than she does now. For the reasons I have already given I do not consider that this is something that is feasible for her, certainly once she no longer has the support of her parents.
- 67 An alternative route for the mother is an Article 8 application based on her relationship with X; however, the evidence is that the Home Office would be likely to look at other options for the mother to continue as X's primary carer, and might well consider that either Asia or Australia offered that to the family. The expert is cautious as to the impact on Home Office decision-making of an order in this court preventing X from relocating to Australia on the basis of the impact that would have on his relationship with his father. The evidence is that such an order would be likely to be taken into account particularly if accompanied, as, of course, it would be, by a judgment spelling out the reasons for the decision. However, there is no guarantee that an order of the family court would carry decisive weight and effectively prevent the mother and X from being deported. Again, the Home Office would be likely to look at other options which might enable all family members to continue living together, and Asia at least would be a possibility.
- 68 Overall, the evidence suggests that the mother has some prospect of obtaining a visa via one of the identified routes. I accept that evidence as far as it goes. It does, however, leave the mother facing considerable uncertainty before her immigration status is likely to be resolved, and I cannot, for the reasons I have given, have confidence that it would in the end be resolved in her favour. There remains a real possibility that ultimately the decision will be that she and X should not be permitted to remain living in London.

Life for the Mother and X in Town L

- 69 I am satisfied, having reviewed the evidence, that X's educational and healthcare needs could be met to an appropriate standard in Town L, just as they are in London. His education is likely to be in the state sector in London and at a private school in Town L. There are some slight differences between the provision available in each jurisdiction but not such as to carry any significant weight, particularly in this case where there are much more significant issues.
- 70 In her evidence the mother sets out the practicalities of life in Town L. She could live with her parents which would give her rent-free housing. The father says that the mother's relationship with her parents has not always been entirely positive, but I have to take into account the fact that they have supported her so consistently over the past two years in London and have lived with her and X in a very small flat.
- 71 The mother has an offer of employment in Town L. There was some challenge to the fact that she has not provided her employment contract with her witness statement, but given her qualifications her earning capacity in Town L is unlikely to be dependent on this particular job. Indeed, I am prepared to accept in principle that the mother would be likely to find work in both jurisdictions. The difference is not in the availability of work, but in the mother's ability to work around X's needs.
- 72 I do not accept the father's case that there is a gap in the evidence in that the mother's parents have not provided direct evidence of the support that they can provide. I am entitled

to look at what has in fact happened on the ground. The mother has been working 20 hours per week, at least until recently when her hours were reduced, and that has only been possible because of her parents, particularly her mother, spending long periods of time staying with her. If they are prepared to do that when it must cost them a significant amount both in terms of the travel burden and finance, it seems to me that there is no reason why they would not be prepared to provide the mother with somewhere to stay and practical childcare support if she is living in Town L.

- 73 The father has raised concerns about Town L as a suitable place for X to grow up as a child of an ethnically Asian family in an area with much less cultural and religious diversity than London. I would accept that Town L is less cosmopolitan than London. I have some concerns that the father says that he himself at times felt out of place when visiting there. However, I must bear in mind that if the mother goes to Town L she will be returning to a city where she herself has lived and where she has already established links to what seems to be a small but close Asian community. I cannot exclude the possibility that X will experience racism, direct or indirect, but sadly that is a possibility also in London. The fact that the mother herself has lived there is a matter that I must take into account.
- 74 Overall, I accept the mother's case that she can provide X with suitable housing, education, and healthcare in Town L, and importantly that because of the childcare that her parents can provide that her own prospects of working and achieving financial independence and security are better in Town L than in London.

Contact Arrangements if the Move Takes Place

- 75 It is probably obvious that a move to Town L will involve significant logistical difficulties in terms of the arrangements for travel and contact. There are no direct flights between Town L and the UK. That means that the burden of travel, including some adjustment time because of the time difference, is likely to be two days at each end of any trip. The costs of each trip are likely to be in the region of £3,500 to £5,000. The mother suggests that it may be possible for the father to visit X in Australia three times a year. The father says that it is only realistic for him to visit once a year or possibly and at a maximum twice. He has 25 days' holiday and he says that if he is going to spend two weeks with X each trip will take up, once one adds the travel time, 15 days of his overall holiday entitlement.
- 76 Broadly speaking, although it might be possible to increase the time a little bit, I consider that the father's position is right and that probably two visits a year is the most that he is likely to be able to manage. The father points out that Town L has limited public transport. He would need to stay in a hotel or, I suppose, an Airbnb. He would not be able to offer X anything like a home environment. He would be in an area that he himself does not know very well.
- 77 It would be possible for X to travel to the UK. In her witness statement the mother suggests that she could bring X to the UK every other year. In her oral evidence she clarified that that frequency was driven by financial constraints. If the mother's financial position improves as a result of a move to Australia, as I think is likely, it seems to me that it should be possible for her to do the trip once a year, but probably not more than that. The mother too will be working and given the distance and the travel time she would have to stay in the UK herself while X is spending time with his father. That will use up a considerable amount of her own holiday entitlement. It seems to me that again a trip of once a year, for two weeks on each occasion, is the maximum that can realistically be achieved.

- 78 Indirect contact between X and his father if X is living in Town L will, I accept, be difficult. The time difference is significant. The father could speak to X at the end of the day, when it will be the morning here, but the father will be starting his day as X is going to bed. They will be out of sync with each other. It will be increasingly difficult for the father to maintain meaningful conversation, and so far the evidence suggests that indirect contact, for whatever reason, has not worked particularly well. X is reluctant and quite often simply runs away when his father has tried to speak to him. It seems to me unlikely in this case that indirect contact will offer much as a route to maintaining the relationship between X and his father.
- 79 Overall, I have real concerns that if the move takes place the father will really struggle to make contact a positive experience for X. When the father visits Town L X will have to stay in an unfamiliar environment that is not a home, knowing that his home is not very far away. The contact will involve a significant and probably, at least while he is as young as he is, quite an incomprehensible change and disruption to his day-to-day routine.
- 80 Trips to the UK I consider have a better prospect of success because X will see his father in his home environment and perhaps find it easier to make sense of the trip and the purpose of it, but overall I consider that X will lose the opportunity to enjoy normal family life with his father in his father's home. That will be exacerbated by the fact that there will be significant gaps between contact of probably three or four months on each occasion, which combined with the limited prospects offered by indirect contact mean that each time X sees his father they will be spending time rebuilding their relationship. It will, I think, be difficult for them to take up where they left off.
- 81 In other respects I consider that X would adjust to a move to Town L. It is a significant change for him and change is difficult, but he has moved country before and he can be prepared for the move. It is, as I have said, in the context of his relationship with his father that I have very real concerns about his ability to adjust to the change.

The Father's Immigration Status and Issues of Mobility for Him

- 82 The evidence as to the father's ability to travel to and potentially live in Australia is as follows. There is unlikely to be any restriction on the father visiting Australia, particularly if X is living there. He will be able to do that certainly for any periods of contact that the court is likely to order or that is likely to be feasible. The father could potentially obtain the right to live in Australia in the long term. The route to him doing that is likely to be through work and would be dependent on him obtaining suitable employment.
- 83 The father's evidence, which I accept, is that his options for employment in Town L are very limited. It is not a tech centre. That is the father's area of work. Furthermore, he has no wish to live in Town L. He sees it as a remote place, very different to London, and somewhere where the opportunities for someone with his cultural background, skillset, and life experience will be very limited indeed. In addition to that, I am aware that the father's relationship with the mother's family is not warm and that might well impact his ability to integrate into the small Asian community there. I think it is likely if the father attempted a move he would struggle to build a life for himself, and I think overall it is too big a sacrifice to expect of him.
- 84 Neither party puts this forward as a proposal, but I need at least to consider the possibility of the father relocating to another city in Australia. In his evidence the father agreed that either City A or City B would be likely to offer him some possible opportunities for employment. He would probably have to take a step down. The opportunities for career advancement are more limited than they are in London, but he could, if it was necessary, obtain employment

that would allow him to live in another city in Australia. That move could be achieved without imposing such a significant burden on the father. The other side of the cosmopolitan nature of City B or City A and the accessibility of those cities is that they are themselves some distance from Town L, so in terms of the father's relationship with X they would probably allow more frequent contact, but not facilitate the sort of arrangements that X enjoys at present. This is by no means, I recognise, a perfect solution.

The Impact on X of Each Potential Outcome

- 85 If the mother's application is refused X's world, initially at least, will look quite similar to how it is now. The current arrangements for him could continue and he would see both parents regularly. However, that, in my judgement, would mask the increasing instability that the mother is likely to face and the stress and anxiety that she will experience as a result. I consider her situation currently to be precarious both in terms of her finances and immigration status. In due course, even taking into account the possibility of some additional financial support from the father for a period of time, I think that that uncertainty is likely to impact on X.
- 86 If the application is allowed X's relationship with his father, which is still developing, will be drastically and suddenly limited by a move to somewhere very distant. X I think will find it very difficult to make sense of this. I have already recorded his assumption expressed to Ms Wright that if he went to Australia his father would be there too. I think it would be a very real and damaging shock for him to find that his father is not in fact living a couple of streets away.
- 87 Under both options therefore it seems to me that there is a very real risk of X suffering harm that will impact him not just in the short term but into the longer term as well, and it is important that the court recognises this fact.
- 88 I turn then to the summary balance sheet of advantages and disadvantages. I have already said that the evidence about schooling and healthcare does not weigh heavily in this decision. I have also considered the issues raised by the parents about things like crime and amenities generally. It is always possible to draw distinctions between two places on grounds like this, but here it is the case, as it usually is, that all else being equal a life could be made for X in either of these places.
- 89 The main advantages and disadvantages of each option are as follows. In Australia the mother will have access to family support. That is very significant in the light of X's additional needs. Because of this the mother is likely to have much more freedom to work and improve her financial position and in due course to achieve financial independence and security. There will be no question over the mother's immigration status, which will be secure. She is an Australian citizen, as is X. The father is unlikely realistically to be able to make a life for himself in Town L. There might be the possibility in the medium or longer term of the father moving to another city in Australia; however, the prospects for him will be more limited than they are in the UK and that may well impact on his own longer term financial security and wellbeing.
- 90 If the father cannot move to or does not move to Town L or another city in Australia, contact with X will be very limited indeed. The mother may well not be able or willing to take the proactive steps that will be necessary to support the father's role in X's life. X's relationship with his father is likely to change fundamentally, and there is a real risk that the father will cease to be a real parent in X's eyes and will become a much more distant figure.

Finally, the impact on X's relationship with his father is likely to be more significant than would be the case for a child without X's autism and particular needs.

- 91 In London X's relationship with his father can continue uninterrupted. They will have the ongoing space and time to develop their relationship. The father can play a full role as a parent to X, at least for as long as the mother and X are permitted to remain in the jurisdiction. The mother's ability to work will be significantly impaired. Her family are unlikely to be available in the medium term or long term to pick up the slack. That will limit not only the hours the mother can work but some of the jobs she can apply for. For example, it is hard to see how she can do any sort of shift work, which is common in the health sector. There will be some financial improvement in the mother's prospects in the short term because of the father's recent proposals, but beyond that the mother is likely to struggle. At best she will remain financially dependent on the father indefinitely and she will not have much, if any, opportunity to develop her own career.
- 92 The mother's immigration status is and will remain uncertain. At best she will have to make an application, possibly more than one application, for a visa, which may well be a lengthy and stressful process even if the father covers the costs as he has agreed to do. At worst the mother's immigration status may in due course be revoked at an, as yet, unknown point in time and she may have to leave the country with X.
- 93 For those reasons the mother is likely to struggle psychologically and emotionally if she remains in London. To her credit she has not placed this aspect of her case front and centre, but it is, in my judgement, an inevitable consequence of the situation that she faces here. Finally, this is likely to impact on X because his mother is his primary carer and he is hugely dependent on her, more so than a child without his particular needs.

Decision

- 94 On a very fine balance I have come to the conclusion that it is a move to Australia that is in X's best interests. X's additional needs and the insecurity of the mother's situation are key factors in my decision. If either of those had been different the decision might well have gone the other way. This has been an unusually difficult relocation case where the court has been presented with two unpalatable alternatives driven by a combination of factors, including X's needs, the immigration and financial issues, and the personalities and relationship of the parents. That has led me to conclude that if I allow the application X's relationship with one of his parents may well be damaged significantly and possibly irreparably, but if I refuse the application I leave him in a situation where his mother on whom he is primarily dependent faces a precarious and unstable situation both in terms of financial security and immigration status.
- 95 I turn to the timings. There will need to be a little time to make arrangements, but now that the decision is made it is not in X's interest for there to be significant delay. I intend to give the mother permission to leave from the end of this school term. That is, I think, about eight or nine weeks away, at the end of March.
- 96 In terms of contact, I will make an order for contact on the basis that the father remains living in London or anywhere else that is not Australia. I will make an order that the mother must make X available to spend time with the father on as many occasions as the father is able to visit him in Town L. I recognise, as I have said, that it is likely that the father will only be able to visit at a maximum of twice a year, but I do not intend to put that limit in the order in case there are some years when the father is able to visit more.

- 97 The order will require the mother to make X available whenever the father is able to visit for up to two weeks on each occasion. The mother must facilitate that provided she is given notice. I will give the parties the opportunity to agree the notice period or I will decide it if they cannot.
- 98 I will also order that the mother must bring X to the UK at least once each year so that X spends a minimum of two weeks a year in the UK with his father. It will also be recorded in the order that if the father moves to Australia at any point in the future the expectation is that contact arrangements will be reviewed and that the arrangements put in place for X should be as close as possible to the current arrangements depending on where in Australia the father is living.
- 99 As for the costs of contact, the father has a higher earning capacity than the mother. I will order that the father should pay the costs of his travel to Australia to visit X. However, the mother's financial position will be improved if she moves to Australia, and that is in part the basis on which I have given permission, and so it is reasonable to direct that she should pay the costs for herself and X when they travel to the UK.
- 100 As for the costs of the move, I recognise that the mother's financial position currently is very precarious. I think that she has no immediate access to funds whereas the father has, and in reality these are matrimonial assets. I will direct that the father should pay the costs of the mother and X's relocation to Australia on the basis that in reality this is coming out of the mother's share of the matrimonial pot. I will direct, however, that the mirror order, which the mother has agreed to obtain in Australia, should be obtained at the mother's cost. Again, that is because by that stage I am anticipating that the mother's financial situation will at least have prospects of improvement. She may need to borrow in the short term, but I think it is reasonable to expect her to pay those costs.

Publication

- 101 I am publishing this judgment at the parties' request, for the purposes of transparency only. I confirm, pursuant to the Practice Direction on the Citation of Authorities [2001] WLR 1001, that I do not intend this judgment to be citable.
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