

IN THE CENTRAL FAMILY COURT

Neutral Citation Number: [2025] EWFC 23 (B)

M v F (INTERNATIONAL RELOCATION)

First Avenue House

42-49 High Holborn

London

Before HER HONOUR JUDGE ROBERTSON

IN THE MATTER OF

M (applicant)

-v-

F (Respondent)

Clarissa Wigoder of Counsel appeared on behalf of the Applicant

Rosanne Godfrey-Lockwood of Counsel appeared on behalf of the Respondent

JUDGMENT

Date: Corrected version: 13 February 2025

WARNING: 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,

must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Parties and applications

1. The children in this case are S, a girl who is 11 and P, also a girl, who is 8. Their parents are M (the mother) and F (the father). The applications before the court are the mother's application for a Specific Issue Order granting leave to relocate with the children to the USA and the father's application for a Prohibited Steps Order ("PSO") and a port alert to stop her going. Both applications are dated 5 July 2024.
2. At this hearing M has been represented by Clarissa Wigoder of counsel and F has been represented by Rosanne Godfrey-Lockwood of counsel.

Background and progress of this case

3. F is German, the mother is from the USA. They met in 2005 and married in 2011. They lived in Germany from 2010 until 2013 when they moved to London. S was born in 2014 and P in 2016. The parties separated in 2020 and F went to live in Germany. It is common ground that he has always played a committed and hands-on role in the children's lives, since separation coming from Germany approximately every other weekend for a long weekend with the girls (Covid permitting) and having them for half the holidays. The parties' divorce was finalised in 2023. Despite that, there has been a remarkable and commendable degree of positive co-parenting, with the mother allowing the father to stay in the family home (with her there also) during his weekends with the girls and the father agreeing to do so. It has worked well. Latterly the father found accommodation nearby, and has had the girls there instead on his weekends, but when S asked if he could come and stay for her birthday in January this year so that she could have both parents there and wouldn't have to choose, both parents complied. They are both loving, child-centred, protective and capable parents.
4. Proceedings began in the wake of some distressing news the mother received about her parents' health. Her parents live in Florida. At the end of June 2024 she was told that her father, a cancer patient, only had a very short time to live and her mother, who

has Alzheimer's, was deteriorating and would need end of life care. It appears that in the aftermath of receiving that news, the mother decided that she and the girls would need to move to Florida to be near her parents. It appears that on or around 30 June 2024 she had a conversation with the father in which she told him they would be moving, and he did not agree to a permanent re-location. It seems to be agreed that during that conversation he proposed a compromise of 1 year in Miami and 2 years in Germany. Despite the father's lack of agreement to a permanent relocation, on 30 June 2024 M told the children that they were moving to the US, and she records that they were excited about the move. She then took a unilateral decision to remove them from their school, having first given them the chance to say goodbye to their friends and have their shirts signed.

5. On 3 July 2024, the father's solicitors wrote to the mother saying that he did not agree to the relocation, and asking her to provide assurances that she would not go, in default of which he would make an application for a Prohibited Steps Order. The mother did not reply to that letter.
6. By 5 July 2024 the mother had taken some legal advice and had realised that she could not simply go without the father's agreement. She therefore made her C100 application for permanent relocation which I am determining today. On the same day the father, who had by that stage become aware that the children had been taken out of school and had seen photos of them with their signed shirts, made an application for a Prohibited Steps Order.
7. Both parties criticise each other for making the application, but as it seems from the evidence that neither party knew about the other party's application at the time they made their own, such criticism is not called for.
8. On 5 July 2024 the High Court made an order requiring the mother to hand the children's passports to the Tipstaff and prohibiting her from removing the children from the jurisdiction. On 9 July 2024 at the return date, an order was made varying the previous order such that the mother could take the children on a European holiday in the summer, and providing for the passports to be held by the father's solicitors. The PSO preventing the mother from removing the children without permission of the

court was reiterated and a further PSO was made preventing her from moving the children from their school. There appears to be no end date on those prohibitions.

9. Matters were then transferred to this court, and a s7 report was ordered. On 4 November 2024, Mx Jeffrey Baker, the Independent Social Worker or “ISW”, submitted a report on the children’s wishes and feelings and providing a welfare analysis in relation to the proposed move. Mx Baker recommended that the children should remain in the UK and should not be relocated to the USA.
10. Since then the parties have filed additional statements responding to that report, and the issue before me now is to decide whether the mother should be allowed to relocate to the USA with the children or not, and whether any or all of the PSOs need to remain in place.

Positions of the parties

11. The mother wishes to relocate as soon as possible, preferably at February half term which begins at the end of next week. The father wishes the children to remain in the UK and for arrangements similar to the current arrangements to continue.

The Law

12. The law on international relocation has simplified in recent years. Previous case law was found in *Payne v Payne* [2001] EWCA Civ 166 which set out factors to be taken into consideration in a relocation decision. *K v K* [2011] EWCA Civ 79 made it clear that the *Payne* factors were guidance only, and the only principle in these cases is that the welfare of the child is paramount.

13. I summarise the *Payne* factors as follows:

- a. Is the mother’s application genuine, not motivated by desire to exclude the father from the child’s life?
- b. Is the application realistic?

If the answer to those two questions is yes, then

- c. Is the father’s opposition motivated by genuine concern for the child or driven by some ulterior motive?

- d. What would be the extent of the detriment to him and his future relationship with the child if the order were granted?
- e. To what extent would that be offset by the extension of the child's relationship with the maternal family and homeland?
- f. What would be the impact on the mother of a refusal of her realistic proposal?
- g. There must then be an overriding review of the child's welfare as the paramount consideration directed by the statutory checklist so far as is appropriate.

14. In my consideration of the case I will bear these in mind as guidance, whilst conducting a review of the evidence through the prism of the welfare checklist, having the child's welfare as my paramount consideration throughout. I turn then to the welfare checklist.

Welfare checklist

Their age, sex, background and relevant characteristics

15. I have dealt with the children's ages and sex. S is diagnosed with ADHD, ASD and dyslexia. P has been assessed for the ASD and ADHD but the outcome is unknown. The other important part of their background is that they are international children. They were born in London and have lived all their lives in London. All of their lived experience is here. They are therefore culturally British. Their mother is American and their father is German and they have spent a great deal of time with both extended families. It is common ground that they have (with the exception of times of Covid and the last year when the PSO has been in place) usually made 3-4 long haul flights each year (perhaps 2-3 of them to the USA to see their American family) and 5-6 trips to Germany to see their German family. They speak German and English. They have British, EU (German) and American passports. It is my view that all three nationalities play an equally important part in their lives, with no one to take precedence over any other.

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

16. In her C100 the mother says that the children are excited about the move. That remains her case. She says that the girls have for many years said they would love to live in the US. S in particular wants to go and live in Hollywood. The mother says the girls' excitement about living in the US predates these proceedings. She says they are excited about making new friends and going to new schools and seeing more of their grandparents. The father in his oral evidence was clear that the girls had never expressed a wish to relocate to Miami prior to being told by the mother that it was a done deal.

17. The first time Mx Baker (the ISW) met the children they saw the girls separately from each other (and without the mother present), on their own, in their home. Mx Baker said they were both open and forthcoming and there was little need to ask questions. They both volunteered that they knew about the plans in question. Both children began by saying that their mother had told them they were moving to Florida at the start of the summer, and both children then corrected themselves to say that in fact the mother had told them she was going to discuss a move with the father.

18. Mx Baker asked them how they felt about the move. The s7 report says this:

“both S and P responded in almost the same words, that they had friends all over the world; that many of their friends were moving away from London and that they were “ready for a change.” They both also mentioned the nice weather in Miami and the beach, and that their mother had told them they would get to spend “just as much time” with their father as they do now because he would be able to visit them in Florida. They both mentioned that they were used to flying long distances because of going on lots of holidays “all over the world.”

19. It is clear both from Mx Baker's report and their oral evidence that they considered this to be evidence of a certain degree of emotional manipulation on the part of the

mother. Mx Baker was clear that this was very far from the worst encountered in their career, but nevertheless the children were obviously very aware that the mother wanted this, and they endorsed the relocation for exactly the same reasons as each other and in exactly the same words as the mother. Mx Baker was not suggesting that the mother had sat them down and coached them: but it was clear they had seen her crying when it seemed the move might not happen, and when S was asked whether she had any worries about moving she said:

“No, well, I just really want to move because I know it’s what my mum wants, and I want my mum to be happy. I know that she discussed it with my dad and that he doesn’t want to be far away from us. And when they discussed it with him, I saw that she was crying and well, I want my mum to be happy, like when we were at the Taylor Swift concert. I don’t want my mum to be sad.”

Mx Baker noted that even when pressed S was not able to voice wishes of her own save in reference to her mother’s wishes.

20. Mx Baker said in oral evidence that it was likely the girls had not understood the “cons” in relation to the move. Mx Baker was clear (and this does not seem to be in dispute) that they had been told they would see their father just as much, if not more than now. Mx Baker did not think that was realistic. In terms of the school itself he said “they have no idea what they are going to”.
21. Mx Baker was also concerned that the girls had not voiced any anxieties about going to a new school and starting a new life. As I have already mentioned, S is diagnosed with ADHD, ASD and dyslexia and finds change difficult. P has just been assessed for those same conditions but the outcome is not known. It would be expected that they might have some trepidation, but it was absent. Mx Baker agreed that it was not possible to have an open conversation with the girls because there was a pre-prepared line, a wall, and that they presented the case to him all prepared. Mx Baker said that S had identified herself with her mum and got her strength from her mum’s confidence that everything will be OK. She felt that as long as she was doing what made the mother happy, everything will be OK. Mx Baker said it was not possible to talk to her about what she wanted separate from what the mother wanted and as a result there were limitations on the weight that could be placed on their expressed wish to go. Mx

Baker agreed that the court had to be extremely cautious about the children “wanting to go” because it was first presented to them clearly as what was going to happen. It was tricky to understand what their wishes and feelings might have been if the case had been presented more neutrally.

22. There have been a number of criticisms made of Mx Baker’s report in particular in relation to a perceived lack of challenge of the father’s position. Those criticisms, it seems to me, are not relevant to the consideration of the children’s wishes and feelings. I found Mx Baker’s oral evidence to be balanced, fair and child-focussed, and I found their opinions and recommendations to be evidence-based. It is clear from their evidence that the children did have a pre-prepared line albeit that there is no evidence of direct coaching, just emotional influence. I find S’s inability to consider her own wishes separately from her mother’s to be further evidence of that. I find the absence of any sense of anxiety in these two children in particular to be unusual and to suggest that they may not have envisaged clearly what the move would be like. For those reasons alone I agree that the weight I can give to their wishes and feelings is limited. There is another possible reason, which is that they may have based their views on an unrealistic expectation of the impact of the move on their relationship with their father, but I will need to consider separately whether the mother’s view about that is unrealistic. Suffice to say that if it is unrealistic, that is a further reason to limit the weight I place on the children’s wishes and feelings, as I have no doubt they would wish to continue to have their father as a secure, regular, frequent and reliable part of their lives, contributing to their emotional and psychological safety as he does now.

Their physical, emotional and educational needs

23. S has some special needs because of her diagnoses. There is dispute about whether her current school can provide her with the specialist provision she needs. The mother says it can not, and notes that when she applied for the school (which she had to do because she had unilaterally taken the children out of their previous school) they initially refused to accept her on the basis that they could not meet her needs, and then said they would take her but only if the parents provided tutoring in addition. Mx Baker had a different take on it. They spoke to the SENCOs of both the previous

school and the new school, and also the head teachers of both schools. The head teacher of the new school had reassured them that S was getting the provision she needed. Mx Baker also noted that the SENCO from the previous school had had a lot to do with S, and had said she thought S would do fine. If anything she felt the mother was a little over-worried about it. Mx Baker said that the mother was quite a champion for S, and that was confident the parents would make sure S had everything she needed.

24. The argument which was made on behalf of the mother was that S was not getting the specialist provision she needed here, whereas the school in Miami had specifically said they could provide for her. It was argued that that was a factor in favour of the move. I do not accept that argument. S's diagnoses are not unusual. They are also diagnoses capable of being at the serious end or at the much less serious end. Sometimes significant accommodations are needed, sometimes not. There is in England and Wales a system for assessing the special needs of children, and if their needs are sufficiently significant they will be given a EHCP and provision will be made. S is entitled to all this under the England and Wales system and I have no reason to doubt that it will be provided. In the USA, I am told that the specific school proposed by the mother has said they can meet S's needs. They may well be able to. I make no findings as to the statutory requirements in Florida to make provision for children with special needs, but it is not unreasonable to suppose that schools are required to make provision in a similar way to here. But whether that is right or not, there is a system here for making the necessary provision for children, and as a result of that there is no need for S to move to obtain the provision she needs. The same applies to any special need which P may in due course be assessed as having.
25. The other obvious need which these two girls have is to have a close, loving, secure and supportive relationship with both parents. It appears on the evidence that they currently have that, and that is a pleasure to see in these courts. They need that to continue for the sake of their emotional and psychological health as they mature into adults.

The likely effect on them of any change of circumstances

26. I take this together with the heading of *harm and risk of harm*, because the disputed issue about change of circumstances is whether a move to the USA would damage the girls' relationship with their father, and if so, whether that would be harmful.
27. This, then is the nub of the case. The mother says that the existing level of contact could be maintained or even improved under her proposals. The father says her proposals are unrealistic. I turn to look at the mother's proposals in detail.
28. The mother proposes that the father spend time with the girls:
- a. For six periods of 10 nights each year during term time (including a full school week and the weekends either side)
 - b. Summer holidays: 7 weeks (split into 1.5 weeks / 4.5 weeks / 1 week)
 - c. Alternate Spring Break and Thanksgiving holidays (10 days);
 - d. Half of the Christmas holiday (alternating Christmas and New Year per the current arrangement; 1 week each).
29. The mother says this would require the girls to undertake only three long-haul flights from Miami to Germany per year which is a level of travel they are used to. She says it would require the father to travel long-haul six times per year. She says that her proposals cumulatively amount to the same, or more time for the children with their father than they have under the current arrangements, in particular more time during school weeks.
30. The father says that these proposals are unrealistic and unaffordable. I will take those two points separately. Starting with whether or not they are realistic, I look at the detail of the mother's term-time proposals. Her proposal is that the father would fly on a Friday, once a month in term-time, to the USA, using that Friday to work on the plane. He would then have the weekend with the girls. For the following week he would work remotely. The father would be likely to be getting up early because of jet-lag, and he could therefore begin work any time between 3am (which would be 9am in Germany) and 5am (the father having demonstrated under the current system that he is able to start a few hours late by flexible working when it suits him). He would be finished his work by 11am US time (5pm German time) and could then pick the

girls up from school and spend quality time with them in the afternoons and evenings, taking them to their activities, cooking for them and being a full part of their lives. He would then have the next weekend with them, returning home overnight on the Sunday night to start work on the Monday morning. This would be once a month for the six months of term-time. For holidays the girls would travel to Europe and see the father there (or wherever the father wished to be with them).

31. The father says that he will not be able to work on the flight to the USA on a Friday. There is likely to be no or unreliable wifi on board a flight and he can not join meetings or take calls. The father is Head of Country for a large pharmaceutical company, and earns somewhere between 200,000 and 300,000 euros per year. I do not have the evidence to give a reliable figure but nothing turns on it. The point is that he earns a great deal of money in a high-powered and demanding job. Indeed the mother in her own evidence accepts that his job is “unpredictable and demanding”. I have no difficulty accepting that remote working on a journey to an airport, in an airport, on a plane and from the arrival airport to the town is incompatible with the sort of concentration, participation and impact which such a job is likely to demand.
32. The father then says that his company will not allow him to work remotely in the way that the mother suggests. He has provided a letter from his employer which says that “working frequently and remotely for two consecutive weeks from Florida US...would prevent [him] from working and engaging in the way that is needed for his senior leadership position. We do not believe that this is feasible nor appropriate for the role.” The mother says that I should discount this letter because it has been written on a false premise, namely that the father would be working for two consecutive weeks in the US which is not the mother’s proposal. It is right that that appears to be a misunderstanding on the company’s part. However that does not, in my view, invalidate the preceding three paragraphs. They say this:

“F is currently the country manager of our [name of company] affiliate in Germany. In this capacity he is leading the German, office based, senior cross functional team and is accountable for the delivery of significant financial targets. Furthermore, he leads the strategic change which the company is currently undergoing which specifically impacts the German organisation.

In his role it is vital to be frequently present with the team in our office in Bad Homburg or at other events with the salesforce throughout Germany. It is important that he is available during core business hours between 9:00 to 17:00 o'clock. His physical presence is frequently needed in workshops, team meetings or other events. Furthermore there are important Europe region events, once or twice per quarter, which are mandatory for him to attend.

We confirm that F currently has flexibility to work occasionally remotely from England in his current role, which we understand is where his children reside. This causes no disruption to his ability to work during core business hours and fulfil his senior leadership position given its occasional nature and geographic proximity”.

None of that is undermined by the misunderstanding which comes in the next paragraph and it seems to me that I am entitled to give it some weight. The validity of the letter is not questioned, and for someone at his level doing a job of his seniority, none of it is surprising.

33. The father says that under the current arrangement he can leave the office at around 4pm on a Thursday, and can then work remotely on a Friday. This is possible because the majority of people work remotely in Germany on a Friday and it is expected. When he does the school run on a Friday morning he only misses a few minutes of the day, as the drop-off is at 8.45 and he can be scrolling emails on the walk home, which is very short. He says that he either goes home on a Sunday or, if he goes on a Monday he leaves on a 6.30am or 7.30am flight which gets him to the office some time between 9-10 am on the Monday. That limited lack of presence in the office can be offset by working flexibly at the end of the day. The father says that is completely different from being absent for an entire week, working in a different time zone, and the employer's letter tends to support that view.

34. The mother argues that there is evidence from the father himself that he is able to work remotely much more than he has admitted to this court and more than his office letter seems to suggest. To support that she relies on a proposal that he made to her in July 2024 that he would look after the girls for two weeks each month while she went

to see her parents or worked. The mother says that if the father could do it then, he can do it now. The father says that his offer at that time was in response to the mother threatening to relocate with the girls, and that he was simply looking for an urgent solution in a situation where the mother's parents were suddenly so very ill, and he wanted to help. He said he put forward the suggestion without speaking to his employers. All of this I find believable and to fit with the fast-moving events of July 2024. It seems to me that offer can and must be distinguished from the arrangements the mother now proposes. Crucially, it was a knee-jerk reaction to an emergency, and his employers had not signed up to it. I have no reason to think, in view of their letter to this court, that they would sign up to it. It seems likely to me that it was an unrealistic offer from the father who at that stage was trying anything to stop the mother simply taking the children away to the other side of the world. Even if it were a realistic plan (which I doubt) it was a plan which related to shared care in the same time zone, with a one-hour flight separating the father from his work, and 50 flights a day. All of those would tend towards making such a plan more workable. None of those features are present in the mother's plan. It simply does not follow to say that if he could do "that" (his emergency proposal) then he can do "this" (the mother's quite different proposal). In any event, I am not persuaded he could do "that".

35. It seems to me that the limits of the flexibility the father can use are clearly defined in his employers' letter and by the experience of the last four years. If he could work more flexibly with ease, I doubt he would have been on the 6.30am flight on Monday mornings. On the balance of the evidence I do not find that the father has the degree of flexibility to work remotely in the way that the mother suggests.
36. Even if he did, there are other significant problems with the plan. First, he would clearly not be able to claim the Friday of each term-time journey to the US as a work day. He would have to take that as holiday and that would impinge on his available holiday time with the girls. Second, he would be exhausted. He would be suffering from jet-lag whilst trying to fit in with the work day in Germany and at the same time trying to fit in with the school day in Miami. That is not a recipe for quality time with the children. Thirdly, it is not realistic to say that he could do all that, then get the overnight "red-eye" back to Germany overnight on a Sunday and go to work on a Monday morning on a regular basis, not least in circumstances where it is the

mother's case that he should travel economy. I remind myself that his job is not one where he can necessarily daydream or have an easy day. The mother has worked in various businesses and startups and I am told, and I accept, has generated income from those, but it is the father's salary which has provided stability and security for this family, and the mother accepted in evidence that she is dependent on the child maintenance he pays each month. His job is important for the functioning of the family. It would place an unreasonable strain on it to expect him to do it for one week a month exhausted, and then one day a month straight off the red-eye.

37. I turn to the financial considerations. The mother has produced details which suggest return flights can be obtained for £359. The father has produced details which suggest the cost is nearer 1,000 euros. The mother's proposal is that the father pays for the flights. He says he can not afford that and works out the overall extra cost to him as being in the region of £26,000 per year. The mother says that that cost can be reduced by £10,000 by sourcing cheaper accommodation in Miami, booking flights in advance and moving the dates of flights to cheaper days. There is of course an element of truth in that, but as the mother herself has said, the father's job is unpredictable and he may not always be able to book in advance. Further, if he has taken a week off with the intention of being back at his desk on a Monday it does not seem to me it will necessarily be open to him to fly back on the Monday night or the Tuesday night instead in order to obtain a cheaper fare. And if there were to be any hope of him doing work on the way in either direction, he would need business class flights and lounges. It is the mother's case that he can work on the way, but it is not her case that business class can be afforded. For all those reasons I conclude that the overall cost may well be able to be reduced a little from the level at which the father puts it, but it is unlikely to come down as much as the mother suggests.

38. The mother also notes that the father at one stage offered to pay £24,000 per year in school fees to allow the girls to attend the German school in London. She says if he had £24,000 per year for that, then he has £24,000 per year to spend on flights. The father says he put that proposal forward in desperation, in July last year when the mother said she was relocating with the girls. As with the offer of a 2-week on, 2 week off shared care arrangement in London, this was another desperate idea to stop her re-locating. He says he would have had to borrow to finance it. I am not going to

make findings about these specific matters as I have not seen evidence on them. However given the father's salary it seems to me that cost would not in the end be the thing which caused this plan to falter. I note that it is the mother's case that if she moves to Florida her own financial footing will be much stronger and she hopes to improve her financial situation greatly. If that were so she might contribute to the flights, or the child maintenance might reduce which would make it easier for the father. The financial implications might make things harder for the father in the meantime but if it were the only way he could see his daughters, this father would, I am sure, find a way.

39. I come back to the question of the impact of the proposed change on the girls. I do not consider the mother's proposals realistic, given the father's job, the family's need for him to keep that job, the times and the distances involved and the exhaustion and strain it would cause the father. As Mx Baker said, it is naïve to think that putting an ocean between the father and his children and thousands of miles that they would not experience a major change. That is just common sense. In reality, the father would not be able to take the time to come to Florida in the way the mother proposes, and he would see his children less. There would be other implications too. Now, he is able to speak to them on the phone before school to say hello. That would be harder with the time difference. Now he can jump on a flight (there are around 50 a day from Frankfurt to London) and be there in a few hours if he is needed or if there is an emergency, or even if he wants to come for a performance or a special birthday. None of these things would be possible. The reality is that the children's relationship with their father would be transformed. He would be nearly 5,000 miles away. They would see him in the holidays. That is very different from now, when they rarely will go more than 9 days without seeing him. In one scenario he is a regular and hands-on father, playing a really significant part in their every-day upbringing. In the other, he is a holiday dad. The two are not the same. The impact on the girls would be that they would be fundamentally brought up by one parent instead of being brought up by two. It is a major impact.

How capable each of their parents are of meeting his needs

40. The final element of the welfare checklist is how capable the parents are of meeting the children's needs. Both parents are able to meet the children's needs. That is not what this case is about.

Analysis

41. The mother has facilitated the father's contact to a very high level since separation including allowing him to stay in her house to be with them. Her proposals for contact if she moves to the US (although in my view unrealistic) were generous. There is no evidence to suggest that her motivation in making the application is anything other than genuine, and there is no evidence it is motivated by a desire to exclude the father from the children's lives.

42. There is a question however as to whether the proposal is realistic. This is quite separate from the question of whether the proposed contact arrangements are realistic. The mother says that her proposal is realistic – well researched, well evidenced and solid. She has found a school, and says they have a place for the girls. She has investigated accommodation and says it will be cheaper than Kensington (as indeed most places are). She says she has a support network, and has included a spreadsheet of 109 people who she says will help her if she moves. That list I have found unconvincing for the following reasons:

- a. Her parents are top of the list. They live around 2 hours away from Miami, the city the mother proposes to move to. There has been better news about the father's health since the crisis in July last year but he is still a cancer patient, her mother is still in a care home and it is still the mother's case that she wants to move partly to spend "what time they have left" with them. There is no evidence they would be willing or able to move cities at their time of life and even if they could, in the circumstances it is likely that the mother would be supporting them rather than the other way round.
- b. The mother's sister is second on the list. She also does not live in Miami. The mother says she is likely to move but there is no evidence of that. On the mother's case, she has mental health problems. Again I wonder who would be giving support to whom.

- c. Of the people listed as being “in Miami” (I note the grandparents and maternal aunt are on that list despite not living in Miami) one of the others has dementia and is in a care home.
- d. The other people mentioned include a “famous artist who my children also know”. That does not sound like somebody in a support network to me, without more.
- e. The list of people in Miami has an appearance of a list of people the mother knows, rather than a support network which is not the same thing
- f. There is no evidence of what support any of these people could provide
- g. Many of the people on the list live in South Carolina, New York, Connecticut, Los Angeles, Chicago, San Francisco and various other cities, not Miami and usually not near Miami.

43. I am sure the mother would develop a support network in time, as she has in London, through the school, her work and other activities. However I am not persuaded she has a ready-made network as she asserts. This does not make her proposal “unrealistic”, but it makes it a more speculative proposal.

44. More concerning is the financial aspect of the proposal. The mother has a track record of setting up and working in start up companies. By her own evidence her current one gives her an unpredictable income of between £2,000 and £10,000 per month. She says that she is working in the a particular modern industry, and that most of her online followers are in the US, that Miami is a hub of that industry and she will be able to exploit opportunities there such as obtaining a speaking role at a summit within her industry which would pay \$5,000. On cross examination the mother accepted there was no evidence of any such offer being made by the summit. The mother is also trying to set up a start up in a different industry. It is still at the funding stage. She was asked what she would expect to receive as pay in the business once it was set up and she said “the venture capital would pay me ideally between \$200,000 and \$350,000” but again accepted that was not set out in any business plan. The father says that the mother’s chosen industry has three to four times the number of companies in London as Miami, and there is no reason for the mother to be bound to Miami to pursue her career. I have not seen evidence either way about that and cannot say whether it is right. What I can say is that it is the mother’s application, and it is for

her to substantiate her case that she will be financially better off in Miami. This she has failed to do. Her plans and proposals are, on the evidence, nothing more than hopes and aspirations and from that point of view do not seem to be realistic. Further, she has not satisfied me that it is necessary or better to be in Miami to participate in the her chosen industry.

45. There are other things which may be better in Miami. The children would see more of their maternal family, and if these are the last few years of life for their maternal grandparents they could spend precious time with them. There are family and friends further afield in the US and they would see them too. All of that is a significant bonus for the girls if they move. Furthermore, I will certainly accept, without further evidence from either party, that the weather might be better, and that there might be opportunities for outdoor activities there which would suit S in particular with her ADHD and need for movement. However it is possible to meet a need for movement either outdoor or indoor in the UK so that is not a significant factor either way.

46. I must consider whether the father's opposition to the move is motivated by genuine concern for the children. At one stage the mother appeared to be suggesting that his motivation was to seek to control her. That has not been repeated before me. I have seen nothing in the evidence to suggest that he has any desire other than to maintain his relationship with his daughters. His opposition is easily explained: the move would fundamentally alter his relationship with his daughters and would be likely to mean he could not meaningfully be part of their day-to-day upbringing.

47. If I were to refuse the mother's application, I have no doubt she would be very disappointed. She would be frustrated, she would be sad. This is after all for her not a random country but a return "home". She would be anxious about her parents. I pause to note that after closing submissions I was sent some documents, which I have not read, which are said by the father's legal team to show that to some extent or another the mother wrote or fabricated the medical reports about her parents. I have not found it necessary to make any findings about that because I find I can make the decision I need to make whilst putting the mother's case at its highest. For the purpose of this judgment, and without making findings, I am assuming that the mother's parents are in severe ill-health and may be in the last stages of their lives. In that case,

the mother will naturally want to spend time with them and will want her daughters to do the same. The effect of refusing her application will not be to prevent that. The father has made it clear in the past that he will support her to ensure that she can travel to them in an emergency, and can take the children in a planned way to let her go at other times. It was never the mother's case that she wanted to care for her parents full-time. It seems to me she can spend time with them several times a year even if I do not make the order she seeks.

48. The mother says she may have to move house if she has to stay in London. Indeed she may. Kensington is expensive. But there is enough money in this family to ensure that the girls' housing needs will be met. These are not parents who would allow the children to live in unsuitable accommodation. I do not find the possibility of a move a significant factor.

49. The mother says another impact would be that she would not be able to take advantage of financial opportunities. I have already dealt with that. She has not given me evidence to allow me to accept that case.

50. A further impact on the mother is that she would have to continue to work in the evenings. She says her current work is US-based, and she often has to work online at night in order to do business with people in the States. If she is not allowed to move, that will continue which is hard for her. I accept that. It may be that if she knows she is not permitted to move to the USA she will concentrate on developing her business in the UK. In any event, I acknowledge this as a negative impact on the mother in the event that I do not allow her to relocate with the girls.

51. Finally I consider the impact on the girls if the mother is, as I suggest, disappointed, frustrated and sad. The answer to that lies in the mother's hands. Mx Baker said the mother has a choice. She could either say to the girls "because of your dad we are not moving and I am really upset" or she could do something child-focussed. It is my view that this mother is child-focussed. She does not have any mental health issues or personality disorder traits which prevent her from seeing things from the girls' point of view. She is capable of understanding that giving them a positive message is the only way to protect their emotional and mental health and I would expect her to do

that. Furthermore it is open to me to make orders about what the girls are to be told if I think it necessary and that it would help.

Criticisms of the s7 report

52. As I mentioned previously, there has been criticism of Mx Baker's report. I will deal with that now:

- a. First, that he took the father's case at face value. I have relied on my own analysis of the evidence for this, not on Mx Baker's.
- b. Second, that the ISW failed to carry out a welfare analysis on the basis that the mother's proposals do work. I do not consider that a lack in circumstances where the mother's proposals do not work, as I have found.
- c. Third the ISW failed to have regard to the extra time the children would spend with the father each year on the mother's proposals. I consider that the mother has placed too much weight on mathematics. It is no use having 10 extra days a year if the parent concerned is too exhausted, stressed and distracted by work to make the best of those days.
- d. Fourth, the ISW was wrong to say the children would have a significantly higher amount of travel time under the mother's proposals. The ISW accepted in oral evidence that they were wrong about that. It did not change the recommendation.
- e. Fifth, the ISW did not challenge the father on his assertion that the mother's proposals were unrealistic and unaffordable in the light of the father's previous proposals for contact which would require a similar or greater financial outlay or time away from work. I have already set out above the ways in which the mother is seeking to compare things here which are not comparable. I do not see that Mx Baker was wrong not to compare the father's previous offers with the mother's proposals. Furthermore I have done my own analysis of the evidence in relation to the affordability and practicality of the proposals. I have not needed to rely on Mx Baker for that.
- f. Sixth, that Mx Baker did not challenge the father on his position that the children would suffer if the frequency of their contact with him was reduced, when this was what he himself proposed in January 2024. The father did

indeed propose that in January 2024. He asked for a single, longer weekend in the middle of each term with longer holidays at either end. The mother refused, and the contact continued in the old way. Again, the mother seeks to compare things which are not comparable. Longer gaps whilst being in the same time zone and only an hour's flight away with 50 flights a day is entirely different from longer gaps in a different time zone some 5,000 miles away. In the former scenario, there is flexibility built in with the father being able to respond to matters as they arise by coming to the UK if necessary on short notice. In the latter, there is no realistic scope for that. He would not be able to pop across the Atlantic to attend a school performance or birthday celebration. That flexibility makes the father's January 2024 proposal entirely different. I do not criticise Mx Baker for failing to challenge the father on that proposal.

- g. Seventh, the father's position that the children would not cope well with a move to Miami when he had himself sought to relocate the family to Shanghai in 2018 and to Germany in 2020. The father gave oral evidence on this and said that was comparing apples with oranges. He said that moving an entire family unit (mother, father and two daughters) was very different from separating the family and leaving the father behind. That, with respect, is obviously so. I do not criticise Mx Baker for not putting that point to the father.
- h. Eighth, the ISW is criticised for failing to set out a summary of their second interview with the father. Mx Baker saw both parents twice, and gave a summary of both interviews with the mother but of the first interview only with the father. They were asked about this orally and in writing and both times they said that in the second interview the father simply hadn't said anything new, and so there was no need to set out the discussion. The mother's grievance about that is that it shows that the ISW had not challenged the father on his objections and that this was a material procedural flaw. In oral evidence Mx Baker pointed out that this was the mother's proposal which needed to be scrutinised, not the father's. He was not proposing to move. There was therefore not the same need to challenge the father. I agree with that, and I have further set out above the reasons why I do not criticise Mx Baker for his lack of challenge. Furthermore, on each of those issues I have conducted my own analysis, and had no need of Mx Baker's. I make it plain

that the primary assistance which Mx Baker's report has given me is in setting out for me the wishes and feelings of the children and the caveats about those wishes and feelings. That has been important and useful, and it falls squarely within their expertise. I can not get that information from any other source. For these other matters, raised as will be apparent at some length by the mother, there is other triangulating evidence, and it is not necessarily Mx Baker's job to challenge that.

- i. Ninth, Mx Baker is criticised for not considering the impact of refusal on the mother. Mx Baker said in oral evidence that was because he focused on the children. I am of the view that his focus was in the right place. The need to consider the impact on the girls is mine, not Mx Baker's, and I have done so.
- j. Tenth, Mx Baker has placed undue weight on the girls' German extended family and cultural identity at the expense of the American one. It seemed to me that when Mx Baker was asked about that in oral evidence they found find it slightly surprising to think about the American heritage being as important as the German one. It is possible that the report was not quite balanced in that way. However I have made it clear that I consider all three strands of the girls' cultural identity of equal importance, and if Mx Baker's report was not quite balanced in that way, I am satisfied that it has not made any difference to the outcome of the case.
- k. Eleventh, there is criticism of the ISW leaping to negative conclusions about the mother in respect of the girls' presentation the second time Mx Baker saw them. Nothing, for me, turns on this.
- l. Twelfth, it is said Mx Baker failed to consider the SEN issues. I have considered them clearly.

53. The attempt to undermine Mx Baker's report fails in my view for this very simple reason. I am not making any decision because Mx Baker recommended it. I am making my decision because it is right on all the evidence of the case, and Mx Baker's contribution has largely been to the issue of wishes and feelings.

Decision

54. Having taken all those matters into account, I return to the overriding question of the children's welfare. Is it in their welfare interests to move to Miami with their mother? They would gain the excitement of a fresh start, better weather, the maternal family nearby and possibly a more cheerful mother. But they would lose the day to day benefit of a father involved in their upbringing. The relationship they have with him now is a source of security and stability – as indeed is their relationship with their mother. Both parents have been solidly and dependably and predictably there for them and those are the conditions in which children thrive. To move to Miami would be to lose that to a significant degree in relation to the father. I am satisfied that the children do not realise that when they say they want to move, and that is why I do not prioritise their wishes and feelings. The solutions proposed by the mother are unworkable; the financial plan is entirely speculative and I am clear that the impact on the girls overall would be negative.

55. I therefore refuse the mother's application to relocate to Miami.

Child arrangements orders

56. There is no live application before me to make any child arrangements orders in those circumstances. Nor do I think any such order is necessary. The parents have worked out the contact and holiday schedules themselves for many years, and they are clearly able to continue to do that.

Prohibited Steps Orders

57. There is no suggestion that either of these parents are likely to breach a court order.

The mother has been told clearly by this court that she is not permitted to relocate the children to Miami. I make it clear that it is my intention that that remain the case even if her parents' health deteriorates. The way to deal with that is by her and the children visiting them when possible, not by relocation. That being so, I do not consider there is any need for a prohibited steps order preventing her from taking the children out of the jurisdiction. I therefore discharge all the previous prohibited steps orders in relation to that.

Passport orders

58. The passports are currently held by the father's solicitors. Now that the main issue is decided there is no need for that to continue. I understand the parties have agreed that all three passports should be kept by the mother and I am content with that, provided they are provided to the father in good time for any holidays or travel he has planned with the girls. I invite counsel to draw up terms for the parties to make the passports available to each other in reasonable time for trips abroad, and to give each other details of foreign trips in the usual way.

End of judgment