Case No: FA-2024-000087

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
ON APPEAL FROM NEWCASTLE UPON TYNE FAMILY COURT
(HHJ Loveridge)

NCN: [2024] EWHC 2432 (Fam)

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 23 July 2024

BEFORE:

SIR JONATHAN COHEN

BETWEEN:

IH

Appellant

- and -

FA

Respondent

MR L DOWLING (instructed by Hay & Kilner) appeared on behalf of the Appellant
MS K FENWICK and MS M CLANCY (instructed by Hathaways) appeared on behalf of the Respondent

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JUDGMENT
(Approved)

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1. SIR JONATHAN COHEN: This is the appeal by the father against an order of HHJ Loveridge dated 22 March 2024. The substantive issue before him was the mother's application to relocate to Alberta, Canada, with three children of the family, twins, A and B, both aged nine, and C, who is going to be six tomorrow.

2. Before I turn to the chronology, it is important to say that these relocation cases are amongst the most troubling and important cases that judges in the Family Court have to deal with in private law proceedings. The importance of the decision is very great and will shape the lives of parents and children. Often cases are very finely balanced, and this is one such case, as one of the parents wishes to return to his or her home country with the children for entirely understandable reasons, which is opposed because of the inevitable adverse consequence on the parent left behind, and that parent's relationship with their children.

3. The parents are both of Bangladeshi origin, the father being born in Bangladesh, the mother being born in Canada. In 2002 the father moved to the UK for education purposes. In 2010 the parties met virtually through mutual friends and in person in 2012. Their relationship flourished and in 2013, the mother moved to the UK from Canada and the parents married. They lived in the Newcastle area.

4. As early as 2015, when the twins were just one year old, there were concerns referred to children services from the health visitor about the parental dynamic and the mother's low mood. The concerns continued on and off for many years.

5. In June 2021, the parents' relationship ended, but they continued living under the same roof. The concerns escalated and Newcastle City Council Children Services became involved, both by way of referrals and by way of assessment.

6. The mother complained about the domestic abuse that she was receiving from the father and reported that the father would, what is described as "open hand strike", or might otherwise be described as "clip" the children for discipline. In November 2021 the father agreed to leave the family home following discussions with the police and social services.

7. In December 2021 there was an initial child protection conference and the children were made subject to child protection plans. The children were reported as receiving a good standard of care from the mother. The father denied any domestic abuse towards the mother or causing physical harm to the children. Neither the police nor social services took any further action.

8. In June 2022 the mother filed an application for permission to relocate to Canada with the children. The court directed that there should in the first instance be a fact-finding hearing and that took place before HHJ Loveridge, concluding in a judgment that was handed down on 5 August 2023. The outcome of the judgment can be summarised as follows: First, the judge accepted the mother's evidence and was not impressed by the father's evidence. Secondly, he found that the father had physically chastised all three children by slapping them on the face or head on several occasions each. Thirdly, he had used derogatory and unpleasant language with the children when cross with them and had, on occasions, grabbed or pushed them about. Fourthly, he had belittled, intimidated and threatened the mother which had increased her sense of isolation and in doing so he had acted in a coercive and controlling manner.

9. Those were the findings made by the judge after a contested hearing, the father having denied the allegations. The father maintained his denial until his application for permission to appeal was dismissed on 10 November 2023. It was only then that the father decided to accept the court's findings, which inevitably gave rise to the assertion that his acceptance was superficial.

10. The hearing of the application for permission to relocate, took place over two days between 22 and 23 February 2024, with a judgment reserved for four weeks. The judge granted the mother's application and the following matters appear from the judgment to be particularly pertinent to his reasoning.

    (1) Although the father had completed six or so sessions of domestic abuse work, the family support worker could not support his contact becoming unsupervised as the father showed little insight to his behaviour. I should have added earlier that ever since his departure from the family home in November 2021, the father's contact had been supervised.

(2) Nevertheless the contact was of good quality.

(3) The mother's proposals for her move were well thought out. She had lived in Alberta, Canada, for the first 23 years of her life and knew it well.

(4) The mother was very isolated in Newcastle and lonely. She had no support system and only one good friend.

(5) On the other hand, in Canada, there was a large extended family in the immediate vicinity of where she wished to live. They were able to give her the support that she needed.

(6) The application was not prompted by any malice towards the father, but by the challenges she faced in England which she had to meet with little help from the father or from any relative.

(7) Despite the father's protestation that he could not afford the cost of going to Canada for contact, the judge did not accept that.

11. The judge went through the welfare checklist. He rightly said that the children's wishes were not determinative, especially when A's were very difficult to ascertain in the light of her communication difficulties. Both her and B suffer from autism, although the effect on B's functioning seems to be minimal, but that on A was considerable. B was not very positive about her father, although on the other hand, C expressed that she would be very upset if the father did not come to Canada with them.

12. The judge rightly pointed out that a move would bring about a fundamental alteration of the children's relationship with their father. He took into account the following additional factors:

(1) that a removal from Newcastle to Canada would be a removal from the way of daily life that the children had known throughout their young lives;

(2) A's schooling would be in a supported mainstream provision rather than in a specialist school in Newcastle;

(3) a move would support and develop the children's religious and cultural identities and enable relationships with the maternal family to grow. In that context it is worth saying that the paternal family is not in England and I think principally in Bangladesh.

(4) The mother would, if she moved, become much more available to the children and her state of isolation would be replaced by the support of her extended family.

(5) The children have suffered significant harm from the dysfunctional relationship between the parents and what was described as the assaults upon them by their father.

(6) Contact with the father would remain supervised and because of his denial of abuse, there was no certainty that his contact would progress. The judge said this at paragraph 72:

> "The fact that the nature and extent of his contact is likely to be restricted for the foreseeable future, markedly reduces the force of the father's opposition to relocation on this issue."

I have to say, I do not agree with that expression, which I will come back to.

(7) If allowed to go to Canada, the judge had no doubts of the mother's willingness to promote contact.

13. The father applied for permission to appeal and that was granted by Cusworth J, and I summarise his detailed reasons as being the treatment by the judge of the issue of the impact upon the children of the loss or diminution of contact with their father. I respectfully agree with him that this is the issue. I do not regard, for example, the question of whether the educational provision in Canada for A as being a proper subject of an appeal; the school in Alberta is aware of her special needs and has made provision. It is not the same, and perhaps not as extensive as the provision that is made for her in England, but I have no reason, and there is certainly no evidence, to say that what she would receive would be any worse than what she receives in England.

14. Let me return to contact. Since 2021 when he left the home, the father has been having contact three times a week which, until recently, meant two one hour sessions, supported by the local authority, and one session of two to four hours, supported

by a nanny, whom the mother employs to look after the children when she is at work, and thus is someone known to the children.

15. In May, the local authority withdrew from supporting contact and, having done so for nearly two and a half years, that is hardly a surprise. The nanny's ability to fill the gap created by the local authority withdrawal has been limited, so that contact has, over the past two months or so, been taking place one or twice a week rather than three times a week. But it is still very frequent contact and supported, as it is, by someone who the children know, of good quality.

16. If the children go to Canada, the mother has committed to come to England, at least once every two years for a period of four weeks, with the father being able to go to Canada as often as he can, but certainly not less than once every two years. There would be, as there is now, effectively unlimited virtual contact.

17. As I say, I am not persuaded by what the judge said at paragraph 72. Even if the father's contact were to remain supervised, that does not reduce the force of the opposition or the points that he would make. Relocation means a reduction of contact from about twice a week to probably no more than 15 days a year. This is a very significant change and will inevitably impact on his relationship with the children. Virtual contact might work reasonably well for B, but it will work less well for C, aged only six tomorrow, and with difficulty with A because of her communication issues.

18. I was concerned as to how the requirement of supervision was ever going to be removed if the children went to Canada. They would quickly become habitually resident there. The prospect of proceedings in Canada as to the removal of supervision would be unpalatable. I am pleased that the mother agreed at my prompting that, if the appeal fails, she would agree to the removal of the requirement for supervision by no later than 1 July 2026, provided that (1) the father completes some kind of parenting course, such as the PPP course, which he can do online; and (2) that the 2025 contact will take place in England to which she will bring the children.

19. The question remains to be answered. It is not should the judge have made the order, because of course the exercise that I am carrying out is not a freestanding exercise of

my discretion. The question before me is whether the decision was wrong: did the judge (a) consider an irrelevant matter; (b) fail to consider a relevant matter; (c) go wrong in law (that is not alleged); or (d) reach a conclusion that was plainly wrong. It is not for me to determine the issue as If I was sitting at first instance but only to come to a different conclusion if one of the four matters that I have set out apply.

20. I must also bear in mind that I have not heard the witnesses myself, neither the parents nor the family support worker nor the social worker. The judge had the ability to assess the witnesses and not just on this hearing of two days in February, but on the longer, fact finding hearing that took place in the previous autumn.

21. I do not regard the judge as having given sufficient weight or consideration to the disruption of the relationship between the father and the children, but I do not consider that fatally undermines his decision so that I should either remit the matter or reverse his decision. This was a difficult case, but there were important factors that pointed towards the decision he made. Above all, this mother was described in reports as "incredibly isolated". She had struggled with her mental health. Despite that, she was described as "providing exemplary care for the children", but she was almost friendless and without family support. Such a situation is bound to impact on the children sooner or later.

22. The issue of which country the members of the family were to live in has been around as an issue since 2015 when the mother spent a prolonged time in Canada. Nobody could say that the mother has not tried her best in England. A good analysis is provided at pages 268 to 270 of the bundle of the pros and cons of the two options. The judge did not have to repeat it mechanically and can select the most salient matters. He made it clear that he was far more impressed by the evidence of the mother than the father and that was a matter for his discretion.

23. Although I have said several times that the judge, to my mind, should have given more weight and dwelt longer on the issue of contact, it is clear that he did not ignore it. He was aware of the point and repeated it at several places of his judgment. His decision was based on a range of factors, which he said pointed him in the direction of relocation. It seems to me that the decision he came to was one that was properly

within his discretion. There is no benefit to the parties of remitting the matter. The judge would come to the same conclusion. There is no reason and no justification for me to come to a different decision than the one which the judge reached.

24. I therefore dismiss the appeal.