

Judgment approved by the court for handing down
Neutral Citation Number: [2022] EWFC 60

TR v JM (Children: International Relocation)

No: ZC21P00327

IN THE FAMILY COURT SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 June 2022

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF VB AND LB (CHILDREN)

Before:

MR DAVID REES QC
(Sitting as a Judge of the Family Court of High Court level)

(In Private)

B E T W E E N :

TR

Applicant

and

JM

Respondent

Deborah Eaton QC and Tadhgh Barwell O'Connor (instructed by Hughes Fowler Carruthers)
for the **Applicant**
Anita Guha (instructed by Grayfords) for the **Respondent**

Hearing dates: 18 to 20 May 2022

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this judgment as handed down may be treated as authentic.

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

INTRODUCTION

1. This is an application by a mother (TR) for permission to relocate with her two daughters currently aged 6 and 4 from London to Boston, Massachusetts in the United States of America. The application is opposed by the children's father (JM). The parties are married. They are currently still living in the same property and no divorce proceedings have yet been issued, although it now appears very probable that their marriage is at an end.
2. As will be clear from the account of the evidence that I set out below, the stress of the issues that have led to this application and the proceedings themselves have had a profound impact on both parents, and whilst it is clear that they have both worked hard to shield their children from the dispute, matters have reached the point where this is no longer possible.
3. Most regrettably although this application was issued in March 2021 it has taken well over a year to determine. Three previous final hearings have been listed and have had to be either adjourned or vacated. The first listing in October 2021 was vacated because of a lack of judicial availability. The second, the following month, was adjourned as a result of a successful, if very late, application by the father to introduce evidence about his psychiatric state. The third, listed for hearing in March of this year was vacated after the mother's treating psychiatrist became ill and was unable to attend court to give evidence. This resulted in the matter being transferred to the Family Court sitting at Royal Courts of Justice to enable a new listing to be provided as quickly as possible.
4. The final hearing took place by way an attended hearing before me over three days from 18 to 20 May 2022. The mother was represented by Miss Deborah Eaton QC and by Mr Tadhgh Barwell O'Connor; the father by Miss Anita Guha, and I am grateful to counsel for their submissions both written and oral.
5. At the final hearing I heard oral evidence from both parents, from their respective treating psychiatrists (Dr Sally Braithwaite for the mother and Dr Niall Campbell for the father) and from Mr Patrick Mamattah the CAFCASS Family Court Adviser. All the witnesses, save for Dr Campbell, attended court in person to give evidence. Dr Campbell gave his evidence via video-link. Counsel's final submissions were dealt with by way of written submissions.

The parents and children

6. The mother is in her mid-forties. She is a dual US and UK citizen. She was born in the USA and spent most of her childhood living in the Boston area where she attended school and university. On graduating she lived first in other parts of the USA, then in France. Since 2005 she has lived in London and has subsequently acquired British Citizenship. The father is about three years older than the mother. He is a UK national and has lived all of his life in the UK. The children have both British and US Citizenship.
7. The parents first met in 2011. They began to cohabit the following year. They became engaged in late 2013 and married in the summer of 2014, the wedding taking place in Massachusetts. Their elder daughter was born in 2016, and the younger daughter was born in 2018. Throughout their marriage they have lived in London. Both parents are in employment with well paid jobs in the financial and technology sectors.

8. The parents and children continue to live together in the matrimonial home in London. This is owned by the parents although it is subject to a substantial mortgage. The elder child, VB, is at an independent school. The younger child, LB, currently attends a private nursery. Both parents have played an active role in the children's parenting, although one of the issues in dispute between them is the extent to which the mother should be regarded as the primary carer. The family are assisted by a full-time, live out, nanny who has been with the family since the birth of the elder child.
9. Both children have been diagnosed with a heart condition for which they have received private medical treatment. This condition is controlled through medication. VB appears to have outgrown the condition and is now on a very low dose of medication, LB remains on a higher dose, although it is hoped that she too will outgrow the condition in due course.

Financial matters

10. The parents have provided evidence of their combined financial resources. The mother is the higher earner. She works in the finance industry. She currently has a basic salary of around £260,000pa although annual bonuses have meant that her total remuneration has averaged c£340,000pa in recent years. In addition, she received a very large one-off bonus in 2019 but this means that she is now unlikely to receive any further significant bonuses for some years. Her employer has a US presence (although it does not have an office in Boston) and it has agreed that she can continue to perform the same role if she moves to the USA. Her evidence is that she will be able to work from home. Her witness statement indicated that her financial package would remain the same, although in oral evidence she suggested that it would increase. As I explain below, the issues surrounding relocation and these proceedings have meant that the mother is struggling to cope and has been on medical leave from work since March of this year.
11. The father earns around £150,000pa. He works in the technology sector and his current job is based in London. The mother's employer has indicated a willingness to assist the father in finding a role in the USA, but as the father observed in his evidence, his expertise is in a different sector and it is unclear what assistance it could in fact provide.
12. The Mother has around £900,000 in savings. Of this some £350,000 is earmarked to meet a potential liability to the US government, leaving her with around £550,000 in available funds. The father has around £400,000 net in assets, including a property which he purchased before his relationship with the mother began and which currently has equity of c£230,000. The matrimonial home was purchased jointly (although with unequal contributions). It is worth between £1.2 and £1.3M and has equity of around £340,000. The total assets available to both parties are therefore in the region of £1.3M.

The wider family context

13. As I have already indicated, the mother spent most of her childhood and early adulthood in the Boston area. Her parents also owned a holiday home near Cape Cod. However, her parents moved from the Boston area in 1999 and now live some distance away in South Carolina. The Cape Cod holiday home has been sold. They have however expressed a wish to return to the Boston area if the mother is permitted to relocate, and even if this is not possible and they remain living in South Carolina, they have indicated that they would wish to spend a substantial amount of time – around three months each year - with the mother and children in their new home. The mother also has four siblings all of whom live in the USA. One of these siblings lives close to the area to which she

wishes to relocate. The children have a good relationship with their maternal grandparents and have spent time with them in the USA on a number of occasions, most recently at Christmas 2021. Earlier in 2021 they also spent a week in Greece with members of the mother's family, although her father's health meant that her parents were unable to take part in that trip.

14. The father's father died some years ago. His mother is still living and lives on the South Coast of England. The father has one sibling, a brother, and there are other members of his extended family who live near to his mother. The children also have a good relationship with their paternal grandmother, although visits by and to the paternal grandmother appear to have been a source of tension between the parents, and the circumstances surrounding a planned visit to the paternal grandmother in early January 2022 proved to be a particularly contentious part of the evidence. The position of the paternal grandmother is one factor underlying the father's wish to remain in the UK.

The parties as witnesses

15. My impression of both parents was that they were largely truthful witnesses. Where their recollections of events differed, I formed the view that this was generally as a result of their each having viewed events through the prism of their own objectives and desires rather than as a result of any deliberate intention to mislead the court. Both now clearly struggle to see matters from the other side's perspective. On occasion I considered that both parents sought to exaggerate events or justify their own conduct or minimise the effect that their behaviour may have had on the other parent or upon their children and I refer to a number of specific instances of this later in this judgment.
16. The parties' evidence threw up a significant number of factual disputes. However, many of these, although at times featuring large in counsels' cross-examination and submissions, are, at best, of marginal or tangential relevance to the issues that I have to determine and I have been able to leave many of these points unresolved. For example, it is clear that the parties have discussed the possibility of moving to the USA throughout their marriage, although precisely what was, or was not discussed or agreed at various points in time proved to be highly contentious. Whilst these discussions form the backdrop to the dispute that is now before me, I have taken the view that a detailed analysis of precisely what each parent had agreed to at specific points in time is of little assistance to resolving the question of whether it is now in the best interests of the children to move to the USA (in accordance with the mother's proposals) or to remain in the UK (as sought by the father).
17. Where contemporaneous documents such as e-mails or other letters exist, I have usually felt able to rely upon these as a guide to the reliability of a party's current recollection of events, although I recognise that in a number of instances the documents may themselves be self-serving, and I have approached these with a degree of caution.

The parents' psychiatric health

18. These proceedings and the dispute over relocation have clearly taken a substantial toll on both parents. Shortly before this application was issued, the mother sought assistance from a consultant psychiatrist, Dr McPhillips. He diagnosed depression and reports from him were filed by the mother in support of her application. Very sadly, Dr McPhillips died earlier this year. The mother is now under the care of a different consultant psychiatrist, Dr Sally Braithwaite who has diagnosed her as having severe depressive episode without psychotic symptoms. In October 2021 the father

Judgment approved by the court for handing down TR v JM (Children: International Relocation)
too sought assistance from a consultant psychiatrist, Dr Niall Campbell, and was diagnosed with major depressive disorder. As I have already indicated the introduction of this late evidence from Dr Campbell caused the adjournment of an earlier hearing in this matter.

19. I heard oral evidence from both Dr Braithwaite and Dr Campbell. They were, of course, giving evidence as treating doctors, rather than as expert witnesses pursuant to Part 25 FPR. That said, subject to the points that I mention below, I accept their evidence of their respective patient's condition and the likely effect that the outcome of these proceedings may have upon them.
20. As a tool to assist in the diagnosis of their condition and the assessment of its severity, both parents have undertaken the Beck Depression Inventory on several occasions. This involves the patient self-reporting their feelings on a number of matters. A higher score is indicative of a more severe depression. When first seen by Dr McPhillips in March 2021, the mother's reported score was 36/63. On the most recent occasion when the test was administered, in late March 2022, the mother's score had risen to 51/63. The father scored 32/63 when first seen by Dr Campbell in October 2021; his most recent score was 52/63.
21. Dr Braithwaite confirmed that the mother was on high doses of medication and sleeping aids. She considered that the mother was severely depressed and that the overall recent trajectory of her condition had been a "marked deterioration" since her first assessment in March 2021. She described the mother as feeling "trapped" in the UK. The mother had a number of depressive symptoms including "overwhelming fatigue, lack of enjoyment in anything, poor concentration and tearfulness". She had reported difficulties in self-care, finding it harder to get out of bed or to shower. She was no longer able to hide her distress from the children, snapping at VB and was no longer emotionally available to the children. Whilst the mother had not reported any suicidal thoughts, Dr Braithwaite indicated that she "would be extremely concerned" for the mother's health and safety if any further deterioration in her depressive condition occurred and in her oral evidence she indicated that she considered that "something catastrophic" could happen if the mother was not permitted to relocate.
22. Dr Braithwaite emphasised that in her view the mother's depression was linked to her wish to relocate to the USA, reporting that:

"I have little doubt that her depression would be significantly improved by gaining leave to return to the US, and without that, she would struggle ever to recover fully from her depressive condition."
23. Under cross-examination from Ms Guha, Dr Braithwaite conceded that there were likely to be a number of factors contributing to the mother's depression of which her frustrated wish to relocate to the USA was but one, and that these also included the breakdown of her relationship with the father, the very difficult circumstances under which the family were currently living and the stress of proceedings. Although Dr Braithwaite could not say with certainty the extent to which each of these factors was contributing to the mother's condition, she emphasised that she considered the mother's desire to return to the USA to be the longest standing issue.
24. Dr Campbell's evidence in relation to the father to a large degree mirrored that of Dr Braithwaite in relation to the mother. Dr Campbell reported that the father presented with significant depressive thought processes including feelings of sadness, failure and worthlessness. His physical features

- Judgment approved by the court for handing down TR v JM (Children: International Relocation)
of depression included loss of sleep, reduced concentration and fatigue. The father has also described suicidal ideation (although he has said that he would not act on these feelings). Dr Campbell described there having been a gradual deterioration in the father's mental state since he had first seen him in October 2021. He too was concerned as to the potential impact on father's condition if relocation was permitted.
25. In cross-examination by Ms Eaton, Dr Campbell was asked about a comment in his report that if the mother and children were to move permanently to the USA, "access will be difficult and [the father] will inevitably lose contact with them". Ms Eaton referred to the mother's significant proposals for contact between the father and the children and the possibility that the father might himself move to the USA. Dr Campbell accepted that his comment that, in the event of relocation, a loss of contact was an inevitability was an exaggeration of the position.
 26. In cross-examination Ms Guha asked Dr Braithwaite some questions about the Beck Depression Inventory and the possibility that it can be manipulated by a subject reporting feelings with a view to achieving a high score. Whilst Dr Braithwaite accepted this potential vulnerability, she made clear that it was one element of the diagnosis of depression which rested on other symptoms and observations as well. Whilst Ms Guha, in her closing submissions, highlighted the fact that the Beck Depression Inventory may be vulnerable to manipulation this is, of course, is a point that potentially cuts both ways as both parents have reported increasingly high scores on the Inventory as proceedings have progressed.
 27. For the mother, Ms Eaton sought to make a point about the father having reported his symptoms very shortly before a hearing that had been listed in the case after being referred to Dr Campbell by his solicitors. A similar point was also made in cross examination by Ms Guha on behalf of the father – the mother having first consulted Dr McPhillips around the time that these proceedings were issued (although she had previously been seeing a therapist since August 2020). It seems to me likely that these proceedings and the feelings that they engendered in both parties have brought matters to a head and have provided a reason for them each to seek professional help in respect of the symptoms which they have experienced. However, that does not mean that those symptoms are not genuine or have been manufactured for the purposes of adding weight to their respective cases.
 28. I had the opportunity to observe both parents throughout the hearing. The mother, in particular, exhibited significant and visible distress throughout the hearing; not only during her time in the witness box, but whilst listening to the other evidence and to my exchanges with counsel. This presentation was consistent with the account that Dr Braithwaite gave of the mother's state of mind and also with the observations of other third parties such as her employer who has placed her on medical leave. I accept that her obvious distress which continued throughout the three days that she spent in court was indeed genuine and was not (as Ms Guha suggested in her closing submissions) an attempt to evade questions asked of her in cross-examination. The father appeared outwardly less emotional in his presentation both in the courtroom generally and during the course of his evidence.
 29. Having considered matters carefully, I accept the evidence of both Dr Braithwaite and Dr Campbell as to their respective patient's conditions. Although their outward symptoms vary, both parents are clearly suffering from a severe depression and I take extremely seriously the evidence of both Dr Braithwaite and Dr Campbell as to the likely impact of an adverse ruling on each parent.

The parties' wishes about relocation

30. Throughout her relationship with the father – both before and after their marriage - the mother has had, and has expressed, a wish to return to live in the USA. The strength and urgency of this desire and the father's willingness to accede to it are issues that are in dispute. However, it is clear that the possibility of relocating to the USA has been a subject that has been raised by the mother throughout her relationship with the father and they have had discussions about a move both before and after the birth of the children.
31. The father's attitude to a move to the USA appears to have been much more ambivalent and has changed over the course of the parties' relationship. I have no doubt that throughout the parties' relationship the impetus to move to the USA has always been driven by the mother. There have certainly been times when the father appears to have been willing, in principle, to commit to a move to the USA. However, the sense that I have from the evidence is that whilst he has from time to time been willing to agree to a move to the USA as a theoretical concept, there have always been practical matters (the parties' respective jobs, the position of the paternal grandmother, the deterioration in the parents' relationship) which have meant that, from the father's perspective, there has never been a right time to make such a move.
32. There have been a number of occasions when specific proposals or opportunities to move to the USA have arisen. At a relatively early stage in their relationship, the possibility of a role for the mother with her employer opened up in Michigan, but this was not pursued as the father objected to a move at that time. Whilst the parents are at odds as to the specific details of discussions that have taken place over the years (for example whether the father was aware that the mother had been offered, but had turned down, a job in Toronto in 2015) the broad nature of their respective positions that I have outlined above is clear from the evidence.
33. The mother has on a number of occasions sought to deal with the father's equivocation on the question of a move by seeking to get him to commit to it in writing. She produced a document dated November 2016 written by her, but initialled by the father which includes the following statements:
- “We are going to the US whether your mum like it or not;
We are going to the US, even if we don't get jobs.”*
34. In 2018 shortly before LB was born, a homemade document – mostly in the father's handwriting - was produced recording some heads of terms that had ostensibly been agreed between the parents regarding a relocation to the USA. There is a stark conflict in the evidence between them in relation to this incident, although both accept that their relationship was in difficulties at this time. The mother says that she wished to give birth in the USA and begged the father to come too bringing VB, but that he refused and told her that if she went she would never see VB again. The father says that the document it was drawn up in circumstances where the mother was threatening to get on a plane and travel to the USA to give birth leaving him and VB behind and that he was coerced into signing it.
35. I cannot at this remove resolve the detail of this dispute. Clearly though, at the time that this document was drawn up the parents' relationship had reached a crisis. In my view the likelihood is that this document provided the mother with the reassurance that she needed to be persuaded to remain in the UK and give birth to LB in the UK, I also consider that it is likely that it was entered

Judgment approved by the court for handing down TR v JM (Children: International Relocation)
into by the father with reluctance and as a result of pressure from the mother, although I consider it improbable that it was a result of duress or coercion in the sense these terms are understood by lawyers. These heads of terms were incorporated into a more formal parenting agreement dated 3 June 2018 under which they both agreed to relocate to the USA by February 2019 “regardless of their marital status, incomes or jobs”. This document was drawn up by solicitors acting for the mother. It was signed by the father although he did not take any legal advice before doing so.

36. No move took place within the time frame set out in the document although an application was made for the father to obtain a US spouse visa which would entitle him to live and work in the USA. The first stage of the visa process was completed in February 2019. The next stage of the process involved the father undergoing an interview at the US embassy in London, and although a number of appointments for this interview were made it never took place. In August 2020 the father told the mother he could not go through with the interview. He was concerned that they would move to the USA only to divorce, and he was also concerned that his own mother was unhappy about the proposed move. Following further discussions, a new appointment was booked for February 2021, but again the father indicated at the last minute that he could not go through with the interview. Shortly thereafter the mother issued her application to relocate.
37. In fact, rather than cancelling the interview the father had postponed it on the pretext of having covid symptoms. However, following the issue of the application it was finally cancelled.
38. I have no doubt that the mother’s wish to return to the USA has been long-standing, deeply held and consistent. Equally it is clear that the father has sought to equivocate and temporise, torn between his own deep roots in the UK and a wish to save his marriage. Ultimately though I do not consider that these issues assist me greatly in my analysis of which of the parties’ proposals is now in the children’s best interests.

The CAFCASS Analysis

39. By contrast, I have been significantly assisted in this matter by the careful reports and oral evidence of Mr Patrick Mamattah, the Family Court Advisor who has met with both children. Mr Mamattah’s first report was prepared on 30 September 2021 and followed a visit to the children on 2 September 2021. A second report dated 25 January 2022 was prepared following the introduction of the evidence regarding the father’s mental health. Mr Mamattah has also interviewed each parent twice (the first time in person, the second by video-link).
40. The prospective move to the USA has not been discussed with the children, and so Mr Mamattah was not in a position to explore their wishes and feelings in that regard.
41. It is evident from Mr Mamattah’s evidence that the children have grown up in a loving home and that there are no safeguarding issues. Mr Mamattah was clear that the children view both of their parents as sources of care, love and affection and they spoke positively about both their parents. Mr Mamattah noted a strong sibling bond between the two girls and described them as above average intelligence / general development. He stated:

“It was a pleasure to spend time with [VB] and [LB] and their parents should be proud of them”.

42. Mr Mamattah also commended the parents for the steps that they had taken to protect the children from the difficulties between them and the tensions which inevitably flow from their continuing to live in the same property. Mr Mamattah considered that the children had several areas of resilience which would enable them to manage a move to the USA and that as confident children they would thrive in any educational setting. He did not consider that there was any issue about the quality of available schools in either the USA or in England.
43. He recognised that that the mother's application for relocation would have an impact upon the children, and in particular the separation from their father that it would bring about. He described the father as being very much part of the fabric of the children's lives and continued:

"I am confident that both VB and LB's wishes and feelings in this regard can be understood as a wish to remain near their father, in regular contact and with the potential to increase this at short notice if they wanted or needed.

VB and LB will experience a level of loss from any relocation (should [the father] not also relocate to the USA with the children). Whilst VB and LB are both of a developmental age where they can understand they will see [the father] again and have some concept of time between arrangements, he will not be able to engage in the homework, school pickups, extra-curricular activities and the actual time spent with the children will reduce."

44. Mr Mamattah identified though that there were several features of the mother's proposals which would help soften the blow of separation from the father. These included the strong bond that the children have with their mother, the fact that there were extended family members in the USA who they would be able to see more often and the fact that their existing nanny had offered to travel to the USA to assist with the transition.
45. In his first report Mr Mamattah took the view that the father had taken a "somewhat dismissive" attitude towards the mother's reported psychiatric presentation; he considered that the father's comment that the mother was too good a mother to allow any disturbance to impact upon the children lacked insight. In his second report (which was ordered after the father was permitted to introduce evidence of his own mental health) Mr Mamattah developed this concern commenting that he was "confused" as to how the father imagined that the mother could cope (if her application was refused) in the light of his own description of how he would be affected if the application were to succeed.
46. Mr Mamattah recognised that either outcome had the potential to adversely affect the children. In his first report he stated (in the context of the relocation application failing):

"I sympathise with [the mother's] position as that of the children's primary carer who is fearful that her mental wellbeing will suffer if the relocation is refused. The effect of this on VB and LB potentially being far reaching and impacting on her ability to maintain her current job role (and then the level of earnings she currently provides), and the quality of her parenting as she may be less emotionally available or emotionally attuned to the children."

47. In his second report Mr Mamattah recognised the potential harmful impact of relocation on the children through its effect on the father's condition. Mr Mamattah states:

“[The father] was clear with me that moving to the USA himself (if relocation is granted) is no longer something he can contemplate. If relocation is granted, there is then the risk that [the father] will struggle to manage, and his wellbeing will deteriorate further. VB and EB may experience less of an impact if they are not in contact with him daily, however, when he does spend time with them (directly or indirectly) his general presentation and parenting capacity may be adversely affected, and he will not be as emotionally present for VB and LB.”
(emphasis added)

48. These two passages contain two points of factual contention. The father challenges Mr Mamattah’s description of the mother as the children’s primary carer, arguing that the mother’s work commitments meant that the father was often taking charge of the children’s evening routine. I also heard disputed evidence as to which parent took charge of making day to day social arrangements and the like for the children and allegations about whether the mother had been seeking to exclude the father from school and friendship WhatsApp groups. In my view none of this evidence (which largely betrayed a lack of flexibility on the part of both parents and an inability to see the impact of their behaviour on the other parent and the children) detracts from the substance of the point that Mr Mamattah was seeking to make in this paragraph; that under both proposals that are before the court, the children would be living with the mother much of the time (either as the main carer if relocation is permitted; or at the very least for 50% of the time under a shared care arrangement if relocation is refused), and that a refusal to permit relocation would have a serious and adverse effect on both her mental wellbeing and her capacity to maintain employment and to provide the parental support that the children require.
49. The other point of contention relates to what the father said to Mr Mamattah about his own position should relocation be permitted. Although in the passage I have set out above from his second report, Mr Mamattah records that he could “no longer” contemplate moving to the USA himself, his earlier report records that the father in his first interview had told him that he would consider such a move if relocation was permitted. Although the father, in his oral evidence, denied saying this, Mr Mamattah was not challenged on this point in cross-examination and I am satisfied that Mr Mamattah’s report accurately summarises what the father said to him. In any event, such a comment is consistent with the father’s own evidence to the court that if relocation is permitted there was at least a “possibility” that he would himself move to the USA too.
50. Mr Mamattah’s exemplary reports set out the risks to the children inherent in both proposals. Whilst the reports do not come to a firm conclusion as to whether or not the children’s best interests would be best served by relocation (Mr Mamattah fully recognising the difficulty of the dilemma posed by the application), my sense of the tenor of his reports was that on balance he leant in favour of permitting relocation and Mr Mamattah confirmed that to me in the course of his oral evidence.
51. Mr Mamattah also set out recommendations for the children’s living arrangements and contact under both proposals. If relocation is permitted he proposed that the only limitation to the father’s time with the children “should be the logistics and ability to travel and see VB and LB”. He felt that the suggestions made by the mother provided a sensible starting point with holidays being shared equally or with a slight prejudice in favour of the father.
52. If the children remained in the UK, with the parents separating, Mr Mamattah recommended that the children should start by spending the majority of their time living with their mother, but with a minimum of three consecutive nights per fortnight with the father. This would be with a view to

Judgment approved by the court for handing down TR v JM (Children: International Relocation)
increasing the time with the father so that ultimately a shared care arrangement was in place. In his oral evidence Mr Mamattah indicated that this was something that could be built up over a relatively short period of time. He recommended that there should be a shared lives with order to assist the parents in understanding that they are both equally important in making decisions for the children.

LEGAL PRINCIPLES

53. The parties are broadly agreed as to the law applicable to cases such as this and both have referred me to the decisions of the Court of Appeal in *K v K (Children: Permanent Removal from the Jurisdiction)* [2011] EWCA Civ 793; *Re F (A Child)* [2012] EWCA 1364; *Re C (Internal Relocation)* [2015] EWCA Civ 1305 and *Re F (A Child) (International Relocation Case)* [2015] EWCA Civ 882.

54. Additionally, the mother, through her counsel, has referred me to the earlier decision of the Court of Appeal in *Payne v Payne* [2001] EWCA Civ 166, and in particular the well-known passage of the judgment of Thorpe LJ at [40] to [41] identifying certain factors which may be helpful for consideration in a relocation case. In that regard I have carefully borne in mind the warning expressed by Ryder LJ in *Re F (A Child) (International Relocation Case)* [2015] EWCA Civ 882 at [27] namely that:

“[27] *Selective or partial legal citation from Payne without any wider legal analysis is likely to be regarded as an error of law. In particular, a judgment that not only focuses solely on Payne, but also compounds that error by only referring to the four point ‘discipline’ set out by Thorpe LJ at paragraph [40] of his judgment in Payne is likely to be wholly wrong. There are no quick fixes to be had in these important and complicated cases; the paragraph [40] ‘discipline’ in Payne may, or may not, be of assistance to a judge on the facts of any particular case (whether there is a ‘primary carer’ or not) in marshalling his or her analysis of the evidence prior to the all important analysis of the child’s welfare.*”

55. I have also found useful the summary of these cases and the legal framework that applies to international relocation set out by Williams J in *Re C (A Child)* [2019] EWHC 131 (Fam); [2019] 2FLR 137 at paras [15] and [16].

“[15] *The most recent and authoritative appellate decision on the approach to permanent overseas relocation cases is Re F (A Child) (International Relocation Case) [2015] EWCA Civ 882 [2017] 1 FLR 979 . The material paragraphs of the judgment are 3, 4, 30-35 (Ryder LJ) and 45-52 (McFarlane LJ). Re F together with the earlier authorities of Payne, Re F, K-v-K and Re C (Internal Relocation) makes clear that whether the applications are configured under s.8 or s.13 Children Act 1989 the following framework applies.*

- (a) *The only authentic principle is the paramount welfare of the child*
- (b) *The implementation of section 1(2A) Children Act 1989 makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent*
- (c) *The welfare checklist is relevant whether the case is brought under s.8 or s.13 Children Act 1989*

- (d) *The effect of previous guidance in cases such as 'Payne' may be misleading unless viewed in its proper context which is no more than that it may assist the judge to identify potentially relevant issues.*
- (e) *In assessing paramount welfare in international relocation cases the court must carry out a holistic and non-linear comparative evaluation of the plans proposed by each parent. In complex international relocation cases this may need to be of some sophistication and complexity.*
- (f) *In addition to Article 8 rights – indeed probably as a component of the Art 8 ECHR rights and s.1(2A) one must factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis (unless that is contrary to her interests) in accordance with Article 9 of the United Nations Convention on the Rights of the Child ("UNCRC").*
- (g) *Furthermore, the court must also take into account the Article 8 rights of the parents. In the usual case the child's Art 8 right will take priority over the parents but that should not cause the court to overlook the Art 8 rights of others affected and the court should balance the competing Article 8 rights.*
- (h) *The effect of an international relocation is such that the Article 8 rights of a child are likely to be infringed and the court must consider the issue of proportionality of the interference. There remains some degree of uncertainty as to how the proportionality evaluation is to be applied in relocation cases. In Re F it was said one should be undertaken, In Re Y [2015] 1 FLR 1350 it was said in private law cases it doesn't need to be, The Court of Appeal in Re C (Internal Relocation) expressed doubts about how it was to be undertaken. I consider that in most cases in practice the proportionality issue will be subsumed within the overall holistic evaluation in particular when considering effect of change and risk of harm. In reality in the judicial consideration of the welfare checklist it simply is likely to mean the judge will be that much more alert to the importance and thus weight to be afforded to the child's right to maintain contact with the left behind parent and their rights to a stable and secure family life with their primary carer, if there is one.*

[16] *Insofar as it may assist in identifying the relevant issues a court may (but is not obliged to) deploy what may be described as the 'F, K, C, Payne' composite. This is no more than an integrated approach to the welfare checklist and the 'Payne' guidance/discipline incorporating within the welfare checklist relevant Payne criteria and any other particular features of the individual case which appear relevant. Of course in some cases it may be that one or more particular aspects will emerge as carrying significantly more weight than others – a contour map with high peaks and low valleys; in others the factors may be much more evenly weighed and present a gently undulating landscape. In the former the balance may fall more obviously in one direction if it is dominated by peaks with no valleys in others the peaks may be balanced by the valleys creating a finer balance. In the latter the overall undulations may make the balance a very fine one. Ultimately every case is fact specific..."*

56. The difficult question as to how, if at all, an Art 8 proportionality evaluation is to be undertaken was considered further by Knowles J in WS v KL [2020] EWHC 2548 (Fam) at [21] to [22] where, having cited the concluding part of paragraph [15] of judgment of Williams J in Re C (A Child) [2019] EWHC 131 (Fam) (set out above) she held:

“[21]. *It seems to me that, in accordance with the analysis of Ryder LJ in paragraph 32 of Re E, what is required by a proportionality assessment is "a welfare analysis of each of the realistic options" and that such an assessment "may amount to no more than an acknowledgement that one option is better than the other and that the preferred option represents a proportionate interference in the Art 8 European Convention rights of those involved" . If, having carefully examined the parents' wishes and their interests within the welfare analysis, a proportionality assessment is undertaken having regard to the best interests of the child concerned, that approach avoids the danger identified by Black LJ in Re C of inconsistency between the welfare analysis and the proportionality assessment (see paragraph 61).*

[22]. *The careful examination of parental wishes and interests which Black LJ considered important in Re C is not easily accommodated within the confines of the welfare checklist. Neither the likely effect on the child of any change in circumstances nor the capability of the parents really captures what is required in that particular regard. McFarlane LJ recognised this implicitly when he stated in paragraph 50 of Re F that the court's task was to weigh up all the relevant factors, look at the case as a whole, and determine the course that best met the need to afford paramount consideration to the child's welfare. One of the relevant factors would be the wishes and interests of each parent. That global holistic evaluation – undertaken within the ambit of all the relevant provisions of s 1 of the Children Act 1989 – has, in my view, proper regard for the Convention rights of both parents and child.”*

57. I have adopted the approach outlined by Knowles J above in this judgment.

58. Ultimately, the guiding principle that I must apply is that the welfare of the children is the court's paramount consideration. Section 1 CA 1989 requires that I must have regard to the following matters in relation to each of the children:

- (1) Any delay in determining the questions raised by these proceedings is likely to prejudice their welfare;
- (2) I should assume (unless the contrary is shown) that the involvement of both their parents in their life will further their welfare;
- (3) Their ascertainable wishes and feelings (considered in the light of their respective ages and understanding);
- (4) Their physical, emotional and educational needs;
- (5) The likely effect on them of any change in their circumstances;
- (6) Their age, sex, background and any characteristics of either of them which I consider relevant;
- (7) Any harm which they have suffered or is at risk of suffering;
- (8) How capable each of their parents (and any other person in relation to whom I consider the question to be relevant) is capable of meeting their needs;
- (9) The range of powers available to me within these proceedings.

ANALYSIS

59. I therefore begin my analysis by identifying the proposals put forward by each parent.

The Mother's proposal

60. The Mother's proposal is that she should move with the children to a town just outside Boston, Massachusetts. She has not settled upon a specific locale but is proposing to look at properties for purchase in one of three towns that she has identified close to Boston. She proposes searching for a house in a safe, quiet neighbourhood with easy access to a town centre and amenities. The property that she would like to purchase would have a minimum of 3 bedrooms (if possible more to enable the father and other family members to visit) and have outside space for the children to play in. The mother has provided details of a number of houses which were on the market at the time that she made her statement and which are priced at between \$675,100 and \$1.35M. She has also provided details of similar properties which are available for rent and which could be leased if she moved with the children before the purchase had taken place.
61. If I permit relocation the mother proposes that the children should attend schools within the US public school system. The choice of school will depend upon precisely where they live; the mother's evidence is that if they live within the catchment area of a particular school they will be entitled to a place there. The mother thus proposes that the available school or schools will play a part in the selection of an appropriate property. The mother has provided details of the elementary, middle and high schools in the areas in which she proposes to search for a property and I note that that the majority of these are highly ranked in various school league tables.
62. As I have mentioned the children have a heart condition which requires monitoring and treatment. Their existing consultant has offered to make a referral to an identified consultant at Boston Children's Hospital and has confirmed that he would have no concerns with the care provided there, confirming that the relevant unit in Boston "is one of the leading centres worldwide" for this condition. The mother has confirmed that her employer will provide private medical insurance which will cover the children.
63. In terms of other arrangements, the mother has proposed that the children's existing nanny should accompany them to assist with the transition, and her evidence is that this would be permissible for a three month period without a need for a special visa.
64. The mother points to a number of friends who live in the Boston area whom she says would provide friendship and support to her and the children. One of her brothers already lives close to the area to which the mother wishes to move and her parents, although presently living in South Carolina, may move back to the Boston area and would commit to spending a significant period of time with the mother and children in any event.
65. In terms of contact with the father, the mother's preferred position is that the father moves with them. Although she recognises that once there they may decide to divorce or live separately, she would like the father to live nearby so that the children could spend time with him regularly. In her evidence she states:
"whatever the outcome of these proceedings and [the father's] decision, my priority will always be the physical and emotional wellbeing of the girls, of which their relationship with [the father] is a primary factor."

In their final submissions on behalf of the Mother Ms Eaton and Mr Barwell O'Connor emphasised that the mother cares deeply about ensuring the children's paternal bond remains strong quoting from her oral evidence:

“I will do my damndest to make sure they see him and love him and play with him and visit him and he is welcome for every school play [...] I want him to see them as much as possible to see plays and recitals and [everything]”.

66. Assuming that the father does not relocate with the mother and children, the mother proposes that the children should spend time (between 4-6 weeks per year is suggested) with the father in the USA when they are in school, for Thanksgiving and during the shorter school holidays in the winter and spring breaks and that the children should spend time with the father in the UK during the summer break (about 5 weeks in total). The mother proposes alternating Christmas so that one year is spent with the mother and her family in the USA (although the mother has indicated that the father would be welcome to come too) and the next is spent with the father and his family in the UK.
67. In the event that a relocation is permitted the father’s position in relation to the mother’s proposals is that where possible he would travel to the USA to spend long weekends with the children during term time. He would agree to the children spending alternate Christmases in the UK and USA and would consider spending time in America in those years when the children were staying there. He seeks that the children spend a minimum of 6 weeks of their summer vacation in the UK with him. He would wish to spend one half of the Thanksgiving holiday in the USA with the children and asks that the children spend the entirety of alternate Mid-Winter and Spring break holidays in London.
68. The father, however, has a number of criticisms of the mother’s proposals. Given that both parents would need to rehouse themselves in suitable properties in which the children can live whilst they are with them, he considers that the budget that will be available to do so means that the properties whose details have been provided by the mother are not realistically attainable. He also disputes whether the mother would wish to live in the Boston suburbs as she now proposes. He alleges that the mother has downplayed the demands of her job which, he says, will require her to put in much longer hours and travel more often than she has indicated would be the case. Ultimately though he is concerned that:

“The effect of a move to the USA, a change in schools, a fundamental change to their day to day arrangements, a severance of their day to day relationship with their father at the same time as understanding that their parents’ relationship has come to an end would have an enormous effect upon the girls’ welfare and risk the possibility of harm to the girls.”

The father’s proposal

69. The father proposes that the mother and children remain in London. His position is that they have a happy and stable life in London and that the UK is their home, not the USA. He proposes that the parties should separate and in accordance with the CAFCASS recommendations there should be a joint lives with order and a shared care arrangement. Although the father accepts that initially the children should spend the greater part of their time with the mother, it became clear from his oral evidence that he was seeking to move to a position whereby the children were spending equal amounts of time with each parent within a relatively short period of time.

70. His statement does not provide much detail on the type of accommodation that he and the mother will need in the future, although it is implicit in his evidence that he accepts two separate households will be required and that each parent will require (at least) a three bedroom property.
71. If the mother's relocation application is refused, then the father envisages that many aspects of the children's lives will remain the same. They can continue to have the same nanny. The father hopes that VB can continue at her existing school and that her younger sister can join her this autumn. If this is not possible the father confirms that there are a number of excellent rated State primary and secondary schools within their local area. The children will continue to receive medical treatment for their heart condition either privately through the mother's health insurance or through the NHS. He refers to the children having a wide circle of friends and identifies that the current arrangements will afford the children the familiarity and stability which, the father considers, will be crucial to minimising the impact of the breakdown of the parents' relationship upon them.
72. For her part the mother does not consider that it is likely to be affordable for the parents to purchase two suitable properties in the local area and continue to privately educate the children. She expresses some reservations about whether it would be possible for the children to obtain places at the best-rated State schools and also raises an issue as to whether the children would receive the same level of checks for their heart condition if they were solely reliant on NHS treatment. She also states that she has serious doubts as to whether she would be able to continue working in her current role if permission to relocate were to be refused.

The father's position if relocation is permitted

73. As I have already set out above, the father has expressed different views at different times as to whether, in the event that relocation is permitted, he would consider moving to the USA himself. His case is put on the basis that he will not, although his oral evidence was slightly less unequivocal and he acknowledged that he would have to consider the position if the mother and children move to the USA. That he has decided that he will not move, but that should the case go against him, he would reflect again in the light of the changed factual matrix is, in my view, an entirely understandable position for the father to adopt. However, having heard his evidence and the submissions of his counsel I will conduct my analysis on the basis that, on the balance of probabilities, the father will not move to the USA whatever the outcome of this application.

Discussion

74. I now turn to consider the welfare of the children in the light of the competing proposals that are before the court. This is an extremely difficult case. Having had the opportunity to hear the evidence of both parents I have been left in no doubt that the mother has a genuine and long-held desire to return to live in the USA, and to do so with the two children. I accept and agree with the conclusion of Mr Mamattah that this is not a case where the mother is seeking to remove the father from the children's lives. The duration and consistency of her desire to return to the USA and her obvious wish for the father to continue to play an important role in the children's lives make this clear.
75. I am also in no doubt that the father's opposition to the move is born of an equally sincere and genuinely held wish on his part to remain in the UK and for the children and the mother to remain here too. He has clearly engaged with, and struggled with, the prospect of a relocation to the USA over the years, but ultimately has concluded that he does not wish to go and that it is not in the best interests of the children for them to move to a new country with only one parent.

76. To be clear, I do not criticise either parent for their position. I do not consider that either has deliberately set out to frustrate or thwart the other. Sadly though, they have reached the point where their conflicting wishes and objectives for their and the children's future have become mutually irreconcilable, are having a damaging effect on their own and each other's mental health and risk placing in jeopardy the welfare of the children.
77. It is of course impossible to accommodate both of these outcomes and having heard evidence from both treating psychiatrists I recognise that my decision, whatever it may be, is likely to have a profound effect on both the parents and, through them, upon the children.
78. It is clear that whatever my decision the lives of both children are about to change significantly. Whether or not I give the mother permission to relocate with the children to the USA, I am satisfied that there is every likelihood that the parents will now separate and that divorce proceedings will follow.
79. I consider that there is little to choose between the two proposals in terms of the material facilities that will be available for the children (by which I mean accommodation, education facilities, healthcare and the like). In my judgment this case turns upon the impact that the proposals will have on the children's relationships with each of their parents,
80. The parents' current and likely future financial resources are such that I consider that they will be able to set up and maintain two separate households in the future. Between them they have capital of £1.3M and a combined annual income in excess of £400,000. I have no doubt that there will be compromises to be made. If relocation is permitted, the mother may well have to look for properties at the lower end of the range she has identified. If the children stay in England then there may need to be an adjustment in the parties' expectations as to the area in which new properties are to be purchased. However, given the combined resources available, I have no doubt that it will be possible for both parents to rehouse themselves in such a way that they can each comfortably to accommodate the children whilst they are with them. I am also satisfied that, if relocation is permitted, the parents will be able to bear the costs of the international travel involved.
81. Equally, I have no doubt that the children will receive a good education in whichever country they are living. There is uncertainty as to which school the children will attend whether or not I permit relocation. It is possible that if I refuse the mother's application, then VB may be able to remain at her present school, although the uncertainty surrounding the parents' financial position following separation makes this impossible to predict with any confidence. LB will be moving to a new school in any event, whatever the outcome of this application. It is clearly not appropriate for me to undertake a comparative evaluation of the respective school systems in England and Massachusetts and I do not have any material which would permit me to do so. I do however accept Mr Mamattah's evidence that VB and LB are:

“very confident children who ... would soon settle, make friends and thrive in any education setting. It is likely that the children will experience a change of school regardless of the court outcome and I view both VB and LB as having the necessary attributes and personalities to navigate these changes well.” (Emphasis in original).

82. There is also no doubt in my mind that there will be very good healthcare available to the children whether they are in the UK and the USA.

83. Mr Mamattah also states (and again I accept his evidence on this point) that:

“The children have several areas of resilience that would enable them to manage a move to the USA. Namely, their excellent social skills, experience of good quality parenting, their close relationship with both parents and support of significant others such as ... their nanny.”
(Emphasis in original).

I accept that as matters stand, the children have an established network of friends in London. However, I consider that they would be likely to build a similar network were I to permit their relocation to the USA.

84. A move will allow the children to see more of their maternal grandparents and other members of the mother’s family, in particular, her brother who lives nearby. Relocation will, however, impact upon the children’s ability to spend more time with the paternal family, in particular with their grandmother. In my view these points effectively balance each other out. Whichever proposal I accede to will see the children living in one country with a grandparent or grandparents in another. The important point is that both parents accept that the children should be encouraged to maintain close bonds with all their grandparents and that each parent envisages that the children will visit with some regularity the country in which they are not living and that this will afford them with an opportunity to maintain links with their grandparents and other relations.

85. I should add for completeness that the father sought to suggest that the mother’s brother was a heavy drinker and could not be safely relied upon to provide assistance at certain times of the day. I do not accept that father’s evidence on this point; there is evidence that the brother in question has taken steps to improve his health in order to be able to donate a kidney for a family member. In any event, even if the allegations were to be true, I am entirely satisfied that the mother would never permit the children to be placed in a position where they were at risk from his actions.

86. I have reached the conclusion that the key factor in the present case is the likely effect that each proposal will have on the parents’ mental health, and the extent to which this impacts upon the welfare of the children and upon each parents’ ability to provide the love and support that these children require. In my view this is the issue which reveals the crucial differences between the parties’ proposals.

87. I have formed the view that if the mother’s application is refused and I require her to remain here with the children, her mental well-being and her ability to parent the children will be greatly impaired. It is clear from the evidence that I heard and the presentation that I saw in court that the mother demonstrably is no longer coping with the situation in which she finds herself. Her evidence set out the difficulties that she now encounters with performing basic acts of day to day life such as getting out of bed or washing. Her view of the future was bleak:

“I cannot see a way forward if my application is refused.”

“I feel trapped in a recurring nightmare as though I am a windowless room with the walls closing in and no one to hear me scream.”

That the children, despite their ages, have noticed the mother's distress is plain. I was particularly struck by an incident identified by the mother in her oral evidence. She recounted LB telling her a joke and that when she failed to laugh at it, VB, (who is only 6 years old) told her younger sister *"Don't worry, Mum's just sad all the time."*

88. I accept what Dr Braithwaite has said about the mother's health and her extreme concerns for her health and safety if any further deterioration in her condition occurred. Whilst I recognise (as Ms Guha submitted) that there are a number of factors all of which may be contributing to the mother's current severe depression, including the breakdown of her marriage and the existence of these proceedings, I accept Dr Braithwaite's evidence that the relocation issue is the longest-standing of these and I consider that it is material to her current condition. Having heard the mother give evidence I have been left in no doubt that she has been overwhelmed by her desire to go "home". Whilst a decision by me to refuse the mother's relocation application would bring the current proceedings to an end for the time being, I do not think it would in any way blunt her desire to relocate to the USA or alleviate her current feelings of being trapped. I consider it likely that unless she is permitted to relocate, this desire will continue to eat away at her and to corrode her ability to provide the parenting that the two children require.
89. In my judgment there is every prospect that, should I refuse the relocation application, the mother's condition will remain as it is or even deteriorate further. In such circumstances the mother may not be able to return to work (which would have a very significant effect on the financial assumptions that underlie both parties' proposals for the future). Of even greater concern is the impact that a continuation of or a deterioration in the mother's current condition would have upon the two children. The mother is clearly already finding it impossible to conceal her own distress from the children and if I refuse her application I consider it highly likely that the children will be exposed to the reality of her condition.
90. Moreover, I have no confidence that a refusal of the application will resolve this issue for good. If I refuse the application, I consider it extremely likely that she would renew her application at some point in the future. Whilst this point cannot be determinative of the application, a continuation of the current dispute and the prolongation of uncertainty over the children's future lives in this country is not in their best interests.
91. By contrast, if relocation is permitted, as Dr Braithwaite has indicated, the mother's depression would be significantly improved. I find on the balance of probabilities that the mother would be able to resume her work and provide the children with the parental support that they need.
92. Against this I have to consider the effect on the father of a decision to permit relocation. I have accepted Dr Campbell's evidence of the father's condition and the likely impact upon him of a decision to allow the mother's application. Whilst the father was less visibly emotional in his presentation at the final hearing and in the witness box, I accept the toll that these proceedings and the issue of relocation has taken upon him too and recognise that the impact of my decision upon him may be just as profound as the impact upon the mother. However, given the evidence of the mother as to her determination for the father to maintain a relationship with the children and the contact arrangements that I will in any event include within my order, I do not see that it is likely (and is certainly not "inevitable") that the father will lose contact with the children. As such I do not consider that the worst-case scenario envisaged in Dr Campbell's evidence would be likely to arise.

93. Whilst it is clear that my judgment is likely to impact upon the health of one or other of the parents, it seems to me that acceding to the application to relocate offers the better prospect of shielding the children (whose welfare lies at the heart of my decision) from the full effects of this. Here I accept and adopt the point made by Mr Mamattah in his second report that although, if relocation is granted, there is a risk that the father will struggle to manage and his mental wellbeing will deteriorate further, the children “may experience less of an impact if they are not in contact with him daily”.
94. Both outcomes are far from ideal as, one way or another, a significant and adverse impact on health of one or other of the parents seems unavoidable. However, when looked at through the lens of the children’s welfare, I am satisfied that the mother’s proposal to relocate to the USA offers the better prospect of reducing the impact upon the children (so far as is possible) of their parents’ ill-health.
95. In reaching this conclusion I have considered carefully all of the evidence and submissions that have been provided to me. The children (who remain unaware of the proposed relocation) have not been able to express any wishes and feelings about a proposed move. I accept Mr Mamattah’s evidence that the children would wish to spend as much time as possible with both parents. Equally though I note that the children have already expressed concerns about their mother’s evident unhappiness. Whilst I recognise that my decision will interfere with the art 8 rights of the children and of the father I have formed the view that this interference is a proportionate one given the conclusions that I have reached as to which of the two proposals best advances the welfare of the children. In reaching this view I have also taken into account the evidence of Mr Mamattah that:
- “It is well known that separation is not necessarily what is harmful to children but the manner in which the parents manage this / expose their children to [this].”*
96. There is one further point that I need to address. Concern has been expressed on the part of the father as to whether the mother will abide by any contact arrangements that are put in place consequent upon my decision. A contentious part of the evidence related to the attitude of the mother towards the paternal grandmother generally and in particular steps that she was said to have taken to have disrupted a planned visit by the children to the paternal grandmother in January this year. That visit was to have taken place immediately after the parents, the children and the paternal grandmother had all returned to the UK following a visit to the maternal grandparents in South Carolina at Christmas 2021. Having heard both parties’ accounts I consider that it is likely that the mother’s actions played a role in the children expressing the wish not to travel on with the father to the paternal grandmother’s house and to instead stay with the mother in London.
97. That said, this issue does not affect my overall conclusions as to where the children’s welfare lies. The events of Christmas and new year 2021/22 took place whilst this highly charged application was ongoing, and not long after two final hearing dates had been lost. I have no doubt that the trip to the USA and the efforts that were required to conceal their differences from the children were hugely challenging for both parents. I do not consider that their conduct during this period can provide a reliable guide to their future willingness to abide by a set of contact arrangements embodied in a court order.
98. Having heard the mother’s evidence I am satisfied that if I permit relocation she will fully abide by the contact arrangements that are provided for in my order. The father has indicated that he would

Judgment approved by the court for handing down TR v JM (Children: International Relocation)
wish for a mirror order to be obtained (or for my order to be registered) in Massachusetts, and I accept that steps should be taken by the parties to ensure that the arrangements embodied in my order are enforceable by the father in the USA.

Conclusion

99. I will therefore make an order granting the application and permitting the mother to relocate the children to the USA.
100. Although the parents are not wholly agreed on the contact arrangements which should be put in place upon the children relocating, it was clear from the parties' oral evidence that they were not very far apart and that the mother appeared willing to adapt her original proposals to accommodate at least some of the father's wishes. I therefore agreed with counsel that I would not in this judgment rule upon these matters of detail but would instead provide the parties with my decision on the principle of relocation and then afford them some time to see if it is possible to agree the final details of the contact arrangements for themselves.
101. I will therefore invite counsel to have discussions to see if it is possible to agree the terms of an order reflecting agreed proposals for future contact arrangements. I ask that the parties provide me by 4pm on 1 July 2022 with either:
 - (a) An agreed order for my approval; or if agreement has not been possible,
 - (b) Short written submissions on any contact issues which remain in dispute.
102. I recognise that the coming months will bring considerable changes for the children and are likely to be stressful and difficult for all of this family. I wish them well and I express the hope that the parents are able provide the children with the crucial support that they will need during this difficult period of transition.