In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2013 No: 81

FG

Petitioner

-and-

HJ (formerly HG)

Respondent

JUDGMENT

(In Chambers)

Whether mother should have leave to remove child of marriage to Florida

Date of Hearing: 23rd and 25th May 2016, 7th March 2017
Date of Judgment: 17th March 2017

Ms Jacqueline MacLellan, MacLellan & Associates, for the Petitioner
Mr Ray De Silva, Moniz & George, for the Respondent

Introduction

1. In this judgment I shall refer to the Petitioner as the Father and the Respondent as the Mother. They married in January 2006. There is one child of the marriage ("the Child"), who was born in June 2007 and is aged nine.

2. The Father filed a petition for divorce on 13th June 2013. Decree Nisi was pronounced on 26th July 2013 and Decree Absolute on 11th August 2016. However the marriage had broken down some years previously.

3. The Mother has issued summonses dated 10th June 2015 and 22nd July 2016 and the Father has issued a cross-summons dated 23rd June 2015. This is a judgment on those summonses. There are four broad areas in contention.

4. (1) The relocation issue. The Mother, who is a US citizen, wishes to relocate to Deltona, Central Florida, where she used to live before her marriage. She seeks leave to remove the Child from Bermuda to live with her there. The Father, who is Bermudian, opposes this application.

5. (2) The custody, care and control issue. No doubt because of the Mother's proposed relocation, both parents seek sole custody, care and control of the Child. On the hearing of the divorce petition, questions of custody, care and control were adjourned to Chambers and the Court has yet to make any order in relation to them.

6. (3) The schooling issue. The Child has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"), displaying symptoms of at least moderate severity, and a Specific Learning Disorder with Impairment in Reading. This raises the issue of whether he would benefit from attending a school for children with developmental/ learning disabilities. The Mother believes that he would. She has identified two such potential schools: the Arbor School of Central

Florida ("Arbor") and the Blue Jay Academy ("Blue Jay") in Daytona Beach, Florida. Further, the Mother believes that even if the Child were to attend a regular public school[1] in Florida, the provision for special needs children there would be greater than that available in Bermuda.

7. The Father believes that the Child should remain at his present school in Bermuda, Victory Christian Academy ("Victory"), which is run by the Director of the Oxford Learning Centre, Alika Smith. He has been at the school for the past six months.

8. (4) The financial support issue. A pertinent issue in relation to school fees is affordability. Eg the annual fees for Arbor are in excess of $20,000 and the annual fees for Blue Jay are $12,000. Additional services, such as field trips, would be extra. By comparison, the annual fees for Victory, which the Father is paying, are $8,000.

9. The Mother accepts that, for now at least, the parties cannot afford to send the Child to Arbor, which would have been her preferred option. She seeks an order that, if she relocates to Florida with the Child, the Father pay child maintenance of $1,000 per month, which would represent half the tuition fees for Blue Jay plus a contribution towards the Child's living expenses.

10. The Father says that he cannot afford to pay any more than he is paying at present, particularly as if the Child relocates the Father would want to fly out to Florida regularly to see him.

11. I shall consider each of these four issues in turn. When I have done so, I shall state my conclusions. But first, I shall consider the legal principles applicable to relocation and discuss their application to the present case.

[1] I am using "public school" in the North American sense to mean a school run by a public authority, which in England would be termed a "state" or "maintained" school, rather than in the English sense of a privately run fee paying school.

The law

12. Divorce proceedings are governed by the Matrimonial Causes Act 1974 ("the 1974 Act"). The 1974 Act does not deal expressly with the removal of children from the jurisdiction. Instead the issue falls to be dealt with under section 46, which gives the Court broad powers to make such orders as it thinks fit for the custody and education of any child of the family who is under 18 in any proceedings for divorce.

13. The overriding principle is that the welfare of the child is the paramount consideration. This principle was stated forcefully by King LJ in the recent case of Re M [2016] EWCA Civ 1059 at para 34:

> "*There is only one principle in relocation cases and that is that the welfare of the child is paramount; there are no presumptions and any guidance is exactly that, guidance, and, as such, designed to be of assistance (or not) depending on the circumstances of the case. It is unnecessary and inappropriate to trawl through the myriad of authorities in relation to relocation cases; after all in how many different ways is it necessary or helpful for it to be said that the welfare of the child is the paramount consideration?*"

14. In England and Wales, section 1(3) of the Children Act 1989 ("the 1989 Act EW") provides a non-exhaustive statutory checklist of factors which the court should take into account when deciding how best to promote the welfare of the child. As Simmons J pointed out in Re K (Permanent Removal) [2013] Bda LR 66 SC at para 33 the checklist is not binding on a Bermudian court. It may nonetheless be of assistance, as Wade-Miller J found in E v K, unreported, 31st March 2015 SC at paras 105 – 107. I do not propose to set out all the factors identified in the checklist, although I have regard to them. They include, among others, the ascertainable wishes and feelings of the child (considered in the light of his age and understanding); his physical, emotional and educational needs; the likely effect on him of

any change in his circumstances; and 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.

15. The guidance given in the case law was reviewed and summarised by Mostyn J in Re TC & JC (Children: Relocation) [2013] EWHC 290 Fam at paras 10 and 11. The learned judge repeated this summary in NJ v OV [2014] EWHC 4130 (Fam) at para 6, stating:

"*In my earlier decision I attempted to summarise the relevant legal principles applicable to this type of case. I referred, in para.10, to the four leading decisions of the Court of Appeal, namely Poel v Poel [1970] 1 WLR 1469 ; Payne v Payne [2001] Fam 473 ; K v K [2012] Fam 134 , and Re F [2012] EWCA Civ. 1364 . In para.11, having considered the principles to be derived from those four principal cases, I attempted to set out the law in the following terms:*

'I have considered these four cases most carefully and, doing the best I can, I set out shortly what seem to me to be the presently governing principles derived from them for a relocation application:

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. The Court of Appeal did not demur. See NJ v OV [2015] EWCA Civ 286. These principles were applied in Bermuda by Wade-Miller J in E v K, unreported, 31st March 2015 SC at para 97.

17. The guidance laid down in the case law is common to all types of relocation cases, although the weight to be given to any given consideration will depend upon the particular facts of the case. It is not right that one set of guidance applies to cases where one of the parents is the primary carer and another to cases where the child's care is shared equally between the parents. See the judgments of

Moore-Bick LJ at para 86 and Black LJ at para 144 in K v K, Thorpe LJ at para 57 dissenting on this point; Munby LJ in Re F; and, in Bermuda, Simmons J in Re K (Permanent Removal) at para 38.

18. As Black LJ stated in K v K at para 145:

> "*Accordingly, I would not expect to find cases bogged down with arguments as to whether the time spent with each of the parents or other aspects of the care arrangements are such as to make the case 'a Payne case' [one parent is the primary carer] or 'an In re Y case' [neither parent is the primary carer], nor would I expect preliminary skirmishes over the label to be applied to the child's arrangements with a view to a parent having a shared residence order in his or her armoury for deployment in the event of a relocation application. The ways in which parents provide for the care of their children are, and should be, infinitely varied. In the best of cases they are flexible and responsive to the needs of the children over time. When a relocation application falls to be determined, all of the facts need to be considered.*"

The relocation issue

19. The question is whether it would be in the Child's best interests to relocate with the Mother to the United States. This case illustrates Black LJ's dictum about the variety of ways in which parents provide care for their children. It is unusual in the degree to which both parents have shared in the Child's upbringing. Indeed they both claim to be his primary carer. Their joint involvement in looking after him has been facilitated by the fact that their apartments, located on a homestead belonging to the Father's parents, are next door to each other.

20. The Mother stated in her affidavits that: the Child lives mostly with her except when she is working on a night shift or late shift, which is when the Father has him; that in particular he spends most of his parental quality time with her, eg doing homework, eating and reading; when the Child is sick, she is the one who takes time off work to look after him; and that she has been more actively involved

in his education. Eg she had him moved from West End Primary School to Dalton E Tucker Primary School where he could receive greater support, and has been proactive in trying to have his needs associated with ADHD addressed.

21. When giving oral evidence the Mother explained in more detail the day to day parenting arrangements for the Child. Eg she said that the Child, when he spends the night with the Father, comes round to her apartment when he gets up and that she will make him breakfast and get him ready for school. She said the Father will take him to school if it is raining (he has the family car) and that, shifts permitting, she will take him to school if it is not. However she accepted that the Father picked him up from school most days.

22. The Mother somewhat disparagingly referred to the Father's involvement with his son as "*one step above baby-sitting*" and expressed concern that the Father's role in the Child's education and spiritual growth was very limited.

23. The Father stated in his affidavits that: since 2009 he has had the Child overnight for on average 20 – 25 days per month; he takes him to and from school each day; and that even when the Child is sleeping at the Mother's apartment he spends most of his time with his cousins and in the Father's apartment playing. The Mother does not dispute that the Child spends time playing with his cousins, but says that this is time spent in the cousins' apartment or in the yard, not in the Father's apartment.

24. When giving oral evidence the Father clarified that on the days when the Child slept at his apartment he bathed and fed him. The Father did not accept that he was a glorified baby-sitter and said that he was very close to his son. Neither did he accept that the Mother always looked after the Child when he was sick: he said that they both did, depending upon what shifts they were working. However he accepted

that when the Child was not feeling well he sought out the comfort of his Mother.

25. The Father said he was concerned about the Mother's ability to look after the Child. Eg he said that in February 2015 the Mother had come to him half way through the month and said that she didn't have any money for food until the end of the month. The Mother did not accept this, and said that on the contrary the Father had on many occasions asked her for money to buy food. The Father also expressed concern about the amount of time that the Mother allowed the Child to spend playing video games.

26. The Mother has two children by previous relationships. The Father submitted that she had abandoned them and that this was indicative that she would not adequately care for the Child if he were removed from the jurisdiction. The Mother did not accept this as a fair or accurate characterisation of what had happened in relation to her two older children. I heard evidence from her in some detail on this point, though I need not go into that here.

27. Since 2009 the Mother has worked as a patrol officer with the Bermuda Police Service ("BPS"). She finds the work stressful and physically demanding, and does not feel able to carry on with it for much longer. She would like a 9 to 5 job. Based on her prior experience of job-hunting in Bermuda, she doubts whether she could find permanent employment in Bermuda outside the BPS, particularly given the current economic climate.

28. However the Mother stated that she has extensive customer services and sales experience, in view of which she anticipates that she would have no difficulty finding employment in that field in Florida. The pay would be less than in her current job, but the cost of living would be cheaper. She had previously served with the US military, but was discharged on medical grounds when she was diagnosed with rheumatoid arthritis.

29. At the date of the hearing in May the Mother had been on intermittent medical leave on account of insomnia since March 2016, although she has now returned to work. She was taking medication for insomnia and Attention Deficit Disorder ("ADD" not "ADHD"). She had started taking medication in February or March 2016 but had not done so previously. I agree with the Mother that her symptoms were most likely exacerbated by the stress of the divorce. Other than that period of medical leave, these conditions had not prevented her from carrying out an extremely demanding job.

30. I heard oral evidence from the Mother's family, who live in Deltona, who had flown to Bermuda for the hearing. Her father and stepmother ("Mr and Mrs J") stated that they would provide whatever support the Mother and the Child required.

31. For example, Mr and Mrs J own a four bedroom, two bathroom house set in 1/3 of an acre grounds, and stated that the Mother and the Child would be welcome to live or stay with them. The Mother's sister, Brandi J ("Ms J"), has a two bedroom house and stated that the Mother and the Child would be welcome to live with her. Alternatively, two bedroom apartments and even houses were available in Central Florida for a monthly rental of $1,000 to $1,200. The Mother would require a two bedroom apartment because the Child is at an age where he needs a room of his own. By comparison, the cost of a two bedroom apartment in Bermuda would be in the region of $2,000 to $2,200.

32. Mr J, who is a service executive with AT&T, stated that he could provide financial support for the Mother while she looked for a job, and Mrs J stated that she could look after the Child during that process.

33. Mr J also runs a gunsmithing business. He needs someone to help out during the day, and would be willing to hire the Mother for this

purpose at a gross salary in the region of $500 to $750 per week (which would equate to $26,000 to $39,000 per year).

34. The Mother exhibited a letter date 27th April 2016 from a construction company in Florida offering her a position in their office upon her return. I do not know whether the position would still be open, although the offer is not expressed to be subject to a time limit.

35. Irrespective of the outcome of these proceedings, the Mother wishes to leave the homestead. If she remains in Bermuda she would like to rent a two bedroom flat where the Child could have his own room, but is concerned about its affordability. There is a room in the Father's apartment – a room which is currently rented from the Father's parents by his sister-in-law and used for storage – which the Father reckons could be made available as a bedroom for the Child. The Mother considers the room cramped and inadequate for this purpose.

36. I have had the benefit of two Social Enquiry Reports. The First Social Enquiry Report, dated 16th March 2016, was prepared in relation to the competing applications for custody, care and control. The Report's author, Nicole Saunders, attended court and was questioned by both counsel.

37. Ms Saunders found that both parents were very in tune and knowledgeable about the Child's needs. However she questioned the strength of the Mother's relationship with her family in Florida, noting that in the ten years since the Mother had lived in Bermuda, the only family member to visit her was her sister, who had visited twice, and that the Mother had only travelled three times to the United States. Ms Saunders was concerned by what she described as "*the history of lack of connectivity that [the Mother] has with her family*" and appeared sceptical as to the level of support that the maternal family would provide were the Mother to relocate with the Child.

38. Ms Saunders noted that child custody literature asserts that attachment is not necessarily formed from the amount of time a child spends with a parent but rather the meaningful interaction that occurs during the time spent. She noted that the Child appeared to have an attachment to both parents, but that over the years he had reportedly spent more physical time in the care of his Father and paternal family. The Mother does not agree that the Child has spent more time in the Father's care than in her own.

39. Ms Saunders further noted that child custody relocation literature suggested that if the Child were to relocate it would be better that he do so at his current age as he had not likely become entrenched in social relationships with others. She recommended that the Mother relocate to Florida and settle for approximately one year, finding accommodation and employment which would show that she was independent and stable. Ms Saunders suggested that assessment of whether a move to Florida was best for the Child could be considered thereafter. This recommendation was motivated in part by what Ms Saunders characterised as the Mother's history of unstable living before moving to Bermuda.

40. The Second Social Enquiry Report was dated 10th May 2016 and was prepared by social workers at the Department of Child and Family Services following a referral from Ms Saunders on behalf of the Father, who made various complaints about the Mother's care of the Child which caused the writers of the report to conduct what they characterised as a "*neglect investigation*". The social workers found that the Mother's prescription medicines were in a drawer that the Child could access, and she did not demur to their suggestion that the medicines should be placed in a locked box to keep them out of his reach. The social workers expressed no other concerns about the level of care which the Mother provided, and concluded that the allegations of neglect were unsubstantiated.

The custody, care and control issue

41. The resolution of this issue will turn upon the resolution of the relocation issue. Both parents have played a substantial role in the Child's upbringing and it is very much in his best interests that they should continue to do so. The order which the Court makes will reflect this.

The schooling issue

42. When considering relocation, the Child's educational needs are a very important consideration. The diagnosis that he has ADHD follows a referral to Child and Adolescent Services ("CAS") from his school councillor at Dalton E Tucker Primary School. The school was concerned that he had a short attention span, being impulsive and extremely fidgety. He was also described as being defiant and non-compliant with staff requests. The diagnosis of ADHD was made by Dr Peter Yates, a Consultant Child and Adolescent Psychologist at CAS, whose patient the Child remains.

43. Prior to the referral, the Mother had been concerned that the Child was struggling at school, and had moved him from West End Primary School to Dalton E Tucker Primary School where greater support would be available.

44. I had the benefit of oral evidence from Dr Yates, in his capacity as the psychologist treating the Child. I accept his diagnosis, which he explained in clear and convincing terms. Whereas the Mother readily accepted the diagnosis, the Father was initially sceptical. He believed that the Child's disorderly behaviour was largely attributable to lack of discipline at school and to behaviour learned from the Mother.

45. I adjourned the hearing in May to give the Father an opportunity to discuss his concerns with Dr Yates and the Court an opportunity to

review the Child's progress in light of such treatment as Dr Yates might recommend.

46. On Dr Yates' recommendation, the Child has from August 2016 been medicated with methylphenidate (often supplied under the trade name "Ritalin"). Happily, the medication has had a very positive effect on the Child's behaviour in school and appears largely to have negatived the effect of ADHD, although it does not address his learning difficulties. Ms Smith, the principal of Victory, stated that the medication was making the Child a little bit slower. Other than that, no side effects have been observed. The Father now accepts that Dr Yates' diagnosis was accurate and is supportive of the use of medication.

47. Following a referral from the Child's paediatrician, in November 2016 the Mother travelled with the Child to the Nemours Children's Clinic ("Nemours") at the Alfred I DuPont Hospital for Children in Wilmington, Delaware, USA, for comprehensive psychological testing. The Mother stated in affidavit evidence that she had been requesting insurance cover for some time so that such testing could take place. I accept that it was in large part due to her determination that the assessment was able to take place.

48. The assessment took around eight hours to complete. A summary prepared by Nemours dated 16th November 2016 confirmed the diagnosis of ADHD. It also stated that the Child's performance on measures assessing his reading skills, reading comprehension, and spelling abilities represents an area of weakness relative to his cognitive abilities that is consistent with a diagnosis of Specific Learning Disorder with Impairment in Reading. The full report contained some practical recommendations for the Child's school and parents to help address his behavioural and learning difficulties.

49. At the adjourned hearing in March 2017 I heard evidence about the Child's education at Victory from Ms Smith and the Child's teacher,

Cheyenne Gordon. Ms Smith explained that Victory is a small school with four teachers and one other adult and twenty children. Many of the children have learning difficulties and have not thrived in mainstream schools.

50. Ms Smith stated that when the Child first came to the school about six months ago he was assessed in such areas as word recognition, listening, maths and so forth, and the school devised a programme that met his specific needs. Nemours had contacted the school and spoken with Ms Smith about the recommendations in the Nemours report. Ms Smith said that the school had adopted some but not all of the recommendations.

51. Ms Smith said that she had hired somebody, presumably Ms Gordon, to work specifically with the Child and another child. Ms Gordon taught the two of them in the mornings and the Child was taught as part of a group in the afternoons. Ms Smith stated that the Child was good at maths but that reading – not thinking or comprehension – was a challenge. She stated that she believed Victory could give the Child good not merely adequate support, and that she had already seen gains during the Child's time with the school.

52. As to Florida, Arbor is not presently affordable. Blue Jay might be affordable, but it would be a stretch. It is difficult to get a good sense of the schools based simply on the informational material with which I have been provided.

53. As to public schools, there are no doubt good ones and bad ones in Florida just as there are elsewhere. The Mother has exhibited some documents downloaded from the Volusia County Schools website showing the availability in general terms of support services for children with learning difficulties in this Florida Schools District. However it does not give the reader a very clear idea of what support in concrete terms might be available for the Child. The Mother has identified Spirit Elementary School as a public school near where her

family live which the Child might attend, but has provided little information about it. But I accept that the she has shown herself a formidable and effective guardian of the Child's best educational interests.

54. Wendy Cox Blair, the Executive Director of Arbor and a former special education teacher at a Florida public school, wrote a letter addressed "*to whom it may concern*" dated 15th July 2016 in which she set out the support available for the Child at Arbor and contrasted it with the support available in the Florida public schools. She concluded that the latter was not adequate and would be a detriment to the Child's learning and future. However I treat her observations with caution as she had a commercial interest in promoting Arbor.

The financial support issue

55. The Father works as a house painter earning $30.00 per hour. He pays his father $1,100 per month to cover his rent, social insurance and health insurance payments. This leaves him with $3,700 net per month. His monthly expenses include $800 school fees and, averaged out over the year, $83.33 on school camps; $66.66 on clothing for the Child, both school uniform and regular clothes; and $100 treats and entertainment for the Child. They also include $1,000 for legal fees. For the avoidance of doubt, if the Court were to order maintenance payments that ate into the amount available for legal fees, the court ordered maintenance would take priority. If the Child were to relocate to Florida, the Father would want to fly out and visit him regularly. As he is self-employed, he would not get paid during those visits. How regularly he could afford to visit the Child would in part depend upon the extent of any child maintenance which the Court ordered him to pay.

Discussion

56. In my judgment the evidence of both parents was, understandably, influenced by their wanting to achieve what they would regard as a positive outcome in the custody, care and control proceedings. However I am satisfied that both parents currently provide an adequate standard of care for the Child. On the rather unusual facts of this case, and for what it is worth, it would be arbitrary to say that one parent rather than the other has been the primary carer. They are both loving parents who have demonstrated their commitment to caring for their son and the Child is fortunate to have them.

57. I think it likely that either parent would struggle without a support network. There is one in place in Bermuda. Having heard oral evidence from the Mother's family I am satisfied that one would also be available to the Mother in Florida were she to relocate. I was impressed by the fact that they had flown over to Bermuda to offer their support to the Mother and attach little significance to the fact that while living in Bermuda the Mother has maintained her relationship with them via Skype rather than personal visits. Moreover the Father took the Child to visit them on three consecutive Christmases in 2013 through 2015. He gave evidence that he had developed a rapport with the Mother's parents and that he liked them and the Mother's sister. He acknowledged that they love the Child and the Child loves them.

58. The First Social Enquiry Report notes that the Mother had planned to take the Child to visit her family last year but that the Father had prevented this because he did not trust that she would return. Ms Saunders' uncritical acceptance of the Father's behaviour in this respect, which I regard as inappropriately controlling towards the Mother, is symptomatic of a tendency in both Reports to see matters from the Father's rather than the Mother's point of view. Eg she states that the Child predominantly resides with his Father – a statement with which the Mother does not agree and which I am

satisfied is not the case. I bear this in mind when considering what weight to give to Ms Saunders' recommendations.

59. Having heard from the Mother, I am further satisfied that her parental history prior to her marriage to the Father is of little relevance to the present hearing. I attach far more importance to the fact that she has held down a demanding job for the past seven or eight years and to the commitment which, like the Father, she has shown to raising the Child.

60. In all the circumstances I am satisfied that relocation by the Mother to Florida would be both feasible and straightforward. I reject the Father's case that it would be fraught with dangers and difficulties and do not think it necessary that the Mother demonstrate for one year that she is independent and stable before the Court decides whether the Child should be permitted to join her. However were she to relocate she may wish to take professional advice, rather than simply researching the matter online, as to whether she has any outstanding tax liabilities in the United States.

61. Applying the factors summarised in NJ v OV, I am satisfied that the Mother's application is genuine in the sense that it is not motivated by some selfish desire to exclude the Father from the Child's life. The Mother states that she wants to return to the United States to start over and I understand that. She is eligible to buy property there, which she cannot do in Bermuda; the cost of living is less; and she has better prospects of finding conducive employment. I am also satisfied that she believes that relocation would be in the Child's best interests. If the Mother chooses to remain in Bermuda, there is a real risk that the stress of remaining in a physically exhausting job or being unable to find a less physically exhausting one will impact negatively on her ability to care for the Child.

62. The Mother's application, insofar as it relates to herself, is realistically founded on practical proposals adequately researched and investigated

– I have no doubt that she would soon find a job and be in a position to support both herself and, with the assistance of a modest level of maintenance from the Father, the Child; in the meantime she could stay with her parents. As to the Child, I am satisfied that the family would provide a support network that would allow her to combine work with parenting. The real issue in relation to practical proposals is the Child's education, to which I shall return.

63. I am also satisfied that the Father's opposition is motivated both by genuine concern for the future of the Child's welfare and the fact that he would miss the Child terribly if the application were granted. It is not driven by some ulterior motive. The Father would experience the Child's absence as a serious detriment – as would the Mother were she to relocate to Florida without her son. I am satisfied that through a combination of Skype and visits – both to Florida by the Father and to Bermuda by the Child – the Father's strong relationship with the Child would be preserved.

64. In so finding, I accept the Father's evidence that he has a good relationship with the Mother's family. Although it has become a little frayed as a result of these proceedings – I have in mind affidavits sworn by the family members which I ruled inadmissible – I am satisfied, having heard from both the Father and the family, that any breach would be repaired once the Court gave its ruling.

65. The detriment to the Father would be offset to some extent by the opportunity for the Child to build a stronger relationship with his maternal grandparents and aunt and the Mother's homeland: the Child would benefit from the range of experience available to him in Florida just as he has benefited from experiencing life in Bermuda.

66. These factors are finely balanced. Some point in favour of relocation and some against, whilst others are neutral on the issue. In my judgment, considered as a whole, they point neither for nor against relocation. However they are ancillary to the question of the Child's

welfare. Although I have regard to his welfare "in the round" and to all the factors mentioned in the 1989 Act EW, in my judgment his education is of particular importance. The Child has special educational needs. The intervention of Dr Yates and the Nemours report have enabled those needs to be addressed. Having attended several different schools in recent years, the Child is now settled and, I am satisfied, thriving at Victory.

67. If the Child were to relocate to Florida it is likely that he would attend a public school as the funds are unlikely to be available for him to attend a private school. There is no evidence from which I can properly conclude that the quality of education which he would receive there would be superior to the quality which he is currently receiving at Victory. Although I treat the comments about Florida public schools made by Ms Blair with caution, I do not discount them altogether.

68. Blue Jay might prove to be just about affordable, but the Child has not visited the school and the only information which I have about it is contained in a parent handbook and pages downloaded from its website. This is not sufficient for me to conclude that it would be in the Child's best interests to leave a school where he is doing well in order to go there. The first time that Blue Jay was mentioned in these proceedings was in an affidavit filed by the Mother for purposes of the March 2017 hearing.

69. In my judgment it is in the Child's best interests to complete his primary education at Victory. This means that it is not presently in his best interests to relocate to Florida. It would, however, be premature for me to form a view as to where he should undertake his secondary education, ie the course of study issuing in a High School Certificate or other school leaving qualification. I also express no views as to whether he should undertake his secondary education in a mainstream school or alternatively in a specialist school for children with special educational needs.

70. The Court can revisit these issues, if the parents are unable to agree upon them, when a choice of school for the Child's secondary education needs to be made. The Court can, if so invited, do so in the context of a renewed application for relocation. By then, the Child will be old enough to express his own views on where he wants to live. Although they will not be determinative, the Court will treat them with respect. In my judgment, which is based on the Child's individual characteristics and comments as reported in the First Social Enquiry Report and not on any generalisations about nine year olds, he is not old enough to do so at present. In the meantime, finances permitting, I hope that the Child will have the opportunity to spend further time with his mother's side of the family in Florida.

Conclusion

71. The four issues raised at the start of this judgment are resolved thus:

(1) The relocation issue. The Mother's application for leave to remove the Child from Bermuda to live with her in Florida is dismissed. However she may bring a fresh application when the time comes to decide where the Child is to receive his secondary education.

(2) The custody, care and control issue. The parties are to have joint custody, care and control of the Child.

(3) The schooling issue. Unless the parents agree otherwise or the Court so orders, the Child is to complete his primary education at Victory. If the parents are unable to agree where the Child should receive his secondary education then in due course the Court will have to consider that issue.

(4) The financial support issue. I make no order as to child maintenance as I am satisfied that both parents are already contributing what they can realistically afford. Absent a substantial improvement in his financial circumstances, I would not consider it reasonable for the Father to contribute towards the cost of accommodation for the Mother should she leave her present apartment.

72. Save as aforesaid the parties' respective summonses are dismissed.

73. I shall hear from the parties as to costs.

Dated this 17th day of March, 2017

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Hellman J