**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS**
**ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS**
**FAMILY DIVISION**

**CICA (Civil) Appeal No 2 of 2020**
**(Formerly FAM 53 of 2014)**

**BETWEEN:**

**A.M**

**Appellant**

**-v-**

**A.M**

**Respondent**

**BEFORE:**

**The Hon John Martin, Justice of Appeal**
**The Rt. Hon Sir Alan Moses, Justice of Appeal**
**The Rt. Hon Sir Jack Beatson, Justice of Appeal**

**Appearances:** **Mr. H Verdan QC instructed by Mr. D McGrath of McGrath Tonner for the Appellant**
**Mr. F Feehan QC instructed by Mr. D Holland of KSG Attorneys for the Respondent.**

**Heard:** **3 March 2020**

**Draft Circulated:** **5 May 2020**

**Judgment delivered:** **24 June 2020**

**JUDGMENT**

**Moses, JA**

1. I is the daughter, and youngest child of the appellant H and the respondent W; she was born on 29 August, 2012 and so is now 7. Until the beginning of this year 2020 she lived on Grand Cayman, and, since September 2018 with her father H, step-mother and elder brother J. She left the Island, accompanied by her mother, to live in Melbourne Australia on or about 31st December 2019. Following a hearing, between 9th and 11th December, 2019, at which Hall J

(Acting) heard oral evidence from both I's mother and father, the Cayman welfare officer Ms. Bailey and an Australian social worker Ms McDermott, the judge gave permission to the mother to remove I to Australia and made associated financial orders on 30.December 2019. H appealed this decision, with leave of the judge herself. On 3rd March, 2019, following an urgent hearing in London and, by video link in the Court of Appeal, Grand Cayman, the court dismissed the appeal. These are its reasons.

2. The Order made by Hall J (Acting) permitted the mother to relocate to Australia with I, allowing for physical contact with the father during school holidays in locations such as Grand Cayman, Australia or New Zealand or wherever convenient to H with daily Facetime/telephone contact.

3. The essential ground of appeal is focussed on the claimed inadequacy of the judgment which, in its lack of analysis, is said to fail to grapple with the powerful reasons for permitting I to continue to live with her father and brother J, and for following the recommendation of the Cayman welfare officer; it failed to explain the judge's decision to permit relocation.

*Legal Principles*

4. Any decision which results in a young child relocating in a country apart from one of her parents is, it has often been said, amongst the most difficult for any judge to make. The resolution of the dispute is bound to rest on the least bad option, but save in the case of a parent who is not fit to care for the child, which is far from this case, no outcome can be said to be a satisfactory. There is, as Lord Fraser said in ***G v G*** [1985] UKHL 13, [1985] FLR 894, no right answer. Decisions for leave to relocate were described as:

> "*..always difficult for the court and distressing for the parties. They involve a binary decision - either the child stays or he goes. There is no scope for any middle way. If the decision is that the child goes, then the left-behind parent inevitably suffers a disruption to his relationship with the child at the very least in quantum and periodicity of contact. If the decision is that the child stays then the primary carer, if not invariably, then frequently, will suffer distress and disappointment in having what will normally be well-reasoned and bona fide plans for the future frustrated. So the decision, whichever way, is bound to cause considerable trauma".* (Mostyn J ***Re AR*** [2010] EWHC 1346 ) (Fam) 1346).

5. This reinforces the need for judges to be clear and comprehensive so that the parties in so sensitive a dispute, particularly unfortunate parents who are to be separated from their children, may be confident that the judge has engaged with the issues and may understand the reasons

for the judge's conclusions. Moreover, the exercise of reasoning to a conclusion imposes an important discipline on judges themselves. The proposition hardly needs authority, but our attention was drawn to the need for what was said to be a complex and sensitive analysis required in a case of this kind; an analysis which the appellant submitted was lacking in the instant case. As it was put in the relocation case ***Re M (A Child)*** [2017] EWCA Civ 2356]:

> "*[24] In proceedings of this kind, a great deal is at stake for a child and his parents. The impact on the child's future is substantial and that decision is always a tough one for the disappointed party. The task for the judge is to select the outcome that best meets the child's welfare needs and give adequate reasons for the choice. In this kind of case, a valid judicial decision requires, as was said in Re F, an analysis of some sophistication and complexity. That analysis is the engine that drives the decision that takes the parties from the state of disagreement to one of clarity. Without it, the essential judicial task has not been performed."*

6. But there is a danger in merely parroting the words in one case, such as "*of some sophistication and complexity*" and elevating them to a test suitable in all fraught cases. What is required is "*a judgment which sufficiently explains what the judge has found and what he has concluded as well as the process of reasoning by which he has arrived at his findings, and then his conclusions*" (see Thorpe LJ in ***Re B*** [2003] 2 FLR 1035[11] and Sir James Munby P in ***Re F (Children)*** [2016 EWCA Civ 546 [22].

7. As for the approach which a court of appeal should adopt, we should have in the forefront of our minds the speech judgment of Lord Wilson in a care case ***In the Matter of B (A Child)*** [2013] UKSC 33. After citing the often repeated words of Lord Hoffmann in ***Biogen Inc v Medeva plc*** [1997] RPC 1,45, he continues:

> *"[42] Lord Hoffmann's remarks apply all the more strongly to an appeal against a decision about the future of the child.... The function of the family judge in a child case transcends the need to decide issues of fact; and so his (or her) advantage over the appellate court transcends the conventional advantage of the fact- finder who has seen and heard the witnesses of fact. In a child case the judge develops a face-to-face, bench to witness box, acquaintanceship with each of the candidates for the care of the child. Throughout their evidence his function is to ask himself not just "Is this true?" or "is this sincere?" but "what does this evidence tell me about any future parenting of the child by this witness?" and, in a public law case, when always hoping to be able to answer this question negatively, to ask "are the local authority's concerns about the future parenting of the child by this witness justified?" The function demands a high degree of wisdom on the part of the family judge; focussed training; and the allowance to him by the justice system*

*of time to reflect and to choose the optimum expression of the reasons for his decision. But the corollary is the difficulty of mounting a successful appeal against a judge's decision about the future arrangements for the child. In* ***In re B (A Minor) (Adoption: Natural Parent)*** *[2001] UKHL 70, [2002] 1 WLR 258, Lord Nicholls said:*

> *"[16]… There is no objectively certain answer on which of two or more possible courses is in the best interests of the child. In all save the most straightforward cases, there are competing factors, some pointing one way and some another. There is no means of demonstrating that one answer is clearly right another and another clearly wrong. There are too many uncertainties involved in what, after all, is an attempt to peer into the future and assess the advantages and disadvantages which this or that course will or may have for the child.…*
> *[19].. Cases relating to the welfare of children tend to be towards the end of the spectrum where an appellate court is particularly reluctant to interfere with the judge's decision*."

8. Later Lord Wilson reminded appellate courts that the court of appeal should deploy the test of whether the judge's evaluation was "wrong" [ibid 44].

9. It should, however, need no emphasis that the overriding principle is that explained by many judges both here and in England:

> "*[61] the focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regard to the welfare checklist, though of course also having regard, where relevant and helpful, to such guidance as may have been given by this court."* (***Re F (Child: International Relocation)*** [2012] EWCA 1364 per Munby LJ), cited by Chadwick P in B v B [2014] (2) CILR 234 [44].

*Background*

10. The background facts were as follows. I had spent all her life in the Cayman Islands where she and her father had Caymanian status. Her mother, W, and father, H, separated in 2013 and the marriage was dissolved in 2016. I's mother is Australian and her family lives there. I had lived with her mother for the first almost six years of her life until her mother left, in July 2018 for Australia.

11. In that month, July 2018, some 17 months before the hearing before Hall J, I's mother left the Islands and returned to Australia, leaving I behind with her father and step-mother P. I shall return to the circumstances of that departure later. In Australia, the mother was with I's elder

sister R (now aged 20) who suffers from anxiety and other difficulties with her mental health. She is at university but is, unfortunately, estranged from her father. I remained, during that period of 17 months with her father, step-mother and her brother, the parties' middle child, J aged 16.

12. At the heart of this case lies the particular feature of the change in I's circumstances in those 17 months after her mother left to live in Australia. Before then, she had lived with her mother, as primary and often sole carer. During the first two years of her life, her father had no overnight contact with her and for nearly six years I had lived with her mother, her older sister R and her brother J, an arrangement which was formalised by a consent order in 2015. Her father, whose work as a lawyer had required him to travel for more than 100 days per year in those years would have contact with I for a few hours on Wednesday evening and, after the first two years, overnight on Saturdays.

13. After her mother left, I was looked after by her father and step-mother, living with them and her brother J. This change in circumstances gave her father the opportunity, which he took with notable success with the help of I's step-mother, to demonstrate his caring qualities as a parent. This, in turn, led to a striking change in the views of the Cayman welfare officer Ms Bailey, whose recommendation lies at the heart of the dispute between the parties.

*Welfare Reports*

14. Ms. Bailey first reported to the court on 28 September, 2018. I's mother had only recently left Grand Cayman, in July 2018. The welfare officer interviewed both parents, and I and her brother J and visited them in their homes. She recommended that J continue to reside in the care of his father but that I, in accordance with her expressed wishes to continue to live with her mother, should reside with her in Australia, where her elder sister and her mother's extended family lives. She pointed out that W was the parent with the greater day-to-day responsibility for I (para 195). At that time, she did not think I's relationship with her brother was so close that either was likely to be "*emotionally scarred*" by separation (para 214, p.58).

15. Almost a year later, after the substantial period of separation from her mother and whilst living with her father and step-mother I had, understandably changed her own views as to where she would like to live. In her second report, dated 18 September 2019 Ms. Bailey changed her recommendation, though, since she had not had an opportunity to investigate the current circumstances of W in Australia, she expressed her view "*with some caution*". Her latest recommendation was that I should continue to reside with her father in the Cayman Islands.

She spoke of the clear and stable regime for I in the Islands and the emotional destabilisation for both J and I should there be the disruption caused by relocation (para 72). She emphasised the importance of this relationship (para 73). She made no recommendation in relation to J, I's brother who would soon be 16.

16. It is important to note that in neither report did the welfare officer express concern that either parent would be unsuitable to act as primary carer. In her second report Ms. Bailey reports H's views of his close and loving relationship with I (e.g. para 12). One of Ms Bailey's main concerns was the difficulty both H and W had in co-operating in arrangements for contact with I. There were rival complaints as to the course of video contact between W and I (see e.g. paras 18 and 23). H had insisted on documents being signed when I visited W in the summer and December, W had questioned I about her coming to live with her in Australia.

17. There were two welfare reports, dated 1 October 2018 and 18 September 2019, from the International Social Service, Australia (ISS, Australia). The authors had had no opportunity to see the home circumstances in the Grand Cayman or to interview the father, I or J, her brother. In both, the Intercountry social workers (there were two for the first report and Ms Amelia McDermott on her own, as Co-ordinator, Victorian social services in the second) took the view that it was in I's best interests that she live with her mother in Australia. The first report set out the main reason for W's departure. It was to support her eldest daughter R who had suffered with her emotional and mental health, as she embarked on tertiary education (p.12). The second emphasised the importance of the support given by W's family (p.13).and, whilst recognising that the author had had no opportunity to examine the circumstances in the Cayman Islands or interview H, J or I's step-mother, queried what would happen to I, with a busy successful working father and her brother J leaving school and likely to further his studies away from home (page 14). She too recounts the problems of co-operation in contact arrangements with I (e.g. p.9)

***The Judgment***

*Grounds 1-3 and 6*

18. Central to this appeal is the criticism of the way in which the judge expressed her decision. The appellant contends that it was little more than a narrative of submissions and evidence, lacking the necessary "*sophisticated analysis*" the difficulty of the case demanded. For the first 42 pages, it is said, she sets out background, submissions and the welfare reports and only in the last ten pages of her judgment does she reach short conclusions, without setting out the reasons

for those conclusions. The respondent, however, says that, read as a whole, the judgment is not merely a recitation of the evidence and the welfare reports but contains a sufficient evaluation during the course of the narrative to enable clearly discernible reasons to be found for the conclusions which she reached.

19. It is, accordingly, necessary to examine the detail within the judgment on which the appellant relies to make good his grounds. The judgment paragraphs are referred to as [J…]

20. Starting at [J 143], the judge sets out the six questions in the checklist, identified in ***B v B*** [2013] (1) CILR 271, and derived from English authority and approved by this court in ***B v B*** (supra)[2014 (2) CILR 234.

21. At [J 143] she asks:

> "*1. 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?*
>
> *I am satisfied that W does not have a desire to exclude H from I's life. She genuinely wants her youngest child to live with her and given that the first several years of I's life she had been her primary carer she wishes to maintain that bond.*
>
> *I am satisfied, based on the evidence that W would take all steps to ensure that I maintained contact with H, if I relocated to Australia."*

22. The Appellant contends that the judge gives no basis for this conclusion. She makes no findings to make good her satisfaction. There was, however, ample evidence set out in the body of the judgment as to the previous life I and her mother had spent together in the Cayman Islands, as to why she left for Australia and why she would have wanted to live there with her younger daughter.

23. There was no dispute as to the fact that I had lived with her mother for the first almost six years of her life, with little overnight contact with H, who was travelling "*significantly*" for the purposes of his work (judgment [J39]). The evidence and submissions on behalf of H do not disclose any challenge to the description of those early years of I's life. On the contrary, it was the change over the recent period of 17 months which founded H's claim that his I's welfare

and care would be better served by her remaining, as she wished, with him and her step-mother on the Islands.

24. The social worker Ms. Bailey spoke of that earlier life in her first report of 28 September, 2018. W was the parent with greater daily responsibility and "*heavily involved*" in the children's lives, as a stay at home mother until 2017 [195] and Ms. Bailey described how attached I was, at that time to her mother [200]. At that time she spoke of I as being more attached to her mother [201].

25. In her second report, Ms Bailey does not resile from her view of W as a mother to I. The essential distinction in I's circumstances between the date of the first and second report of 18 September 2019 is that I had become used to her life in Grand Cayman with her father, step-mother and her brother J. Ms Bailey described the close relationship between I and her brother and cautioned that they should not be separated without "*very careful consideration of the benefits and drawbacks*" [87].

26. The reasons for W's departure at the end of July 2018 are set out in the reports and in the submissions. The primary motivation for leaving in July 2018 was the wish of the parties' eldest daughter R to complete her tertiary education in Australia, and for her mother to be there with her, the timing was partly influenced by the expiry of W's lease. (Judgment [J33]). R had had difficulties of a psychiatric nature to which a Consultant Psychiatrist, Dr Lockhart, in the Cayman Islands speaks in a report, dated 1 November 2019. For several years R had expressed a wish to go to university in Australia and her mother going with her was, according to Mr Lockhart, seen as beneficial and a source of support (see pages 3 and 4).

27. Unfortunately, R and H had become estranged, a breakdown aggravated, according to H, by W (see Judgment [J 37]). Counsel for W had submitted that H believed, as evidenced in an email of 27 May 2019, that W's wish to go was "*with the vengeful intent of adding I to the list of children I will never have any contact with ever again…"* (Judgment [J 70]). But W's wish to move to Australia, so W's counsel submitted, had been expressed in earlier years and there had been an earlier court application in 2015 and a written request for permission in January 2018. (see H's submissions noted at [J. 111].

28. H's case by the time of the hearing in 2019 was that it was not therefore R's move to Australia which motivated W but rather "*a choice she made for her own reasons…in the hope for a better life and better opportunities for herself*". (H's submissions noted at Judgment [J 113]).

29. But there was evidence on which the judge could and did rely in concluding that W genuinely wanted her youngest daughter to live with her. H himself had conceded that W had, in the past, been in the primary caregiver for the three children of the marriage (J [35]).

30. Moreover, the judge had earlier set out the evidence on the basis of which she concluded that W would take all steps to ensure that I maintained contact with H. There was a dispute about monitoring of visits and Ms. Bailey had expressed concern about attempts to influence I, as to where she wanted to live (J [24] and [38]). In her first report Ms. Bailey had not seen any risk that W would seek to turn "*the children*" against their father (para 207). The judge records the evidence of Ms. Bailey that:

> "*There was no evidence that [W] would seek to turn the children against their father. While she shared various concerns, she was able to consistently balance the negative comments with more positive comments. Additionally, it is believed that [W] played a role in influencing [J] to rekindle the relationship with his father*." (J [65])

31. In her second report Ms. Bailey describes a conversation recorded by H as to I's reaction when her mother spoke of her coming to live with her in Australia (para 23). But there is nothing in that report to justify a fear that W would seek to restrict H's contact with I or spending time with her on vacation. The second report from Ms McDermott in Australia records W's intent to do "*everything to facilitate the relationship between H and I*" (page 4). Despite H's beliefs, there was a sound basis in the evidence for the judge's answer to this question.

32. The second question the judge asked herself was whether "*the father's opposition is motivated by a genuine concern for the child's welfare or is it driven by some ulterior motive?*" [J 144]. The judge recognised the stronger relationship which had developed between I and her father in the past 17 months and accepted that he genuinely wanted I to live with him. But she is criticised for expressing her view that:

> "*It is troubling, however, that H strongly blames W for his strained relationship with his eldest child R. He repeatedly expressed the view that if I relocated to Australia, W would cause an alienation between himself and I*"

33. It is said no explanation has been given as to why it is troubling. But I have already referred to the email which expressed H's belief, (quoted [27]). The judge was entitled to express her evaluation of H's attitude in the terms that she did. The judge had earlier recorded that:

> "*As expressed throughout his evidence and as indicated to Ms Bailey, H holds W responsible for his estrangement from R. He has expressed fears that if they lived in Australia with her, she would similarly influence J and I. Reference was made to his request that W satisfy certain conditions prior to him sending the younger children to visit her in Australia for holidays. This included the signing of a declaration that she would return the children at the end of the visit and a declaration that the Cayman Islands had sole jurisdiction over the issue of custody. He referenced her refusal to do these things as evincing an intention of preventing them from returning. While testifying H demonstrated strong resentment towards W."* [J 37]

34. Given that she accepted W's reasons for going to Australia and accepted her genuine wish to have her youngest daughter with her, it was open to the judge to express, in the terms she used, her concern that H would cause the rift between himself and I that he believed W had caused between R and himself. The judge was entitled to find that W had not caused the rift between H and the eldest child R; the reports did not suggest that she had and she had heard evidence both from H and W. We do not believe the judge needed to amplify the cause of her concern founded on H's persisting fears as to W's attitude to his relationship with the children for the future. Once the judge had, on a sound basis, rejected the grounds for those fears, it was then open to her to view those baseless fears as of concern.

35. The appellant criticises the final paragraph of [J 144]:

> "*On the evidence, H in the past has taken a rigid attitude to contact between the younger children and W. It is of concern that based on H's views on alienation and past behaviour, he could seek to obstruct W's contact with I.*"

He says that it is not enough to venture that something could happen. What is needed is a finding as to likelihood. For the reasons given above at [34] it was open to the judge to make a finding as to risk based on H's previous attitude; the judge was doing no more than that.

36. The judge then considered the third question in the checklist:

> "*What would be the extent of the detriment to the father and his future relationship with the child were the application granted?*
>
> *It is accepted that H would be devastated if I relocated to Australia. However, the evidence has established that he and I now have a much closer bond than they had when I was younger. Such a bond is not easily fractured. This close bond taken together with the contact that W will facilitate electronically, as well as in-person visits would insure that there was limited detriment to H's relationship with I.*" [J 145]

37. This issue, as the appellant rightly submits, goes to the heart of the case. The judge was bound to ask what the change to I's life would mean after the settled 17 months with her father, step-mother and J. The appellant contends that the judge failed to grapple with this central question and failed to analyse the type of detriment.

38. The court did not agree. The comments which the judge makes about the father stem from his own counsel's submissions, based particularly on the second report of Ms. Bailey. She describes the clear routine and positive relationship with H and his wife (para 72) and H's active involvement with I (para 79). That was a sufficient basis for the judge's conclusions as to the strength of the bond which would continue even if I relocated to Australia. Despite the importance of this checklist, the danger, as Mr. Verdan QC on behalf of the appellant submitted, is that it should not be a substitute for a fuller analysis which draws the separate answers together in answering the all important problem of the effect on the child and her welfare were she to be removed to Australia. It is true that that overall consideration does not appear at this point in the judgment. But what is important is whether, read as a whole, the judgment can be said sufficiently to consider that issue and explain the conclusion which the judge reached. This is an issue considered further below.

39. The judge considered the fourth question:

> "*To what extent with would the detriment to the father, if the application was were granted, be offset by extension of the child's relationship with the maternal family and, if applicable, homeland?*
>
> *There can be no suggestion that a relationship with her maternal family can replace I's relationship with her father. I has spent quality time with her Australian family in the past but regular contact with her extended maternal family including the maternal grandparents can only be a positive thing. It is noted that I already has an existing relationship with her older sister R who is in Australia. The extension of these relationships would be of benefit to I."* [J 146]

40. The appellant says that the judge failed to make any comparison with the benefits of remaining with her father and with J; nor did she take into account the risk of estrangement from her father. The judge, however, accepts without reservation the success of I's developed relationship with her father for the past seventeen months. It is this which she weighs against the extended family in Australia from which I would benefit. There was a sufficient consideration of balance or, as the checklist puts it, "*offset*".

41. The judge then asked, in the final question derived from ***B v B***:

> "*What would be the impact on the mother of a refusal of her realistic proposal? The weight placed on this will increase if the child resides with the mother*".
>
> *As is the case with H, W would be devastated if the relocation application is refused. It cannot be overlooked that I resides with her father and that this must be given weight. However the fact that for several years I resided with and was cared for by W, with significantly less contact with the H must also be a factor for consideration. This was no doubt the reason that I had such a strong reaction when told that her mother was moving to Australia without her. She did however, eventually adapt to the changing circumstances.*
>
> *It would be extremely detrimental to W and I, should H, as has been previously mooted, place any obstacles between contact between W and I".* [J 148]

42. The appellant criticises the judge for failing to quantify the weight she attaches to the existing relationship and residence with H. But she had already recognised that importance (e.g [J 145]). He says that the glimpse into what is obvious in the final sentence includes no finding as to whether that is likely and is, therefore, without value. But the judge had herself earlier referred to the risk in the final sentence of [J 144] (cited above [32]) and this was a reference back to that concern.

43. The judge then turned to what she called the "Welfare Checklist", the list of factors which Ms Bailey had set out. The judge's answers were the subject of criticism as lacking the necessary analysis and reasoning. These paragraphs, between [J 149-154] concern one of the crucial issues in the case: the effect on I of uprooting her from her life for the past seventeen months living with her father, step-mother and her brother J. The general criticism is much the same as directed against the judge in the earlier passages: she failed to deal adequately with the detrimental effect of the disruption that would be caused and her separation from her sibling J.

44. Ms. Bailey, in her second report, refers to I's expressed wish to remain with her father and with J. (see e.g paras. 66, 89 and 92). It was this which led to Ms Bailey's recommendation:

> "*[89]. I clearly articulated a desire to continue to reside in the Cayman Islands and to continue to communicate with her mother regularly during visits. She appears to be secure in the current arrangements and does not wish to relocate. In light of her expressed wishes and the divergent wishes of her parents in relation to her residence, it would be necessary for the court to carefully consider the emotional impact of disrupting her current routine and peer relationships*."

> *[93] In light of the fact that this writer was not responsible for investigating the current circumstances of [W], the recommendations for the residence of the children are made with some caution. However, they incorporate this writer's observations about the extent to which the children's needs are being met, the level of stability experienced as well as the children's expressed wishes."*

45. The judge in considering the first item (A) on the Welfare Checklist, recognised the clearly expressed wish of I, firstly at five when she wished to go to Australia with her mother and then at seven when she wished to stay in the Cayman Islands but said:

> "*It is considered that either age is too young for the Court to place much weight on expressed views.*" [J 149]

46. This view is challenged as failing to acknowledge the articulate and intelligent nature of I, as demonstrated by interviews with her described in the reports. But the judge was entitled, as a matter of evaluation, to form her own view on the weight to be given to the understandable views of so young a child. As the judge went on to say I, according to all the reports, would "*swiftly adapt to change*" [J 150], a view she repeats at [J 151]. The appellant's challenge to this view seems to be no more than a disagreement with views which the judge was entitled to take.

47. The judge considered the future of I's emotional and educational needs [J 150]. She expressed concern as to whether, given the nature of H's work commitments, he could provide the same attention as W had in the past and could still in the future. This conclusion is criticised since it makes no reference to the problems W has faced in relation to her own plans for work in Australia. H had described them as being "*flaky*". His views are set out by the judge at [J 116] and [117] and [J 128]-[132]. When H first looked after I he was on "*gardening leave for six months*". He now has a new job, demanding as one would expect of a talented busy lawyer, but he told the judge that he had re-evaluated his priorities [J 124]. By way of contrast, W had resigned from her post as a Montessori teacher, had been without gainful employment for nine months and had for a time worked ad hoc babysitting and as a carer [J 128] and [J 129].

48. W's work and plans were described in the Australian report of 18 September, 2018 (page 3) and the support I would receive from her wider family in Australia is explained (page 13). The judge records this evidence, in the course of her account of counsel's submissions [see [J 56], [59] and [60]) and referred to Ms McDermott's report from Australia as to W's plans [J 30].

49. It was obvious that H could provide a stronger financial and more prosperous background than W and plain that the judge recognised this in recording the submissions relating to the Financial Orders (e.g. [J 92]). But that the judge was entitled to rely on the fact of the demands of a busy and successful legal practice, however much H's work priorities had changed. There was an obvious evidential basis for that view. The evidence of Ms McDermott, as recorded by the judge, did entitle the judge to embrace the contention that I's needs would be met in Australia.

50. The appellant advances further criticisms in relation to a failure in [J 151] to [154] to analyse and balance the benefits which I would retain by remaining with her father and her brother J in the Cayman Islands. In particular it is said that she fails properly to analyse and weigh the importance of the bond with J. This formed separate grounds of appeal (Grounds 7 and 8). Ms Bailey had, in her second report, stressed the importance of this close bond (para 73 and 87). The bond between J and I was close (para 31) and "t*he preservation of this (sibling) unit should be carefully contemplated when decisions regarding relocation are under consideration.*" (para.73). She recognised the limitations on the power of the court, save in exceptional circumstances, once J reached 16 in 12 November 2019 (para 74, citing section 10(11)(4) of the ***Children Law*** (2012 Revision).

51. The judge rejected the view that J should himself relocate to Australia, as had been mooted. He had expressed a clear wish not to do so, [J 26] and having regard to his age it would be for him to decide whether he wished to do so in the future. The judge was well aware, that I and her elder brother would be separated if I went to Australia. The question therefore remained whether even if I had stayed in Cayman, the two would continue to live together (see the argument of W's counsel at [J 59]) and the probability, feared by W, that J would leave home within the following three years (Ms McDermott p.14).

52. Mr. Verdan QC's criticism of the judge's failure to deal with the importance of the sibling bond between J and I and the effect of its fracture on I's relocation is well-founded. But, in the context of the overall view that the judge took, it is not a basis for impugning the judgment as a whole. It was obviously not nearly as significant as it might have been had J been younger and had the prospects of him remaining in the same household as I been more settled.

53. Although the appellant criticises the judge for failing to pull together the strings of her separate answers to the questions and factors she identifies, by the end of this part of the judgment it seems to me that her reasoning is sufficient to explain and justify her conclusions.

54. There were two features which drove the judge to permit relocation. Indeed, there was no dispute as to those two features since counsel for the appellant himself complained that they were limited to only two features and that betrayed a failure properly to consider the case as a whole.

55. The judge's conclusion is to be found at [J 154], although it is in answer to a particular welfare question relating to the parents ability to meet I's needs, a question which itself goes to the heart of the primacy of I's welfare for the future:

> "*It is a matter of great concern that H's strongly expressed resentment towards W and his past behaviour showing a rigid approach as it related to contact between W and the younger children, could lead him to obstruct contact between I and her mother if he retained custody. Particularly direct physical contact. This would undoubtedly be detrimental to I's emotional needs and overall development.*
>
> *On the evidence, there is no concern that if I relocated, W would seek to prohibit her contact with her father. This is essential that to I's is emotional development.*
>
> *Based on the history of W being I's primary care giver for such a long period of time after her birth, taken together with the concern that H would restrict contact between child and mother if he retained custody, it is concluded that it is in the best interests of I that she is allowed to relocate to Australia with her mother.*"

56. Thus, although there were many features which were relevant as to where I's best interests lay, the judge took the view that the two most compelling reasons for relocation were the prior relationship between I and her mother as primary carer for the first almost six years of I's life and the attitude of her father to contact. There was no dispute about the former and ample evidence as to the latter. The evidence on which the judge's fears as to H's attitude were based lay in his own approach and beliefs as to W's motivation, the demand for written assurances and his monitoring of the contact between W and her daughter. That provided a sufficient basis for that significant feature which influenced the judge's overall view. The judge adequately explained her reasoning and there was sufficient evidence to justify it.

*Disagreement with Ms. Bailey's second report (Grounds 4-5)*

57. It is, of course, of significance that the judge did not adopt the recommendation of Ms. Bailey in her second report. As an aspect of the judge's obligation to make clear the reasons for her conclusion, a judge who differs from a welfare recommendation should make it clear why she is taking a different course. In ***Re W*** [1999] 2 FLR 290, Thorpe LJ counselled that judges should reason their departure from a recommendation and test a disagreement with the expert witness (p.395). The appellant says the judge in the instant appeal did neither.

58. The fundamental principle is that the judge should have made clear her reasons for departing from the recommendation; this is of greater importance than the manner in which she does so. In ***Re V (Residence: Review)*** [1996] 3 FCR 101, the Court of Appeal approved the proposition that the reasons for the judge's decision are normally "*the very reason for declining to follow the welfare officer's recommendation*" (p.110).

59. Plainly, the change in I's own wishes was crucial to Ms. Bailey's own change in recommendation. It was a matter for evaluation for the judge to decide what weight should be given to the views of a seven year old who had just spent the last 17 months, for the first time in her life, apart from her mother and who had hitherto not only been the primary carer but on most occasions the only one. The reasons, therefore for according limited weight to I's own feelings were obvious and, in our view, sufficiently expressed when reading the judge's reasons as a whole. We reject these grounds of appeal.

*Further Grounds: the status quo (9) and I's wishes (11)*

60. Although these issues formed separate grounds, they were intertwined with the grounds dealing with the inadequacy of the judgment. The appellant complains that the judge failed adequately to deal with the disruption to what had become I's settled and happy life in the Cayman Islands. But the judge did refer to the impact on I at [J 146], [150], [151] and [154]. The whole tenor of her judgment is based on a recognition of the settled life I has had but a decision that her future is best served by relocating to live with her mother who had, prior to the previous seventeen months cared for her, coupled with the judge's expressed view that at that young age I would rapidly adapt to change. It is not correct to suggest that the judge overlooked or was unaware that relocation did involve a complete change from those previous seventeen months.

61. As to I's wishes, as indicated above, (see [43] and [56], the judge did consider those views in the context I have explained. The judge was entitled to express the view as to weight to be

attached to the understandable wish of a young child to avoid disruption to the life she had spent recently for nearly a year and a half.

*W's Departure with I at the end of December 2019*

62. The judge said:

> "*I should be able to adapt rapidly and settle into a new environment as long as the introduction to any changes is done gently and with sensitivity.*" [J 151]

63. Far from adopting the judge's advice, W chose to leave with I on or about 31st December 2019 sending H an email at 7.55pm on 1 January 2020 telling H that she had done so. As far as the court could tell, no notice was given and I had no chance to take her things or to say goodbye to her father, stepmother or friends. The court ordered a report from Victoria Social services but for reasons which are unclear, no report was available when this court hearing took place. Nor did we have evidence from W, though her counsel proffered explanations for this precipitous behaviour.

64. This turn of events, to which H made reference when seeking leave to appeal, did not form a ground of appeal. This court could only consider the matter a fresh, taking into account these events which took place after the judge had given judgment if it had taken the view that the judge was wrong (see in particular Lord Neuberger in Re B [86]-[89]). Had the appellant wished to rely on W's behaviour after judgment had been given he should have returned to the judge to make findings of fact as to whether this behaviour altered her view as to what was best for I for the future.

*Financial Orders*

65. H accepts that his appeal in relation to the financial orders made by the judge was linked to his appeal as to relocation. Since the court has dismissed his appeal, a substantial proportion of this aspect of the appeal has gone. (see H's skeleton argument [48])

66. The judge was entitled, and arguably charitable, to order that H pay only four months out of the sixteen months he was in arrears as to housing allowance. The orders made in respect of continuing housing allowance and for I's maintenance were not arguably wrong.

*Costs*

67. W was required to ask for costs, as a condition of her legal aid certificate. There has been no change in the Cayman Islands to follow the change in the England and Wales Family Procedure Rules 2010 (see ***McTaggart v McTaggart*** [2011] (2) CILR 417). But H's application, in the light of the second welfare report from Ms. Bailey and his relationship with I for the seventeen months prior to the hearing of W's application fully justify the view that H's conduct in pursuing the appeal was far from reprehensible and should be recognised by making no order as to costs in this appeal and below. Both parties sought what was in the best interests of I, there were no winners and no losers (see Cobb J in ***Re E-R*** [2016] EWHC 805 [77].

*Conclusion*

68. The court took the view that the judge adequately expressed her reasoning. The respondent prayed in aid the speed with which she was required to deliver her judgment. If the judgment had failed adequately to explain the judge's reasons, such a circumstance would not be a reason for a judgment which failed to satisfy the needs of the case. Moreover, a process in which it is necessary to glean the reasoning from a lengthy recital of the submissions advanced is undesirable. But this court has not to mark the judge's papers but to see whether the reasoning sufficiently expresses why the judge differed from the welfare report's recommendation and I's own expressed wish and decided that I's best interests for the future lay with her mother in Australia. The court was of the view that the judgment satisfied that requirement. It is necessary to add that it was wrong for the judge herself to grant permission to appeal. It may be that that was because of urgency. But this court could have and would have dealt with the application urgently and if the judge had left it to this court to consider permission she would have followed the advice of Chadwick P in ***B v B*** supra para 66).

**Beatson, JA**

69. I agree.

**Martin, JA**

70. I also agree.