4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

Re TC and JC (Children: Relocation) (2013)

[2013] EWHC 292 (Fam)

21/02/2013

Barristers
Paul Hepher

Court
High Court (Family Division)

Practice Areas
International Children Law

Summary
It was appropriate to allow a mother to relocate to her native Australia with her two young children; a factor of great significance in the instant case was the effect an adverse decision would have on the parents: the father would be affected less, being self-sufficient and prepared to move to Australia to share in the children's care.

Facts
The applicant mother (M) sought an order allowing her to relocate her two children (C) to Australia.

M was Australian, while the respondent father (F) was British. They married in Australia and lived there until 2010, when they came to the United Kingdom. M became unhappy and the marriage began to break down. In May 2011, F told M that he wanted a divorce. Three days later, M took C, who were then aged three and two, and flew with them back to Australia. Proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980 were issued, and in August 2012 C returned to the UK with F. The parties had agreed that, whatever decision the court reached as to which country C should reside in, they would both reside in that country and look after C under a shared-care arrangement. An expert had commented that F would be entitled to return to reside and work in Australia. As to M's immigration position here, it appeared that an application for leave to enter or remain would take between 40 and 48 weeks to be resolved; she stated that, if she had to stay in the UK, she would be prevented from working and have to live at subsistence level, without family and friends.

Held
(1) In Kacem v Bashir [2010] NZSC 112, [2011] N.Z.L.R. 1, the Supreme Court of New Zealand had made some highly acute observations demonstrating the fallacy of the suggestion that there was some kind of presumption in favour of an application to relocate. There was no presumption in favour of the mother in a case like this; the court's determination would involve a factual evaluation and a value judgment, Kacem considered (see paras 14-18 of judgment). (2) The instant decision should be based from first to last on the interests of C; the court had to shut out its strong feelings of sympathy for F in relation to

what had been M's high-handed, selfish and autocratic conduct, just as it should eschew any temptation to punish her for that conduct. C were not at risk of harm on either choice of country, and their physical, emotional and educational needs would be much the same in both countries. This was a knife-edge decision. The decisive factor was the impact the court's decision would have on M and F. An adverse decision would bear far more heavily on M than it would on F. F was highly competent and self-sufficient; there would be no obstacles to his obtaining employment in Australia and to his finding a home suitable to share the care of the children in. M, on the other hand, was a fragile character. Her account of the misery she had suffered when residing in the UK had not been challenged. Even apart from the financial pressures she would endure here, she was less well equipped to face the relevant challenges were C to stay here than F would be were C to return to Australia. This was a case where F was the victim of his own virtues. An order would be made that, once in Australia, C would spend equal amounts of time with M and F (paras 47-48, 50-54).

Application granted