

Neutral Citation Number: [2024] EWFC 204 (B)

Case no.: OX23P00434

IN THE FAMILY COURT SITTING AT OXFORD

Date: 19 July 2024

Before: HHJ Vincent

Between:

MC

Applicant mother

and

FG

Respondent father

Jason Green (instructed by **HMG Law**) for the applicant mother
Elizabeth McGrath KC (instructed by **Bower & Bailey**) for the respondent father

Hearing dates: 10 and 11 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Introduction

1. The mother, father and their two children are from [Country Y, in Europe]. Since 2015, the father has lived principally in England. The mother and the children came to join him in January 2023, but by September 2023 the parents' relationship had broken down.
2. The mother now applies to relocate with the children to Country Y. The father opposes the application. He seeks orders that would provide for the children to remain in this country, and for them to spend equal time with each of their parents.

Chronology

3. The mother and father started their relationship in Country Y in 2011. The mother is a pharmacist, the father a doctor. At the time they started their relationship the father was completing his national service in the army and starting his residency as a doctor in his chosen specialism, [redacted]. The mother was working as a pharmacist and doing a masters degree.
4. Between 2015 and 2016 the father was seconded to Hospital [A] in England to complete his residency.
5. The parties were married in Country Y [in] September 2016.
6. [George] was born a year later, in August 2017.
7. When [George] was two months old, the father moved to [City B] to take up a two-year post at the University Hospital, which was later extended by a further year. During this time the father returned to Country Y to spend time with the family, and the mother and [George] visited in [City B] twice.
8. [Ella] was born in December 2019. The father was with the family for a month after her birth but then returned to England.
9. The covid pandemic in 2020 affected the ability of the family to spend time together.
10. In October 2020 the father returned to Country Y and set up in private practice.

11. In March 2021 he returned to England to take up a new job at [Hospital C]. In June 2021 he purchased a property in [Oxfordshire].
12. In January 2023, following renovations being carried out at the property, the mother and children moved to [Oxfordshire] to live together with the father. The children started at school shortly thereafter.
13. On 14 September 2023 the parties separated. The mother says the father's current partner, [Ms J], met with her on this day and confessed to the mother that she had been having an affair with the father for the past year. The father arrived and there was an altercation between the parties – a tussle over the father's phone. The father was arrested and kept in the cells overnight. Subsequently, bail conditions prevented him from visiting the family home. The father accepts that he is now in a relationship with [Ms J], but he says the relationship did not start until after he had separated from the wife.
14. Neither party has sought to pursue a complaint against the other in respect of the events of 14 September, either with the police or at court. Both are keen to put the incident behind them.
15. On 24 September 2023 the mother commenced divorce proceedings in Country Y.
16. On 28 September 2023 the mother applied to the Family Court in England for permission to relocate with the children to Country Y.
17. On 25 October 2023 the father issued an application for divorce in this jurisdiction, and cross-applied for child arrangements orders. He opposes the application for relocation. He seeks joint 'lives with' orders, and for the children to spend half their time with each of their parents.
18. At the FHDRA the parties were directed to file statements, and a section 7 report was ordered to be filed by 30 April 2024. A final hearing was listed for the first available date after 7 May 2024.
19. There were some difficulties around the arrangements for the children to see their father in the first few weeks after separation. They did not stay overnight with him until early November. Since December 2023 the children have spent four nights in every fortnight with their father. He has repeatedly asked for that to be increased to seven nights. The mother said the status quo should be maintained pending determination of this application. The court agreed.

The law

20. The law is set out at section 1 of the Children Act 1989. The children's welfare is the court's paramount consideration. The court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3).
21. Section 1(2) provides that any delay in determining a question with respect to the upbringing of a child is likely to prejudice the welfare of that child.
22. Section 1(2A) provides a presumption in favour of both parents being involved in a child's life unless that is proved to be contrary to the child's welfare. That involvement need not be equal and may be direct or indirect (s.1(2B)).
23. There is a large body of cases in which guidance has been given by the Courts about how to approach a relocation case. However, none of those cases takes away or adds to the essential requirement of focusing on the children's best interests, with particular reference to the welfare checklist factors.

The evidence

24. I have read the contents of the bundle, and heard evidence from the mother, the father, and the s7 reporter.

Hayley Elliott, Cafcass

25. It is somewhat of a luxury to have a section 7 report. There are no safeguarding concerns.
26. Ms Elliott did meet with the children, but did not broach the subject of their wishes and feelings about where they might want to live or about the time they might wish to spend with each parent. The children are not aware of the proceedings.
27. In the circumstances, Ms Elliott has not been able to contribute a great deal. Nonetheless, she has taken care over her role, considering all the documents in the bundle, meeting with the parents and the children. In her report she highlights all relevant factors, and sets out carefully her recommendations for arrangements in the event that the children remain in England or return to Country Y. However, she has not felt able to make a recommendation as to

which of those options she regards as being in the best interests of the children.

28. The cross-examination explored some of these factors with her, but the question of the weight to be given to the various different factors in this case is a matter for me. She was not persuaded to shift from her initial position to move more in favour of one or the other parent's case.
29. Both the mother and father are acknowledged to be loving, committed and devoted parents to their children. Each of them has acknowledged how important it is for the children to have a relationship with each of their parents, and has praised the other's contribution to the family. Although they disagree about where the children should live, whatever order is made, and wherever the children are living, these parents will do all they can to ensure that the children continue to have all their needs met, feel loved, supported and safe, and continue to thrive.

The mother

30. The mother advocated for her position with conviction and clarity. She said that she had supported the father's choice throughout the marriage to work in England, but it had not been easy. She said that she was very anxious about moving to England, but the father had assured her that if it did not work out for her and the children, they would return to Country Y as a family.
31. She has obtained work as a pharmacist in the same hospital where the father works. She works four days a week. She gets on well enough with her colleagues, and has more recently met a friend [from country Y] who is also a pharmacist, but these are not the same as the friendships she has at home with friends from childhood. She said yes, she copes with work, and tried to do it the best she could. She said in many ways her work was rewarding, she had learned new things, but in other ways there were limitations, she was not able to do all the things that she had done as a hospital pharmacist in Country Y. While of course she could laugh with her colleagues at times, that did not mean she was happy. She said she was in survival mode.
32. It was suggested that she was bitter about the way the marriage had ended. She said no, she felt 'emptied', 'and betrayed', but not angry or bitter. I accept this.
33. When it came to questions about her children, she did not hesitate, she would do whatever was required to meet their needs; if they stay in England, she will stay, and she will make it work. If they return to Country Y, she will ensure that their relationship with their father is promoted. She was resolute in this,

and to this extent came across as strong and determined, as described by father's counsel. However, she is in a state of limbo. The life she has lived at least since separation has been one where she has made plans in response to the situation she has found herself in. She is not at this point in control of her own future, but must wait for the court's decision.

34. Her motivation in making the application is clear. She is no doubt that it is in the children's best interests to return with her to Country Y, to the life they had before January 2023. It is obvious why she herself would choose not to remain living in a country that she has not chosen to live in, where she has experienced the breakdown of her marriage, and where, as a newly separated parent, she would be away from all the networks of family and friends that she would have in Country Y. I considered it ungenerous and unfair for it to be suggested to her that in bringing her application she was seeking to punish the father, that she wished to be 'compensated', or that she was knowingly putting her own desire to return home before her children's best interests.
35. The maternal grandmother has been living in England since separation (returning to Country Y on occasion to spend time with her husband and to meet visa requirements). The mother's evidence was that if the court refused permission to relocate, the maternal grandmother would continue to provide as much support to her as she could. However, given that the maternal grandfather lives in Country Y, her home and her life is there, and the visa situation is not clear, this cannot be guaranteed.

The father

36. The father spoke with equal conviction about his perspective. He said that the decisions, firstly for him to work in England, and then to bring the children to England to be educated and raised here, were made jointly by the parents, and were decisions made that were in the best interests of the children and the family as a whole. He did accept that he had said to the mother that if the move to England did not work out, they would return to Country Y as a family. However, he maintained that their plan had always been to settle in England permanently, this was not any kind of trial run so far as he was concerned.
37. He acknowledged that before the children and their mother came to England, she had been their primary carer, but he said that had fundamentally changed when they moved to live in the same house. He had been fully involved in the children's daily lives, read them stories and tucked them up at night, and taken them to and from school. To move them to Country Y now he says, would

fundamentally disrupt and change their relationship with him, to their detriment.

38. The father said that his years away from the family had not been easy on him, that he had made sacrifices in order to build a better life for them all.
39. The father relies upon a statement from the paternal grandmother. She says that if the children were to remain in England, she and her husband would be willing to travel to England to provide support to the father with childcare.

The section 1(3) welfare checklist

(a) the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);

40. The children are too young to have been asked about their wishes and feelings.

(b) their physical, emotional and educational needs;

41. The children are dependent upon the adults in their lives to meet all their daily needs, to keep them safe, to look after their health, to support them in their education, and in making friends and having fun.
42. Their relationships with each of their parents and of members of their extended family network need to be nurtured and supported. This will ensure they feel loved, secure, grow up with a good understanding of their identity, and place in the world.

(c) the likely effect on them of any change in their circumstances;

43. When the children moved to England, [George] was five and a half, and [Ella] was three. They have now been in England for eighteen months.
44. If the children remain in England they will have some continuity, because they will likely remain at the schools they currently attend. They go to [Country Y language] school on a Saturday and this too will continue. They will grow up speaking and writing both English and [language of country Y].
45. They will continue to see much more of their father than they did when they were living in Country Y. He will be fully involved in their lives, in and out of school, and he will be an 'every day' parent, living in the same place as them, not just visiting. It is likely that they will spend a greater share of their time with their father than they do now.

46. Nonetheless, their situation in England is not fully established and settled. They are about to face some changes in their circumstances. The family home is now on the market. It is anticipated that it will be sold and their mother will have to find a new place to live. Their father is staying with friends at the moment, he too will have to find new accommodation once financial matters are resolved. The father is in a relationship with a partner who has children. If this relationship sustains, the children may have to navigate becoming part of a different family unit. This is not inevitable, and is of course to be anticipated following the breakdown of any marriage, but in the particular circumstances of this case, it is not a purely hypothetical scenario.
47. If the children return to Country Y with their mother they will live in the house that they lived in for all their lives before moving to England, and in which the maternal grandparents also live.
48. [Ella] would go to the nursery that [George] attended, and [George] would go to the local primary school. This would be a significant change after they have spent eighteen months in English schools, but they are very young, they speak [language of country Y], and are of an age where it is generally easy to integrate with new friends, just as they did when they came to England.
49. They would return to a situation that more closely resembled that of their early years, living with their mother in Country Y and their father being based in England. The time they spent with their father would be regularised by court order or agreement between the parties. They would be seeing him more often than they did pre-2023, but would be spending much less time with him than they do in England. This change would be a loss to both them and to their father. They will miss him.
50. The children would see both their maternal and paternal grandparents very regularly, as well as members of their extended families.
51. The children have been described as resilient. They coped exceptionally well with the move to England and settled very well into school, where they are thriving. With these qualities, and loved and supported as they are by both their parents, there can be some confidence that they will be able to manage any further changes well, whether that means remaining in England and absorbing the further changes that come as their parents establish separate households post-divorce, or relocating to Country Y.

(d) their age, sex, background and any characteristics of theirs which the court considers relevant;

52. [George] is seven, [Ella] is four and a half. There are no additional relevant characteristics that have not already been considered.

(e) any harm which they have suffered or are at risk of suffering;

53. The children have not suffered harm, and are not at risk of suffering harm.

(f) how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;

54. Each of these parents is well able to meet the children's needs.

55. There has been some discussion about the mother's mental health. I have not received any expert evidence. The picture I have gained from the mother's evidence, corroborated to an extent (or not challenged) by the father, is that at times of stress the mother has consulted with clinicians for support with her emotional well-being. This would appear to be down to external factors, rather than the mother having any diagnosis of a mental health condition. She says she consulted someone in 2015. More recently she was prescribed a course of anti-depressants in December 2022 at a time when she was feeling anxious about the impending move to England. She has again been seeing a psychiatrist for the past year or so to get support arising out of the challenges posed by the breakdown of the marriage. She has been prescribed some medication at a low level.

56. Being ordered to remain in England will be difficult for her, and her current unhappiness will likely persist to some degree, for some time. That may well present a challenge to her as she continues to parent her children, but, as the father acknowledges, she has managed exceptionally well to care for the children and to shield them from her own worries.

57. It has been suggested by the father that if the children relocate to Country Y there is a risk that the mother will not promote the children's relationship with their father. I do not find this concern to be justified.

58. It is understandable that it was difficult to make arrangements for the children to spend time with their father in the first few weeks following separation. Although they were not initially staying overnight with him, they were seeing him regularly. Overnight stays started after six weeks. The father has repeatedly asked for the time the children spend with him to be increased so that they spend half their time with each parent. The mother's view has been that pending her application being resolved it was best to maintain the status quo of four nights a week. Two previous judges reviewed the arrangements

and agreed with the mother's position. If the children remain in this jurisdiction she says she is not set against a fifty-fifty shared care arrangement, but would like there to be a staged progression towards that.

59. There was one day in October half-term of 2023 when the mother did not make the children available to spend the day with their father. This was because she had discovered that the day before the father had taken the children to an event at which they had met [Ms J] and her children. The children saw their father the following day, making four days out of five in the half term week. Since then, there have not been any times when the children have not seen their father as arranged. The mother has not raised any concerns about how the father is caring for the children, she has acknowledged that he is a loving and attentive parent to his children.
60. In this respect, the father came across as somewhat intransigent and lacking in empathy. His perspective was very clear, that at point of separation he should have been entitled to spend half the time with the children, and the mother had stopped this. He accepted that he had persistently asked for more contact, even after the issue had been raised and settled at court hearings. He said yes, he had instructed his solicitors to send a number of letters on this point, and he would send 'twenty hundred' emails if that was what was needed. He criticised the mother for being upset about the children encountering [Ms J], and says it was a work event. He suggested that the mother had put her own feelings before the children's needs and stopped contact as a reaction. He did not acknowledge even that she had the right to feel upset, saying the marriage did not end because of any affair, it had broken down because over the years they had become alienated from one another. He said the marriage was finished anyway.
61. By her words and actions the mother has made clear that she fully supports the children's relationship with their father and with the wider paternal family. If she and the children relocate to Country Y, she has said that the children could see the father whenever he came to Country Y, either in the paternal grandparents' home, or in the family home, and she would stay elsewhere. She did not agree to his initial proposal that he should spend the entirety of the [country Y] school holidays at Christmas, Easter and in the summer with the children, but suggested that they could spend more than half of the twelve-week summer holiday with him. She told me that when they lived in Country Y she and the children spent a lot of time with the paternal family, even when the father was in England. She said they spent Easter and Christmas together, the paternal grandparents would visit weekly to see the children, and would support her by regularly looking after the children if she had to be at work.

(g) the range of powers available to the court under this Act in the proceedings in question.

62. Having regard to all the circumstances, with reference to each of the factors on the welfare checklist, I conclude that the mother should be permitted to relocate to Country Y with the children. I set out my reasoning below.
63. The children and the mother have been in England for just eighteen months (the mother's application was made after nine months in England). In the context of their whole lives, that represents an interlude, there is nothing about their situation that is permanent. They are at the outset of their school lives, do not have long-established friendships, nor have they become integrated with another family, or made other connections that would be difficult to unravel from. Older children may have committed to a particular curriculum or exam system, be more invested in their friendships, or activities out of school. None of those factors applies here.
64. By contrast, the children do have established and permanent connections to Country Y. Their maternal and paternal grandparents live there, as well as other members of the extended family, and significant people in the history of their parents' lives. It is the place of their birth, of their formative early years, of their language and culture.
65. If the children remain in England, these relationships and connections will of course sustain, but they will not be nurtured in the same way that they would if they are raised in Country Y, living very close to their grandparents and other members of the family network.
66. If the children remain in England there would be a further period of uncertainty about where each of their parents would live. Delay in determining their future is inimical to their welfare interests.
67. The children would be supported through that transition by each of their parents, and each of the maternal grandmothers could well travel to be on hand to offer further support. However, the reverse situation of them returning shortly to a house in Country Y where they have lived all their lives until January 2023 offers immediate certainty and stability. It is a place where they would have guaranteed support from all four maternal and paternal grandparents, as well as other members of the extended network of family and friends.
68. The father's proposal places significant constraints on the mother. He says if life in England is too difficult for her, she could go back to Country Y without the children. This does not represent any kind of choice for her; she is clear

that she would never leave her children. The father suggests that it is the mother who has reneged on a promise to settle in England, and they agreed this was in the best interests of the children. This is not a reasonable position. Firstly, he accepted in evidence that he agreed that if things did not work out in England, they would return to Country Y as a family. The mother did not promise to stay in England come what may.

69. Secondly, the context has changed. The plan to settle permanently in England was predicated on the marriage sustaining, but it has broken down. The father does not regard himself as bound by any promise to return to Country Y, because they are no longer together. Yet he asks the mother to stay in England on her own while he establishes a new life with a new partner.
70. If the children relocate to Country Y they will move from their current schools where they feel settled and are thriving. They will lose the opportunity to become bilingual with comparative ease. However, there is no dispute that the children were settled and thriving at their schools in Country Y, and that there are good schools in the public and private sector that they can return to. Both their parents are highly intelligent and speak excellent English. Their father intends to remain in England, so they will be able to build on the English language skills they have acquired in the eighteen months since they have lived in this jurisdiction.
71. The father says the English education system is better than [country Y's]. I have not received any evidence to support that, and no issue has been taken with the quality of the [Country Y] schools proposed by the mother. I do not accept that the family's original plan for the children to be educated in England is one that should be pursued at all costs.
72. The most significant negative for the children of a relocation is of course the change in the relationship with their father that will be brought about. After many years in which they were primarily cared for by their mother and their father was abroad, visiting five or six times a year (save for the six months from October 2020 when the father lived in Country Y), they then had nine months of living in the same household as their father. Following separation, they see him four days out of every two weeks.
73. If the children are in Country Y they will probably see him more than they did pre-2023. They will spend quality time with him during school holidays and at additional times when he can visit Country Y. On any view it will be different from the current situation. He will not be able to take the children to school, or take them to activities at the weekend. He will not be the 'every day' parent that he has been, nor the 'equal' parent that he hopes to be, having the children with him every other week. He will of course continue to share equal parental

responsibility for the children with their mother, regardless of the amount of time the children spend with each parent.

74. The children will undoubtedly miss their father and be sad that he is not involved in their lives in the way that he has been for the past eighteen months. Nonetheless, they have a loving and strong bond to their father, which existed before they came to England and despite the fact that the father lived in a different country. That loving and strong bond was nurtured and supported by his regular visits, by the phone and video calls, and through his continuing interest and pride in them, and from the loving care and attention he gave to them when he saw them.
75. In these ways the children's relationship with their father will sustain even if they are living in different countries. By the very nature of the relationship and the parents' joint commitment to supporting it, the loss of their father as an 'everyday parent' can be minimised.
76. It will of course be hard for the father to revert to a situation in which he is separated from his children, having enjoyed living with them in the same country, and having had the opportunity to be involved in their lives to a greater degree than pre-2023. He says that the years when he lived on his own in cramped doctors' quarters building his career in order to earn money in order to support his family were difficult and lonely.
77. There was no doubt sacrifice on his part, but that is no basis for 'compensating' him now by the children and their mother being required to remain in England. Firstly, because on any view there is an element of choice in his decision to remain in England. As well as nurturing his relationship with his children, he wishes to pursue a fulfilling career and to maintain his new relationship. Secondly, because the mother also made sacrifices; while he was in England, she was alone in Country Y, caring for two young children.
78. There are gains and losses in respect to each option, but weighing all the factors in the balance, my clear conclusion is that the children's welfare is best met by them relocating to Country Y.

Child arrangements

79. I am confident that the parents, ably assisted by their legal representatives, will be able to work out the arrangements for the children to spend time with each of their parents. Once the children regain habitual residence in Country Y any disputes that may arise over these arrangements will need to be resolved in Country Y.

80. It is anticipated that the father will be able to visit for some weekends or short days when he has leave during term time, so he may be able to pick up the children from school occasionally or come to a school concert or sports day, but in general it will be the children's mother who is with the children day to day. The father of course will see this as a loss for him, but it must also be recognised that caring full-time for school age children whilst holding down a job brings its own demands. It is right that the children get the chance to have some 'down-time' and holidays with their mother as well as their father.
81. I would suggest that the parents split the Christmas and Easter school holidays, which are around two weeks long, (alternating so that the children take it in turns to celebrate Christmas and Easter with each parent).
82. My starting point would also be an equal split of the summer holidays, which in Country Y is twelve weeks long. This is because I doubt the father would in fact be able to take six weeks off from the NHS during the summer holidays, and if he could take that amount of holiday, it may be preferable for him to use some of that time to spend time with the children during term times so that he sees them more regularly throughout the year. However, I have not had detailed information about the father's work schedule or intentions around this. I have seen a letter from his work indicating that he would be afforded flexibility in his work to accommodate childcare needs. If the parties agreed in all the circumstances that there should be a shift in the father's favour, I wouldn't have a difficulty with that, although I would agree more with the mother's suggestion of seven weeks out of twelve rather than any more, for the reasons given.
83. These proceedings mark the end of a difficult period in these parents' lives. It is to their credit that despite the challenges they have faced, they have at all times sought to put their children first. As a consequence, they are the parents of two delightful, engaging, settled, and happy children, who are surrounded by love. I have full confidence in these parents to continue to be the very best parents they can be to their children. I wish them all the best for the future.

HHJ Joanna Vincent
Family Court, Oxford
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