Neutral Citation No. [2012] NIFam 2

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Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered:	**28.02.2012**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

BETWEEN:

S H

-and-

R D

-and-

R H

WEIR J

Anonymity

[1] This judgment has been anonymised to protect the identity of the child concerned. Nothing may be published concerning this matter that would lead directly or indirectly to the identification of the child, its parents or grandparents.

Background

[2] These proceedings were transferred to this court by order of Her Honour Judge Loughran sitting in the Family Care Centre. They concern a child, K, a girl now almost 5½ and consist of an application by SH, the child's father, for a joint residence order and by RD, the child's mother, for leave to remove K to live with her in Australia. They are respectively the fifth and sixth applications that have been made to court concerning the arrangements for K in the course of her short life.

[3] The father is a man of 36 years who lives on a farm owned by his elderly parents. He has an NVQ Level 2 qualification and some GCSE passes. Apart from

some temporary paid employment on a neighbouring farm at the end of the 1990s and a period of taxi driving in the early 2000s he has never had a job and lives as a paid carer for his father for which he receives state benefits of approximately £90 per week. The mother is Australian aged about 38 years and holds a doctorate in a specialist scientific area. She came to Northern Ireland from Australia in June 2002 to take up a university appointment at the suggestion of her academic supervisor who had some Northern Ireland contacts. The parties met in 2004 or 2005 and around May 2005 they moved to live on the father's family farm in the same house as his parents. K was born in October 2006 as the result of a planned pregnancy. In January 2007 the parties moved to live in a separate farmhouse on the farm that had been renovated for their occupation. The mother had continued with her university work on a series of short term contracts and following the expiry of her maternity leave around April 2007 she returned to work with the father caring for K on Tuesday, Wednesday and Thursday while the mother was at work and K attending day nursery each Monday and Friday.

[4] In April 2009 the mother was made redundant owing to cost saving measures at the university and has been unable to obtain employment in Northern Ireland ever since. It appears that following the redundancy she began to speak more seriously about the idea of moving to Australia where she was hopeful of finding employment but that suggestion did not meet with the father's approval and so concerned does he seem to have been about the possibility of her removing K to Australia without his permission that the first of the several court applications was launched by him for the purpose of preventing K from being removed from Northern Ireland. At that stage the parents were still residing together but in November 2009 the mother moved out to independent accommodation and in December 2009 the first court application was concluded with a residence order being granted to the mother with contact to the father between Sunday afternoon and Tuesday when he was to leave K to her nursery school for collection by the mother at the end of school.

[5] It appears that around this time the mother ceased to bring K to the nursery school on Wednesdays without informing the father that she had done so.

[6] In January 2010 RH, the paternal grandmother, decided to launch her own proceedings seeking a contact order and in the following month the father launched the third application, on this occasion seeking a residence order. In March 2010 both those applications were refused by the Family Proceedings Court and the grandmother appealed that refusal to the Family Care Centre with the result that, by consent, she was granted a contact order which enabled her to have three hours contact on a Tuesday, collecting K from the nursery and keeping her until 3.30 pm that same day. At about this time the father and grandmother ceased bringing K to the nursery on Mondays or Tuesdays with the result that instead of attending on the three mutually agreed days of Monday, Tuesday and Wednesday she in fact did not attend at all. Just as the mother had not informed the father about the cessation on Wednesdays he did not inform the mother about the cessation on Mondays and

Tuesdays and it seems that some time elapsed before each parent became aware accidentally of what the other had done. It was agreed that there had been no prior consultation between them before either had taken their unilateral action.

[7] In June 2010 there were further disagreements between the parties. The mother requested the father to agree that K should attend a different nursery on five days a week but the father was resistant and said that K could attend on those days when the mother had care of her, namely on Wednesdays, Thursdays and Fridays. This resulted in the fourth court application which was an application by the mother for a specific issues order to enable the attendance of K at the new nursery school on each of the five week days. As a result of that application the contact arrangements were changed so that K could attend at that new nursery school throughout the week and the father would then collect her from the new nursery school on Fridays and she would in turn be collected from his house by the mother on Sunday mornings. The grandmother's contact altered from a Tuesday to a Monday. These contact arrangements remained in place at the time of the hearing before me.

[8] In September 2010 SH launched the fifth application, this time for a shared residence order. The proposal was not supported by the court welfare officer, an extremely experienced social worker whose everyday task is to seek to broker suitable arrangements between conflicted parents. In a report to the court dated 24 February 2011 she enumerated a number of issues that had arisen between the parents including disagreements about birthday party arrangements, whether K should or should not have dairy products, what primary school she might attend in the future and overnight toileting techniques. Her assessment was as follows:

> "The applicant has applied for a joint residence order. I believe for this to be successful both parents should be able to negotiate and be flexible in relation to issues that may arise. The applicant has stated that the respondent and he have no animosity towards each other and communicate effectively regarding K. In speaking with the parties this has not been demonstrated to me."

Her conclusion and recommendation was that there should be no alteration in the current arrangements other than for some minor adjustments to holiday contact. This is the first of the two applications before me.

[9] In March 2011 the sixth application, the mother's application for permission to relocate, was launched. The proceedings were first transferred to the Family Care Centre and at that level Her Honour Judge Loughran granted an application by the grandmother to be joined to the proceedings and transferred the applications for joint residence and for permission to relocate to this court. Before the matter came before me Master Wells helpfully made an order that the Official Solicitor be requested to act in this court on behalf of K and she kindly agreed to do so.

The evidence in this court

[10] Each of the parties and the court children's officer gave evidence before me. In summary their evidence was as follows. The mother confirmed that she is an Australian who moved to Northern Ireland to find university work in her specialist field. She met the father three or four years later and had, as earlier described, commenced to live with him after a period of months and thereafter gone with him to live with his parents in their house on the farm. She said that prior to K's birth they had got on fairly well particularly because she was working full-time so that they were not around each other all the time. Their plan was to move to a renovated farmhouse on the lands and she was happy with that. When she was working at the university the father was acting as carer for, she then believed, his mother whom she knew had had a stroke in the past. His father seemed very active about the farm on which they kept sheep. She was not successful in obtaining a permanent contract but her temporary contract had been renewed several times over seven or so years until April 2009 when it was not further renewed. She had thereafter applied for jobs in the two universities and also with commercial concerns but although she had had interviews she had not had success in obtaining a job. She said that her major aim is to obtain employment and that while she would like to go back to Australia to be with her mother and wider family that is not her driver. In order to support herself she did some sewing making children's clothes and handbags from which she earns about £2000 a year and in addition she receives income support and child benefit. The only material help that she receives from the father or his parents is a dozen eggs per week and some firewood from the farm. Her monthly rent is £450 and the landlord is seeking to increase it to £480 whereas her housing benefit is capped at £400. As a result she thought that she would have to sell her car and that this would create problems in picking K up from the father on Sundays. Her evidence was that if she had been able to find a job in Northern Ireland at a salary of about £25,000 she would be willing to stay here. She had given thought to how contact could be managed if she relocated to Australia and was proposing that she would come back to Northern Ireland for holidays with K and that she would also facilitate visits by the father to Australia and arrange, if he wished, for him to have accommodation. In November 2011 she had received a job offer with an Australian company to commence on 5 February 2012. The letter of offer was produced. The salary quoted is 74,640AUD.

[11] The mother gave detailed information about the enquiries she had made about K's possible education and social activities in Australia. Her intention would be to move in initially with her mother who lives a short distance from the facility where she would be working and then to look for her own home. She described her mother as being in her early 60s in good health but for diabetes for which she take medication. Her mother has retired from her job in a bank, having previously been a scientist. The mother's working day would be a flexible 7½ hours and she had made enquiries from the local school which would be in a position to take K. She said that they had four kindergarten classes with a maximum of 20 pupils in each

class with school hours between 9.00 am and 3.00 pm. In addition the school has before and after school programmes in which it gives preference to the children of single and working parents. Her hope was that she would be able to bring K to school and her mother would also be willing to help with pick ups and drop offs. She had enquired about the local Girls Brigade and Girl Guides and discovered that there was swimming and Irish dancing available. She described the suburb in which her mother lives as "fairly affluent", her home having been inherited from her grandmother. Her mother had some properties which she was willing to sell to buy a house which could be rented to her and meanwhile they could stay with her mother as long as they liked. She said that she knew that K would miss the regular contact which she presently has with her father and grandparents and that she considered it would be completely unfair to K to deprive of those relationships. She felt that they were just as important as her relatives in Australia. She said that she had never stopped the contact with SH and his family and did not intend to and presently facilitates K in talking to her grandmother on the telephone. She said that she found it very stressful to have repeated applications to court and that it worried her that she kept being brought back to court and wanted to get on with her life "I think that we don't work together well …. we don't communicate well and if there were a shared residence order then every issue would have to be heard in court e.g. schooling. If [the father] does not succeed today I am expecting to be brought back to court again".

[12] The mother was cross-examined by counsel on behalf of the father, grandmother and the Official Solicitor. There was a degree of overlap in the questioning but the principal themes were as follows. The mother agreed that K is happy and content with her present arrangements and that it would be a big change to move her to Australia. However she felt that it would be a benefit to her to have at least one parent employed outside the home and she did not believe that she would be able to find a position in Northern Ireland. She denied a suggestion that she had made much more effort to find a job in Australia than here and pointed out that there are many more jobs available there for someone with her qualifications. She readily agreed that if K were to move to Australia that she would miss her father and that he would miss her and similarly that she benefits from seeing her grandparents, who are aged 67 and 70, as often as she does. Asked about the nature and whereabouts of her other family members in Australia the mother explained that her sister who has three children lives about 12 hours drive away and agreed that the extended family would not therefore be as accessible to K as those who live here. It was suggested to the mother (rather improbably in my view) that the father did not realise that she had financial problems and that if he had been asked he would have been willing to help. It was suggested to her that her own mother could help her with the cost of running her car and she agreed that this was a possibility but that it would not be able to go on indefinitely. She accepted that if K went to Australia she would lose out on her relationships with her paternal grandparents and her father but that as against that she would see her maternal grandmother which she thought would be a benefit. In reply to questions from me RD said that she was struggling financially and looking at having to move home and sell her car.

On the other hand in Australia she would be self-sufficient. It seemed to me from watching her closely as she gave her evidence that the witness had a very low and despondent mood. I asked her about her health to which she replied that it was generally okay but that she had found this very stressful. She had been suffering from heartburn and had been given beta-blockers for help with panic attacks which she suffered, for example, if she was late in dropping K off at her grandmother's. She felt that the court cases had put her under pressure and that while she generally speaking tried to be calm she did get stressed.

[13] The father gave evidence of the history of his relationship with the mother which was generally consistent with that given by her. In relation to his view as to what he had anticipated was likely to happen after K was born he said that he was of the impression before the pregnancy that the mother was "kind of settled" in this country and that if they had a child they would be here for a couple of years at least before the mother would have any idea of moving on or going back home. He said that it was about two months after the mother was made redundant that she began to talk about emigration at which stage they were still living together and he was aware that she was looking at possible jobs in Australia. The witness thought that it would not be possible for him to move at that stage as he would not have got a visa but he does not appear to have taken any active steps to explore the possibility and my clear impression from his evidence both on this point and on others is that he has no intention of leaving his parents to whom he seems more than ordinarily attached and dependant for a man of his age. The position therefore was that the mother was indicating that if necessary she would go on her own to Australia and he was fearful that she would remove K without his permission which was why he had obtained the prohibited steps order and sought a residence order at a time when they were still living together. In December 2009 they had gone back to court and around the same time the mother had moved out to her own accommodation in a town some 20 miles away. A residence order had been made by consent in favour of the mother with defined contact to the father. At that stage K was attending a private nursery to which he brought her during his contact on the Mondays and Tuesdays and the mother brought her on Wednesdays when she was living with her. The cost of the nursery was £4.20 per day which the father paid. In January he discovered that the mother was not bringing K to the nursery on Wednesdays and he then withdrew her from the nursery on his days because he noticed she was "distressed". He agreed that there was no exchange of information between the two, for example at handovers, and for that he blamed the mother saying "there was really no willingness – you were ignored or dismissed. I would have been inclined to avoid conflict - it would be portrayed as me getting at her". He described the activities that K enjoys while staying with him on Fridays and Saturdays and her meetings with her four cousins. There was a discussion of a trip which the mother had had with K to Australia during which, although he was offered SKYPE contact, he declined to have it because he thought that it was perhaps not appropriate in case she developed homesickness. He repudiated any suggestion that his mother had been any more involved in their parental or personal affairs than any other grandparent would have been and said that initially relations between his mother

and the mother "were not too bad. There were tensions." He did however say that the mother was keen that they move into their own home and that that happened when K was a couple or three months old. He provided attractive photographs of the interior of that home, K and various family members including the grandfather which are retained on the court file.

[14] In cross-examination the father denied that his mother had been interfering both before and after K was born and said he was unaware of an incident when his mother had to be asked to leave the room by a health visitor when she tried to insist on being present during her visit to the home to see the mother and K. He further claimed not to have discussed with his mother "in any detail" why she was applying for a contact order and he was not able to say why she needed to apply for such an order. He agreed that he has a very close relationship with both his mother and his father. He did not think that his father needed a contact order. There was also agreement with the evidence given by the mother that there were on-going disputes about matters such as giving K dairy products and toileting techniques at night time. He said that it was not obvious to him that although the mother was living on benefits she was not in a good financial position. He agreed that he could see the advantage for her in going to work in Australia but he could also see disadvantages for K. He agreed that the mother had facilitated contact for him and his family and did not dispute that her "track record" supported the view that she would maintain contacts. He said that if the applications to relocate were accepted then he would have to use SKYPE and agreed that that had previously been offered to him while the mother and K were on a visit to Australia.

[15] The grandmother gave evidence that she had three sons, the first two of whom had been taken from her when she was younger in circumstances that I need not describe in this judgment beyond saying that those events were in no way her fault but resulted from insensitive behaviour on the part of her own parents. She was now firmly reunited with both those children and described in some detail and with obvious pleasure the details of those sons' families. She mentioned having frequent contact with them both at her own home and by travelling to see them and explained that K very much likes to see them as well and does so once every month or three weeks. It was claimed that she had been very good to the mother before K was born and when she heard about K's forthcoming birth she had said "maybe it will come on my birthday". She felt that everything was grand until K was born and that after the birth she babysat whenever she was asked but claimed that the mother took K away on Saturdays and Sundays to get her away from her and her husband. When in July 2009 she heard for the first time that the mother was considering returning to Australia she found it "hard to try to get your head around". She felt that the mother did not want her to see K even before the separation and that she had locked the door of the house. She said, (in my view rather oddly), "It was as if [the mother] was possessive of her". She said that she had looked up grandparents' rights on the computer and that she found it hard to talk to the mother because she felt that "she was talking to herself". "There is no communication between me and the mother about K. [The mother] won't say to me anything about what has

happened. I would like to foster better relationships with her – I tried when she was next door." She felt that if K were taken away from her paternal family she would be upset and that she could imagine her on the other side of the world crying for her father and her granny. In her opinion the matter should be put back until K could make up her own mind and that it would break her heart if K were taken to Australia and that, while being familiar with SKYPE, she could not use it to look at K knowing that she was on the other side of the world. She thought there was no advantage whatsoever in K going to Australia. She recalled the incident with the health visitor and said she had only gone up to the room because she heard the baby crying and wanted to see what was happening. When she saw that they were trying to learn to breastfeed she had come away. She then added gratuitously "She was my first legal grandchild".

[16] The final witness was the court children's officer who provided the report on shared residence earlier referred to and a second report dated 22 August 2011 in relation to the relocation application. At that stage the mother had not obtained her offer of employment in Australia. The witness was of the view that K is not of an age whereby her wishes and feelings may be effectively ascertained in respect of the issues before the court, a proposition that no party disputed. Concerning the shared residence application she said that she did not think such an order would work. She had seen no evidence of the parents working in partnership and she considered that the child is likely to suffer emotional harm if the present situation continues. In her view it would undoubtedly become worse as time goes on. Regarding relocation she had no firm recommendation to make if relocation were permitted but she considered that there would have to be technology such as SKYPE employed and that the effectiveness of indirect contact would depend on the willingness of parents to make it work. She had suggested mediation when the matter was before the Family Proceedings Court but while the father had said that he was agreeable she was not sure if he was and the mother had said that she did not think there was much chance of success. It was put to the witness on behalf of the father that there are authorities that suggest that parents do not have to like each other in order to work a shared residence arrangement to which she replied that that was so but that they did have to work co-operatively. Pressed about the merits and demerits of relocation she said again that she did not feel able to give a definitive answer but that if the relocation were properly managed there would perhaps be benefits for the child in relocation and if the child is not to relocate then a lot of work would have to be done to improve the situation here for K. She considered that K is well cared for and lives in a very good situation with her mother who could benefit from having more money. She also felt that there could be an advantage if a parent is employed as it encourages a child towards its own employment in due course. She thought that this was a very stressful time for the mother with these difficult relationships and that perhaps she needed help from her GP. She did not believe that the child is insulated from the adults' problems and that the older it became the more these had the real possibility of causing harm. There had been a total breakdown in communication and the child was bound to suffer. Matters such as the dairy products and toileting had been badly handled and it was unsatisfactory that these

parents seemed only able to communicate through solicitors. She thought that while probably either parent could provide an acceptable standard of care she was concerned about the "triangle" consisting of the two parents and the grandmother. She did not consider that there was any objection to the use of SKYPE if there were relocation and that in her limited experience children enjoy talking to people that they can see. She felt that the present lack of enthusiasm on the part of the father and grandmother to use SKYPE was probably more because it would be upsetting for those adults rather than for K.

Submissions

[17] The parties will I hope forgive me if I do not set these out in their entirety as they followed broadly predictable lines. Mr Devlin BL on behalf of the mother submitted that the evidence established that the move to Australia would be in K's best interest. It was plain that a poor parental relationship existed including the involvement of the grandmother and the court children's officer had opined that things could only get worse. It was questionable whether mediation could work but if the child were to stay then it would have to be attempted. He acknowledged that both parents were to blame for the situation and submitted that if there were the move to Australia then one parent would be responsible for the day to day parenting, negativity would be removed from the life of the child and contradictory decisions avoided. On the material side, the mother would have been willing to take a job in Northern Ireland at a relatively low wage but had been unable to find one. She had now been offered a job at the equivalent of £45,000 per year and the family circumstances would therefore improve. The father has not provided any real support so that the child's home is in jeopardy and the mother may be unable to retain her car. The paternal family, whilst focusing upon the importance of the relationship between K and themselves, seem to attribute no importance to the corresponding potential for K's relationship with her maternal family in Australia. The mother was prepared to return the child to Northern Ireland for a holiday and to assist the father in making trips to Australia when he was able to do so. The intensity of feeling caused by the several applications to court since mid-2009 had caused much mudslinging as evidenced by the various statements of the parties filed in their support and while, if leave to remove were refused, the mother would obviously remain in Northern Ireland it would be very disappointing for her and she would inevitably continue to suffer stress. There was no evidence that the current contact arrangements had not worked satisfactorily and in particular there was no instance of contact between K and her father and grandparents being denied despite all the arguments that there had been between the parties over the various issues. It was submitted that this was a reliable predictor for the continuation of contact in the future and that, by way of safeguard, the mother was willing to have a consent order made in the Family Court of Australia in terms that would mirror whatever arrangements were arrived at in the present proceedings. Finally, as to

shared residence, his submission was that this is plainly not a case for shared residence as it would lead to even more contention than presently exists.

[18] On behalf of the father, Ms McIlroy commenced by saying "we are left with a delicate balancing exercise". She reminded me that the child was planned and conceived by two parents who had agreed to have her and that in the early period while the mother continued in employment the father was the "stay at home" parent and the child had continued to benefit from her relationships and activities and has a wide circle of friends. She agreed with Mr Devlin that whatever the outcome of the present application something needed to be done to improve relationships. As to the application for shared residence she submitted that such orders are no longer exceptional and that, notwithstanding the existence of differences between the parties, the making of such an order was not ruled out in this case. As to the application for leave to relocate, it was the opinion of her client that the mother had made much more effort to obtain employment in Australia than here and that she was motivated by a desire to escape from further court proceedings. Her client's fear was that contact might not continue although it was acknowledged that the mother had not obstructed contact while they had lived in Northern Ireland. If relocation were to be permitted she would ask for the maximum possible contact and pointed out that the efficacy of indirect contact very much depends upon a cooperative relationship between the parties. She agreed that K is too young to be consulted about her future arrangements and urged that the welfare checklist test should be carefully considered.

[19] On behalf of the grandmother, Ms McKenzie agreed that tensions have clearly arisen. She accepted that Northern Ireland is a small place and that the academic community here is close- knit but speculated that the mother may perhaps not have been offered jobs because that community knew that she had in contemplation the possibility of returning to Australia. She acknowledged that the mother had said in the course of her evidence that she wanted to put an end to on-going court proceedings and that the court should give consideration to this. It was the desire of the grandmother to continue to spend time with K and it had been acknowledged that there no complaint about the quality of the relationship which K and the grandmother enjoyed.

[20] Ms Murphy on behalf of the Official Solicitor, who had provided the court with a most impressive skeleton argument discussing in depth both the factual and legal considerations, observed that the Official Solicitor did not have a finite plan. She pointed out that the child has a close relationship with her extended paternal family and that if she were to move to Australia with the time difference of approximately 11 hours a determined effort would be required in order to maintain contact. She referred to the recent decision of Stephens J in the case of Grace (A Pseudonym) [2010] NI FAM 15 in which, at paragraph [30], that Judge had set out detailed arrangements for future contact in that case in which he had permitted the child to relocate to Australia. Ms Murphy's suggestion was that in the present case there should be a decision in principle as to whether relocation was to be permitted

and, if so, the parties should then engage in a discussion of the detailed future contact arrangements along the lines of the approach taken in Grace. The Official Solicitor concurred with the social worker's view of the unsuitability of a shared care order in this case. As Ms Murphy put it, there didn't seem to be any acceptance of any errors on the part of any of those involved. She considered that it was not possible to give the court any example of a willingness on the part of the three to work together in a shared care arrangement.

The law

[21] In a recent relocation decision, SL v RG [2012] NI FAM 1 I discussed the present state of the law on relocation and adopted as my guiding approach to such cases the following passage from the judgment of Black LJ in MK v CK [2011] 3 FCR 111 at para. [141]:

> "The only authentic principle that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child."

Consideration

[22] It is plain and no one disputes that each of the parties in the present case very much loves K. Unfortunately they have been quite unable to do so in a way that is complementary. Even before the father and mother separated recourse was had to court proceedings and that pattern has continued since with the grandmother becoming an active and enthusiastic participant in them. Matters that could easily and should have been the subject of discussion and agreement concerned with K's schooling, diet and other personal matters have instead become fuel for the destructive fire that has burned with undiminished intensity for the past 2½ years, fanned no doubt by the ready availability of legal aid. Anything that could be disputed has been disputed with the exception of the contact arrangements which appear to have worked relatively well, ensuring that K has had good levels of contact with her father and paternal grandparents and the wider paternal family to her evident benefit and enjoyment.

[23] What would the future hold for this child if she stayed here or if she were to go to Australia? If she stays here I see no prospect of an improvement in relations between the parents and the mother and the grandmother. There was no admission in the course of the proceedings by any of the parties that they had done anything to contribute to the unhappy relationships and in those circumstances I am unable to see how, as everyone did concede would be required, improvement in relationships has any prospect of being effected. The social worker has indicated that this is likely to increasingly impact upon K with every decision in her life, whether of importance

or no importance, being squabbled over in the course of the emotional tug of war to which she has been relentlessly subjected. The mother is a highly educated person with an impressive academic record and is plainly most unhappy at being unable to find appropriate employment after so many years of education and research and at having been reduced to making handicrafts in order to supplement her life on benefits. She has lived a straightened existence since her university employment came to an end and I reject the disingenuous assertion on the part of the father and his mother that they were unaware of the difficulties she was having in making ends meet. The provision of eggs and firewood was a mean response to the predicament of K and of her mother as K's principal carer. I have no confidence that they would mend their ways in this or any other respect if K continued to live in Northern Ireland with her mother.

[24] I have no doubt that the mother's desire to relocate to Australia is motivated by two principal factors, namely a desire to obtain employment at the level for which she is eminently qualified and to put an end to the depressing series of court cases that have rained incessantly about her head and that of K. I watched and listened very closely to her as she gave her evidence and I am entirely satisfied that she suffers from low mood and is psychologically beaten down by the relentless involvement in disputes with the father and the grandmother both in and out of court over issues both trivial and more important. Her state of mind cannot be of benefit to K who will, as she begins to become older and more aware of the family dynamics, herself feel burdened by her mother's unhappiness and sense of defeat.

[25] On the other hand, if K were to relocate to Australia, I have equally no doubt that the father and the grandmother would feel a considerable sense of loss. In this case the grandmother, possibly as a result of her own unhappy early parenting experiences, has in my view taken much too prominent a role in the life of this child and has interfered inappropriately in the relationship between the parents and between the parents and child both before their separation and subsequently. She has confused the role of a grandparent with that of a parent with most unhappy consequences. Furthermore, she appears to allow nothing for the benefits which K would receive from having contact with the maternal grandmother and extended maternal family in Australia and seems incapable of seeing any point of view other than her own in relation to K's upbringing. She would undoubtedly feel a considerable sense of loss and deprivation if K were permitted to go to Australia but she has a close relationship with her other children and grandchildren to whom she is plainly also very close. At the moment she is sceptical about the benefits of SKYPE as a means of keeping in touch with K but I see no reason why those should not be overcome.

[26] As to the father, he will also be greatly affected by the loss of the level and quality of contact with K which he has enjoyed. The sad reality of all relocation cases is that there will always be a parent who regards him or herself as having "lost" since the child cannot live in two countries at once so that that outcome is inevitable. However, if the child were to relocate I am satisfied that both by way of

visits by the mother with K to Northern Ireland and by the father to Australia and regular intervening SKYPE contact the effect of the separation would be mitigated though not of course avoided.

Conclusion

[27] I am satisfied that none of the parties to this case is motivated by any improper desire to deprive any other of contact with K. I find that the mother wishes to relocate for the reasons I have mentioned and the father does not wish her to do so because he and his mother genuinely desire to have the good level of contact which they presently enjoy. However, apparently unseen by all of them there is a small and vulnerable child buried beneath this collapsed scrum and I pay great attention to the uncontroverted evidence of the highly experienced social worker that the present situation, in which I see no realistic prospect of betterment, is injurious to the child and will become progressively more so if the present arrangements continue. Indeed no counsel, apart from the unenthusiastic mention of possible mediation, suggested how matters might be improved. For my part I do not consider that mediation would have any prospect of success in this case within anything like a reasonable timetable for this child. The parties are each simply too unshakeably convinced of their own rectitude and the grandmother is in my opinion quite incapable of altering her fixed point of view and her son incapable of separating his point of view from hers. K deserves a happy, carefree life without conflicting messages and on-going family battles and of that I consider there is no prospect if she continues to live in Northern Ireland. On the other hand, in Australia she would have the benefit of a materially comfortable existence with a mother who feels fulfilled in her work and enlivened by the lack of on-going disputes and would have the compensatory benefit of contact with her maternal grandmother and wider family. I have carefully considered each element of the welfare checklist in reaching the firm conclusion on the particular facts of this case that, provided that suitable contact arrangements can be agreed or ordered and suitable safeguards put in place by the making of a mirror order in the courts of Australia, K's welfare will be best served by permitting her to relocate to live with her mother in Australia.

Future contact arrangements

[28] I followed the suggestion of Ms Murphy that I should indicate my decision in principle to the parties so that, if the decision were in favour of relocation, they could discuss future contact arrangements. Having done so, the parties did then apply themselves to agreeing a very detailed future contact schedule which was incorporated in the Order of 26 January 2012 although agreement to those arrangements on the part of the father and grandmother was of course subject to their primary contention that relocation ought not to be permitted and that a joint residence order ought to be granted. I do not propose to set out the details of the schedule here but the arrangements appear to have been exceptionally well thought out and, provided they are complied with, appear to me to provide the best possible platform for on-going contact between K and her Northern Ireland family.

Postscript

[29] If confirmation be sought of the proposition that these parties are quite unable to work collaboratively and sensitively together in the interests of K even despite all that was said at the hearing, it may perhaps be found in the following circumstances. After my Order of 26 January 2012 had been made the mother had to travel to Australia in order to take up her offer of employment as she had been unable to negotiate a postponement of the start date of 5 February 2012. It was therefore agreed between the parties that K would remain here with her father until such time as the court proceedings had been concluded by the making of the necessary mirror order in Australia and any possible appeal against my order had been determined. On the very next day following the mother's departure the father, without any consultation either with the mother or the school, removed K from her primary school and enrolled her at a primary school near his home. This thoughtless action, which must have added greatly to the distress of K at the departure of her mother from whom she had never previously been separated, was only reversed following an immediate application brought on behalf the mother to this court. Thus did the father continue to demonstrate his single-minded determination to have his own way in relation to K without consideration of how the child might feel at being simultaneously deprived both of its mother and of her school friends.