In the Family Court at Barnet (sitting at Court 24, Royal Courts of Justice) 2 and 3 October 2024

Case Number ZW23P01572

Neutral Citation Number: [2024] EWFC 283 (B)

Before DDJ Nahal-Macdonald

Sitting in private

In the matter of the Children Act 1989

Between

DV (mother)

v

ZV (father)

Re: Final Hearing, Application for relocation to Poland

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.

Preliminary

1. The case before me heard over two days on 2 and 3 October 2024 at the Royal Courts of Justice, was a Final Hearing in a 'private law' matter under the Children Act 1989 concerning a child, ('C') who is seven years old. There were cross applications brought by the applicant father, who I shall refer to as 'F' as is customary, and the respondent mother, who will be referred to as 'M' in turn.

2. F at the outset of the hearing sought the following orders from the court:

a) a *Child Arrangements Order* ('CAO') pursuant to section 8 of the Children Act 1989 ('the Act'), to the effect that C would live with both parents on a 'shared lives with' basis, and spend time with each, including overnight contact.
b) a *Prohibited Steps Order* ('PSO') also pursuant to section 8 of the Act, to the effect that M be prohibited from removing C from the jurisdiction.
c) an *Occupation Order*, pursuant to section 33 of the Family Law At 1996, to the effect that M would be ousted from the *Former Matrimonial Home* ('FMH') and that he may return to live there. Currently M and C live there alone and have the benefit of exclusive use and the protection from M via a *Restraining Order* made in the Magistrates Court. On this, F changed his position during the hearing, following an indication from me as to the merits of that application and that there are ongoing proceedings in Financial Remedies. He wisely asked and undertook for that matter not to be decided by me but to wait for the conclusion of the FRC proceedings.

3. M sought, in turn, a cross application that C live with her (a 'CAO') and that she be given permission to relocate with the child to Poland, which is where both M and C were born, and where F and M met and married and lived for the first six months or so of C's life prior to moving to England. Clearly the central issue in dispute between the parties, and one in binary opposition to each other, was for the court to determine whether C continue to live in the UK or in Poland. As the Social Worker for the family encapsulated in evidence to the court:

"the issue of relocation is a complex issue which has advantages and disadvantages to both parents… on both sides there are pros and cons"

4. F was ably represented by Miss GONELLA, and M by Miss ROCHA, both of counsel, before me. I give sincere thanks to both advocates for their balanced, measured and incisive cross examination of the parties and for their assistance to the court. The court heard from a Social Worker ('SW') for the family, 'CN' and from M and F in turn. Each gave helpful and compelling evidence as to their respective positions and insights into C's needs and how they would be met in respect of whether I allowed M to relocate or not.

Background

5. F is 54 years old and British. M is 35 years old and is from Poland. They met in 2016 in Poland, where F was at that time working and living. In April 2017 they married, and in September of that year, C was born, and is now seven years old. In March 2018, F moved back to the UK from Poland and in August 2018 M moved to the UK with C to live with him as a family. Owing to a deterioration in the relationship between the parents, by November 2023 they had separated. They are now going through separate divorce and financial remedy proceedings vis a vis the assets of the marriage, which sadly appear to be acrimonious.

6. M and F both raised allegations of domestic abuse against the other, variously of a controlling, violent, and oppressive nature. As is sadly rare in these cases, neither sought to pursue a separate *Fact Finding Hearing* ('FFH') as to those allegations, and indeed whilst I was not directly addressed on it, I infer that one of the prior Judges who heard this case (noting that there have been no fewer than five judicial colleagues who have made orders in the case, including Deputy District Judges, Recorders and a Circuit Judge) had determined that a 'FFH' was otiose.

7. In November 2023, F was arrested for allegations including coercive and controlling behaviour, kidnap and assaults upon M. In the fullness of time, after investigation by the police and consideration of the evidence by the Crown Prosecution Service ('CPS') the matter came before Highbury Corner Magistrates Court. Eventually, F was convicted only of the matter of an assault by beating pursuant to Section 39 Criminal Justice Act 1988 (often called a 'common assault') dating to his arrest in November 2023. I have seen details of the conviction and note that the allegation comprised of F pushing M against a wall and breaking her fingernail in so doing. F denied this and I am told he was convicted after trial, and made subject to a Conditional Discharge for 24 months and a Restraining Order prohibiting him from contacting M. F maintained his denial of this matter, but I took judicial note of his conviction and will not go behind it. I am told that F is still under investigation for more serious offences, but that is a matter for the Police and CPS.

8. F has made counter allegations largely mirroring the several criminal complaints against him by M. I have been shown a document from the Metropolitan Police Service outlining that M will face 'no further action' ('NFA') for those allegations, owing to the lack of sufficient evidence.

9. Notwithstanding this litigation under the Children Act; the ongoing Financial Remedies Court ('FRC') proceedings under the Matrimonial Causes Act 1973 ('MCA') and the recently concluded criminal court proceedings, it is remarkable, and heartening that CN outlined in her report that both F and M were loving and earnest parents and that both had a positive relationship with C. It was perhaps even more remarkable, that M has managed to somewhat compartmentalise those other matters and facilitate contact between C and F. That contact currently takes the shape of every second weekend and midweek overnight contact. I commended the parents for their ability to put aside their major differences in an effort to co-parent, and to put C first, even in extremely adverse circumstances. This is not the norm in such cases.

10. It is with that background that the parties came to the final hearing. As to job prospects and living standards, both have had a difficult time recently. F is a producer for film and television by trade, and freelance, but has cited a downturn in those industries coupled with other reasons for a lack of paid work. F is barred from the FMH by way of court orders, and clearly it will need to be sold and divided in due course, but there is said to be real jeopardy that the home may be in danger of repossession as both parties have struggled to pay the mortgage and their respective overheads – as is not unusual in cases such as this – referred to in the FRC as a 'needs case'.

11. M works in real estate marketing, and notwithstanding recent promotions at work, is struggling to make ends meet with the high cost of living as a single parent in London. She has the offer of paid work in marketing in Krakow, Poland, where she has previously lived and worked. She knows the area well, as her parents live around two and a half hours from the city in a bucolic town with a large house set amidst a forest. Notwithstanding her salary will be lower than in London, such is the markedly lower cost of living, M seeks to persuade the court that she would have enough money to rent a comfortable flat for her and C, and to pay for a bi-lingual international

private school in the City, at which C has been offered a place. M also cites the promise of a familial network nearby and monetary help from the family, as reasons that, overall, C would have a significantly higher quality of life if the court approves her relocation.

The legal framework

12. Counsel assisted me as to an overview of the most pertinent caselaw in the field of relocation out of the jurisdiction and with submissions as to how I should approach the legal framework in analysis of the competing positions. It may be helpful to the reader to outline the pertinent points here, but, as will become clear, there is not a special test for relocation as compared between, say, Poland and Portsmouth – the overarching considerations are as to the best interests of C apropos of the well-trodden 'north star' for parties known as the '*Welfare Checklist'* at section 1(3) of the Act.

13. Whist section 1(3) provides a list of considerations for the parties to address in respect of each parents' ability to care for C, and her specific needs, it may be noted that section 1(2A) provides a statutory presumption that, unless the contrary is shown, both parents ought to be involved in the upbringing of a child.

14. I will address the *Welfare Checklist* again as it relates to C later, but for now it is worth reciting that it reads as follows:

(3)[…] a court shall have regard in particular [when exercising the powers under s.8] to—

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

(b)his physical, emotional and educational needs;

(c)the likely effect on him of any change in his circumstances;

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

(e)any harm which he has suffered or is at risk of suffering;

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

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

15. As outlined by HHJ Jones in *F v M* [2016] EWHC 2691, the principles relevant to the specific issue of relocation are found at sections 8 (re powers of the court) and 13 (re the prohibition on removal from the jurisdiction without the courts permission) as supplemented by the cannon of case law. At paragraph [38] of the same, the learned Judge noted:

[38] *"Applications under s.8 and s.13 of the Children Act 1989 are supplemented by the relevant case law. The effect of the well-known triad of cases (Payne v Payne [2001] 2 WLR 1826; K v K [2012] 2 WLR 941; Re F [2013] 1 FLR 645) is summarised in the decision of Mostyn J in Re TC v JC [2013] 2 FLR 484. I adopt his summary at para.11:*

"(i) The only authentic principle to be applied when determining an application to relocate a child permanently overseas is that the welfare of the child is paramount and overbears all other considerations, however powerful and reasonable they might be.

(ii) The guidance given by the Court of Appeal as to the factors to be weighed in search of the welfare paramountcy, and which directs the exercise of the welfare discretion, is valuable. Such guidance helps the judge to identify which factors are likely to be the most important and the weight which should generally be attached to them, and, incidentally, promotes consistency in decision-making.

(iii) The guidance is not confined to classic primary carer applications and may be utilised in other kinds of relocation cases if the judge thinks it helpful and appropriate to do so.

(iv) The guidance suggests that the following questions be asked and answered (assuming that the applicant is the mother):

> *(a) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?*

(b) Is the mother's application realistically founded on practical proposals both well researched and investigated?

(c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

(d) Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?

(e) What would be the extent of the detriment to him and his future relationship with the child were the application granted?

(f) To what extent would that detriment be offset by extension of the child's relationships with the maternal family and homeland?

(v) Since the circumstances in which such decisions have to be made vary infinitely and the judge in each case has to be free to decide whatever is in the best interests of the child, such guidance should not be applied rigidly as if it contains principles from which no departure is permitted.

(vi) There is no legal principle, let alone some legal or evidential presumption, in favour of an application to relocate by a primary carer. The old statements which seem to favour applications to relocate made by primary carers are no more than a reflection of the reality of the human condition and the parent-child relationship.

(vii) The hearing must not get mired in taxonomical arguments or preliminary skirmishes as to what label should be applied to the case by virtue of either the time spent with each of the parents or other aspects of the care arrangements."

16. HHJ Jones went on to say, that in the specific case before the court [involving an application to relocate to the USA] that:

[41] "Whilst a balance sheet approach might be of assistance, this is not an arithmetical exercise. As emphasised by Macfarlane LJ at para.52 of Re F, the court should attribute weight to any relevant factor and, therefore, it is perfectly possible for one factor to have greater weight than two or three other factors."

17. Further, the case of *C (Internal Relocation)* [2015] EWCA Civ 1305, reiterated the test and shortly encapsulated the approach to untangling it:

"[82] As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. [my emphasis added] *The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional."*

18. In short, therefore, the welfare of C is paramount here, and I needed to apply a holistic approach to balancing the competing arguments for and against her relocation, noting that it is neither an arithmetic exercise but one which will, by definition, leave one parent disappointed. It is not an easy decision and I hope that both parents recognise that I have given anxious consideration to their views, but that C's needs are the paramount concern of the court which may tip the balance one way or the other.

The Social Worker's Evidence

19. The court heard evidence on the first day from the social worker (SW), CN, who had provided the court with a very long *'Child & Family Assessment'* report in November 2023, and a shorter 'section 7' report with recommendations in April 2024. CN was cross examined by both counsel and adduced useful information as to each parents' ability to look after C and considering recent developments in the criminal matter.

20. CN explained in cross examination by Miss ROCHA for M, that the Local Authority had become involved with the family in 2023 following concerns of domestic abuse raised by parties in the couples' church. From this, she had been involved with assessing C and each parent. She was aware of the recent conviction of F, and that his own allegations had not been progressed by the police and/or CPS, and felt that this was a concerning sign of lack of insight on the part of F – he had maintained to CN that he was the victim and that he had never committed violence against M. Clearly, by reference to his conviction, this was not true.

21. CN explained that F had in turn made a "huge number" of allegations against M, including denigrating her mental health vis a vis her ability to care for C. CN had checked this thoroughly including via M's GP and C's school, and found no basis for these complaints. CN reiterated that this was another source of concern, because false allegations represent a form of manipulation of M by F which would be of direct detriment to C.

22. CN was of the view that there was no evidence of neglect by M, and indeed I took the view that her report of M's ability to care for C was that she was an exemplary parent. CN explained that a lack of stable housing was a cause for concern, and that whilst she could not give an opinion either way on the "*complex issue*" of relocation, she noted that M's wish to move back to Poland did not seem to be from a point of trying to negatively impact C's contact with F.

23. CN was asked whether she had any concerns about C moving to an English-speaking school in Poland. She had no concerns about that, she considered C to be a *"very bright child and at the age of six she can adapt very quickly wherever she goes, if given the opportunity to develop"*.

24. CN was asked *"are you confident that M has made realistic enquiries to see if the move to Poland is realistic?"* she answered *"yes, from what she has told me, her family are there and even when M and F were together, there was no concern about C going there on holiday. When it became clear to M that she wanted to move to Poland, she was sure about it"*

25. She was asked as to M's motivation to relocate, and opined that from what she remembered, M had told her that *"she came to the UK because of marriage and now that has ended, she has a family back in Poland and she met F there and got married there, and so she has less support here, going to Poland would be the most suitable option to her and C"*.

26. With respect to how finely balanced the competing positions are, CN gave evidence that a refusal of relocation could have a huge impact on M: *"if M is not*

psychologically stable or happy in the UK then it would have a direct impact on C. People tend to adjust to situations. She would likely be happier, better supported in Poland. This would have a direct impact on M".

27. Conversely, CN was pressed as to her ultimate recommendation in the section 7 reports – one that C should live with M and have contact with F. She explained that her report was based on the situation at the time, it was working well with the child and she was used to the routine. She knew the day she would go to her dad. CN insightfully and perhaps reflectively asked herself *"why change what is already working for a child?"*

28. Indeed, the central proposition of *"if it is working well currently, why change it"* was the crux of questions in turn from Miss GONELLA on behalf of F. CN confirmed in further examination that *"obviously the distance would make weekly contact more difficult if M relocates, that reduces the frequency of C seeing F, and would have an effect on his relationship with her. Not seeing F for a long time would most likely have an impact on the bond and attachment with F, and she benefits from this with both parents"*

29. When asked if it was preferable to have a similar amount of contact with both parents, the witness confirmed *"C's relationship with both parents is excellent and the reason I came down to the conclusion in my report – my recommendation was because we want C to have a solid routine and the plan as was, was working well"*

M's Evidence

30. M gave evidence in chief where she confirmed she was not in a rush to immediately move to Poland, if I gave her permission to do so. She said she would respect the view of the court, and not do anything to disturb C's education or mental wellbeing. Her most likely approach would be to plan for the end of the current school year and to then relocate during the summer in 2025, to minimise disruption and prepare C for the new school year in Poland. In answering questions, I had as to the school year in Poland, M explained that Polish children enjoy a longer summer break, but no October half term, however the rules were more relaxed there such that a parent could take the child out of school with notice and she would not object to contact with F

between September and Christmas. She agreed that regular contact and a break of not more than one month or so between seeing each parent was preferable.

31. In cross examination by Miss GONELLA, it was put to M that moving to Poland would be an obvious cause of disruption to C. She answered that: *"Every single change results in both positive and negative effects, C is only 7 years old, she will be able to adapt and live a happy life. She has grandparents, cousins, uncles who miss her in Poland. Her contact with them was disturbed by F. Change is always hard, but not every change means it is worse – it is better that C lives in a house with no beating, no changes, no drama, and her wishes are always based on what she wants to do. F is not the parent now that he has been during the last six years of the marriage"* On further probing, M confirmed that this meant that F was doing better as a father but that she felt he had a long way to go to live up to his responsibilities, and that in the prior six years of their relationship, she felt he had put himself first.

32. It was put to M that C was currently insulated from the prior toxicity of the relationship between the parents and that she therefore had no imperative to move her to Poland. She responded that *"[her] primary goal is to give C the best life she can have. I have no financial or emotional support – I am alone in this country – the only reason we are in the UK is because it was the decision of F at the time. C is my primary person that I care for, I will always sacrifice, but in order to give her the best of life and to take care of her Polish roots and maintain those and develop that bond with the country and the language, the move is the best option. The only reason I was in the UK was because of my husband, who is now gone. I have no support from F toward C. I cannot provide the best quality of life to C here, and F provides no emotional or financial support to us"*.

33. It was put to M that in context of her allegations of abuse, and despite her difficulties as to the quality of life in London, she is doing "incredibly well". She answered stoically that *"I have no other choice, I was abused, I had enough strength to stand up for myself and fight for my child. I am setting an example for my child as a woman, but I am not willing to do this for the sake of a man who abused me to be here for his benefit. I am her mother and will be in her life the majority of the time."*

34. It was put to M that surely the presumption was that F should be actively involved in C's life, and she answered that *"I absolutely respect and acknowledge his role but his rights as a father carry responsibility and he does not meet those, he is failing. He told C that we would be made homeless, he offers no financial help at all for his daughter. If he is fighting for his rights, he should also meet his responsibilities"*

35. It was put to M that her real intention was to reduce contact between F and C, and she responded that this was *"Not my intention. I may not forget but I can forgive. Whilst C is growing I want her to have contact with F. I know that the best I can give her is in Poland and it is only two hours away. F met me in Krakow, he lived there and had a successful businesses there, we got married and C was born there. It is not my intention to reduce contact with F – I would do anything to maintain that contact as much as they wish. I am also happy with indirect contact."*

36. When probed as to whether M had discussed the possibility of relocation to Poland with C, she demurred and suggested that she had not done so directly, as she did not want to build up C's hopes and prejudge the outcome of the case. She said "*We have had gentle conversations about it, I didn't want to prejudge the decision or to rush C. I did not want to confuse her*."

37. In turn, Miss GONELLA suggested that C had no desire to be in Poland, but M refuted this, saying that *"her desire is huge, she loves Poland, my family is extremely focussed on C. She loves the space, the gardens, the chickens, my sister has a daughter the same age, the neighbour has a child a similar age"*

38. When asked if relocation was refused, would M still be able to take C on holiday to Poland and would that not be sufficient, M said that *"I would not be able to provide the best quality of life to her in this country, if I am living here I would not have enough money to rent or buy a property – we are only here for the benefit of a man who made my life hell. Last year I was not be able to go to Poland for Christmas – I respect whatever the Judge will say. I obeyed all the rules. Why would F not live in Poland?"* she reflected.

39. When pressed as to the minutiae of the financial consequences of the proposed relocation, M confirmed that school fees would be around 30-40% of her salary, but that her parents have a special fund for C which will pay toward this too, which currently stands at around £9,000 and would cover school fees for a significant period. She opined that if she did not care about C's English identity she would not put forward a multi-lingual school. She maintained that the one in question is an excellent school, 2.5 hours from the family home in Alfredowka, which is where C would spend free time including weekends and holidays, time permitting.

40. I asked her specific questions about her estimated outgoings in Poland, M explained she would earn around £1800 per month, that £600 per month would go on school fees, £400 on rent and utility costs, leaving £800 per month for living expenses, supplemented by her parents.

41. It was put to M that F says he is not working at the moment. She questioned this, noting that she felt F is able and intelligent and there is nothing stopping him from having a stable job and income. I inferred from the totality of the evidence that there were serious holes in F's account as to whether he is working or not, or pecunious or not, as will be discussed when I recount the pertinent parts of his evidence. I infer that this is probably due to ongoing impasse in FRC proceedings, but it was not helpful.

42. Miss GONELLA suggested that the relocation would damage the relationship between C and F. M said "*Absolutely not, I feel it will give more benefits to C for me not to be in an oppressive, loveless environment and with peace. F is still finding ways to manipulate me, and the police are still looking into this. There were at least seven allegations from F which resulted in NFA, and he is extremely obsessive and manipulative. It is making me nervous and worried and taking time from C"*

43. In turn it was put to the witness that with the benefit of a Restraining Order there was no risk to her at the moment. She retorted that *"during the marriage F refused to even get up to look after C –I am sorry, but he was here for six years and is only improving in the last six months. He is trying to do better as a parent in the last six months, but he still puts his own needs first on occasion like with the dental appointment which clashed with his playdate, so he did not take C"*

44. In re-examination by Miss ROCHA, M confirmed her view that she would not do anything to disrupt the academic wellbeing of C, and would only seek to relocate during the school holiday next year, and would have support from her parents to do this.

F's Evidence

45. On the second day of the case, the court heard at length from F in examination in chief and then cross examination. Somewhat unusually, F chose to start his evidence by launching into a soliloquy as to his skill at parenting and his relationship with C. He failed to mention anything of note positive about M, and indeed strayed on several occasions in to disparaging comments about what he felt were her obstructive traits.

46. Of note, he said that C was "*the love of my life*" and said that he had been *"very involved in her life up to the first two and a half years of her life, during and post lockdown, I took time out of work, and used savings. Since then, I have been the primary carer for her, I have done all the school drop offs and pickups. We are extremely close and share a similar personality, and we even look quite similar. All the bigger developmental parts of looking after her are very important to me: educationally, emotionally, financially. We laugh together, hug together, kiss together and watch movies together. We go cycling, and I have recently moved into a two-bedroom place so that she has her own room. Since things imploded it has been very hard for us. I have put her into music lessons, I am an artistic and musical person, I studied music at University. We have done gardening together, we have planted fruits together, I have recently taught her to ride a bike in a cycling school over the summer. These moments are really important for C as well as me. Some of the things like in school, she was made school council – I helped her write a manifesto for that using her points of view. She said she wanted to help the homeless and she is so proud of her position, representing the school for her year. I met the teachers recently – these are all important for me to be in her life on a daily and weekly basis. For the sports day and assembly, C asked me if I could go to these as M could not make it – C really wants me to be involved"*

47. F went on to say that C calls him "*her friend*" and that they have an extremely close bond. He sees her approximately two or three days per week, and the proposed move to Poland would have an extremely destabilising effect on that pattern.

48. When asked if he had discussed the idea of relocation with C, who has just turned 7 he said *"I had a conversation with C about me and M talking to the court about where she would live. She told me she loves it here and she loves her school. She asked me to make that happen, I told her that was a matter for the Judge. She asked to speak to the SW and I told her that I thought they had closed the case and would not want to speak to her again. She cried"*

49. In questions arising from this narrative from me, F confirmed inter alia that:

    i) He had not made any contemporaneous note of this apparently vital conversation with C
    ii) He had not raised it with CAFCASS, the Social Worker or the Court or his solicitors
    iii) He had discussed C's wishes with members of his church

50. I noted my extreme concern with this approach, not least the apparent prima facie contempt of court to discuss this matter with third party individuals not involved in the case, in direct contravention of the prior warnings in orders in this case. F later accepted that discussing court proceedings with C was not appropriate but told the court that he felt that his own understanding of C's wishes and feelings should be noted. I noted that this would have been probative evidence to put before the court, but that there was no mention of it in written evidence nor anything said to lawyers or the court prior to today. It was also far from edifying that M and her legal team were unable to prepare for this new evidence. I decided in all the circumstances that it would be prejudicial for me to attach any probative weight to this part of the evidence, as to admit it would be totally unsafe and without foundation. I noted my disappointment to the parties, and also noted that there had not been an application before me to adjourn for an addendum report in light of this new evidence.

51. In cross examination by Miss ROCHA, F was asked a series of questions pertaining to this alleged conversation with C about the relocation. It was put to him it was inadvisable to discuss the matter with a then seven-year-old when the expert had taken the view to do so would be inappropriate at that stage, and before determination of the matter. F said *"it would be traumatising to not tell her, she would not have time to prepare, it would be extremely impacting upon the child. I have talked to her based upon her maturity. She is very mature as a person."* I took the view that no matter how mature, a seven-year-old must have discussions of that serious nature done in the right way – with both parents and the expert SW involved, not unilaterally as here.

52. When asked about his prior time living and working in Poland, F gave a convoluted answer, but it was eventually clarified that he worked for international clients and that there was an ex-pat community in Krakow including his then boss, who was English. He had evidently been good as his job as he set up and managed a team of 22 people. I took the view that there was good evidence that F had lived and worked in Poland with no issue and could do so again.

53. As to his current employment situation, F was equally convoluted and at times I felt evasive. I have already given the view that I infer this is partially down to ongoing FRC proceedings, but it was not helpful. After pressing by Miss ROCHA he explained *"I have a job offer at the end of the month. I had a job some time ago. I don't currently have a job. I was working and was self-employed. I invoice under a limited company. The last job I had was around December 2023"* he confirmed that the new job would pay £8,000 a month, or £96,000.

54. In the very next answer, and in direct contradiction to his current situation, F said that he left Poland as he needed to find work, that he was someone who "*couldn't just do nothing*" he said he "*was freelance so it was easy to find work*" – these two points directly contradict that he is currently unable to find work despite being self employed and having worked for clients around the world.

55. F was asked "*do you accept that you were physically abusive to M?*" noting his recent conviction for assaulting her. *"I am appealing this"* he told the court *"I don't accept it. My MP is very concerned. I want to see justice done"*

56. As a matter of judicial notice, and the advocates will be familiar with my prior background in criminal practice, I note that the fact of F's conviction in the Magistrates Court is conclusive evidence of a finding of guilt. I note that he maintains his innocence, and he has a right to an appeal to the Crown Court. Such an appeal will be a hearing *de novo*, at which instant he will be un-convicted again, until such time as the Crown can persuade the bench of his guilt in that court. That calls for theory as to what may or may not happen. At the moment, as I say, he stands convicted and does not accept he has abused M, which I found to be lacking in insight.

57. F was asked by Miss ROCHA to confirm that in the context of an ongoing criminal matter and eventual conviction, he was still seeking for C to come and live with him. F said he had demurred from this position on legal advice, and that he did not agree with the SW report, but he was happy that M was "*getting some scrutiny*" to make sure she was looking after C. When pressed on this, he said he meant that "solicitors, barristers, Judges, Social Workers" were now checking that M was looking after C.

58. As an aside, I found it impossible to reconcile that on the one hand F described the professionals in this process as looking to scrutinise M and yet did not agree with the findings of the Social Worker nor of the professionals involved in his criminal matters as to his own conduct, but that was indicative of a fundamental lack of reflective thinking on his part as to his own parenting ability and potential deficits.

59. F was cross examined on his stated view that M was spending "*unsavoury time*" with a work colleague, which he stood by. He seemed to suggest infidelity on M's part, notwithstanding this has no logical nexus to this case and no obvious connection to her ability to parent C. I took that to mean that F is still angry at M and blames her for the breakdown in their marriage, which is unhelpful.

60. F accepted that M plays an equal role in C's life but maintained that he is the primary carer, notwithstanding that C lives with M and spends more time with M than F. When pressed, F conceded that "*M is a good mother but some of her temperament, unpredictability, compromises that."*

61. It was put to F that he cast aspersions about M's mental health, and this is not borne out by the GP evidence. F maintained that M had anxiety disorder in the past, and moderately severe depression. Despite the lack of concerns of professionals in the case, and evidence from the Social Worker that M was *"appropriate… rational and coherent…"* F said *"I don't accept that – I still have concerns. I raised concerns with the SW and I still hold a lot of them about M"*

62. When pressed as to whether there was any scrutiny of his own parenting of C, F opined that "*there has been, and I have scrutinised my own parenting. For instance, I have taken steps to secure housing because this was identified as instability with C*" but he failed to identify any concrete deficit in his own parenting at all.

63. Under questioning on the point of the professionals' feedback in this case (inter alia the glowing report from the SW; the criminal conviction of himself; the lack of any evidence of concerns about mental health from the GP pertaining to M's parenting etc.) F confirmed that he does not agree with the totality of the evidence, and still has concerns about M.

64. It was put to F that when M asked to go to Poland for a holiday he reacted by applying for a PSO to which she gave undertakings. He accepted this. In contrast, Miss ROCHA put to him the month before he travelled to Paris with C and that he didn't tell M because he thought she would stop him. F refuted this, despite evidence from M and the Social Worker (and indeed his own account to the SW) saying that he told M the day before. This was not borne out by the evidence, and I find that it is more likely that F unilaterally took C to Paris and Barcelona and only told M after the fact, as reported by M and the social worker.

65. It was put to F that he has exposed C to parental acrimony. He denied this, saying he had done his best to avoid that. It was put to him that he told C she might be made homeless. He denied this too. It was put to him that he told C to tell her teacher that M had deleted emails from him. He accepted this. It was put that this was not appropriate, to ask a young child to recount the allegation to a teacher as opposed to console a sad little seven-year-old. He maintained that this was about accountability. I found this to be an unedifying and somewhat distasteful response, indicative of F

trying to score points with his upset daughter and her teachers, rather than trying to console her and potentially rising above petty squabbles. He was asked whether his approach was child focused. He maintained that bringing the teacher into the dispute was child focused.

66. It was put to F that it is incredibly damaging to C to know that one parent has a negative view of the other. F maintained that he was not bringing C into it, he accepted that this could be damaging, but maintained that he has never said anything negative to C about M; *"I don't even talk about M with C. She is doing well because I care about her emotional wellbeing"* I found this to be a contradiction in terms and ignorant of the other parent's import and input. Under questioning, F failed to particularise anything positive about M, other than he thought she was "*practical*" and that she loved C.

67. As to housing needs and the current situation, F confirmed that M and C are currently living in a one bed property and C does not have her own bedroom. The FMH is at risk of repossession, which he cited as a safeguarding risk. He confirmed he is renting a two-bedroom flat for himself. He maintained that M "is fabricating financial difficulty to relocate" but accepted that he is also not paying child support to C.

68. F was asked if he was paying toward the mortgage, and he accepted he is not. He maintained he is paying £1275 rent per month but that he is currently not working. He said he has spent £22,000 on legal fees and is impecunious, yet he also claimed to have a job offer starting imminently where he will earn £8000 per month. Despite this, F had no outline as to how he would financially contribute to C, and indeed put forward no cogent evidence as to his own finances versus those of M.

69. When asked about the preparation and research that M had done in terms of C moving to Poland, F initially criticised M for taking steps to secure C a school place, saying this was "*presumptuous*" and then a moment later resiled from this, and accepted he had earlier criticised M for a lack of forward planning. When asked about research he had done as to the proposed school, he said that he was happy that they taught in English as well as Polish but said (without any evidential basis) that he did not think schools in Poland were as good as equivalent fee paying schools in London. Despite this, F accepted he did not have the means to fund private school in this country.

70. It was put to F that, if the court ordered relocation, he would be in a position to continue to have contact with C. He accepted that there would be difficulties but that it would be workable, and he would need the lion's share of the holidays with C. He said during term time he would want to see C at least every two weeks. He was pressed as to how it would work in practice – whether he had looked at flights to Krakow. He accepted that there were lots of flights from the UK and specifically London and the South East to Poland and advanced that it would take about six hours "door to door" including the rather enervating process of getting to the airport and through check in and security and at the other end. He admitted that he has been back to Poland many times since the family moved back to the UK, he knows Krakow well, and albeit he does not speak Polish, he accepted there is an ex-pat community in the city, though it is not as developed as London. In all the circumstances, I took the view that F is well travelled, cosmopolitan and well used to the minutiae of international travel, the point being that he would "*make things work*" in terms of regular visits to Poland if needed. In re-examination F explained that he is starting a job in London and will need to be in the office quite a lot.

Submissions

71. Ms ROCHA outlined her client's case apropos of the *Welfare Checklist* and the so called '*Payne'* guidance as it related to the evidence in this case. She said that M had provided a quite detailed plan as to the relocation, and that although there was a degree of flexibility in the timing of that plan, there was the open-ended offer of employment in Krakow which is not time bound. There was a great school identified, there was cogent evidence as to financial provision and the much lower cost of living in Poland. Set against that, Ms ROCHA explained that both parents had admitted to severe financial and housing strain currently in the UK.

72. Miss ROCHA explained that M had accepted F was a good dad to C and that – whilst there was a conviction for domestic violence, which many others in her position would cite as a safeguarding issue – that the point wasn't taken as such. I agree this was of great credit and frankly very brave on the part of M. Whilst the parties held low opinions generally of each other, they both tacitly accepted the other needed to

have a central role in C's life, and there was evidence that both parents had done well to largely shield C from acrimony, which was positive.

73. M had always intended to return to Poland, where she has a better quality of life, a network and a family, things she did not have in the UK. The SW did not have concerns that M was seeking the move to obstruct F's access to C.

74. One of the guidelines I would need to consider would be the impact on M if I refused to allow the relocation. The SW noted that this would be tantamount to "*refusing to allow her birth rights*" the evidence was that to refuse the application would be damaging to M and therefore indirectly to C. Set against this, whilst there would be an indirect detriment to F by the move, because he would not be able to see C as regularly, but the evidence was that C was a highly intelligent and resilient child who would adapt.

75. There was also a lot of uncertainty as to the housing situation in London – with both M and F financially struggling and impasse in the FRC proceedings, such that it was highly likely that the FMH would need to be imminently sold and leaving very little equity for either party to try and rehome – it was more likely that any residue would be frittered away in rent very quickly. There was no guarantee that either party would be able to afford to continue to live in London, and the high likelihood of a school move for C in any event.

76. Ms ROCHA submitted that F's application for a shared lives with order, the case of *Re M* assisted "*it is still the case that 50/50 shared care cases are relatively rare in private law cases… the couple need to be on good terms*" In this case, there was currently a difficult co-parenting relationship. The use of a shared care or joint lives with order would not be appropriate in this case, not least because F did not have any faith in M's parenting, did not consider her to be equal and did not accept that the concerns about M were baseless and had been explored and not made out. The SW had identified the danger of one parent undermining the other.

77. In turn Miss GONELLA's submissions hinged upon the evidence of the social worker: "*why change what is working for a child*" and that this equally applied to the issue of relocation. F submitted that the child was settled in England, has regular

contact with her father, and that this proposed relocation is a drastic proposal in light of the parties' history. There was a complex history in this matter. It is noted that despite the ruling that there was not to be a Fact-Finding Hearing in this case, F has been convicted. I took the view that until there is an effective appeal in that matter, I cannot go behind the fact of that conviction. I noted that it was a point which went against F, because on the one hand he did not accept that he had perpetrated domestic abuse in the relationship, but the fact of that conviction directly contradicts this. I found it troubling that F struggles with that, but I note it his right to appeal that decision and the Crown Court will deal with it in due course.

78. Miss GONELLA said that both parents, to their credit, had tried to limit the negative impact of their deteriorating relationship on the child. I was told that despite the Social Worker indicating that she would not be able to speak directly to the child about the relocation, F had discussed proposed relocation directly with the child. He had not passed on the result of those discussions prior to today. I noted my concern about the way F had handled this, in my view it was totally inappropriate to discuss this matter unilaterally with the child without the assistance or input of the other parties, most notably the Social Worker. To then not revert to the SW because F thought (and indeed apparently told C) that C's wishes would not be listened to, is alarming and frankly incredible in context. I note that there had been no application to adjourn to consider an addendum report from the expert seeking to clarify the Child's views.

79. I was told that C had a variety of clubs and extracurricular activities, and it would be an enormous emotional loss to C if she was to lose those things in the UK. F maintained that M's relocation was not a "trump card" and that the parties arguments needed equal footing. Miss GONELLA said that M's plan had changed over time, namely from the plan that M and C would live at the family home some two and a half hours from Krakow, whereas in evidence she maintained that she would find somewhere to rent in the city for herself and the child. F was concerned that the plan was not "*well thought through*" given the changing plans, which I found to be rather churlish, bearing in mind his own evidence was initially that he found it "*presumptuous*" that M was taking steps to secure a place at the school for C.

80. It was put that it was disingenuous that the Maternal Grandparents were in a position to pay toward living costs and tuition fees there, yet M told the court that she was struggling to pay the mortgage and costs of living in the UK. I took the view that I had heard evidence that circa £9,000 was held on trust for C's tuition by the grandparents, and from what the court had heard, this would only represent six months of mortgage payments on the FMH, a property which neither grandparent had any locus with, and which was being contested in disputed FRC proceedings.

81. It was submitted that it would be extremely unsettling for C to be moved to Poland at this stage. It was pointed out that M's evidence was that C had good relationships via the church and with her friends here and that this was evidence of significant roots in the UK which contrasted with only having spent a short time in Poland prior to moving to the UK.

82. F's proposal as to contact was on the basis that M had stated that the afterschool and breakfast clubs which M pays for are costly, and his proposal would reduce this cost and enable him to have more time with C on week nights. This was in contrast to the fact that only M is working at the moment and F has accepted he is not financially contributing either in terms of child maintenance or living costs directly.

83. In respect to the application for a joint lives with order, both parties were involved in C's life, both had Parental Responsibility, both had significant overnight contact with the child, and there was no express concern raised by M that F would be a "*flight risk*" in the future. F's proposal was that both parties would need to provide travel arrangements to the other in future. I found this somewhat contradictory to the evidence I had heard that M had tried to discuss travel to Poland with F and this had resulted in his application for a PSO, and on the other hand that F had unilaterally taken C to Paris and Barcelona without telling M in advance.

Views on the evidence

84. As has been noted prior, there are competing arguments in this case which are not without merit. It is not an arithmetic exercise to try and total up the sum of M's arguments against F, but rather to try to pull back and look at the needs of the child and how they would be best met with respect to those competing plans.

85. I am troubled that F unilaterally discussed the proposed relocation with C without involving the other parent and the professionals in this case. I attach little weight to the assertions he says she made, not least as he failed to take a note of them. I am troubled that we do not have a professional's view of C's voice, so I must proceed on the evidence that I have heard rather than theoretical evidence.

86. I have heard that C is a remarkably resilient, clever and well-adjusted little girl. I hear she is doing well at school and that she has been elected by her peers to be a sort of class prefect. She is evidently well loved, has friends and a peer group in the church and a lot of extra curricular activities. She is currently coparented albeit by parents who share a degree of hostility toward each other, whilst they have indeed somehow managed to shield her from the brunt of that acrimony, which is perhaps more by luck than judgment so far. I would have liked to have heard directly from her as to her views, but I must take as incontrovertible the position of the Social Worker that she is too young to directly provide them, and also in context the lack of an application for an adjournment and addendum from the Social Worker for that purpose. I must proceed on what is before me.

87. Set against the fact that C is doing well, there is an argument that her parents are not doing so well. M has been the victim of domestic violence. She spoke eloquently and passionately about surviving that abuse and setting an example for C as a woman. She clearly gave the view that because her marriage to F was the cause of M and C being in England, and that has ended, there are no compelling ties to keep her in the UK, other than C. That in and of itself is not a compelling reason, though it is honest.

88. I had conflicting evidence from the parties as to the general plan as to where they would live, but I did have evidence that F had worked and lived in Poland, and note that that was where the parties met, married and where C was born. C is a Polish citizen, albeit she only lived there for a few months. I cannot ignore her Polish side, nor her English side, and ideally both would be given the space, respect, time and input to be nurtured by loving parents who put themselves second to her needs. I note that having an EU passport, and all that this offers in terms of working and studying across the Bloc in would offer advantages in the future.

89. In terms of F's evidence, I was not convinced he was telling the truth about his working situation nor the portability of work in his industry. I note that despite not speaking Polish he not only lived and worked there but flourished and was gainfully employed. Whilst C was the "love of his life" now, evidently it can be inferred that M had been prior to her birth. I note that despite the distance to Poland, it is only two hours away by regular flights from Luton, Stanstead or another London Airport. This is comparable to one parent moving to live elsewhere in the UK, such are the speed and cost of road and rail links, and it is not an unusual or outlandish request in context. I did not take the view that M's application is predicated on destroying the contact F has with C, but that it is a genuine and reasoned application based primarily on quality of life.

90. To put it prosaically, both parents are going through a (needlessly) messy and contentious FRC process. I advised them that the FRC is not a court of morals, it is a court of open disclosure and fair computation. It makes little sense for the parties to obfuscate and lie about their income and assets, but sadly this often does happen in the FRC. The evidence I did have is not helpful to F, it is indicative of someone who cannot afford or is not willing to prioritise payment toward C or C and M's joint housing needs. The fact that a seven-year-old has to sleep in the lounge of a one-bedroom flat is unacceptable. I also note the somewhat magnetic point that there is said to be so little equity in the FMH that even if they do reach settlement and avoid diminishing that with a protracted legal battle, the residue will not be enough for either to re-house in the London area and it will likely be expended on rent, and/or that M and C will have to move out of London resulting in a school change too.

91. Therefore, when this case is analysed in the cold light of day, when the emotive parts are stripped away and when one takes a step back to look at the whole family dynamic, the following I find to be the magnetic features of this case:

    i) Both parents are struggling to make ends meet, and this is notably having a destabilising effect on housing provision for C. There is a real risk of repossession and homelessness, and F is not in a position to provide for C.

ii) Both parents love C dearly and both accepts the other needs to be in her life. Whilst M feels angry about F due to his treatment of her, F completely fails to acknowledge this, and relies on his own sense of victimhood, without cogent evidence in support.

iii) F has taken decisions which are poorly thought through, including unilaterally taking C on holiday, assaulting M and talking to C about the proposed move. He will need to reflect on the impact of his actions going forward.

iv) M has a well thought through plan for relocation which is not vindictive, it is reasoned. It is understandably flexible but it is couched in the financial troubles and contrasting quality of life on offer in Poland.

v) F has not adopted a child-focused approach to thinking about this case at all times. On occasion I found his evidence to be dissembling, vague, contradictory and somewhat belligerent even in the face of professional advice and findings. It would be better for him to have adopted a conciliatory approach and to admit his own shortcomings rather than attacking others.

The Welfare Checklist

92. Turning to the application of s1(3) in this case, in turn:

a) The ascertainable wishes and feelings of the child concerned (in light of her age and understanding). I note the report from the Social Worker on this point and that her view was that it was not appropriate to involve C in discussions about the potential to relocate to Poland, but that F says he has done this anyway. M abided by that decision. It is troubling that F acted unilaterally, and in a way which could cause damage to C. I do not find this was a child focussed approach. I cannot attach any weight to F's evidence on this point for the reasons outlined. I can only discern from the evidence of the parents that C has been to Poland several times and enjoyed it, she is a resilient and clever young girl, and that the Social Worker says she will adapt over time to any change in living circumstances.

b) Her physical emotional and educational needs. I note that the proposed school is an international fee-paying school with tuition in both English and Polish. Whilst I have no doubt that C is bright enough to flourish in any environment, and is doing well at her current school, I note that there is some risk that she may have to move schools if the FMH is lost, and the parents cannot afford private school in the UK. I accept that on the face of the evidence I have heard, C's educational needs would be met either in Poland or in her current school, but that she needs stability in either event. As to her physical and emotional needs, these are currently met by both parents and there is a risk that a move to Poland would diminish contact with F, however I note that his evidence was that he would "make this work" and further that M is willing and flexible to compromise on contact. Poland is not too remote as to stop all contact, albeit it would require effort on all sides and compromise as to travel.

c) The likely effect on C of a change in her circumstances. This is probably the most difficult to ascertain with a degree of certainty, and it requires a leap of faith in either direction. I have heard that C is resilient and would adjust to any outcome. I note that if I accede to F's application and refuse M's application it would likely result in diminished mental health for M and impact on C indirectly. More pressingly, the housing situation is so tenuous as to not offer any long term stability either for M or C at this time. A change in circumstances by being made homeless would, in my finding, be of more harm to C than the change in circumstances by being relocated to Poland, albeit there would undoubtedly be a high degree of adaptation needed on all sides.

d) The child's age, sex and background and any other characteristics which the court thinks relevant. I have not heard any other specific information as to C which would give me cause for concern in this regard. C seems to be completely adjusted based on her age and gender and has no specific needs that the parents cannot equally meet.

e) Any harm which C has suffered or is at risk of suffering. I note this is not always tangible or obvious. I note that the SW report is glowing as to C's resilience and how she has been largely insulated from acrimony, but I also note that there must

be some effect on the upheaval and acrimony upon her indirectly. The bare fact is that an assault by F upon M is a clear source of harm to C, albeit indirectly, because it had the effect of ending the relationship, causing bitterness and mistrust on all sides and the unforeseen consequences of a criminal conviction and restraining order which has impacted on the parties ability to coparent amicably. Whilst that harm is not directly to C, it would be churlish to disregard it, notwithstanding that F and M are seeking largely to compartmentalise that matter and agree that both need to put their energies into C.

f) How capable each parent is (and any other person being relevant) to meet the needs of C. This requires an analysis of finances, housing, education, quality of life and the consequential impact of these on the parents and vicariously upon C. I take the view that, contrary to F's evidence, M is the primary carer and has the majority of time with C. I note she is working and F is not, that may change in future. I note that M's proposal is "costed" and researched, and comes with the multiple positives of gainful employment, a good school, and a network of family nearby both in Krakow and in the countryside nearby. I note that there is the promise of financial and emotional as well as practical support from M's parents who are about the same age as F and therefore fit and well enough to commute to Krakow or vice versa to meet C's needs. Conversely, the opposition to the relocation comes with no guarantees at all in terms of stability of housing. It appears F has only thought about his housing needs and arrangements, and simply takes the view that M ought to be able to solely pay the mortgage and that's that. It is a poorly thought through approach, because he fails to take into account that jeopardy to the FMH is jeopardy to C directly in terms of the stability of her living arrangements. Whilst I come to the conclusion that both are loving and doting parents, F could and should be doing more in terms of proactively seeking work in the last ten months, and supporting his daughter, no matter his views on her mother. I also note that I have not heard any positive evidence as to the wider paternal familial network in the UK.

g) The range of powers available to the court. I note ss8 and 13, and the tension between the two competing arguments from F and M. Clearly the court cannot make a shared lives with order whilst also allowing M to relocate to Poland, that

would be unworkable. However, the court needs to consider the least invasive route to securing the safety and wellbeing of C as against each parties applications and whether there is some alternative order.

In conclusion

93. I find that the factors in the welfare checklist tend just about in favour of M's application for leave to relocate to Poland. I find that because the most pertinent factors are the offer of high-quality education, quality of life and lower cost of living, along with the offer of a close maternal familial network. The offer of gainful employment, the likelihood of lower cost accommodation, financial, emotional and practical support from parents and siblings, the much lower cost of living and the promise of a multilingual school are all compelling features in this case. Set against that, the proposal that I refuse to allow relocation is not properly thought through or evidenced most pressingly in respect of financial and housing provision. Perhaps that would be different if the parties were not embroiled in a dispute within the FRC, I do not know. On the face of the evidence before me I find that whilst the matter is finely balanced, and there will (as the SW put it) be pros and cons on both sides – the parties are energetic and flexible enough to listen to each other and to "make it work" as F put it in evidence. For those reasons I find that the evidence tends toward the child's needs being best met by allowing the relocation to Poland. I note that the parties have worked on a plan for contact on that basis, and I endorse it.

94. Carriage of an agreed order to give effect to the minutiae of contact is with counsel.

Publication

95. By way of a post-script, I received and considered submissions from both counsel as to their client's competing arguments for (M) or against (F) publication of this judgment.

96. In summary: M was supportive of publication, submitting that it would be in the public interest and that it might provide a detailed and considered analysis of the law for parties in a similar predicament in the future.

97. F was against publication, and outlined concerns, including that identification of, or access to this judgment, by the parties may be determinantal to himself and C.

98. I have closely considered the competing arguments in respect of the tension between the rights enshrined in Articles 8 and 10 of the European Convention on Human Rights, and the fact specific submissions, including as to the wellbeing of the parties and C, as raised by F. I have also considered the helpful guidance on *Publication of Judgments* from the President of the Family Division from June 2024.

99. I have found that on balance, in reference to the test at paragraph 3.6 of the same:
    a. There is a legitimate public interest in the facts of this case, and how they were decided, because of a lack of similar jurisprudence at this level and in the context of the wider push for transparency in the Family Court; and

    b. The case does have interesting, if not massively complex or novel, issues – such as the lack of a Fact Finding Hearing; the fact of F's conviction; the ongoing other case(s) between the parties and the consequences of those on the factual matrix here and my decision. Whilst it does not set a precedent, it may be a useful template for others in the future; and

    c. The judgment exists in a publishable format which has been anonymised and had the helpful input of both counsel.

100. For those reasons, I have published this judgment.

DDJ Nahal-Macdonald

11 October 2024