



**IN THE SUPREME COURT OF BERMUDA
DIVORCE JURISDICTION
2020: No 16**

CONFIDENTIALITY WARNING:

The names of the child and the parties are not to be publically disclosed without the written permission of the Judge. No transcript /recording shall be released to any person/agency/corporation/whomsoever without the written permission of the Judge. Failure to obtain such written permission will be a contempt of Court.

BETWEEN:-

PK

Applicant

-and-

SKB

Father

DECISION

Permanent relocation of the child of the family

Date of hearing: 26 & 27 October 2020

Date of decision: 23 April 2021

J. MacLellan of MacLellan & Associates for the applicant mother

The father, appeared without an attorney

Introduction

1. Any parent who wishes to relocate from Bermuda to another country, in the absence of an agreement with the other parent, requires the permission of the Court.

2. This case concerns a mother's application dated 27 February 2020 seeking leave to remove the one child of the family from Bermuda to take up residence on a permanent basis in Udaipur, India her country of origin. The mother's application is supported by two affidavits dated 6 February 2020 and 18 June 2020.
3. In response to the mother's application, the father filed an affidavit dated 16 June 2020. The father's affidavit was also filed in support of his summons dated 12 March 2020 seeking joint custody of the child and access. The father's affidavit and summons were prepared on his behalf by Marshall Diel & Myers Limited, Barristers & Attorney.
4. The mother and father's applications were consolidated on 13 March 2020. Thereabouts, the unprecedented COVID-19 global pandemic became a severe threat to Bermuda and the scheduled listing of this matter before a judge was set back
5. In accordance with precautionary public health measures, the hearing of this matter was conducted on 26 and 27 October 2020. Other evidence before the Court included:-
 - a. Letter of the Court Appointed Social Worker ('CAS') dated 22 July 2020
 - b. Social Inquiry Report of the CAS dated 6 August 2020
 - c. The oral evidence of the mother, father and the CAS.
6. After reading the documentary evidence and hearing the oral evidence of the CAS, the mother and father, legal submissions were made by Ms. McLellan, on behalf of the mother. The father, appeared without the assistance of an attorney and his submissions were delivered from his heart. Following these submissions, the best interests of the child seemed obvious. I therefore indicated that I would give a decision the following week with a written judgment thereafter.
7. Upon undertaking a 360 degree evaluation of the evidence over the course of the following days my view changed. I therefore determined that it would be in the long-term best interests of this child and her parents to know the reasons for my decision to refuse the mother leave to relocate permanently to India at this time with the one child of the family. This decision has not been easy.

Undisputed Background facts

8. The mother and father were married on 6 December 2013 in Bermuda. The child was born in Bermuda in December of 2017. The child is registered as 'Bermudian' and holds two a British Overseas Territories-Bermuda passport and a British Citizen passport.
9. The mother is an Indian citizen, who has resided in Bermuda for a number of years working in Bermuda's wellness sector. She speaks Hindi and English. The father is a Bermudian citizen of Bermudian and Indian heritage. Whilst not fluent in the Hindi, he somewhat understands the spoken language. Immediately prior to the global pandemic, he worked six days a week within the local hospitality industry.
10. Throughout the marriage, the mother and father shared rental accommodations with the father's mother, who is of Indian origin ('the mother-in-law'). In fact, it was the mother-in-law who first introduced the parties.
11. Soon after the birth of the child, the parties' marriage became strained. Unfriendly differences formed between the mother-in-law and the mother to the extent that after a very heated argument between them relating to the preparation of the child's milk, the mother sought refuge at a local charitable organization. The charitable organization assisted the mother and child with accommodation and counselled the mother on ways to manage the immediate stress in her life.
12. Not long after this most unfortunate heated argument, the mother travelled to India, taking the child with her without the father's knowledge. The father became aware of such travel only after receiving a text message from the mother advising of her arrival in India. Heated text messages were exchanged and the father accused the mother of kidnapping the child. The mother maintained that she required time to recover from the marital stress as well as spend time with her family.
13. Whilst in India, the mother requested the father to sign a visa application necessary for the child to remain in India for a longer period of time. The father refused to do so. After a month long stay in India, the mother and child returned to Bermuda, but not to the matrimonial home.

14. In or about November 2018, the mother instructed an attorney to write to the father requesting that he consent to her desire to permanently relocate to India with the child given the unhappiness that had befallen the marriage. The letter concluded by setting out the mother's relocation proposal which included a request that the father relinquish joint custody of the child. The mother's proposal contained an open invitation to the father to visit the child as often as possible in India and in return the mother expressed her intention not to pursue any claim for child maintenance to enable the father to save sufficient funds to afford the costs of frequent travel India.
15. By late November 2018, the father's attorney replied to the mother's attorney categorically denying wrongdoing on the father's part. The letter made clear the father's objection to the mother's proposal to relocate with the child on a permanent basis and stated that his ultimate desire was for the mother and child to return to the matrimonial home.
16. In this same letter, the father's attorney accused the mother of having somehow obtained a travel visa for the child to enter without the father's consent. The letter concluded by expressing the father's continued love for the mother and an invitation to participate in family counselling.
17. In March 2019 the mother and the father attempted reconciliation and the father moved into the mother's new rental accommodations. The mother-in-law did not join them. Sadly, this period was fraught with financial stress and other marital discord. Before long it became apparent that the marriage had come to an end. The father moved out leaving the child in the mother's care but continued to care for the child most weekday evenings and each Saturday until such time that the mother returned home from her job.
18. In November 2019 the mother once again travelled to India with the child; this time providing the father with the travel itinerary in advance of departure. Once in India, the mother confirmed via text message to the father her anticipated return to Bermuda in December 2019. Nevertheless, the father attended the Bermuda Department of Immigration with the intention of preventing the mother from removing the child from Bermuda again and issued proceedings in the Magistrates' Court in this regard. The mother returned to Bermuda with the child, just in time to attend the scheduled hearing of the father's application in the Magistrates' Family Court.

19. The Magistrates' Family Court recorded its concern regarding the mother's plan to leave Bermuda with the child and made an immediate Order for an investigation to be conducted into the welfare of the child. The mother was also ordered to surrender the child's passports.
20. During a subsequent hearing, the father was ordered to undergo an assessment for substance abuse and pending the completion of the welfare investigation, the father's access with the child was supervised.
21. In February 2020, the mother petitioned the Supreme Court for divorce. Upon grant of Decree Nisi in May 2020, the parties were granted joint custody of the child and all matters of care and control and access were adjourned to Chambers. Travel restrictions were imposed prohibiting the removal of the child from the jurisdiction without prior leave of the Court.
22. At the time of the hearing before me, the mother and father's employment in the wellness and hospitality industries had been interrupted by the imposition of mandatory Public Health (COVID-19 Emergency Powers) Regulations of the Bermuda Government.
23. As of 1st October 2020, the Collecting Office of the Magistrates' Court recorded the father's arrears of child maintenance to be approximately \$3,646.00.

Position of the Parties

The Mother's Position

24. Against this background, the mother at paragraph 7 of her First Affidavit dated 6 February 2020 sets out several reasons for bringing this application to relocated to India with the child. The mother said this:-

"I am bringing this application for leave to remove our daughter to reside with me in India for a number of reasons. I do not have family support in Bermuda. ... [The father] is unable or unwilling to change his behaviours to give me the assistance which I need to care for our daughter. I do not have enough money to survive a comfortable lifestyle in Bermuda and to provide for our daughter the lifestyle that I would like for her. I miss my family and wish to return to India. I never intended to move to Bermuda on a permanent basis. I have been accepted to nursing school in

India which starts in April 2020. Becoming a nurse is something that I have always aspired to. I was unable to complete my nursing training here in Bermuda, which I started at the Bermuda College, due to the [father] and his family's need for me to contribute more financially to the household expenses, when the [father] lost his job due to the family business closure."

25. The mother's position is that it is necessary, given the distance between India and Bermuda, for the Court to grant her sole custody and sole care and control of the child. The mother's plan includes residing in a home jointly owned with her parents, who she contends will assist in caring for the child as well as provide financial support until she remarries.
26. The mother produced evidence of acceptance and enrolment in a programme at Geetanjali University School of Nursing, in Udaipur, India. On campus classes were scheduled to commence in April 2020, but due to the impact of the COVID-19 global pandemic on Udaipur, India, the mother commenced her studies remotely from Bermuda via an online portal.
27. It is the mother's position that she is now exhausted owing to the scheduling of the online classes with the 9 ½ hour time difference between Bermuda and Udaipur, India along with child care and employment responsibilities.
28. In respect of the child, the mother's position as set out at paragraph 34 of her First Affidavit is that if permitted to relocate, she intends to enrol the child in a day-care/ pre-school that uses English as the primary medium of instruction.
29. In respect of the child's ongoing relationship with the father, the mother at paragraph 37 of her First Affidavit said:-

"{The father} can go to India and see {the child} anytime he wishes during her first years. Once she commences school he could go to India during some of her school breaks. I am happy to arrange regular video calls."
30. At paragraph 10 of her Second Affidavit dated 18 June 2020, the mother further stated:-

"I want {the child} to have a meaningful relationship with her father and I do not dispute his important role in her life. There are flights to India via US gateway

cities and London, broken into legs the longest of which is 13 hours and shortest, just 7 hours, most of which are overnight flights. {The child} in fact enjoyed her travels very much sleeping through the night flights and had a great learning experience. Many children fly regularly. {The father} has travelled to India before, and has maternal family there, with whom he has visited recently in New Delhi, as his mother grew up in India and is Indian.”

31. The mother contends that technology offers the opportunity for the father and his family in Bermuda to keep in regular contact with the child. She stated at paragraph 12 of her Second Affidavit:-

“I will facilitate daily video calls with Skype or WhatsApp, for {the child} ...in which he can read her a story, play the hide the doll behind the back game he enjoys as per his Affidavit, and talk with her. My parents are comfortable with technology, and can assist. I will continue to send videos and pictures, with updates as I do now. Once I graduate from University, and am earning by working fulltime, I could commit to once a yearly visit to Bermuda during {the child’s} school holidays. Of course, once she is of age, she could travel freely as she wishes to Bermuda”.

32. The mother’s position is that, she will need the father to financially support her and the child until she has secured employment after completion of the five year nursing program. This will require the father to be fully responsible for paying her and the child’s travel costs of flying from India to Bermuda each summer. The mother provided the following estimation of her monthly expenses that she contends the father should be responsible:-

Expense	Monthly	Per Annum
Food/Groceries	USD\$130.00	(USD\$1,560.00)
Nursery	USD\$25.75	(USD\$309.00)
Phone/Internet	USD\$20.00	(USD\$240.00)
Utilities	USD\$20.00	(USD\$240.00)
College	USD\$83.33	(USD\$999.96)

Health Insurance	USD\$50.00	(USD\$600.00)
Expense	Monthly	Per Annum
School Supplies	USD\$25.00	(USD\$300.00)
Activities	USD\$25.00	(USD\$300.00)
Transportation	USD\$50.00	(USD\$600.00)
Clothing for mother and the child	USD\$50.00	(USD\$600.00)
Travel for mother and the child x 1 travel per year	USD\$216	(USD\$2,592.00)
Total	USD\$695.08	(USD\$8,340.96.00)

33. Upon conclusion of her oral evidence, the mother uttered the following words: - *“This is the worst experience of my life!”*

The Father’s Position:-

34. In a nutshell, the father’s position is that a relocation to India would be contrary to the welfare of the child. He contends that the mother’s plan to relocate is neither well researched nor practical as the mother has no plan for employment in India and intends to be financially dependent on him and her elderly parents whilst she embarks on a 5 year fulltime course of study.
35. The father strongly believes that the mother has brought this application to relocate to India to defeat his relationship with the child. The father in his affidavit dated 16 June 2020 said this:-

“The {mother} behaves in a manner that supports her view that that {since our} relationship has fallen apart and therefore I am no longer a relevant feature in {our child’s} life.

Materially, a relocation would significantly and detrimentally impact my ongoing relationship with {our child}. It is beyond argument that having her father in her life is in {our child's} best interest and wellbeing; such a relocation would have a devastating effect on my psychological wellbeing”.

36. The father at paragraph 10 of his affidavit said:-

“{Our child} is only two; the next few years of her life are most formative and they need to include her father. I wish to be actively involved in her day to day life – to be a part of her emotional, psychological and intellectual development. I want to see her learn to form full sentences, to hear her make jokes, to be with her on each of her birthdays, to see her start primary school, to attend her parents evenings, to watch her sing or dance or recite at a school performance. These to name a few are significant moments in my daughter’s lives that I want to participate in. More importantly, {our child} has the right to have her father participate. A fulsome relationship with both her parents is without doubt in [our child’s] best interest.”

37. The father contends that his mother, father and sister have always been extremely supportive of the mother and have at times treated her as part of the family. However, the father accepts that the relationship between the mother and his mother (the mother – in-law) became extremely hostile over time and a source of contention within the marriage.

38. The father accused the mother of marginalizing his family and excluding herself from the support that was readily available to her. At paragraph 30 of his affidavit, the father said this:-

“I appreciate that [she] may miss her family and to that end there is nothing preventing her from visiting them. However, our daughter was born in Bermuda – this is her home. The intention has always been to raise {our child} in Bermuda with both of her parents present and active in her life.”

39. The father asserts that he fully supports the mother’s desire to become a nurse which he contends could be achieved by enrolling in the Bermuda College part-time evening programme. The father categorically denies that his family required the mother to discontinue her nursing studies at the Bermuda College.

40. In respect of the mother's proposal regarding his access to their child, if permitted to relocate to India, is simply not realistic. At paragraph 9 of his affidavit, he said this:-

“Pertinently, the flights to India cost \$1,500.00 to \$2,000.00 – a cost I can ill afford and on the [mother's] evidence, a cost she could not possibly meet. Travelling to India is a 16-18 hour flight and if you include the layover the total travel time is almost 48 hours. Not only can I not afford the flight to India, which I repeat on the [mother's] evidence she too cannot afford, but a trip of such length would be awful for a young child

41. The father's position is that not only would he be “*utterly devastated if the mother's relocation application was granted*” but that it would have a devastating effect on his psychological wellbeing. The father denied the mother's assertions that he consumed excessive amounts of alcohol on a daily basis.

The Law - Relocation

42. The legal test to be applied on an application seeking leave to remove a child of the family from Bermuda to take up permanent residence elsewhere is the paramount welfare of the child.
43. The Matrimonial Causes Act 1974 does not make specific provision for the permanent relocation of children from Bermuda. However, Rule 94(1) of the Matrimonial Causes Rules 1974 empowers the Court to grant an application for leave to remove a child of the family under the age of 18 years outside of Bermuda on such terms as may be specified.
44. When exercising this power, the Court always looks to the common law for guidance. The common law has well established that the only authentic principle when determining relocation applications is the paramount welfare of the child.
45. Recently, in *WS v KL [2020] EWHC 2548 (Fam)* a 2020 decision of the High Court of Justice (England and Wales) (Family division), Mrs. Justice Knowles, at paragraph 14, reiterated that the decision of the Court of Appeal (UK) in *In Re F (A Child) (International Relocation Case) [2015] EWCA Civ 882, [2017] 1 FLR 979*, remains the most recent and authoritative exposition of the principles which judges should apply in determining international relocation cases. -
46. At paragraph 30 of the *Re F* decision, Ryder LJ stated this:-

“Where there is more than one proposal before the court, a welfare analysis of each proposal will be necessary. That is neither a new approach nor is it an option. A welfare analysis is a requirement in any decision about a child’s upbringing. The sophistication of that analysis will depend on the facts of the case. Each realistic option for the welfare of a child should be validly considered on its own internal merits (i.e. an analysis of the welfare factors relating to each option should be undertaken. That prevents one option (often in a relocation case the proposals from the absent or ‘left behind’ parent) from being side lined in a linear analysis. Not only is it necessary to consider both parents’ proposals on their own merits and by reference to what the child has to say but it is also necessary to consider the options side by side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse.”

47. The undertaking of analysis of the welfare factors was recognized by Hellman J, in *FG and HG (formally HG) [2017] Bermuda Law Report 27* where he stated:-

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

48. With the welfare principle and checklist in mind, I turn my focus to the proposals of the mother and father in the circumstances of this case.

The Social Inquiry Report

49. By Order dated 13 March 2020 the Court Appointed Social Worker was instructed to conduct an investigation to assist the Court in determining this matter. Shortly thereafter, the Bermuda Government declared a COVID-19 State of Emergency which included strict public health guidelines to reduce the spread of the COVID-19 virus.
50. The Social Inquiry Report (SIR) is dated 6 August 2020 and is signed by the Court Appointed Social Worker and the Senior Program Manager of the Department of Child and Family Services. According to the SIR, the investigation consisted of an interview with the father via telephone on 25 June 2020 and, an interview with the mother via Zoom on the same date. Other sources of information relied on included the mother and father's affidavits, letters from collateral contacts and a police report.
51. The CAS reported, *inter alia*, the mother's feelings of stress, isolation and lack of family support on island. The CAS also reported the mother's belief that she was able to provide for the basic needs of the child including an *ad hoc* baby sitter and weekly day-care in Bermuda, the mother expressed concern that her employment income was not sufficient to cover the expense of frequent travel to visit family in India, and that the child's travel required the father's consent.
52. The CAS reported, *inter alia*, the father's mistrust of the mother and his strongly held belief that if permitted to relocate, the mother would not facilitate communication with the child nor would the mother be able to afford the cost of travel to Bermuda to promote the child's relationship with him and extended family members.
53. The CAS noted the father's concern regarding realistically remaining a meaningful figure in the child's life given that he is only entitled to 14 days' vacation per year balanced against the time required to travel to India from Bermuda.
54. The CAS' assessment included a finding that the child has been negatively impacted by the constant conflict between the mother and father and that the breakdown in communication between them, coupled with the inconsistent support of the father, has left the mother feeling isolated in Bermuda. The CAS stated that "*this is why {the mother} feels that moving back to India would be the best option for her at this time. She is able to provide information regarding her residence, family supports...and the school that {the child} will attend*".

55. The CAS' assessment also concluded that *“while a move to India would benefit {the mother} it would not enable {the father to have visitation with {the child} on a consistent basis...his contact would be through electronic means. ... {The father} is not able to finance {the mother} remaining on island and completing her education. At this time, he is not able to have {the child} remain in his care if {the mother} returns to India, to complete her studies. Due to the current COVID-19 pandemic, he is temporarily out of work and his income is limited. This may cause him stress if this financial hardship lasts much longer and he begins to worry about when he will be able to get back on his feet. Stress in the past has caused {the father} to resort to the use of alcohol to manage his emotions. Having {the child} in his care during times of stress would not be advised.”*
56. The CAS determined that as the mother *“has a plan for housing, finances, support, communication with {the father} and schooling when she returns to India, the Department believes that she should be allowed to leave Bermuda to complete her education in India. Due to the possible health risks while travelling, {the mother} should ensure that she relocates during a time when it is deemed safe to travel. All necessary precautions should be made to ensure that both she and {the child} are following all necessary precautions when making the transition”*.
57. On this basis, the CAS' recommendations included that the mother should be granted sole custody and sole care and control of the child together and should be granted permission to relocate to India with the child. Moreover, that the mother and father should schedule daily video conference calls between the child and father *“at a time mutually convenient for both”*.

Analysis and Findings

58. It was undeniable throughout the hearing that this child's mother and father were still emotionally reeling from the immediate aftermath of the dissolution of their marriage some five months prior to the hearing.
59. The majority of the mother's evidence focused on the unhappiness that had befallen the marriage immediately following the birth of the child with great emphasis on the father's conduct. The mother's evidence characterised the father as an unsupportive, drunken and abusive husband, who had yet to detach from his own mother.

60. The mother did not shy away from ridiculing the father's mother. In her Second Affidavit, the mother said this about her mother-in-law:-
"{She} is controlling, treated me like a slave and had to interfere in everything between the {father} and me, including; putting me in the middle of her arguments with the {father} over money he owed for her bills, enabling his drinking and abusive behaviour and not respecting my concerns relating to my daughter's care, such as the discussed vaccinations and couch pillow sleeping."
61. After listening to the mother, there was no doubt in my mind that she very much resented the mother-in-law's entanglement within the marriage including participation in any discussions concerning the child's care. This leads me to suspect that there might be some truth in the father's affidavit evidence wherein he described the mother as *"confrontational and controlling particularly as it relates to {the child}"*.
62. I have little doubt in my mind that this highly emotive relationship with the mother-in-law along with the negative emotions experienced on the breakdown of the marriage coupled with the ongoing conflict with the father are the primary motivation for the mother's application to relocate to India so soon after the breakdown of the marriage.
63. I have no doubt in my mind that prior to her scheduled return to Bermuda and in contemplation of the Magistrates' Family Court proceedings, the mother intentionally facilitated payment of the 2019 – 2020 tuition to attend Geetanjili School of Nursing to bolster her plan to relocate to India with the child.
64. Notably, the mother's anger and resentment did not wane during the hearing. In my judgment, such petulant manner is consistent with the father's evidence that *"everything must be her way or she will cause a scene"*. I have little doubt that such emotion has contributed to the mother's sense of isolation in Bermuda.
65. Remarkably, the father was subdued throughout the hearing. Not even Mrs. MacLellan's vigorous cross examination could ruffle his demeanour. This prompted me to question the father on whether he had consumed any alcoholic beverages prior to the hearing. The father readily admitted that he had done so the preceding day. In my judgment, the father's candour is consistent with the self-reported assessment conducted by the Bermuda Assessment and Referral Centre's dated 17 January 2020. The father's

reported score was ‘low’ for alcohol dependency. There was no indication that there was any need for “*substance abuse treatment at the time of completion*” of the report. I accept this evidence.

66. Notwithstanding this assessment, I am satisfied after reading the Police Report dated 7 January 2020 exhibited to the mother’s affidavit sworn 6 February 2020, that on at least one occasion, namely October 19 2019, the father was observed by police officers to be heavily intoxicated with the child in his care. In my judgment, the father is in serious denial about this October incident. I find that the father is yet to fully appreciate that his intoxicated condition on that day placed the child’s wellbeing at risk of harm.
67. Whilst there is no evidence before the Court that the child was harmed in any way on this day in October 2019, I have no doubt that the child’s immediate and long-term welfare would benefit from the father’s engagement in appropriate therapeutic services to address the impact of continued alcohol consumption on the longevity of a meaningful relationship with the child.
68. I suspect that there might be some truth to the father’s contention that the mother hopes to achieve a ‘*leg up*’ in these proceedings by focusing much of her evidence on this incident to characterise him as an unreliable father. Notably, the father stated in his affidavit that the mother too consumed alcohol but firmly articulated during cross examination that he had no intention to “*throw stones at the mother*”. I find this decision of the father to take the proverbial ‘high road’ during the hearing genuine and demonstrated his maturity. I therefore accept the father’s evidence that the mother is “*a good mother.*” And that, it was very important to him to “*be the bigger person for the sake of his daughter.*”
69. I find the father’s focus on the welfare of the child, in the face of Mrs. MacLellan’s cross examination, which was clearly pitched to cast him in the most undesirable of light, a more accurate measure of the father’s true character. In my judgment, the father’s admitted imperfections and the mother’s assertions about the father (whether true or false), are simply evidence of the fallibility of fatherhood, and indeed motherhood.
70. Therefore, I find the approach of Mrs. MacLellan’s cross examination counterproductive to the mother and father’s necessary relationship to positively co-

parent in the future. In my judgment, the mother and father desperately require individual therapeutic services to assist them in moving beyond their negative emotions stemming from the breakdown of the marriage and toward positive co-parenting for the long-term best interests of the child.

71. This brings me to the SIR. The CAS, during cross-examination, explained that the rationale for recommending that the mother be granted sole custody of the child was that it would be “*impractical*” for the mother to have to obtain the father’s consent for any major decision in the child’s life particularly if pressing in nature.
72. I find that the father has indeed played a caring and loving role in the child’s life during the marriage and post separation including regularly preparing dinner and feeding the child until such time that the mother returned home from work three evenings per week and all day Saturdays. In my judgment, I find such actions are consistent with a reasonably responsible and caring father. The father has played a significant role in the child’s life.
73. Despite Mrs. MacLellan’s cross examination of the father which particularised each and every occasion that he failed to show up for scheduled access with the child, I find there is insufficient evidence before this court to extinguish the father’s legal right to be involved in major decisions in the child’s life whether residing in Bermuda or India. In this circumstance, I find it would be inappropriate for the Court to rely on this recommendation of the CAS.
74. After such cross examination, the father might well benefit from a community based support group focused on re-establishing his dignity and indispensable role that he plays in the child’s life despite challenging circumstances.
75. After thinking carefully about the CAS’ recommendation regarding SKYPE and WhatsApp video conference access, it became clear to me that the CAS gave little if any consideration in my judgment, to the fact that Udaipur, India is some 9 ½ hours ahead of Bermuda. By way of illustration –

76.

Bermuda Time

11:00 pm

Udaipur, India

8:30 a.m.

12:00 (midnight)	9:30 a.m.
1:00 a.m.	10:30 a.m.
3:00 a.m.	12:30 p.m. (lunch)
7:00 a.m.	4:30 p.m.
12:00 (noon)	9:30 p.m.

77. Any practical evaluation of this key factor having regard to the child’s age, understanding and the mother’s plan to enrol the child in pre-school, would readily reveal a limited window of time within which “*it would be mutually convenient*” for the child and father to video conference. Given the undisputed ongoing conflict between the mother and father navigating access in Bermuda, I find it highly improbable that they would successfully navigate the 9 ½ hour time difference if the mother were permitted to relocate to India with the child.
78. Moreover, I have serious reservations whether such form of parent/child contact would promote the existing bond between this 3 year old child and father. In the absence of frequent physical contact with the child, I am afraid that the father’s value in the child’s life would be reduced to no more than a recurrent electronic character on a screen. This, in my judgment, will undoubtedly negatively impact the child’s emotional well-being regards the father, as well as the father’s emotional well-being with the child. In this circumstance, I find it would be inappropriate for the Court to rely on this recommendation, at this time.
79. Surprisingly, the CAS did not raise the very important factor of linguistics. The mother’s evidence is that her parents do not speak English. This respectfully begs the question of the quality of the maternal grandparents’ interaction with the English-speaking father when facilitating video conference contact with the father.
80. Moreover, I find that the CAS overlooked that Hindi would be the predominant language spoken within the home and gave little consideration of whether there would be any risk of the 3 year old child losing fluency in the English language. Whilst it is the mother’s evidence that the child will attend an English speaking pre-school and day care centre, I do not accept Mrs. MacLellan’s submission that the SIR confirmed the child’s enrolment. I find that the CAS simply reported what was told to her by the

mother without any independent verification whatsoever of a secured placement or even inquiry for placement.

81. After reviewing the evidence of the mother and father's regarding their respective positions on meeting the annual expense of travel between India and Bermuda so that the child can visit the father and paternal family, as recommended by the CAS, it became clear that neither mother nor father could afford such travel expense on an annual basis with any certainty to safeguard the child's bond with the father and cultural ties with Bermuda. Therefore, I find this recommendation more theoretic in nature and inconsistent with the reality of the facts of this case.
82. In respect of the mother's 5 year financial dependency plan on the father, I find it is simply not a good plan in circumstances which include the mother's unwavering evidence that the father is not financially reliable and where the father's income derived from the hospitality industry in Bermuda has been severely impacted by the COVID-19 global pandemic. Notwithstanding, "*pounding the pavement looking for work and going on job interviews,*" during this pandemic, the father continues to accrue arrears of maintenance payable to the mother. Consequently, I find that the mother's plan to be dependent on the father's financial support to meet she and the child's needs over the next five years, without any plan to secure employment of her own, very worrisome.
83. If that is not worrisome enough, the mother's relocation plan is also dependent on financial support from her elderly father, who is a fruit vendor in Udaipur, India. At the time of the hearing, there was no evidence before the Court of whether the mother's elderly father's business' income has been impacted by the COVID-19 global pandemic.
84. In my judgment, the unprecedented happening of the COVID-19 global pandemic compounds the uncertainties of the mother's plan. In these circumstances and the ever changing COVID-19 public health restrictions and travel guidelines (which vary from jurisdiction to jurisdiction), it would be fair to say that the recommendation of the CAS that the mother "*should ensure that she relocates during a time when it is deemed safe to travel*", is akin to a moving target. Consequently, I find that I cannot properly rely on this recommendation of the CAS.
85. I have also considered the impact on the mother in reaching this decision to refuse her relocation application. I find she is an intelligent lady but remains emotionally

vulnerable so soon after the dissolution of the marriage. I have no doubt that she will be very angry and overwhelmed on learning of my decision. I am hopeful that she will come to realise that the uncertainties of her plan balanced against the ongoing parental conflict, make it impossible for me to be satisfied that there is no real risk that the child will lose the relationship that she now enjoys with her Bermudian father, who has no plan of moving to India to live.

86. I am satisfied to find that the welfare of the child demands that the child remain in Bermuda especially during these formative years where her overall welfare is certain and secure.
87. It is hoped that the mother too will continue her employment in Bermuda and carry on being a good mother to the child. The mother is encouraged to continue her studies via the online platform that she is currently enrolled in conjunction with available resources in Bermuda. In my view, the mother's dreams to provide the child with a university level education and the best opportunities are still attainable. The path to achieving such dreams and opportunities will be different from that which the mother desires right now.
88. The father is encouraged to adhere to his weekly access schedule with the child and to secure employment. The father shall immediately confirm his re-employment with the Enforcement Officer and shall continue to pay the sum of \$100 per week for the benefit of the child via attachment of earnings directly into the Collecting Office of the Magistrates' Family Court until the child attains the age of 18 years, or further order of this court.
89. The child's passports shall be immediately released by the Magistrates' Family Court directly to the mother. The mother may travel freely with the child outside of Bermuda subject to providing the father with 30 days written notice in advance of such intended travel together with a copy of the travel itinerary and contact details. Such travel is on condition that the mother must return the child to Bermuda and must not travel with the child for more than 30 days without the prior approval of this court. The father may also travel with the child on the same terms and condition. The Chief Immigration Officer shall be advised accordingly.
90. This Court will consider an application of any paternal family member in respects of access to the child, should they wish defined access to the child. In principle, such

access would provide the mother and father additional support to promote the best interests of the child.

91. Before concluding, I must express my fear that the enormous stress of these proceedings may have damaged the parties' future co-parenting relationship unless multidisciplinary support is provided. Accordingly, I direct the CAS to provide the mother and father with information on the range of resources available including services provided by the Department of Child and Family Services as regards cooperative co-parenting and the Bermuda Government Child Day Care Allowance programme as regards applying to obtain assistance with the cost of the child's nursery fees. The welfare of this Bermudian child demands that she must not be discriminated against on the basis of remaining in the care and control of her mother post dissolution of marriage.
92. Circumstances may change in the future; when the child is older and her relationship with the father stronger and there is diminished parental conflict, there might well be a case for revisiting the question of the child's relocation to the mother's home country of India. These are but some of the factors that the Court will consider.
93. The mother and father shall be responsible for their own costs.

THE HON. JUSTICE NICOLE STONEHAM