Neutral Citation Number: [2014] EWHC 4130 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. FD12P01226
Royal Courts of Justice

21st November 2014

B e f o r e :

MR. JUSTICE MOSTYN
(In Private)

NJ	**Applicant**
- and -	
OV	**Respondent**

MR. A. LEONG (instructed by Broadway Solicitors) appeared on behalf of the Applicant.
MISS R. AMIRAFTABI (instructed by Dawson Cornwell) appeared on behalf of the Respondent.

HTML VERSION OF JUDGMENT

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MR. JUSTICE MOSTYN:

1. In this case I am concerned with the future of a little girl called B, who was born on 28th January 2010 and who is now therefore aged nearly 5.

2. Her mother is NJ, who is aged 31. She was born in Sweden of Finnish parents. B's father is OV, aged 36, who was born in London to English parents.

3. It is the mother's application for permission permanently to relocate B to Sweden and for consequential adjustments to be made to the contact arrangements in the father's favour. This is strenuously opposed by the father. He cross-applies for an order adjusting the present contact arrangements so that B's time is equally shared between the parents.

4. It is my opinion that outside the sphere of State intervention for the purposes of child protection, the hardest decision that a judge ever has to make in the field of family law, or, for that matter, in any field, is a relocation decision. The choices are starkly binary. One or other parent will lose and will be bitterly disappointed. There is no scope for finding some comfortable middle ground.

5. In my recent decision of *Re TC & JC (Children: Relocation)* [2013] EWHC 290 Fam., given on 21st February 2013, I analysed the highly acute decision of the New Zealand Supreme Court in *Kacim v Bashir* [2010] NZSC 112, which explained correctly, in my view, that a decision of this nature is not really discretionary at all, at least not in the sense of a judge making a decision from a range of legitimate solutions none of which can be said to be wrong. Rather the court makes an assessment and a decision based on an evaluation of the evidence. It is a factual evaluation followed by a value judgment.

6. In my earlier decision I attempted to summarise the relevant legal principles applicable to this type of case. I referred, in para.10, to the four leading decisions of the Court of Appeal, namely *Poel v Poel* [1970] 1 WLR 1469; *Payne v Payne* [2001] Fam 473; *K v K* [2012] Fam 134, and *Re F* [2012] EWCA Civ. 1364. In para.11, having considered the principles to be derived from those four principal cases, I attempted to set out the law in the following terms:

> "I have considered these four cases most carefully and, doing the best I can, I set out shortly what seem to me to be the presently governing principles derived from them for a relocation application:
>
> i) The only authentic principle to be applied when determining an application to relocate a child permanently overseas is that the welfare of the child is paramount and overbears all other considerations, however powerful and reasonable they might be.
>
> ii) The guidance given by the Court of Appeal as to the factors to be weighed in search of the welfare paramountcy, and which directs the exercise of the welfare discretion, is valuable. Such guidance helps the judge to identify which factors are likely to be the most important and the weight which should generally be attached to them, and, incidentally, promotes consistency in decision-making.
>
> iii) The guidance is not confined to classic primary carer applications and may be utilised in other kinds of relocation cases if the judge thinks it helpful and appropriate to do so.
>
> iv) The guidance suggests that the following questions be asked and answered (assuming that the applicant is the mother):
>
>> a) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?
>>
>> b) Is the mother's application realistically founded on practical proposals both well researched and investigated?
>>
>> c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

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> d) Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?
>
> e) What would be the extent of the detriment to him and his future relationship with the child were the application granted?
>
> f) To what extent would that detriment be offset by extension of the child's relationships with the maternal family and homeland?
>
> v) Since the circumstances in which such decisions have to be made vary infinitely and the judge in each case has to be free to decide whatever is in the best interests of the child, such guidance should not be applied rigidly as if it contains principles from which no departure is permitted.
>
> vi) There is no legal principle, let alone some legal or evidential presumption, in favour of an application to relocate by a primary carer. The old statements which seem to favour applications to relocate made by primary carers are no more than a reflection of the reality of the human condition and the parent-child relationship.
>
> vii) The hearing must not get mired in taxonomical arguments or preliminary skirmishes as to what label should be applied to the case by virtue of either the time spent with each of the parents or other aspects of the care arrangements."

7. By a coincidence, in this very month's Family Law at [2014] Fam Law 1586, a learned article appears written by Mr. Edward Devereux and Rob George, both barristers of Harcourt Chambers. In their conclusion they stated this:

> "The experience of lawyers and judges up and down the country leads to a conclusion that now really is the time for a re-think. We have tried living with *Payne* and we have tried re-interpreting *Payne*. It is time finally to admit that this case has run its course and for the Supreme Court, with a critical eye, to take the next available opportunity to look at this important area of the law".

I do not agree with that view. In my opinion, the law, since the more recent cases of *K v K* and *Re F*, is now clear and stable and I believe that I have correctly summarised the relevant principles in para.11 of my earlier decision and, even more laconically, in para.18 where I stated:

> "… presumptions have no place in a relocation application. I therefore start with a blank sheet. There is no presumption in favour of the applicant mother. My determination will involve a factual evaluation and a value judgment. I will ask myself and answer as best I can the questions in paragraph 11(iv) above but their answers will not be determinative or even necessarily tendentious (in the true sense of that word). They will merely be aids to my determination of the ultimate single question, which is, of course: what is in the best interests of these children?"

8. I make two preliminary observations of a general nature. Mr. Justice Hedley has made some characteristically penetrating observations about the problems thrown up by a transnational or cross-border relationship. Where, as here, an Englishman has formed a relationship with a foreign woman, both must have done so, or be taken to have done so, with their eyes open as to possible future pitfalls should the relationship

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founder: *a fortiori*, if they decide to have a child. If the relationship founders it will probably come as no great surprise to the Englishman if his own estranged partner wishes to return to her homeland. That would not come out of a clear blue sky. The counter-argument, which is the other side of the same coin, is that the foreign mother must surely be taken to have tacitly accepted and agreed that should the relationship founder she would sacrifice her own wishes and desires to return to her homeland in favour of the maintenance of a regular and meaningful relationship between the child and her father. These are deep waters indeed.

9. My second preliminary observation is the paradox referred to at para.12 of my earlier decision. In para.12 I said this:

> "Factor (c) of the guidance always looms large and is particularly problematic, both in principle and in practice. It is a significant feature in this case, as will be seen. Discussing this factor in *Re AR (A Child: Relocation)* [2010] EWHC 1346 (Fam), [2010] 2 FLR 1577 (at para 12) I stated
>
> > 'The problem with the attribution of great weight to this particular factor is that, paradoxically, it appears to penalise selflessness and virtue, while rewarding selfishness and uncontrolled emotions. The core question of the putative relocator is always "how would you react if leave were refused?" The parent who stoically accepts that she would accept the decision, make the most of it, move on and work to promote contact with the other parent is far more likely to be refused leave than the parent who states that she will collapse emotionally and psychologically. This is the reverse of the Judgment of Solomon, where of course selflessness and sacrifice received their due reward.'
>
> I do not resile from these views but the paradox does not make the problem any easier to solve. The impact on the mother if her realistic proposal is rejected is a fact which has to be recognised whatever its psychological origin. I have to take the parents as I find them and if one finds himself as a result of my judgment to be a victim of his virtues then that is a cross which he will have to bear in the interests of his children."

As will be seen, that paradox looms large here and it has made my task in this case exceedingly difficult.

10. Counsel have, at my prompting, helpfully prepared a comprehensive chronology from which I will extract most of the key dates. But before I do so, I should set out some of the respective backgrounds of the parents. I have mentioned the date of birth of the mother. She comes from a troubled family. I remarked during the hearing that her family seems to have stepped out of the pages of a Russian novel. Her parents are Finnish. When her father was 12 his brother, then aged 23, murdered their own father by shooting him. The mother's parents were married in Finland and had two children there. These are ZJ and RJ.

11. At some point prior to 1980 the mother's parents, and their then two children, moved to Sweden and settled in H. This is a town with a population of about 40,000. Following their arrival in H, the mother's parents had two more children - AJ and the mother herself, NJ, who was born in 1983 and who is now aged 31. However, in 1980

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the mother's father was accused of arson of a property in Finland prior to their move to Sweden. He was convicted and sent to prison for 9 months.

12. Although much emphasis has been placed by the mother on her close relationships with and within her family, and upon the support she would receive and would expect to receive from them should she be permitted to relocate to H, it is plain that this family is riven by disputes and feuds. The older sisters, ZJ, who still lives in H, and RJ, who lives in W, 200 kilometres away, do not have anything to do with their younger sisters or their parents. Although the mother is close to her sister, AJ, who also lives in H, and to her parents, AJ and the parents fell out over some unexplained issue 9 months ago and have nothing to do with each other. Were the mother to return to H I sense that she may find herself embroiled in the festering dispute between AJ and, for that matter, her husband, LO, on the one hand, and her parents on the other. This family is divided both horizontally and vertically and, as is well-known and as has been famously said, a house divided against itself cannot stand.

13. It is fair to say that the mother was not particularly forthcoming about these rifts and divisions in her written evidence. The position only became clearer from her oral evidence, from her parents, from her sister, AJ, and her brother-in-law LO, which was all taken by video-link.

14. I turn to the father's background. He is aged 36 and is the middle child of his parents. He is a model and web designer and, although he has earned reasonably well in the past, the stresses and strains of this litigation has meant that his earnings have virtually disappeared. His father is a taxi driver. His mother is a retired dental nurse. His elder sister is GV. She has learning difficulties and is cared for by her parents at their home. His younger sister is JV. She is a dancer. All live together in the family home in Wimbledon Park. Nothing adverse has been said about the father's family dynamics. It is plainly a loving and stable family unit.

15. I revert to the chronology. Perhaps unsurprisingly, given the family dynamics to which I have referred, the mother seems to have had a troubled adolescence. When she was aged 14 she self-harmed and had psychological treatment. When aged 23, in 2006, she left Sweden and travelled to Mexico where she stayed for some time. In 2007 she came to London. She wanted to live in a cosmopolis and London was the place for her. She worked first for Phillips in customers services dealing with the Swedish and Finnish market and, after that, for the Financial Times in the same field. In 2007, the year of her arrival, she met the father through the internet via the website 'Myspace'. They began a relationship and in 2008 the mother moved into his family home in Wimbledon Park to live permanently with him. In that year, and the following year for that matter, she visited her family in H. In 2008 she was accompanied by the father. In March 2009 she fell pregnant.

16. The father told me that he and the mother had spent two years discussing starting a family and that it was clearly understood and agreed that they would live family life in London. He told me that she expressly stated that she did not wish ever to return to Sweden. The mother agreed with me that if the relationship had not foundered she would have expected family life to have been at all times in London. As I have said, B was born on 28th January 2010.

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17. Following her birth, the mother, the father and the new-born baby all lived in the paternal family home in Wimbledon Park. In July 2010 the mother, the father and B visited her parents in Sweden. At that point the rift between AJ and her parents had not occurred and so there were gatherings of the parents, AJ, LO and their two children, SO (who is now nearly 15) and TO (who is now aged 8), with the mother and the father and B. However, after a few days the father abruptly left. As I will explain, he has over-protective traits and he was very disturbed by the practice - which for all I know is a standard Swedish practice - of leaving B, then aged 6 months, outside the house in her pram. As a result a row developed and, without putting too fine a point on it, the father stormed off and returned to London, leaving behind the mother and B who stayed in Sweden for about a month.

18. Following her return with B, the mother resumed living with the father in the family home in Wimbledon Park. Plainly problems were developing in the relationship. I have seen an email written by her to the father dated 26th July 2011 where she refers to the father having threatened to kill her, of having hit her and strangled her, so that B was born prematurely. I have no idea if this is true and that was not explored in evidence. The same email says this:

> "I have never been included in your family. I'm a stranger living in their house. I feel like a criminal when I've gone down with the laundry and if I've made lunch for B and I can't just go into the kitchen if I want to make something, and if I happen to go downstairs and your family are in the kitchen talking they go quiet and leave when I enter. You always defend your family, take their side and blame me for everything and that proves to me that you consider them to be your closest and primary family, not me and B".

Again this was not explored in evidence and I am in no position to determine if what the mother says is true. But what this email shows, and indeed the email to which it replies, is that very unhappy relationships had developed both directly between the mother and father and, for that matter, between the mother and the father's family.

19. In July 2011 the mother and B went to Sweden for an agreed holiday. She did not return with B at the end of the holiday. This was an open and shut case of a wrongful retention under the terms of the Hague Convention on the Civil Aspects of International Child Abduction, signed in the Hague in 1980.

20. In my judgment in the case of *Re TC* at para.56 I denounced child abduction as a form of child cruelty. An unlawful retention is no less bad than an unlawful removal. The mother now professes that she wished she had done things differently and has expressed regret. Interestingly, and in contrast, her sister AJ maintains even now that in her view the retention was justified and right. It was a stupid, cruel and ultimately futile act because, as we all know, the 1980 Convention is extremely effective in securing the return of abducted children.

21. The father promptly issued an application for the return of B under the Convention. This was heard in Sweden on 8th December 2011. A return order was inevitably made. The parents agreed terms as to the father's contact that should be enjoyed by him upon the return of B and further terms to ensure that the mother had a soft, safe landing on

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arrival. The terms extended to the father agreeing that he would provide accommodation for the mother upon her return.

22. The mother and B returned on 3rd January 2012. One might have expected that the mother would have promptly issued a specific issue application permitting relocation and that such an application would have been heard by a District Judge or a Circuit Judge by the end of 2012. But that did not happen. It has taken nearly three years since the return of the mother and B for this case to be heard by me in the High Court, to which court the case has been transferred. The delay is not the fault of the court. It is because, almost from the moment of the return, these parents have engaged in an attritional war about B. Each has accused the other of negligence and worse. The father told me that he has made no fewer than six complaints to the police about the mother's care of B. Some of those complaints have been, up to a point, justified. Some were plain over-reactions and some were, in my view, inventions. Reference has been made to the Local Authority, the London Borough of Wandsworth, in relation to allegations of neglect, who determined to place B on what used to be called the Child Protection Register but which is now known as being on a child protection plan. B was put on such a plan between November 2013 and July 2014. She was taken off the plan in July 2014 but is still designated as being a child in need.

23. For her part, the mother breached the agreed contact regime almost as soon as she stepped off the aeroplane. She herself has insinuated that the father has been guilty of neglecting B.

24. The mother's application to relocate was made on 23rd May 2012. The court directed that it should be heard finally on 21st January 2013. In January 2013 the mother and B, who had been living in the accommodation provided by the father pursuant to his agreement in the Hague proceedings, moved from there into temporary accommodation, a bed-sitting room, provided by the Local Authority.

25. The final hearing did not take place on 21st January 2013. It was adjourned to 28th May 2013 for a number of reasons. The mother was unrepresented at that time. B had suffered a bruise and a cut to her left eye on 20th December 2012. The mother explained that this was caused by an accident when she fell on a broom which the mother was using whilst sweeping.

26. On 20th March 2013 B suffered a further bruise to her right buttock. In the light of that and in the absence of criminal checks on the mother's family, and also having regard to certain concerns which had been raised by B's nursery, the then CAFCASS officer recommended, on 22nd May 2013, a further adjournment. Therefore on 28th May 2013 Judge Hughes QC adjourned the final hearing to 14th October 2013, and the father's contact was fixed for alternate weekends plus one midweek visit each week. That is the operative order for contact at the present time.

27. In September 2013 the nursery had reported sexualised behaviour on the part of B, specifically they recorded that she had been prising apart the cheeks of her buttocks and putting her finger in the area of her anus. They also had reported earlier in the following month that she had had her hand down her trousers on at least five occasions.

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28. In the light of these warnings, the final hearing, which was scheduled to take place on 14th October 2013, was adjourned yet again, this time by Judge Gargan. She transferred the application to the High Court and also directed that the Local Authority, the London Borough of Wandsworth, should prepare a s.37 report.

29. The matter came before me on 25th October 2013 when I fixed the final hearing for 17th February this year, 2014, and gave final directions. However, on 31st October 2013, not even a week after the matter was before me, there was a further incident of bruising, this time to the left side of B's chest. The mother explained that this may have been caused when she grabbed B when she (B) slipped in the shower four days earlier. As a result B was made the subject of a child protection plan on 26th November 2013. However, the s.37 report, which is dated 3rd February 2013, recommended no care proceedings as the parents were both cooperating.

30. On 28th January 2014 Miss Odze, in her first report, recommended that the matter be adjourned yet again because of child protection issues. So on 17th February 2014 the final hearing was adjourned by Mr. Justice Newton (as he then was not) to 6th August 2014.

31. Shortly before that hearing on 17th February 2014, the mother had been reported as having attended the nursery smelling of alcohol. Therefore on 17th February 2014 one of the directions provided for her to submit to hair and blood tests in order to determine if she was abusing alcohol. The test results arrived on 13th March 2014. These showed that the mother had been guilty of chronic and excessive alcohol abuse between August 2013 and February 2014.

32. On 9th July 2014 the paternal grandmother, FC, reported that she had observed B simulating a sexual act whilst referring to "mummy's boyfriend". She, FC, implied that B had witnessed the mother having sex with her boyfriend.

33. On 31st July 2014 Mrs. Justice Pauffley vacated the final hearing fixed for 6th August 2014 in view of the proliferation of issues and in the face of an agreement that the then time estimate was inadequate. The case was re-fixed for 17th November 2014 with a time estimate of five days, when I finally heard the matter.

34. Thus far I have recounted events as were known at the material times. One of the directions given on 31st July 2014 was for police disclosure in respect of both the mother and the father in circumstances where repeated complaints have been made, as I have described. The police disclosure recorded three occasions when the father made serious allegations to the police. The other three that he told me he had made do not appear to have been recorded. I refer to one of the recorded allegations. On 10th November 2013 the father complained to the police that he had observed bruises to B's neck. The child was examined at her home by the police and, under a flashlight, a tiny bruise was observed. Otherwise B was found to be safe and well and this was reported to the father. Notwithstanding having received this report, on 15th January 2014 the father complained to the police that he believed that B may have been strangled by the mother because of bruises (in the plural) on her neck. This is an example of the father jumping on the bandwagon and exaggerating and presenting in the worst possible light the mother and her care of B.

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35. In similar vein, he told the CAFCASS officer, Miss Odze, on 11th December 2013, at para.60 of her report:

> "He did not want B to live in Sweden because she would not be safe there due to the criminal history of the maternal family and their family dynamics … The maternal grandfather hit his daughter three years ago and went to prison for it. … I have never done anything wrong but the mother has lots, not only the abduction but she has harmed B time and time again. She has destroyed B and my life. She has mental health problems and this will never go away".

The allegations about her family were quite untrue and the allegations about the mother were highly exaggerated.

36. The police disclosure about the mother revealed much new information. That disclosure was fleshed out in the oral evidence given before me. In April 2013 the mother began a relationship with a man called DH. He lived in the same building as her. He had a girlfriend called Q. DH was cheating on Q with the mother and the mother knew that. On 20th August 2013 the mother made a complaint to the police that in June or July of that year, 2013, DH had anally raped her, so brutally that she copiously bled from her anus. It should not be forgotten that it was at this time that the mother was abusing alcohol excessively and chronically, as the later hair and blood test demonstrated.

37. On 28th August 2013, however, the mother withdrew her complaint and from that point on she carried on seeing DH and permitted him to have sex with her, although she maintained to me that she did not have much choice in that regard. Curiously, on 30th August 2013, or possibly 30th September 2013, the mother was issued with a harassment warning by the police for repeatedly telephoning Q. The mother told me that the calls were not in fact made by her but were made on her own telephone by a friend who had taken matters into her own hands.

38. On 5th June 2014 the mother made a further complaint to the police that on 29th March 2014 DH had got into her property and had seriously sexually assaulted her in her bathroom. At that time B was present in the property. DH had attended with a friend who was in a room with B drinking tequila while the assault took place.

39. In May 2014 the mother had commenced a relationship with KS, a police officer whom she had met over the internet. In May or June 2014 DH attended the mother's property and made threats to kill KS. He (that is DH) is being prosecuted, I assume for threats to kill, and the case will be heard in December. The mother will be a witness.

40. None of these events were reported by the mother to the Local Authority, to the father or to other professionals. They only came to light because, on 10th June 2014, the police notified the Local Authority of the mother's complaint that she made on 5th June 2014. The mother told me that she had not made any report as she feared that the consequence might imperil her present application or indeed might have an even worse consequence, namely the removal of B from her care.

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41. In July 2014 the mother's relationship with KS ended. Two months later, in September 2014, she began a new relationship with a man called YF who lives in Portsmouth. This again was formed initially over the internet. The mother was frank enough to explain to me in her oral evidence that if she is granted permission to relocate that relationship will come to an end. Both she and YF recognise that reality.

42. In June and July 2014 the mother spent a month in Sweden, staying with her parents, and spent one night with her sister. She had done much the same in December 2013.

43. It is plain that from about April 2013 to the middle part of this year, 2014, the mother's life has been very disturbed and disordered indeed. The excessive drinking, which has been confirmed by the test results, and the formation of at least one highly inappropriate and unsuitable relationship imperilled her and also imperilled B. However, it is fair to say that in the second part of this year stability seems to have taken hold. Indeed, the mother has allowed the father far more contact than the operative provisions of the order stipulate. She has done so up to a point through motives of self-interest, in order to pursue her relationship with YF, who lives in Portsmouth, but it is also perhaps a sign that this mother has started to turn her anarchic and dysfunctional life around.

44. The mother's case for a return to Sweden has two limbs to it. First, she believes, and I believe she believes authentically, that in H she could offer B a far superior way of life compared to that which she could provide here. Secondly, she is totally isolated here. She told me, "I am here on my own. I have no friends. I don't know who to turn to".

45. In the papers there is a report from a clinical psychologist, Dr. Mark Draper, dated 11th October 2013. He was at that time the treating therapist of the mother. He wrote in these terms:

> "I write to confirm that NJ has been attending individual psychological therapy sessions with me since 21 June 2013. The focus of our work has been the anxiety and low mood she experiences at the prospect of not being able to return to her native Sweden with her daughter B. Whilst she is able to formulate plans for a future in London, she remains certain she will never be happy if she cannot return home. She has struggled to sustain relationships with people in London. She is unemployed and largely isolated. She is unhappy in her accommodation, with little prospect in the medium term that she will be able to find somewhere better. As a result of the strain she is under, she suffers from insomnia, anxiety, low mood and poor appetite that to date has not responded to treatment. NJ longs to live in a small town again and in close proximity to her family. Apparently where she to return to Sweden she would be able to access both somewhere to live and a job. It is clear to me that NJ has not settled in London and is genuinely unable to foresee a happy future for herself and her daughter here. From a clinical perspective I think that being compelled to reside in London would precipitate a substantial decline in her emotional wellbeing and that, as a consequence, psychological therapy in the form of long-term counselling might be necessary. Even with the provision of this treatment the outcome remains uncertain, and whilst I currently have no

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concerns about her ability to care for B it is possible that chronic low mood may impact on the quality of parenting she is able to provide".

46. On 3rd June 2014 Dr. Draper wrote to Wandsworth's social worker, Ms. Khalifah. Ms. Khalifah recorded what he wrote in these terms:

> "He was of the view that NJ wants to return to Sweden and that she may struggle to make relationships in the UK. He was also of the view that NJ may struggle to parent in the UK due to lack of family support and feeling isolated".

It is plain from this that Dr. Draper has maintained a constant view as to the mother's position since he wrote his initial report on 11th December 2013.

47. Miss Amiraftabi, for the father, urges me to treat this evidence cautiously, specifically because the mother and Dr. Draper were then in a therapeutic relationship. I have to confess not to understand that submission. I would have thought that the actual therapist would be the person best placed to give the most real evidence as to the mother's actual condition. Simply because he is her actual therapist does not mean that he is to be regarded as partisan. In my view, the view of Dr. Draper is highly relevant evidence.

48. The vision of Dr. Draper, as I have recounted, is confirmed by my view of the mother having observed her very carefully giving evidence over a prolonged period in the witness box. The constant allegations, some of which, as I have explained, have a justifiable basis in fact, of neglect; the drinking; the formation of at least one disastrous relationship, all point to an isolated, needy person who is deeply unhappy.

49. Her counsel, Mr. Leong, repeated stated at various points in the case that "one relationship does not a bad parent make", which is an allusion to Aristotle's famous remark that "one swallow does not a summer make nor one fine day; similarly one day or brief time of happiness does not make a person entirely happy". So here. It seems to me that the mother's reaching out for ephemeral relationships, her use of drink, all seem to me to be symptoms of a deep inner unhappiness. This unhappiness, so it seems to me, is considerably aggravated by her dire housing position.

50. It emerged in evidence that just before the commencement of this hearing, on 13th November 2014, the mother was written to by the Housing and Community Service Department of Wandsworth Council offering her accommodation in Clacton-on-Sea in Essex. The mother told me that it had been explained to her that she could be offered re-housing by the Local Authority anywhere in England. If she turned it down she would be taken to be intentionally homeless and the Council would have discharged their duty to her and would wash their hands of her. She told me that she had been informed that it was possible that re-housing in Birmingham could be offered to her. I confess to having been surprised that a local authority could discharge its duty by offering accommodation to a homeless person in a far flung, another part of the country. However, an email has been received from the Borough solicitor on behalf of the housing department which does indeed confirm that. This email, which is dated 20th November 2014 (midway through this case) states as follows:

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"The Localism Act 2011 made amendments to the Housing Act 1996 so that a local authority may discharge their duty to house an applicant into the private letting sector and/or outside of their own district. The current allocation scheme of the London Borough of Wandsworth provides that only one offer of suitable accommodation will be made and should that offer not be accepted then the duty to house is discharged and an applicant can be considered intentionally homeless and an applicant will not qualify to be or remain on the applicants' housing queues for a period of two years unless there are material changes in circumstances. An applicant does, however, have a right to review the suitability of accommodation pursuant to s.202 of the Housing Act 1996. In the present case NJ has not been given a formal offer but an invitation to view the property. She was second on the list of those viewing in terms of priority and the property in Clacton-on-Sea has therefore been formally offered to the applicant who is first. If this property is accepted by that applicant NJ will then be considered for other properties. If refused by the other applicant the property will formally be offered to NJ".

51. The letter of 13th November refers to the Council having considered the Homelessness (Suitability of Accommodation)(England) Order 2012, SI 2012 No. 2601. That specifies that:

"In determining whether accommodation is suitable for a person, the local housing authority must take into account the location of the accommodation, including—

(a) where the accommodation is situated outside the district of the local housing authority, the distance of the accommodation from the district of the authority;

(b) the significance of any disruption which would be caused by the location of the accommodation to the employment, caring responsibilities or education of the person or members of the person's household;

(c) the proximity and accessibility of the accommodation to medical facilities and other support which—

(i) are currently used by or provided to the person or members of the person's household; and

(ii) are essential to the well-being of the person or members of the person's household; and

(d) the proximity and accessibility of the accommodation to local services, amenities and transport."

However, notwithstanding the obligation to take these matters into account, the housing department (in the email to which I have referred) answered question 4, which was in these terms:

"Would it make any difference to the location of the property offered if (a) a resident child has been subject to a previous child protection plan and child in need measures; (b) the child is settled in a local school; (c) the child's other parent is in the borough and has extensive contact?"

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The answer to those questions were:

> "A child's school would not be a factor in determining the location of an offer of accommodation unless there were expressed exceptional circumstances. As to the other issues, these could possibly but may not be determinative factors. For example, if the child was on a child protection plan there would be a transfer in conference with the local authority to where the family is moving".

Question 5 asked:

> "What impact would a letter from Children's Social Services in supporting a re-housing in the local area?"

The answer was simply to refer to the previous answer to question 4.

52. In the light of this seemingly bleak and inflexible approach, evidence has been obtained from the London Borough of Wandsworth Children's Specialist Services and, in particular, from Mr. Justin Walesby, who has written a report which is in evidence in these proceedings. His letter, dated 20th November 2014, outlined what support would be offered by Children's Specialist Services to the mother in an application by her to be housed in Wandsworth. That support would be as follows:

> "(1) The Local Authority will be able to liaise with the allocated placements officer (housing) about any potential housing options in the London Borough of Wandsworth.
>
> (2) The Local Authority would also, if required, be able to provide a letter to housing to assist in the mother's application for a new home outlining the following:
>
> > (a) NJ is a Swedish national and her extended family is all living Sweden. However, NJ and B are now very familiar and utilising community services available to them within the area of Wandsworth.
>
> (b) B is currently subject to a child in need plan.
>
> > (c) B has recently begun at TS Primary School and has identified speech and language therapy. It would assist for her to have continuity with this support to aid her speech development.
> >
> > (d) NJ's peer support network is likely to be based in the Wandsworth area.
> >
> > (e) Through remaining in Wandsworth, it is likely that B will be able to have regular contact with her father.
> >
> > (f) That NJ is aware of the professional network in Wandsworth, including Social Services, schools, GP, etc.
> >
> > (g) NJ also engages with the Victim Support Agency with which she is currently engaged."

53. It is hard to predict the outcome of the mother's housing application, but there is an appreciable risk that she would have to accept an offer of housing in a far flung, another part of the country. If that eventuated there would, of course, have to be a

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complete change of circumstances and of life for the mother and B in effectively alien territory. In the light of this, I permitted both counsel to provide short supplemental submissions. Miss Amiraftabi wrote to me this morning as follows; she referred to the letter from Mr. Walesby which I have just read out, and said:

> "The letter sets out, by reference to the relevant criteria, the support that the CSS would lend to the mother's application for re-housing in borough. Although such support would not be determinative of the mother's application, it is clear the CSS would strongly advocate on behalf of the mother to be re-housed in borough. The letter from the housing department is predictably bleak as they are always wary of committing themselves to a course of action. Ms. Khalifah in evidence said that she had re-housed two mothers in Wandsworth this year who are facing harassment issues. Clearly she meant in consultation with the housing department. The mother has not to date sought to use the support of the CSS and opportunity should be given for them to liaise with housing. In the event the mother is not offered a property in borough the father would propose that she find a property in the private rental sector. The mother is in receipt of housing benefit which would meet the rental payments on a property suitable for her and B. The father would meet the cost of the deposit for the property if the mother is unable to do so. This would ensure that the mother and B remain in an area familiar to them".

54. Mr. Leong responded as follows:

> "The letter from CSS does not change anything significantly in relation to the mother's re-housing prospects, particularly having regard to the letter from Wandsworth Council's legal department. A specific question was asked of the housing department as to any impact CSS's support would have on the mother's prospects of being re-housed in the borough. The response was not positive. On that basis it is unlikely the matters set out in Mr. Walesby's letter would have much, if any, effect. The mother was not asked specifically in evidence, but she states she has discussed her housing with Mr. Walesby and therefore he is aware of her need for support in this regard. She states she has also spoken to Miss Gammon, a housing officer, about B being subject to a child protection plan but this has not made any difference to her housing prospects. It is therefore not accepted that support or liaison between CSS and Housing has not been explored by the mother.
>
> In relation to the father's offer to fund the deposit for the mother to find a property in the private rental sector, this was not explored in evidence with the mother but, in fairness, was raised by the father yesterday after the end of the court day and I have discussed this with the mother. She has previously considered the possibility of renting in the private sector. Unfortunately the difficulties with that proposal are that there is a dearth of landlords within the borough who actually accept housing benefits and there is difficulty locating a property within the borough which falls within the rental limit of housing benefit. The prospects of finding a property suitable and safe for B and the mother to live in with those limitations are remote and therefore the uncertainty around the mother's housing will still remain."

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55. The father's offer does ameliorate the exceedingly bleak position somewhat. However it is plain, and cannot be disputed, that the mother's future housing position is very uncertain whichever angle it is viewed from. The mother's support network in Wandsworth, as referred to by Mr. Walesby, is very limited. On the personal front, YF is a very recent arrival. Dr. Draper has signed the mother off, as has Ms. Butterfield, the family psychotherapist who has been working with her. So on the evidence the only professional contacts that the mother now has are to IDAS, the Integrated Drug and Alcohol Service; her social worker, Ms. Khalifah; and to victim support. The mother is unemployed and is subsisting on benefits. As I have said, she is living in temporary accommodation in a bed-sitting room with B. There is no evidence the mother could find employment here. On any view, her position, both actual and prospective, is uncertain if not bleak.

56. What would the mother's position by in H? I received unchallenged evidence that after about a month, when she would either stay with her parents or with AJ and LO, she would be able to move into a private sector flat with the rent paid for by the H local authority. In fact that happened during the period of the unlawful retention. There was no suggestion that the accommodation would be other than suitable. In the written evidence there is an offer of employment from LO's father. This offer was made in July 2014 and is in these terms:

> "NJ has, after a conversation with us, a probationary employment with us for 3 months from that day when she lives permanently in H, with the possibility of permanent employment. Her probationary employment salary is during these first 3 months of 21,000 Swedish krone per month".

57. LO's father, CO, has a number of businesses, one of which is in cheese and charcuterie and the offer of employment appeared to be in that business, although the mother explained that she might also do cleaning work in one or more than one of CO's other businesses. Furthermore, her sister and brother-in-law, AJ and LO, who appear to have reasonable, if not opulent, means have offered her financial support.

58. Notwithstanding the fractures and rifts within her family in H, I judge that the mother's proposals in relation to the proposed move to Sweden are realistic and well-researched. I think that a return would bring a welcome stability and security into her life and would give her a sense of purpose and of responsibility. I think that the life of conflict and chaos that she has lately been living would be replaced by something more healthy and purposeful. Fundamentally I consider that there is a good prospect of the unhappiness and anxiety, as so vividly described by Dr. Draper, being replaced by, if not happiness then certainly contentment.

59. The mother was basically a good witness. She took the path of answering every question directly and, to my mind, truthfully. She made numerous direct admissions which were contrary to her interests and she did not try to spin or massage matters when the truth was adverse to her. Of course when a witness adopts this course there is nowhere for a cross-examiner to go.

60. I heard evidence from her own mother. She explained to me that she was recovering from a stroke which may have explained the slow, distracted, monotonic quality of her evidence. Her father was brusque and defensive. They did not give me much

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insight into the family problems. However, it was not challenged that they have a very close relationship with the mother.

61. Similarly, I judge AJ and LO to be good and truthful witnesses. They obviously do not think much of the father but equally I do not think that they would attempt to disrupt any contact arrangements which I might order, were I to agree to the mother's proposals. I am satisfied they would fully support the mother were she to return to H.

62. I turn to the father. I judge him to be a highly emotional man who has become regrettably obsessed by this case and its outcome. I judge that he has not altogether been able to separate his own personal needs from an objective assessment of what is in B's best interests. To this end he has made exaggerated and sometimes untrue allegations and he has behaved poorly occasionally with professionals. Thus the social worker, now replaced, Miss Delfish, records in her report at Section C, p.59, dated 3rd December 2013:

> "It is my view that OV appears to be preoccupied in providing material which shows NJ to be negligent in her parenting role. This type of behaviour is not helpful".

Similarly, on 13th January 2014, six weeks later, Miss Delfish had to write to the father in these terms:

> "At the last team around the child meeting, held on 6th December, you began, in your questions and queries raised around my role, and the action Children's Services was taking regarding NJ being held responsible for causing the bruises found on B, you presented in a raised voice, quite hostile and aggressive, not allowing me to speak and wanting to know why we were not taking action against NJ and demanding an explanation for why we were not holding her responsible. It is not expected you always agree with the plans that are in place to protect your daughter and I fully accept your concerns for B's safety. However, we all need to work together and be respectful towards each other during these meetings and in our communications. On this occasion your presentation was unacceptable and I am hoping, moving forward, there will be an improvement in this area".

63. In his oral evidence to me he said this: "B is my life. I can't function without her. It is all I am thinking about". His stance, as regards the outcome of these proceedings, has not been consistent. To Miss Odze, on 11th December 2013 (Section C, p.102) this is recorded:

> "The father did not believe B to be safe. This was because background history of what keeps happening on a regular basis, first the abduction. Since back, far too many bruises with no evidence the mother has taken her to the GP and the mother has stopped contact despite court orders".

Then at para.65 Miss Odze writes:

> "Suddenly the father stood up and was shaking, showing me his hands. He said, 'Look at me. I won't be okay if she goes'. Then pulling up his sweater he

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> showed me his upper body entirely covered in red blotches and said it was psoriasis and said this is what it was doing to him, adding 'I'm never going to be okay. Look at the pattern of emails, isolating me from B, not putting B's interests first'. He then told me that B had been calling him 20 minutes earlier. 'She needs me'. The father was too distressed for me to continue with the interview".

64. These passages would suggest that at that time, which, as I say, were stated in an interview on 11th December 2013, the father believed that the mother should not be B's primary carer. However, a little over six months later, on 2nd July 2014, following an interview with Miss Odze, she said, and this is recorded in her second report at Section C, p.265 at para.10:

    > "About B, he told me he would not object to her remaining in the care of the mother should the mother remain in the UK and for her to spend time with him at the current level and frequency".

    Yet in his counsel's skeleton argument, at para.28, it is proposed that the contact should be altered so that it is true shared care with B living with him each alternate week from Thursday after school to Tuesday morning, on one additional night each week and for half of all school holidays. That will amount to an exact exactly division of the time and a substantial departure from the present contact regime. The father told me that he had shifted his position at what he had learned about DH, but I have to say that that argument struck me as a *non sequitur*.

65. My impression is that if the present situation, or anything like it, continues the father will not be able to control himself from monitoring every aspect of the mother's life. Her sense of being beleaguered will continue. I foresee endless further complaints and allegations.

66. The father's mother was a good witness. I am sure she had reported accurately what she saw on 9th July 2014 but, in my judgment, it would be a leap too far to conclude from that that B has seen her mother having sex with a boyfriend. The mother has utterly denied this and I do not believe that she has. Beyond that, FC was too ready, in my view, to accept every complaint made by her son against the mother but this perhaps is not very surprising and the same criticism, of course, could be made of the mother's own sister and brother-in-law.

67. I heard evidence from Miss Odze and Miss Khalifah. The latter expressed a view that had she known about the conduct of DH she might well not have supported B coming off the child protection plan last July. Her principal objection to the mother's plan centred around her "lifestyle". She said: "There are a lot of people she can leave B with to pursue her lifestyle". It was not entirely clear to me what lifestyle she was referring to. Was she making a moral objection to the mother's wish to form a happy liaison with another man? The mother obviously must be free to form new relationships, although one would like to hope that with stability in her life she will choose any new boyfriend very carefully.

68. Miss Odze has made two reports and gave oral evidence. She confirmed her written recommendation that the mother's application should be dismissed. She said to me

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that her concerns centred principally around the mother's vulnerability. She referred to the mother's unfinished work with Ms. Butterfield and said that that work related to the mother's attachment problems with her own parents. She also said that further work needed to be done to continue with the mutual improvement in co-parenting. She referred to an email chain with Ms. Butterfield, which I was subsequently given. Those emails do not refer to further work needing to be done in relation to attachment. I think in this regard Miss Odze's memory had failed her. In her covering email she said: "You will see at the bottom where I took my reference from about attachment issues is dated 6th July". If I look at Ms. Butterfield's email of 6th July, I see at the bottom of it:

> "In my view, NJ will continue to need additional professional support for the medium term after the court outcome. I think the lack of family and support network in London for her is a factor and she needs more help to gain confidence to build and sustain friendships and a supportive informal network if she is to stay in London for the longer term".

So in fact the further work being recommended by Ms. Butterfield was nothing to do with attachment to her parents, but was the work that would be needed were her application to be dismissed. If anything, the recommendation of Ms. Butterfield would tend to support the application being granted because it would follow that the further work would not in fact be needed.

69. So far as co-parenting is concerned, all are agreed that great strides have recently been made by both parents. This was, indeed, one of the reasons why B was taken off the child protection plan. Miss Odze hoped that this progress would be maintained and that the father would not hold onto the past. She feared that if the mother was permitted to return to Sweden the parties may end up back at square one. It seems to me, however, that that risk is present whatever decision I make. Miss Odze felt that a new life in Sweden might be "harmful" - that was the word that she used - to B as she did not know what the family dynamics over there were. However, Miss Odze had not spoken to any member of the maternal family, nor, unlike me, did she observe them give evidence. I have to say that I found Miss Odze's evidence to be somewhat contradictory and illogical.

70. I have found this to be an exceptionally difficult case to judge and I confess that, as the case has progressed, my provisional view, which one inevitably forms on reading the papers and the excellent skeleton arguments, has altered with some frequency. In the end, and having very carefully considered the discipline which I have summarised in para.11(iv) of my earlier decisions, and having focused intensely on B and on her best interests, I have concluded that, subject to appropriate terms, this application should be granted. I am satisfied that it is more in B's interests for her to live with her primary carer in a place where she (the mother) can be happy and fulfilled. It is more in her interests than the continuance of the instability, uncertainty, conflict and misery that presently pertains. That conflict and misery has been the hallmark of the mother's life since her return. I say this acknowledging that this decision will compromise, up to a point, the father's relationship with his daughter and that it will be bitterly disappointing for him. As a human, I have to say I personally regret this a great deal.

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71. I am satisfied that B has a better prospect of a healthy and safe life in Sweden than if she remains here. I am satisfied that her dual heritage is better promoted were she to return to Sweden. Like all Swedes, she will end up fluent in English.

72. I therefore now turn to the question of what the father's contact should be following a return to Sweden. In her witness statement the mother proposed contact in the following terms: "(a) The respondent is to travel to Sweden for staying contact with B for one week each month at my or my family's expense. I am happy for the respondent to have an additional week of staying contact in Sweden at his own expense; (b) the respondent is to have staying contact with B in England for one month during the summer holidays. I will accompany B until she is able to fly as an unaccompanied minor and will pay for our travel expenses; (c) the respondent to have staying contact with B for one week at Easter every other year and one week at Christmas, either covering Christmas Day or New Year's Day, rotating annually; (d) the respondent to have contact with B over Skype for one hour twice weekly, times to be agreed, and (e) there be such other and further contact as may be agreed between the parties in advance".

73. I have to say that contact for at least a week in Sweden every month, with the father and B staying in a guesthouse at the mother's expense, seems to me to be quite unrealistic. I therefore am going to make a child arrangement order in the following terms. The child, B, shall live with the mother as her primary carer and the mother shall have permission to take her to live permanently in Sweden. There shall be contact to the father in the following terms: He shall have half of all the school holidays and two out of three of the school half-terms each year in London, with the mother to deliver and collect B and to pay her travel expenses. He is to have two weekends each term in Sweden, from Friday afternoon to Monday morning, with the mother to pay the father's travel and guesthouse expenses for such term-time weekends. He is to have Skype contact as proposed by the mother.

74. My order will provide on its face that this child arrangements order is expected to be recognised and enforced in Sweden pursuant to Article 23 of the Council Regulation known as Brussels II Revised, and Article 23 of the 1996 Hague Convention. Those provisions mean that it is not necessary for me to require the mother to obtain another order in Sweden before she goes, as those provisions provide that my order shall be recognised and enforced in Sweden as if it were a domestic order.

75. However, my order will state that its provisions are variable by a Swedish court if circumstances changed and B's best interests require a variation. There is one circumstance where I can envisage a variation being made. The father's counsel has raised the spectre of non-compliance with my contact order by the mother. I want to make it crystal clear that I am expecting compliance to be made to the letter. If the order is frustrated or breached without very good reason then I will expect the Swedish court to conclude that the mother's promises to me were empty and insincere. In such circumstances, a transfer of residence to the father and the return of B to live with him in London should be carefully considered.

76. That concludes this judgment.

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