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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
5th February 2015

B e f o r e :

MR. JUSTICE WOOD
(In Private)

C	**Applicant**
- and -	
B	**Respondent**

Transcribed by BEVERLEY F. NUNNERY & CO.
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Official Court Reporters and Audio Transcribers
One Quality Court, Chancery Lane, London WC2A 1HR
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com

MR. R. HARRISON QC (instructed by Dawson Cornwell) appeared on behalf of the Applicant.
MS. B. MILLS (instructed by Kingsley Napley) appeared on behalf of the Respondent.

MR. JUSTICE WOOD:

The Applications

1. R is a much loved little boy, born on 22nd August 2012 and therefore just two and a half years old.

2. His mother wants to take him to live permanently in Hong Kong where she was born fifty-three years ago in October 1961. She makes various proposals for the father to see R in Hong Kong and in England. She also proposes Skype and telephone contact between the father and son on a regular and frequent basis.

3. The father opposes that application and seeks a child arrangements order, pursuant to the provisions of section 8 of the Children Act 1989 (herein after referred to as "the Act"), which would extend the hard-won contact currently in place (see below) leading to what he calls "shared care," with R to spend almost equal amounts of time with each parent.

The Child

4. I have described him as much-loved, as indeed he is. He was born following IVF treatment of a donor egg and the father's sperm. Thus biologically only his father is his natural parent; a fact he will have to grapple with probably in six to seven years' time, such is the current advice as to when these issues can first sensibly be discussed with such children. He will at that point learn that his mother is not related to him, save by law (see below).

5. I have seen photographs of him provided by both of his parents. I have heard from them both about him. The CAFCASS officer, Miss D, described him as a delight. Her face suddenly illuminated with pleasure as she recalled her time watching him with both of his parents. With each of them he is totally at ease.

Background

The Mother's marriage and children

6. As earlier noted the mother was born in Hong Kong and raised there until 1977 when, at the age of sixteen, she came to a boarding school in the United Kingdom only returning to Hong Kong in the summer of 1981. She married her first husband in 1985. Her first child, a daughter, K, was born in 1988 and is now twenty-six. That daughter has recently returned to Hong Kong for work after a number of years here and was described by her mother for the first time in her oral evidence as one half of her reason for wanting to return to Hong Kong, the other half being her wish to take up a job offer. It is astonishing to me, if that were a significant part of her desire to relocate, that she entirely failed to refer to it before in statements or to the CAFCASS officer, Miss D.

7. In 1990 the mother's son, whose full name also begins with the letter K, was born here and continues to live here in the same household as his mother, his maternal grandmother, and R. In passing I note the mother also has an older brother, D, and his family living in Manchester, and an uncle and an aunt living in Portsmouth, all of whom, to a greater or lesser extent, are part of her and R's lives here. It is not argued, and cannot be on the evidence, that she is isolated and lonely here.

8. In July 1995 work brought the mother back to England and she has lived here ever since. Thus the majority of her adult life has been spent here. Her parents and two children, K and K, came with her. She would return to Hong Kong at least once a year to see her family and friends. In 1996 the family here was joined by her husband. The mother's father died some ten years later in 2005.

9. In 2006 her husband returned to Hong Kong for work. The children stayed here with their mother and their grandmother, living, as the mother still does, in a house jointly

owned with her former husband. The by then teenagers, K and K, flew to Hong Kong sometimes as unaccompanied minors to see him when the mother's visits did not coincide with theirs. I mention in passing that it is suggested by Mr. Harrison QC (who acts on behalf of the mother) that, at some stage in the comparatively near future, perhaps at five years of age, it will be appropriate, if the mother's application is allowed, for R to travel to and from Hong Kong as an unaccompanied minor as some airlines seem to permit.

The relationship of the mother and father

10. In 2007 the mother and the father, who is now forty-seven years of age, met in April and began an intimate relationship. The mother and her former husband separated and then divorced in 2009. The two children, K and K, visited him on a continuing basis after the divorce and he would visit England once or twice a year. He stayed amicably in the still jointly owned house I have referred to above.

11. The mother meanwhile had moved to live with the father in his flat. She underwent, in the United States of America, the IVF treatment to which I have referred, successfully conceiving in about August 2012. Both the mother and the father were very keen to have a child. It is in the father's view his last chance to have one. He, like the mother, has been delighted by their son.

12. For a variety of reasons including the undoubted stress of that IVF treatment, their respective businesses and business affairs together, and the restoration of a dilapidated property in which they intended to live their relationship foundered initially becoming what has been described as "on/off" with the mother moving backwards and forwards between her former matrimonial home and the father's flat. The final break between them came in June 2013.

The Mother's work

13. After her school years it has been work which has determined where the mother has lived from time to time. In 1982 she began working for an asset management firm, B, in Hong Kong, then moving in 1987 to another Hong Kong firm. In 1991 a man I shall only refer to as RLG set up a company in Hong Kong and asked the mother, with whom he had worked at the firm known as B, to join him.

14. In February 1992 she helped RLG establish an asset management company, and, as I earlier noted, in 1995 she moved to London to help him establish here his London office. In January 2004 she became the assistant director of RLG's asset management company in London, and in December 2007 she became operations director of it based also in London though working very closely with the Hong Kong office. In 2011 RLG sold that company. In June 2013 the mother, along with most of the founding staff, was told by the new owners that she would be made redundant. The 31st October 2013 was her last day there. She received a redundancy package and part of it was the payment for her to attend training sessions to which I shall refer in a moment. I shall return to the subject of her working life in due course.

The Father's work

15. It is not needful to go into so much detail about the father's working life for it seems to fall into two neat sections. The first was his employment with the Metropolitan Police force and subsequently with Transport for London ending in 2007. The second was and remains his working life as a dance teacher and originally co-owner with the mother of a dance school. When they bought that school in June 2010 it was rather run down, but now, although it provides very limited and indeed almost non-existent income, it continues to operate, despite all current business pressures. Other dancers and companies use the facilities there with key entry and, on a number of afternoons and evenings the father runs the dance classes over which he presides.

16. He described in cross examination the arrangements of the school, but I need not descend into the detail of what he was asked about. It is enough in my view to state, based on the material I have read and heard, the following:

    (i) He and the mother took on this enterprise knowing that it was a long-term project and not expecting immediate success or any substantial income.

    (ii) They inherited from the previous tenant the building requiring considerable attention.

    (iii) Almost immediately part of the roof fell in and, since the joint lease with the landlord was a fully repairing lease, the expense of reparation fell on them.

    (iv) The initial joint lease was eventually signed over to the father solely in 2014. It runs for five years. If he surrenders it before its term in 2019 he will be liable for a significant bill for dilapidations. Since he has access to very limited funds and could not in reality escape that sizeable bill, he is not in any viable position to surrender the lease now or in the immediate future. He is, I find, to put it shortly, trapped.

    (v) Although he has other dancing instructors who assist with the running of the dance classes, there is effectively no one else to take charge of the myriad duties and problems associated with running the building and the dancing class business. On such occasions as he is absent, it seemed to me something of a hotchpot arrangement operates to keep the classes open and also the school, but it could by no means be described as fixed contingency plans. Although he has over the past few years taken very short breaks of four to six days, and went to Los Angeles for ten days for the purposes of the IVF treatment on two separate occasions, I accept his evidence that the exigencies of running the school and building and the complex arrangements needed for others when willing and available to operate when he is absent make it almost impossible for him to leave it even for short-ish periods. This has very real implications for his ability to visit Hong Kong if I give permission to the mother to relocate.

17. His income from the dance school business and other classes (see below) has been assessed by the Child Support Agency on the joint agreement of the parents that this agency should determine questions of child support. It is between £5 and £100 per week, more or less. He told me, and I accept, that in fact his main source of income is from the dancing lessons he gives at another venue altogether, and it varies, before all expenses associated with it are accounted for, between about £200 and £250. The mother in an email told him he should be ashamed that his assessed contribution for

the financial care of R is only £5 per week. He agrees with her and I find he is genuinely ashamed, though as noted above the figure was arrived at by a jointly agreed mechanism. Of further note in this context of finances is that when they were together it was the mother's contribution to the business to keep the account books and, despite the very low earnings figures mentioned by him and supported by a letter from the Benefit's Agency, the mother did not then, nor has she following separation or at this hearing, suggested that he earns more.

Finances Generally

18. After lengthy negotiations between them, each receiving independent legal advice, they came to an agreement on 18th July 2014 about their assets.

19. As noted the father was to have, subject to the landlord's consent (which was given in April 2014), the lease on the dance school and the mother's shares in the two operating companies.

20. A property I shall call No.39, jointly purchased and substantially improved by the father's work on it (an agreed fact), was in effect mostly paid for as to deposit, expenses and continuing mortgage payments by the mother. It has been transferred into her sole name, pursuant to the provisions of the separation agreement. It was transferred but not before the father, he says in desperation, it being the only weapon left to him to deploy, in an email of 18th July talks of the transfer and says:

    "Although in principle I am willing to agree to this, I must insist that it is on the condition that from Sunday 27th July and every Sunday from that date on you release R into my care from the earlier time of 10am to be returned to you by 5pm."

    This was a modest, but to that point withheld, increase in his weekly contact.

21. The father accepts that this was unattractive on his part. The mother replied by email on 21st July as follows:

    "Provided everything is completed and settled on 25th July, as per the separation agreement which you had already signed, you may start collecting R every Sunday from 10am to 5pm starting from 27th July."

    Thus, although Mr. Harrison criticises the father for his linkage of contact and money issues, the mother seems to have no such sensibility and indeed capitulates immediately without advancing any welfare arguments either way by extending contact as requested by the father though it had been previously vigorously opposed by her for no really discernible reason. But I have strayed someway from their financial affairs to which I now return.

22. Although No.39 was transferred, that transfer was followed almost immediately by a letter from the father's solicitors to the mother's seeking an undertaking that it would not be sold pending a possible revision of the terms of their separation agreement in circumstances which I shall speak of later. There was no reply to that request for an undertaking, but the mother has not sought to sell the property yet. No.39 net of

mortgage and sale costs is probably worth somewhere between £130,000 and £135,000.

23. I have mentioned the mother's half interest in the former matrimonial home still owned by her and her former husband though many years have passed since their separation and later divorce. It is subject to a modest mortgage paid jointly and equally by the mother and her former husband. Her share of the mortgage is no more than about £40,000. There is a substantial equity.

24. There was financial disclosure between the mother and father as to their other assets/pensions etc. The mother told me in her oral evidence that she "forgot" to reveal some of her assets in the relevant document. Rather surprisingly, I find, in view of her business life in the financial sector and that she had kept the financial accounts for the dance school. Despite an inevitable degree of suspicion on my part arising from this declaratory failure, I do not find on the balance of probabilities that she was deliberately seeking to mislead the father or the court, and that this was more likely than not an odd (in both senses) forgetfulness.

25. What is clear is that both parties have spent very considerable sums on the resolution of the financial arrangements between them, and on this litigation under the Act. The father estimated his own costs at about £80,000, money he can frankly ill-afford. The mother, now on her fourth set of solicitors, can only have run up bills of similar size.

26. As I mentioned earlier she received a redundancy payment in November 2013, but claims that it is more or less now all but exhausted having been spent on mortgage repayments, maintenance of herself and R, legal fees, etc. The father points with some justification to the fact that she has also taken a number of holidays with R and her mother which could not have been cheap, although the mother downplayed this aspect of her expenditure in her evidence. It is also clear from that oral evidence of the mother's that she has repaid some other liabilities from this sum and thus not all of it by any means can be attributed to the maintenance costs in keeping herself or R, and a roof over their head.

The Mother's work - two job offers

27. I do not find it useful to tease out those aspects of her work in which the mother claims to be competent and experienced. Her chief area of expertise is equities, trade settlements and administration including the establishment of an administration (see, for example, the way in which she set up the London office for RLG referred to earlier). She is bilingual in English and Cantonese, but she is without a second European language though historically that has not impeded her. Significant periods of her working life have been spent in London, as I earlier described.

28. She tells me she has signed on with a significant number of recruitment agencies. She has tabulated the jobs she applied for and the relevant agencies, but, in reality, she seems to have applied for only twelve between January and April 2014 and then nothing much, if anything, until October last year when apparently the issue was discussed at court. There were then limited and sporadic applications by her totalling over the whole period January 2014 to January 2015 approximately twenty-one. I do not regard this level of enquiry as sufficient to establish that there are no jobs in the

United Kingdom. From all the applications made by her or on her behalf by agencies, it is said there was only one unsuccessful interview. It is said by her and the recruitment consultant responsible for arranging that one interview - the latter reporting in an undated, unheaded letter - that there are few senior appointments on offer and that the mother is overqualified for the restricted number of lower grade jobs available. In addition the mother says she does not have the expertise demanded in many areas of the financial services sector in this day and age.

29. I have, after the close of evidence, been sent at my request the email exchanges between the author of the letter above referred to and the mother's latest solicitors. The requests for information from that firm of this one author, who was approached at short notice at her home just after giving birth, were couched in essentially negative terms so that the brief short communication from the author is restricted and not very informative. I also note that this author is the only provider, other than the mother herself, of information about recruitment. Thus I am left in a genuinely unsatisfactory position with no real help from what I would hope in an ordinary case would be a variety of credible sources as to the mother's employment prospects here, her strengths and her options. The mother has such a powerful wish to return to Hong Kong that she is not, in my view, a sufficiently impartial provider or assessor of that information and, as I noted in para.28, I am not satisfied on this evidence that she cannot get a job here. I also accept the evidence provided by the father that there are a number of other agencies which the mother did not approach at all, even though they work in the relevant field of the financial sector.

Job offers continued

30. The mother was offered a job in Montreal, which she understandably turned down. She says she was offered a job by a friend of her brother's in Hong Kong, but in a sector of financial services and/or industry which she knew nothing about. There is a letter in the bundle, dated 6th May 2014, from this proposed employer. It states she would be an assistant director "responsible for assisting me to expand our business in Europe, mainly in the United Kingdom". It names a salary, a start date of 1st September and says an employment contract would be forwarded in due course. I have not seen one and there is no such contract set out in any part of the bundle. But in the letter dated 11th August of last year from the mother's then solicitors to the father's there is a further reference to this job. It suggests, without explanation, that the start date has been moved to 1st October. The salary figure and the job title are the same as in the earlier letter. The letter also states the mother's redundancy money from November 2013 is running out, that she cannot get a job here, and that the mother's own mother wants to return to Hong Kong where K, the daughter, is now living. If this reference to her own mother is a serious aspect of the case it is surprising to me, at its lowest, that there is no statement from this lady and no evidence of any kind from her.

31. It seems to me that three points arise:

    (i) This job offer was not mentioned by the mother nor by anyone acting on her behalf in the financial negotiations where it was potentially a highly pertinent issue for the father.

(ii) In those negotiations she purported to want to live with R at No.39 and that it was to be their home for the foreseeable future.

(iii) There is an insubstantial quality to this purported job offer in Hong Kong. The mother, as I noted above, despite her self-declared ignorance of the sector also noted above, was prepared to take this job even though there is no contractual description of the terms of the employment, her duties, her base, her holiday entitlement, health insurance, cover, etc. There is no substantial, indeed any, evidence before me as to any extensive discussions between the mother and that firm. In other words, it is not a remotely satisfactory letter and beyond doubt, if for no other reason than good faith, it should, insubstantial or not, have been disclosed to the father and his legal advisors in the financial dispute.

32. I do not accept the mother's evidence that she had always intended to remain and work in England if at all possible and that it was only after the conclusion of the financial proceedings and when she had to pay her costs of them that she realised the urgency of moving to a job, given her purported depletion in savings. She is a careful and experienced businesswoman. She knows the cost of daily life. She would be and I find was, fully conscious of them in July 2014 and it seems to me implausible that only after the signature on the separation agreement was obtained and the property transferred to her she decided she had to go. I have no doubt that the urgency for her in the father transferring his share in No.39 by 25th July 2014 (see paras.20 and 21 above) was because she had planned to return to Hong Kong, if possible, and wanted the finances organised before she dropped her bombshell. In the event, she has told me that she refused this offer when a better one came along; an offer I shall have to deal with in a little more detail below.

The RLG job offer

33. In late November 2013 the mother decided to take R, her own mother and herself off to Florida ostensibly for a holiday. I shall speak of this again in the context of the father's ability to spend time with R and other surrounding issues. All I note at this point is that the mother said she received a luncheon invitation from her former boss, RLG, at his home in Florida and was anxious to accept it so she could talk to him about possible work opportunities. The luncheon took place but she gave me the impression that there was almost no, if any, talk between them about jobs. I cannot, given what she says about their long professional association with him, understand why she did not ask his advice about jobs in the United Kingdom given his standing in the financial services world. The answer is, I find, she made it quite clear that she wanted to return to Hong Kong. I note also in an email she sent to the father she refers to wanting to talk to RLG about "a" job. That "a" may of course be interpreted in more than one way. Nevertheless, as I have found from her written and oral evidence, she made her plans clear to RLG on that occasion.

34. She continued with training and the techniques for applying for jobs which she had begun in October 2013 and continued through to June 2014. This training was apparently funded by her previous employer, as I earlier noted, and was said to be to assist her in job seeking in the current climate in the United Kingdom.

35. It is said by Mr. Harrison in closing submissions that this activity shows she intended, if at all possible, to find a job here. But I note that the end, more or less, of these

training sessions coincides with the previously noted cessation of job applications and the arrival of the purported job offer in May (see paragraph 30 above). She could not, I find, use that letter before August for it would have undermined her position in the financial negotiations where she sought the transfer of No.39. I therefore reject the submission of Mr. Harrison that her not disclosing that purported offer showed she was trying hard to remain here for work.

36. The mother has produced an email from RLG to her, dated 15th August of last year timed at 16:33. The relevant part reads as follows:

> "We are moving ahead with incorporating the HK company with help from MF and A. We should have a new office ready in October. Are you still planning to return to Hong Kong? Let me know your plans. I would love to have your help."

Its very terms suggest, and I find, that there has been some prior exchange of information between him and the mother as to his plans and indeed hers. I was told by the mother there had been none. I do not believe her. Her wish to return to Hong Kong was, as I have found, conveyed in Florida in December 2013 at that luncheon party. Following the overnight adjournment on Monday this week, and having concluded her evidence, the mother was recalled and produced telephone records which purported to show three attempts by her to call RLG back in response to this email but with no success.

37. The next email, in what the mother says is the complete chain of emails between her and RLG, is dated 2nd September and timed at 10:29. It was from RLG to the mother and referred to his PA "trying to draft a letter for you today. Let's talk about it on…" The mother acknowledged receipt the same day at 11:44am. The document called "Offer of Employment" is indeed dated 2nd September 2014 and appears at C83. If I believe the mother's account it would seem to appear in its final acceptable state to her at least and presumably to the sender, even though there would have been no sensible discussions between them.

38. On the first day of her evidence to me, namely Monday this week, the mother had said that there had been no calls or talks with RLG after his email to her of 15th August until some time later yet almost the first words of the letter of 2nd September read as follows:

> "Following our telephone conversation on 1st September 2014…"

After the overnight adjournment, as I earlier noted, she produced her telephone records which she said showed a call to the operations manager of RLG's business who was based in Australia at the time to discuss the terms of employment with her. Even then she did not give an answer explaining the reference to the call on 1st September for which she can proffer no sensible explanation. I shall not set out all the various contradictions in her evidence, but once again have to note, and I find that she is an unreliable historian in many matters including the genesis of this offer which followed on from her clear indication to RLG.

39. The essential points to note in this offer for my purposes are that the purported location of her duties is Hong Kong and that she would have twenty-one days holiday a year, and not, as she told me, the norm for Hong Kong of fourteen. Plus she would have statutory public holidays unspecified to me, even after the close of evidence as to their dates and spread throughout the year.

40. The mother told me that much work is done on the net and many duties, though not all, can be carried out from different locations by computer. Despite the previous history of working for RLG in Hong Kong (but more substantially in England) and her knowledge that the details and location of this job, and what can be achieved remotely, and what the future plans include for an English office for this company, she had produced no significant evidence. There is no statement from RLG as to these crucial negotiations, though I accept that he clearly wishes to have her services and I do not make any imputations against his character or behaviour. There is no statement from the operations manager, if such a call was indeed made to him in Australia.

41. She accepted this offer immediately. There is no start date noted by her on the document which she returned the same day, namely 2nd September. I am expected to believe that this job is to remain open for an indefinite period, although there is no supporting evidence to that effect even from her written and oral evidence, save by implication.

42. I shall return to the question of her holidays, their distribution and their relevance later.

Mediation

43. From an early stage of these proceedings going back as far as November 2013 the father has politely been inviting the mother to engage in mediation rather than litigation. She has proved for the most part to be powerfully resistant to this proposition, initially, for example, citing total financial inability to pay for them but that she would go to them if the father paid the not inconsiderable expenses of such sessions. There was, however, some limited mediation, which led in May 2014 to an agreement that the father could see R for two periods per week for four and a half hours on each occasion. I am rightly not privy to the cause of the collapse of other attempts. I find the father's repeated invitations to the mother to mediate were not lip service but genuine attempts by him to resolve the issues, or at least some of them, in a less corrosive manner than by recourse to the law. I cannot understand the mother's refusal to engage in that approach. The argument of financial inability does not survive sight of the statement of finances.

The Mother's finances re-visited

44. I have touched on these already. Whilst it is accepted that her living expenses and those of R have depleted her savings including but not limited to her redundancy monies, she has, and if No.39 is sold will have, more than sufficient monies to sustain those continuing expenses for a reasonable period in which to search much more assiduously than before for a United Kingdom based job.

45. I accept the submission of Miss Mills, counsel who appears for the father, that it is readily open to the mother to rearrange her affairs, sell No.39, pay off her mortgage on the jointly owned property with her former husband and adjust her standard of living. I do not accept Mr. Harrison's submission that it is Hong Kong or a life of comparative hardship if not destitution in England.

46. I would only add that I note the mother's recent letter purportedly setting out her current finances is unsupported by any primary evidence. It also shows that, understandably, if accurate in this regard, she has diminished her overall funds by in some instances reducing her previous indebtedness, and thus not all of the diminution in her funds can be attributed to the costs of supporting herself, her mother and R.

Contact, development, the Mother's attitude

47. I appreciate that when the parents split from each other finally R was only about ten months old.

48. I also accept the evidence he had severe problems with constipation requiring a high fibre diet and that at times the father had difficulties, on his own account, persuading R to eat. But these problems were comparatively of minor significance and were in effect traded upon by the mother to inhibit the father's early contact with his son post the parental separation.

49. For a long time the mother has presented barriers for the increasingly frustrated father to surmount including, but not limited to, at times:

    (i) Insisting contact be at her home.

    (ii) Insisting that she should supervise it right up until March 2014.

    (iii) Insisting that only she should be responsible for R's care needs, for example, washing, changing and feeding.

    (iv) Insisting on the venue and duration of contact.

    (v) Opposing the development of contact to longer periods in one day during which the father could spend time with his son.

    (vi) Opposing any sort of overnight stay, or, once it was finally established, extending the number of overnight stays.

50. Her opposition to some of these extensions stoutly held and advanced by her have at times suddenly evaporated without any sort of obvious trigger or explanation proffered either in writing or in her oral evidence. It may be that now she is in the hands of experienced solicitors, Messrs. Dawson Cornwell, she has been advised differently from before, but that is speculative. If that is the reason and in some measure accounts for her shifts from maintaining opposition to relaxation of them then it does not, in my view, bode well for future contact if she were to take R to Hong Kong, for she would not be in receipt of and amenable to such advice.

51. She has been disgracefully disdainful of the father in making holiday arrangements. To give but one example, although at comparatively short notice she asked the father to consent to a holiday for R in the United States of America between 29th November

and 24th December 2013, to which he readily agreed, she entirely failed to seek his permission to an extension of it for a further three weeks in the course of which, as I have earlier noted, she saw RLG in Florida for the luncheon party. She deprived him, therefore, on that occasion, of any time with his son over his first Christmas.

52. She took the child on holiday without notice to the father over the period of his first birthday. There have been subsequent similar occasions. When challenged by the father she has adopted the most dismissive of tones, as set out in some of her emails.

53. Mr. Harrison puts points to the incremental increase over the following months, but, as I have already made clear, the mother's position has until very recently been dismissive, aggressive and rude. Her overall exchanges within emails and through solicitors at times are not ones which lead me to have any real optimism that she has fundamentally changed her view of him and of the need for their son to spend time with him, and I so find.

54. She has also illustrated her failure to understand and recognise the father's place in R's life. Let me give but one example. In November 2013 R developed lumps on his neck and skull leading the mother to take him, without notice to the father, to the General Practitioner. In consequence of that visit an appointment was arranged for R to see a consultant. The father was informed of none of this and only found out once he bespoke a copy of R's medical records very shortly before this hearing. Although happily the consultant reassured the mother that there was no real problem, the mother, even in her oral evidence to me, could not really see and accept that the father had a right to know about this condition and the outcome of the appointments, and also that he should have been invited to, at the very least, the consultant appointment. She attempts even now to pass off the consultant's appointment as nothing of note because, she says, the GP said there was not a problem and the consultant was only seen because she had private medical health cover. In fact the medical records show that the GP was sufficiently worried to make the onward referral; he being concerned that R might have cervical lymphadenopathy and wanted the view of the consultant.

55. I regret to say, having now heard and read all the evidence, that I do not share Miss D's opinion that the mother now does hold more positive and balanced views about the father and recognises his place in R's life.

56. There is also some limited evidence, which I accept, that the mother's brother and her own mother have negative views about the father not likely to be easily diminished and not even hidden from R.

The Mother's contact proposals

57. The letter of the mother's solicitors of 11th August 2014 setting out her case (see volume C144-5) reads on this issue as follows:

"Our client is of course acutely aware of the importance of maintaining R's ability to continue to enjoy his relationship with his father. On this basis our client will, in the event of a move to Hong Kong, return to the United Kingdom during the school summer holiday for no less than two weeks to enable R to have direct contact to you and will facilitate visiting contact in the event that you are able to travel to Hong

Kong. In addition to this our client will facilitate telephone contact on each Tuesday and Thursday and Skype contact on each Saturday and Sunday while R and our client remain in Hong Kong."

58. By the time of this hearing the mother's proposals had mutated to encompass two trips a year by the mother and R to the United Kingdom of, I understood, more or less, two weeks each time. This might fit in with the holiday entitlement in the contract with RLG of twenty-one working days plus or minus the unspecified number of statutory holidays, the dates of which may or may not fit onto either end of the contractual holidays. If the mother is indeed proposing two 2 week periods that might or might not fit in with the twenty-one days, she nevertheless seems to exclude from calculation flying times of twelve hours each way, recuperation from the flight, and jetlag, though she did suggest there might be a period when R would need to settle. She left out of account when these holidays might occur. If, for example, in the summer school holidays when R is older, the two weeks might be manageable without loss of school term; but, as to the timing of the other period, she gave not even the most general of indications when they might occur and I doubted from listening to her evidence that she had made any real enquiries about the practicalities. She does not say where she and R would stay when R was not with his father on a return to the United Kingdom. She seemed to indicate that she would have to see how R felt about the contact. Not unreasonable of course, but it might well lead to for an abbreviation of even those limited times with the father.

59. She now further proposes that the father can visit in Hong Kong twice a year funding flights etc. from the sum of about £11,000 she proposes to waive though entitled to it under the separation agreement. She seems to think this sum would last for a considerable number of years. She offers the use in such visiting periods of her own and R's home (which Miss D. thought might be appropriate), but in respect of which the father was wary given the historical disputes between himself and the mother, and the fertile territory such an arrangement would provide for accusation and acrimony. She seemed to me, irrespective of the use of her accommodation or an hotel to ignore the significant Government flight taxes and all incidental expenses, a real factor given the father's limited means.

60. As to two telephone calls a week, I fear I have little confidence in either their desirability or practicality. Anyone who has tried to have any sort of exchange with a two year old on a telephone will recognise the unreality of such a proposition. Even if they were arranged by the mother, which I very much doubt, what about time lags, etc.?

61. Miss D. thought that Skype could be beneficial for a child even as young as two because the child could see who they were talking to, but the mother's proposals do not take account of time lag, competing interests in a child's life, what a two year old talks about on consecutive days, etc. Also leaving aside the technology and timing issues, the disadvantages of Skype - as any user will know - are all too often the lack of clarity of image, the sound delay even if short, and, as Miss Mills colourfully notes in her closing submissions, "You can't hug Skype".

62. At the risk of being obvious, a significant part of at the successful development of a relationship between a parent and a child is the quotidian nature of it or if daily

exchanges cannot take place because of parental separation then at least regular and frequent exchanges of physical as well as spoken affection, behavioural guidance, eye contact, subtlety of communication and all the other aspects of such development which grow slowly and deeply over time with that frequent exposure should ideally occur. These important exchanges are fundamentally skewed by long distance and separations interspersed with short periods spent together, even if they do occur.

63. There may well be many cases where there are countervailing factors - here said to be financial indigence to give but as one example - which might shift the balance to giving permission to a parent to remove a child permanently from the jurisdiction save for visits, but this is not such a case.

64. This is a case where a father, despite obstacles, has built up a very good and profound attachment to his son. The relationship includes, but is not limited to, the matters I have touched on rather crudely at para.62 above as attested to by Miss D.

65. The mother's proposals to relocate (even if her proposals for visits, telephone calls and Skype calls are carried out) in practice do not begin to make up for these losses.

66. For the avoidance of doubt, I do not believe this mother once back in Hong Kong, if given permission, would adhere to the contact regime pre-figured in her case. Even if I am wrong about that and she started the programme, it would, having seen her and heard her, only in my view be a matter of time before this regime faltered and collapsed. I simply did not, in the light of my findings and after giving myself a clear Lucas warning, believe her as to her intentions.

Mirror Orders

67. Do the existence of mirror orders alter this picture? Expert opinion has been taken from a Hong Kong attorney. Although she does not give her qualifications or experience in her letter, neither party challenges her capacity to give her views and the answers she has proffered. Neither party sought to cross examine her. I did not require her attendance. Her letter of reply to the questions posed can be found at volume C218-220 supplemented after a second round of questions crafted by the father, who was then temporarily acting as a litigant in person, at E30-33.

68. An English Children Act order can be mirrored in Hong Kong and is enforceable. The procedure, which I need not set out, takes between three to six weeks. Provision can also be made to prevent a parent taking a child from Hong Kong to China, a worry of the father's.

69. The period of enforceability varies, not surprisingly, with real emergencies being heard within two working days. But even then it may not lead to a resolution. Any other summons would not be heard for at least two weeks thus absorbing the period when the father might be (in theory) enjoying contact with his son, and even then it may not be resolved at such a hearing. Costs vary. She, with engaging honesty, notes:

"There is a considerable amount of waiting in the Family Court."

Apparently the Judges there attempt to steer parents in this position towards mediation, but I have given a brief history at the progress of mediation in this country, and I personally would not regard that in an optimistic light as a way forward in the event of any problem given the mother's historical behaviour.

70. In my view these provisions, whilst giving a modest degree of confidence as to the theory and generality of enforceability, do not give sufficient certainty or anything approaching it for a father going there (assuming for these purposes that he does) to see R for these periods.

Further Harm

71. If I am correct about the mother's compliance or lack of it with the necessary provisions of contact, either swiftly or over a comparatively short period, then a consequence of real significance is that R will lose the person he will in a number of years learn is his only natural parent. The sense of abandonment is likely, in my view, to be devastating. It will be difficult enough in the short term to lose his father in any realistic way if he is allowed to go to Hong Kong now, but to have to struggle to contemplate these realities in due course will compound that harm.

The Mother's proposals - other aspects

72. I do not need to set out the details of the mother's proposed arrangements in Hong Kong if given permission. No objection was taken to them by the father. They are conventional enough including flat rental and location, nursery provision, income, health insurance provision and contact with wider family. Although the father trailed current political instability in Hong Kong in his statement, he does not support this with any evidence, and it was not run as a point in his case before me in either evidence or submissions. I thus find that the above points of the mother's proposals are adequate.

What the Father seeks

73. As I understand it, apart from the dismissal of the mother's application, the father seeks a continuation of the current arrangements when R stays with him each week on a Wednesday from 12:30 to a Thursday at about the same hour when he goes to nursery and on a Sunday from about 10am until about 2pm on the Monday. But that is not all.

74. In December of last year to early January of this year, the mother and father agreed at a court hearing before Mr. Justice Newton that R could stay with his father for three consecutive nights on three separate occasions. The father would wish this to be continued. The mother declined. I can see nothing wrong in principle or practise with this latter proposal which was clearly set out in the documentation. R is cherished in both homes. There is no reason at his current age to discriminate between the two parents. I am not, I emphasise, in these remarks seeking to reward one or punish another, but I am solely acting in the best interests of this little boy within the framework of the law to which I shall turn in due course.

75. The father currently expresses real reticence in travelling to Hong Kong for contact. I have earlier commented only on his reticence in staying at the mother's flat and the practical problems of his business. Were the mother to be given permission, I find he will probably do all he can to see R, even in the very restricted circumstances practicable as a result of his professional difficulties and personal indigence I cannot begin to estimate how long finances might permit such travel, even with the mother's proposed waiver of £11,000 due to her, let alone the mother's ability to thwart contact.

The Mother's resilience

76. I have no doubt this mother will be disappointed if refused permission, but she is a resilient character as her work and personal lives have shown and I have no doubt she will turn her shoulder to the wheel of fortune and make a full life for herself and R in this country.

CAFCASS

77. Miss D. reviews the case and makes the observations about the parents and their abilities with R referred to in para.5 above. She told me that she has never before in a report not made a recommendation, though in this report she feels quite unable to do so such are the competing advantages and disadvantages of each case. For my part, as my findings to date have made clear, I do not find the case to be as evenly balanced as she does.

Shared Care

78. This is not a case which hangs on the questions of shared care or primary care. I do not find the terms useful in assessing the facts. It is sufficient to recall that the boy spends extensive periods of time with both parents and is equally well cared for.

The Law

79. Before concluding this judgment I should say something of the law. These applications, both of them, are governed by section 1(1) of the Act, commonly known as the welfare principle. I have considered the relevant parts of section 1(3) of the Act, currently called the welfare checklist. R's welfare is, I emphasise, paramount. I shall not slavishly go through each and every one of the relevant aspects of the checklist.

80. I have also taken full account, as relevant to these issues, of the authorities of:

(i) *Payne v. Payne* [2001] Fam. 473.

(ii) *K v. K (Relocation: Shared Care Arrangements)* [2012] 2 FLR 880.

(iii) *Re F (Relocation)* 2013 1 FLR 645.

Research

81. I have been directed by Miss Mills to a body of research material on the subject of relocation cases and the consequences of relocation for a child. The research papers comprise:

    (i) Relocation by Dr. Marilyn Freeman, July 2009.

    (ii) A lecture by Professor Freeman delivered in March 2010.

    (iii) The Washington Declaration on International Family Relocation made in March 2010.

    Mr. Harrison took no exception to their inclusion in the material before me. I have considered these papers where relevant, bearing in mind of course that the research is comparatively limited, and that there may be changes since the date of the original material. It is not needful to set out the conclusions of the above. For the avoidance of doubt I have, as stated earlier, applied the Statutory provisions in English domestic law with of course firmly in mind Article 8 of the European Convention For the Protection of Human Rights and Fundamental Freedoms 1950. As is clear from Strasbourg and domestic jurisprudence, each of these two adults and this child have their own Article 8 rights. Where there is conflict or tension between them, it is R's rights under Article 8 which shall prevail.

Conclusions

82. On the basis of the above findings and applying the relevant law, I dismiss the mother's application and grant the father's application for a child arrangement order in the terms pre-figured above. Both these parents are capable of raising R physically and of giving him physical care and nurture. It is the mother's inability to recognise in any real way the value to R of having his father in his life and to facilitate and encourage it, which leads me to I find that the likelihood is that she would in reality let R's opportunities for continuing and developing his relationship with his father wither or even cease more abruptly. This weighs with me along with the inevitable emotional harm to R when that occurs, especially given the history of his conception and the acute value to him of having his father in his life at the point when he is struggling with that part of his identity, as well as in the years leading up to it and after.

That is my Judgment:
LATER

83. This is a short *extempore* supplementary judgment. I am concerned with a little boy I described in the main judgment given earlier this afternoon as a much loved child, born on 22nd August 2012 and thus just two and a half.

84. The bulk of the substantive judgment dealt with the mother's heavily argued case that she wished to relocate to Hong Kong with R for the purposes of accepting a job offer. I do not say more about that judgment, save to say that I dismissed the mother's application for the reasons I there gave.

85. The need for this additional short judgment is because in my main judgment I also dealt with the father's cross application. He wishes to prevent any move to Hong Kong, and he further wishes, as was carefully expressed in his written case, to a position where R would spend three nights a week with him and four nights with the mother; a, more or less, "shared care" (I use his terminology, not mine) arrangement.

86. I had before me in dealing with both of those applications not only lengthy carefully drawn statements from each of the parties but also opening position statements from Miss Mills, counsel instructed on behalf of the father, and Mr. Harrison QC instructed on behalf of the mother. Not surprisingly, both dealt predominantly, but not exclusively, with the application to remove.

87. Not only was there considerable written evidence, but both of these parents gave oral evidence to me. Again, the arguments and the questions which followed were predominantly about the application to relocate.

88. I made it clear in my lengthy judgment the law which I considered which applied to both applications (see para.79 to 80). I do not need to repeat that material here. The relevant statutory provisions are contained in section 1 of the Children Act 1989, and also the provision of Article 8 of the European Convention For the Protection of Human Rights and Fundamental Freedoms 1950, which I also applied.

89. There is, as it happens, no dispute between these parents that, albeit they approach the matter from different angles - the father asserting that it had been a long and difficult campaign to establish proper contact between himself and his son, and the mother saying that it was in effect a slow progression, a matter on which I have already ruled and I do not repeat - neither parent raised any child care issues in relation to the father's ability to care for R. There is, despite recent extensions to the quantum of overnight stays and a brief period in December last year and January this year when the parties agreed that R could stay three nights a week with his father, no real complaint of any kind as to the quality of care (in its widest sense) on offer from the father and, when R stays with him currently, from the paternal grandparents.

90. In addition I had the advantage of seeing the very careful report by a Family Court Advisor, Miss D., dated 27th November 2014. When I consider the quality of care on offer by the father and indeed by the mother I can look, in the father's case, at paras.8 and 9 of that report (E4) and, in relation to the mother, at para.10 (E4-5). But for the purposes of this supplementary judgment I shall concentrate on paras.8 and 9, which I incorporate in extenso by reference only whilst highlighting the following: R was relaxed in his father's care. He was encouraged in proper politeness. She observed a close bond between the two. The father was enthusiastic without being over-demanding when with his son. He made all proper concession to the age of his son and the way in which they were playing. They chattered and smiled to each other. There were affectionate overtures and considerable sensitivity shown by the father towards his son. She noted in particular that R was happy and relaxed in his father's care, and at ease with the proximity between them. R was described as easily separating from his father - in my view, a good sign showing an un-anxious relationship between them - and excitedly playing with his paternal grandmother whilst the individual interview took place with the father. So importantly the

independent observation corroborates the joint mutual parental account of a good relationship.

91. In the principal judgment I set out some of the difficulties the father had faced in establishing his contact. In many ways it may be said that the problems he faced could easily have impeded the establishment of the sort of relationship there on display in that report. It is a great credit to the father and to R that there is now the relationship therein described.

92. Current levels of contact as of last October, so of comparatively recent vintage, show a little boy transferring between the two homes without difficulty. I do not mean by that that the handovers lacked tension as occasionally in circumstances like this they do, but that once the handover is negotiated this little boy moves happily between the two homes. He spends from about lunchtime on Wednesday through to lunchtime on Thursday with his father then being taken to his nursery in the afternoon of the Thursday by his father. He stays over with his father again on Sunday night through to Monday.

93. The substance beneath the order I made in the principal judgment is that there would be a child arrangements order extending that contact so that the father would have three nights a week and R would return to his mother for the balance. I do not regard that as such a shattering change from what has gone before, and in recent times particularly, entirely without problem.

94. Mr. Harrison complains in effect, although he is not impolite enough to use the term, that he has been ambushed by the way in which I dealt with the two applications because very little evidence was given by the CAFCASS officer. In his submission it requires a full and careful examination of matters and the expertise of a CAFCASS officer to tell me about propositions with which I am familiar after over forty years in the Division.

95. What I have to look at are the interests of this little boy, pursuant to section 1(1) of the Act, cross-checked with aspects of the welfare checklist. For my part, I consider I have carried that out and that it is entirely in the welfare interests of this little boy to spend more time with his father. I do not see that the proposal I make is so revolutionary as to entirely overturn the equilibrium of this child who is so demonstrably at ease with his father.

96. In particular I consider relevant in this context - even in the light of para.11 of Miss D's report to which Mr. Harrison draws my attention to - para.21, which reads:

> "The court will be aware that the father seeks to increase the time that he spends with R. This would, in my view, be a likely natural progression if R were to remain in the United Kingdom."

I remind myself that that report is dated 27th November 2014 shortly after the arrangements I have just described were put in place and thus the natural progression of which she spoke, particularly given the experience of three sessions of three nights a week between 8th December and January, have in fact occurred without any problem.

97. Mr. Harrison looks forward to nursery attendance of five days a week commencing in September of this year and thereafter R will be rising four and will go in September 2016 to his first school. My only response to that at this stage is: so? I do not consider that those two dates and the changes that will come with them are sufficiently potent, or indeed may ever be proved to be sufficiently potent, to alter a regime with which R appears predictively to be one of ease.

98. I reject the idea that the case has not been sufficiently fully investigated for me to come to the conclusions and make the order I indicated in my earlier judgment relating to the child arrangement order. Accordingly, I confirm it. It seems to me unhappy that it should now be said that the case was not argued. It was there for all the world to see from an early stage and the evidence necessary for its resolution was in place. I confirm that order.