



PUMP COURT

CHAMBERS

Relocation

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A parent who wishes to relocate within or outside the jurisdiction requires the court's consent where it is not forthcoming from the other parent:

- Re C (Internal Relocation) [2015] EWCA Civ 1305
 - CA revisited earlier authorities
 - “*Exceptional circumstances*” no longer applicable
 - Distinguishing internal and international relocation = “*questionable*”
 - Clarified that the only true principle is that the welfare of the child is paramount (taking into account s1(3))
 - No supplemental requirement of exceptionality

- Re C (contd)
 - Bodey J agreed with the summary of Black LJ and summarised the proper approach as being:
 - No difference in approach between international and internal relocation cases;
 - The decision in both types of case hinges on the welfare of the child;
 - Wishes and feelings of the parents and the impact of the decision on them are relevant, but only in the context of determining the welfare of the child;

- Re C (*contd*)
 - Payne v Payne [2001] 1 FLR 1052
 - Consider the “Payne principles” as guidelines not tramlines
 - Those principles are likely to remain useful
 - BUT – they are not a prescriptive blueprint
 - Checklist of factors to be weighed in the balance when determining which outcome will better serve the child’s welfare

K v K (Relocation: Shared Care Arrangement) [2011] EWCA Civ 793:

“the only principle to be applied when determining an application to remove a child permanently from the jurisdiction was that the welfare of the child was paramount and overbore all other considerations however powerful and reasonable they might be; that guidance given by the Court of Appeal as to factors to be weighed in search of the welfare paramountcy and which directed the exercise of the welfare discretion was valuable in so far as it helped judges to identify which factors were likely to be the most important and the weight which should generally be attached to them and promoted consistency in decision-making; but that (per Moore-Bick and Black LJ), since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted.”

- Re F (A Child) (International Relocation Cases) [2015] EWCA Civ 882
 - The Court must carry out a welfare analysis of the options and plans of each of the parents;
 - *the court must carry out a comparative evaluation of the options and plans, that is by looking at the pros and cons of each option and balancing them against each other, rather than by considering each option in turn and in isolation*
 - *if Art 8 ECHR is engaged by reference to the gravity of the consequence (for example that direct contact may cease) the court must also carry out a proportionality evaluation*

- Re C (Internal Relocation) [2015] EWCA Civ 1305
 - CA considered the issue of proportionality
 - Black LJ
 - In line with ECHR jurisprudence
 - Court should strike a fair balance between the interests of each parent and the child
 - If those interests conflict
 - » Interests of the child shall prevail

- *Re K (A Child)* [2020] EWHC 488 – international relocation
 - Williams J brought the strands of the previous authorities together
 - “FKC Payne composite”
 - An integrated approach to the welfare checklist and Payne guidance
 - Which incorporates the Payne criteria
 - AND any other particular features of the case

- §50:-
 - An expanded version of the welfare checklist which takes into account the particular features of relocation cases

Law - other considerations?

- What else should you ask the Court to consider?
 - What is the Mother's motivation for relocating? Is it driven by a genuine desire to relocate, or is it an attempt to undermine the Father's relationship with the child?
 - What is the Father's motivation for opposing the application? Does he have genuine concerns about the child's welfare or is the refusal driven by a desire to control;
 - If the Mother were prevented from relocating, what would be the impact on her;
 - If the Mother were allowed to relocate what would be the impact on the Father;

Law - other considerations?

- What else should you ask the Court to consider? (*contd*)
 - Cases should not be distinguished on the basis that there is a Shared Residence Order (or arrangement) in place;
 - Considering the factual matrix of each case and the proposals for contact should the application be allowed, is it in the child's best interests to relocate with the Mother;
 - The Court must strike the balance between the parent's freedom to relocate and the welfare of the child which might militate against relocation.

Multiple siblings

- Re S (Children) [2011] EWCA Civ 454
 - Children age 16y and 12y
 - CA held that:
 - Whilst there was sympathy for the “unitary” approach adopted by the Judge (supported by the parents and CAFCASS)
 - Fell into clear error in not recognising that when the children’s needs were considered separately they were at odds bearing in mind their :
 - Ages;
 - Stages of development;
 - Nature of their needs;
 - Court commented that this was a lifestyle case and a compelling reason case might be treated differently

Interim relocation?

- E v E (Shared Residence: Financial Relief: Yardstick of Equality) [2006] EWCA Civ 843 [32]
 - the function of the court is to decide whether or not the relocation is in the best interests of the children;
 - the judge's duty is to subject the mother's relocation proposals to rigorous scrutiny;
 - balance the benefits for the children, and the effect on the mother of refusing her application, against the effect on the children of the disruption of their relationship with their father

Section 7 report?

- The “detailed analysis” that the court is required to undertake means this is virtually always necessary
- Independent assessment of the welfare checklist
- Including the wishes and feelings (if age appropriate)

ISW or CAFCASS?

- Timing
- Quality
- Ability to consider other issues in the case

Dos and Don'ts

- Dos:
 - Tell the other parent ASAP
 - Give as much detail as possible
 - Take a conciliatory approach
 - Start as you mean to go on
 - Allow plenty of time
 - Consider your forum

Dos and Don'ts

- Don't:
 - Leave your application to the last minute
 - Forget to think about the timing of the move from the child's point of view
 - Resort to mud slinging

Opposing an application

- Don't resort to denigrating the other parent
- Focus on the child's needs
- What will the move mean for them?

“Security”

- Mirror orders
- Travel funds
- Monetary bond (“fighting fund”)