# BNT *v* BNS
# [2014] SGHC 187

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| **Case Number** | : Divorce Suit No 704 of 2011 (Registrar's Appeal Subordinate Courts No 30023 of 2013) |
| **Decision Date** | : 24 September 2014 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Judith Prakash J |
| **Counsel Name(s)** | : Randolph Khoo and Anusha Prabhakaran (Drew & Napier LLC) for the appellant; R S Bajwa and Kelvin Lee Ming Hui (WNLex LLC) for the respondent |
| **Parties** | : BNT — BNS |

*Family Law – Custody – Care and Control – Relocation*

24 September 2014

**Judith Prakash J:**

**Introduction**

1 This judgment sets out the reasons for my decision to refuse to give permission to an expatriate mother, with interim care and control of two young children, to relocate herself and the children to Canada, against the objections of the father who is gainfully employed here.

2 The appellant ("father"), the respondent ("mother") and their two children are citizens of Canada. After their marriage in May 2002 in Canada, the mother moved to Singapore to be with the father. The father is a lawyer and the mother was primarily a homemaker during the subsistence of the marriage. She now works part time as a meeting and conference planner. The couple lived in Singapore till 2004 before moving to Thailand for four years. The two children of the marriage ("T"/"daughter" and "L"/"son") were born in Thailand.

3 The family returned to Singapore in May 2008 and has lived in Singapore ever since. The daughter is currently eight years old and the son is six years old.

4 On 17 February 2011, the mother filed for divorce on the basis of the father's unreasonable behaviour. Interim judgment for divorce was granted on an uncontested basis on 26 May 2012. In the meantime, the father had applied for interim care and control of the children. On 20 October 2011, the court ordered that both parents were to have interim joint custody and granted interim care and control of the children to the mother. The father was granted fairly liberal access as follows:

(a) From 7.15am to 7.30pm on Tuesday and Thursday;

(b) On Saturday morning from 8.45am to 10.15am for soccer practice; and

(c) Overnight from Saturday 3pm to Sunday 3pm.

5 On 13 September 2012, the mother applied for permission to permanently relocate out of Singapore with the children to Toronto, Canada. On 17 October 2013, the District Judge ("the DJ")

allowed the mother's application to relocate. The father appealed against the DJ's decision. I allowed his appeal and dismissed the mother's application to relocate. The mother has appealed to the Court of Appeal.

**The decision below**

6 In coming to his decision to allow the application, the DJ cited *Re C* (an infant) [2003] 1 SLR(R) 502 ("*Re C*"), *AZB v AYZ* [2012] 3 SLR 627 ("*AZB v AYZ*"), and *Payne v Payne* [2001] Fam 473 ("*Payne*"). He stated that in deciding whether to grant the relocation application,

> … it would be essential…to reconcile the need of the primary caregiver to relocate for a variety of reasons and the need of the other parent to have access and contact, but always with the welfare of the child as the overarching consideration.

7 The DJ accepted that the mother was the primary caregiver. He rejected the father's contention that although the mother had care and control of the children, there was "*de facto* joint care and control" because he had been granted liberal access to the children and was a highly involved parent.

8 The DJ found that the mother's desire to relocate was not unreasonable because she was in Singapore only because of her marriage and she had never intended to make Singapore her permanent home. Given that the marriage had broken down, it was reasonable for her to want to return to her home country. He also found that the mother had few friends and no family in Singapore to afford her the emotional and psychological support she needed. The constant court battles with the father over matters relating to the children had wearied her. She was "quite unhappy and distressed remaining in Singapore". Her children would benefit from her regaining her self-esteem and self-confidence. Additionally, he found that the mother had better long-term prospects of rebuilding her career in the conference and event management industry in Canada since she still had active contacts in that industry there. This would enable her to become "more financially independent".

9 The DJ did not accept the father's claim that the relocation application was brought in bad faith to restrict the role the father would play in the children's lives. He noted that the mother had generally allowed access to the father in accordance with the 20 October 2011 court order. He also noted that even Dr Ken Ung ("Dr Ung"), whose medical opinion the father sought in relation to the relocation application, stated in his supplementary opinion in his third affidavit filed on 29 July 2013 that "both children [had] good attachment with both their mother and father" and that the children were "not effectively alienated yet". Dr Ung's medical opinion was given based on his review of the documents that had been filed in the proceedings and his interviews with the father. Dr Ung did not have the opportunity of interviewing the mother or the children. The DJ accepted that there was no risk of alienation and, hence, that the relocation had not been brought in bad faith.

10 The DJ also considered that the mother had laid out a sufficiently clear relocation plan for herself and the children in her affidavits in support of relocation. He noted that the mother had set out to find suitable accommodation in Toronto, where she intended to settle, well before filing the relocation application. He also noted that she had made pre-registered bookings for the children to attend public school in that area.

11 The DJ regarded relocation as not being incompatible with the children's interests. He noted that the children were more emotionally attached to their mother and that they would want to continue to live with their mother in the country she chooses to reside in. He opined that the children, who were generally sociable, would be able to make new friends in their new school in

Canada. Since the children were Canadian, they would also be entitled to free education and free medical benefits.

12 The DJ observed that the father had allowed his negative attitude towards the mother to colour some of his actions, which were not in the best interests of the children. He highlighted the father's delay in renewing the son's Long Term Social Visit Pass ("Visit Pass") despite being reminded to do so which resulted in the son illegally overstaying in Singapore for about three months in 2013.

13 The DJ concluded by acknowledging that relocation would reduce the contact time the father had with his children. However, he considered that the use of phone and internet technology and more liberal access to the children, when the father travelled to Canada, could ameliorate this problem. In the final analysis, he found that the "disadvantage of [less] contact time for the [father did] not outweigh the overall benefits of relocation in taking care of the primary caregiver's emotional and psychological well-being and the welfare of the children".

**My decision**

14 Weighing the evidence as best I could, I came to a different conclusion from the DJ. In my view, the paramount consideration of the welfare of the children in this case militated against allowing the mother to relocate with them at this time. I will set out the law on relocation and then explain the full reasons for my decision.

***The law on relocation***

15 The Court of Appeal set out in *Re C* the general approach to be followed when considering relocation applications. The court stated at [22]:

> … *It is the reasonableness of the party having custody to want to take the child out of jurisdiction which will be determinative*, and always keeping in mind that the *paramount consideration is the welfare of the child*. If the motive of the party seeking to take the child out of jurisdiction was to end contact between the child and the other parent, then that would be a very strong factor to refuse the application. Therefore, *if it is shown that the move abroad by the person or parent having custody is not unreasonable or done in bad faith, then the court should only disallow the child to be taken out of the jurisdiction if it is shown that the interest of the child is incompatible with the desire of such person or parent living abroad*. … [emphasis added]

Before me, there was disagreement between the parties as to the weight that should be attached to the reasonable wishes of the primary caregiver to relocate. Predictably, the mother argued that it should be determinative or, alternatively, that there was a presumption in favour of allowing relocation when the primary caregiver's desire to do so was not unreasonable or done in bad faith. The father argued that there was no such presumption and that the desire of the primary caregiver was just one factor to be taken into consideration when assessing what was in the child's best interests.

16 In my view, the only applicable principle of law in relocation cases is that the welfare of the child is the paramount and overriding consideration: *AZB v AYZ* at [20]. *Re C* should not be understood as suggesting anything contrary. In fact, it expressly accepts this principle. The suggestion that the reasonable wishes of the primary caregiver are "determinative" must be understood within this context.

17 The reasonable wishes of the primary caregiver are important because a child's welfare is closely linked to the happiness and well-being of the primary caregiver. As Thorpe LJ explained in *Payne*:

> 30 … In a broad sense the health and wellbeing of a child depends upon emotional and psychological stability and security. Both security and stability come from the child's emotional and psychological dependency upon the primary carer. …
>
> 31 Logically and as a matter of experience the child cannot draw emotional and psychological security and stability from the dependency unless the primary carer herself is emotionally and psychologically stable and secure. The parent cannot give what she herself lacks. …

It is for this reason that courts are reluctant to refuse a relocation application, so long as it has been reasonably made and is not against the interests of the child. Reluctance does not mean that the wishes of the primary caregiver will always be decisive. There are cases where it would be necessary to deny an application to relocate in order to advance the welfare of the child: *AZB v AYZ* at [17].

18 The principle that the welfare of the child is paramount and it ought to override any other consideration in relocation applications is well established in common law jurisdictions. In *Payne*, Thorpe LJ, undertook a review of 30 years of English jurisprudence on this area and summarised the law as follows at [26]:

> … relocation cases have been consistently decided upon the application of the following two propositions: (a) the welfare of the child is the paramount consideration; and (b) refusing the primary carer's reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children.

A more recent case, *MK v CK* [2011] EWCA Civ 793, considered *Payne* in some detail. It noted that *Payne* had been met with some criticism for being "unduly prescriptive" and for mandating an "approach that [was] unduly favourable" to those who seek to relocate (at [78]). The court stated (at [86]):

> … the only principle of law enunciated in *Payne v Payne* is that the welfare of the child is paramount; all the rest is guidance. … the circumstances in which these difficult decisions have to be made vary infinitely and the judge in each case must be free to weigh up the individual factors and make whatever decision he or she considers to be in the best interest of the child. As Hedley J said in *Re Y*, the welfare of the child overbears all other considerations, however powerful and reasonable they may be. I do not think that the court in *Payne v Payne* intended to suggest otherwise.

19 It is indisputable that the facts out of which such relocation applications arise can be highly varied. I am therefore of the view that the principle of law can be stated with no greater degree of specificity than Andrew Ang J's formulation in *AZB v AYZ* at [20]:

> ... since the long-term interests of the child are closely aligned with the emotional and psychological well-being of the primary caregiver, the court will place considerable weight on an application by the primary caregiver for relocation with the child, provided that such application is based on reasonable grounds and not made in bad faith. The court will also be sensitive to other factors in this balancing exercise, although in most cases where the desire of the primary caregiver to relocate is reasonable and genuine, the court is likely to grant the application.

20 I would only add two observations. First, there is no *legal presumption* in favour of allowing relocation when the primary caregiver's desire to relocate is not unreasonable or founded in bad faith. By this, I mean that this is not a situation where the burden of proof shifts to the party challenging the application upon the applicant proving the reasonableness of his or her desire to relocate, nor is it a situation where the presumption is decisive of the outcome unless displaced.

21 Second, the court must bear in mind that, in general, it is in the child's interests for him to continue to have a meaningful relationship with both his mother and father notwithstanding that the relationship between the parents has broken down. The Court of Appeal in *CX v CY* (minor: custody and access) [2005] 3 SLR(R) 690 ("*CX v CY*") observed at [26]: "that the welfare of a child is best secured by letting him enjoy the love, care and support of both parents". The understanding is that a child will feel more secure if both his parents continue to be involved in his life: *BG v BF* [2007] 3 SLR(R) 233 ("*BG v BF*") at [13]. Although these comments were made in the context of joint custody orders in *CX v CY* and access orders in *BG v BF*, I consider them relevant in the context of relocation applications as well.

22 The idea that a child needs both his mother and father was recognised in the context of relocation applications by the Hong Kong District Court in *HKMB v LKL* [2007] HKCU 291. The court stated that it was important for the child's "emotional and psychological stability" to maintain "regular and meaningful contacts" with both parents and that the child would experience a "sense of loss" if his relationship with the parent who is left behind was adversely affected (at [59]). Admittedly, this comment was specific to the facts of that case and was made with the benefit of psychological assessment of the child involved. Common sense, however, would dictate that similar observations would apply equally in cases where the children concerned enjoyed a good relationship with both parents. Much would depend on the facts of the case. For example, it would undoubtedly not be in a child's interests to force him to maintain a relationship with an abusive or estranged parent. However, in general, a child would benefit from continuing to have a meaningful relationship with both parents. Therefore, the potential loss of an opportunity to have a meaningful relationship with the parent who is left behind must be considered when assessing whether a relocation application should be allowed.

***The factors relevant to my decision***

23 In this case, there were several factors which played a part in my determination that the welfare of the children would not be best served by permitting the mother to take them back to Canada at this time. I discuss these in detail below.

*The father is an active and involved father in the children's lives and desires the best for them*

24 The father has fully availed himself of his access rights and continues to participate meaningfully in the children's lives. The father maintains that there is a *de facto* state of shared care and control under the 20 October 2011 order. I disagree that the father and mother have *de facto* shared care and control of the children. The father has fairly liberal access but the mother remains the primary caregiver. Nevertheless, it is clear that the father continues to participate meaningfully in the children's daily lives and also maintains a keen sense of responsibility for their upbringing.

25 The father's actions in the immediate aftermath of the breakdown of the marriage suggested that from the outset he wished to continue to be actively involved in the children's lives. The mother took the children and moved out of the family home in May 2011. Shortly thereafter, the father also moved. The reason for his move is not clear. However, it is noteworthy that he moved to a condominium that was adjacent to the one where the mother and children resided to ensure that the arrangements concerning access to the children would be easy to effect. He also agreed with the

mother to share the use of his car with her. The arrangement between the parties was that whoever had the children could use the car.

26 It also appears that the father values personal contact and face-to-face interaction with his children. The father's affidavit, filed on 29 July 2013 in the relocation summons, set out his involvement in the children's daily lives. They have breakfast together on Tuesdays and Thursdays when he has access to the children. He also returns home early from work on those days, although often not in time for dinner but, according to his evidence, with enough time to "do homework, read from [his] extensive collection of children's books, do arts and crafts, tell stories, play together or simply talk before showering them, changing them into pyjamas and driving them to [the mother's apartment]". He then returns to the office or continues to work from home. He takes his son to the boy's weekly soccer practice on Saturday mornings and, on Sunday afternoons, he takes his children (and occasionally some of their friends) on outings to various locations. It seems to me that the father not only desires to play an active role in the children's daily lives but takes active steps to ensure that he does so.

27 The father is also concerned about the children's long-term development. This is evident from the role that he played in the children's education. The children attended pre-school until December 2011. T was due to complete the final year of her kindergarten programme in December 2011. The parties were unable to agree where T should attend school before starting primary one at the Canadian International School ("CIS") in August 2012. The father's evidence is that he visited 11 schools and pre-schools in 2011 and did a significant amount of research on the various educational options available to the children before deciding that it would be in both children's interests for them to attend a particular school ("X school") together (*ie*, L to attend K1 and T to attend K2 at X School). However, he claims that the mother refused to cooperate with him notwithstanding the fact that he pleaded with her to discuss the children's education on more than ten occasions between 28 January 2011 and 31 October 2011. With T due to graduate soon, he was compelled to apply to court for an order for both children to attend X School until they started at CIS.

28 The mother opposed the application, insisting that T attend kindergarten at CIS and that L remain where he was. The mother's position was that she wanted stability for the children. She did not want T to have to first adapt to X School starting in January 2012 and then CIS in August 2012. In the same application, the father also sought a court order for T to attend a Chinese Cultural Programme at another kindergarten.

29 On 5 December 2011, District Judge Angelina Hing ("DJ Hing") granted the orders that the father sought. I will return to this episode in the section discussing the mother's hostility towards the father. For the moment, it suffices to say that it is apparent from the interest that he took in the children's education, that the father desires to play an active role in the children's long-term development and does not wish to be excluded from important life decisions concerning the children.

30 The DJ appears to have formed the opposite view of the father. As mentioned above, he considered that the father had allowed his negative attitude towards the mother to colour some of his actions concerning the children and that he had, on occasion, acted in a manner that was not in the best interests of the children. The DJ only highlighted the father's lateness in renewing the son's Visit Pass which caused the boy to illegally overstay in Singapore for about three months in 2013. The mother's contention is that even when she offered to renew L's Visit Pass, the father refused.

31 It appears that the parties had once before, in 2012, sparred with each other over the issue of the renewal of the Visit Pass. On that occasion, the father contends that the mother refused to consent to the release of the children's passports and the Visit Passes, which were held by the

father's solicitors under an undertaking that they could not be released to either party without a court order or the consent of both parties. He obtained a court order on 26 January 2012 from DJ Hing to have the children's passports and Visit Passes released to him so that he could renew the Visit Passes. However, it appears that the father did not extract this court order until 6 March 2012 and only then did he apply for the Visit Passes to be extended, by which time they had already expired. On that occasion the Immigration & Checkpoints Authority did no more than to warn the father that a fine may be imposed if he failed to renew the Visit Passes in time again. However, following the late renewal in 2013, the father was administered a stern warning.

32 This behaviour on the part of the father was hard to understand. It was not rational and worked against his own interests as much as against the children's. However, balancing it against all the other evidence, it appeared to be an uncharacteristic aberration on his part. Therefore, it did not materially affect my assessment that, generally, the father genuinely desired to act in furtherance of the children's best interests.

*There is a real likelihood that the good relationship that currently exists between the children and their father will be undermined if the relocation application is granted*

33 Notwithstanding the numerous court battles between the parties, it appears that they have shielded the children fairly successfully from the acrimony. As the DJ highlighted, even the psychiatrist who the father approached noted that "both children [have] good attachment with both their mother and father" at the moment. However, the father's contention was that the DJ failed to appreciate that while the children are not effectively alienated yet, that outcome would inevitably ensue if the mother is allowed to relocate with them given her hostility towards the father.

34 I do not think that there is sufficient evidence to support the father's contention that there is a real risk of alienation at present. A finding that a parent's behaviour has an alienating effect involves medical assessment. As I explained in *ABW v ABV* [2014] SGHC 29 at [27] (citing *Re S* [2011] 1 FLR 1789):

> … [T]he term alienation applies to a cluster of psychological responses in a child towards a parent with whom he once had a loving relationship. Alienation may not result from any deliberate campaign of denigration by one parent in respect of the other. The research data supports multi-factorial causes for alienation following parental separation, involving contributions from both parents and vulnerabilities within the child. …

In the present case, there is no evidence of any deterioration or hostility in the relationship between the children and their father. I do not think the father's argument that there is a risk of alienation can be sustained.

35 However, I was and am satisfied that the good and close relationship that currently exists between the children and their father will be undermined and become distant if the relocation application were to be granted. I believe that this will be the likely outcome for the following reasons:

(a) The hostility that the mother has displayed towards the father suggests that once in Canada she will not actively facilitate contact with the father in Singapore.

(b) The fact that the mother's plans for relocation are not well thought through also suggests that her true motivation for bringing the application was to avoid the unpleasantness of having to deal with the father in Singapore. Therefore, once she is outside the jurisdiction, she may sever contact altogether or make it difficult for the father to have meaningful access to the children.

(c) The facts of the children's young ages and the difference in time zones between Canada and Singapore will make it difficult for their father to sustain the closeness of his present relationship with them. With younger children, closeness is promoted by physical contact and frequent interaction in routine activities. Telephone and internet access are frequently unsatisfactory due to technical difficulties and generally permit only one type of interaction: conversation. Normal family life consists of much more than conversations between parent and child – there are joint activities, routines, projects, discipline and learning from the examples set by the parents in all sorts of situations.

*Mother's hostility towards the father*

36 The mother's behaviour has been disconcerting at times. It is clear from the affidavits that she filed on 13 September 2012 and 20 September 2013, that she holds the father in low esteem. She regards him as a "bad influence" on the children in view of, among other things, his alleged "sexual promiscuity" and "constant lying" and his belief that "he is above the law". Her hostility towards the father boiled over into physical violence as well. Both parties had applied for Personal Protection Orders ("PPOs") against each other in May 2011. On 8 July 2011, the mother assaulted the father in public in breach of an expedited PPO. She was subsequently given a stern warning by the police for this behaviour.

37 The evidence also suggests that her hostility towards the father drove her to behave at times in a manner that was not in the children's best interests. I return to the parties' disagreement over the children's pre-school education. The mother had put T on the wait-list for kindergarten at CIS notwithstanding DJ Hing's 5 December 2011 order stating that both children were to attend X School until they started at CIS. T cleared the wait-list and was able to start at CIS in March 2012. The mother applied to court to vary the earlier court order. Prior to the court hearing, she cancelled T's application for a place in CIS. The father wrote to the CIS admission staff and asked them not to cancel the primary one admission application until the court decided the matter. The father's position at the hearing was that the order should not be varied because of (1) the merits of X School; (2) the fact that the children would benefit from attending the same school; and (3) the fact that a move to CIS would make it the third school that T attended in 3 months. On 5 March 2012, DJ Hing ordered that her initial order should remain. Both children were to attend X School until they started at CIS.

38 I found the timing of the mother's cancellation of T's application for a place in CIS troubling. I accept that she might well have thought that T would be better off moving to CIS immediately rather than having to spend eight months in X School first before moving to CIS. However, she should have waited for the court's decision so as to ensure that T's chance of attending CIS would not be affected by her premature cancellation of the application. The mother's behaviour suggested that on this occasion she was not acting primarily T's best interests.

39 Another dispute occurred between the parties during the children's school vacation in December 2012. This fortified my view that the mother, on occasion, acted out of spite towards the father without due regard for her children's interests. On 19 November 2012, the mother applied to court for permission to take the children to Canada for the entire school vacation from 15 December 2012 to 8 January 2013. The father did not object to the mother taking the children to Canada. However, he indicated that he might join them in Canada or bring his mother to Singapore to spend time with the children and asked for a proposal as to how the children's holidays could be split between them.

40 On 3 December 2012, District Judge Jen Koh allowed the mother to take the children to Canada with the proviso that "the school holidays [be] equally split between the parties". The father was not represented at this hearing nor did he appear in person. The 3 December 2012 court order was in

accordance with an earlier 23 February 2012 court order which stated that "each party shall have half the school vacations with the Children".

41 On 13 December 2012, the father applied to court for access during the holidays and sought for it to be heard on the same day. The court granted the father access to the children in Canada and ordered the mother to hand over the children to the father in Canada on 20 December 2012. The mother and the children were due to depart for Canada on 15 December 2012. On the evening of 13 December 2012 itself, the mother cancelled their air tickets to Canada. The father then independently purchased tickets for the children and himself and applied to court for the 13 December 2012 order to be varied so that he could take the children to Canada himself. This was granted on 20 December 2012.

42 On 10 April 2013, the court ordered the mother to reimburse the father for the cost of the children's air tickets. At that hearing the court asked the mother's counsel how cancelling the trip was in the best interests of the children. Her counsel's response was as follows: "My client won a free air ticket to Canada – lucky draw. She could take the ticket in March to make up." This was by no measure a satisfactory explanation for her behaviour. I also find it noteworthy that although the December 2012 trip to Canada was extensively covered in the mother's written submissions in this appeal, no reason was given as to how it was in children's interests to cancel the trip. It appears that the mother was upset with the father because he had "wreck[ed] all [her] painstakingly laid out plans" which "included relatives flying in to meet the children". She stated that she had "no choice but to cancel the air tickets that she had purchased and decided to reschedule her trip to a later date". Perhaps she was entitled to be upset about the father's late application for access to the children in Canada. However, I regard her unilateral cancellation of the air tickets as an instance where her hostility towards the father caused her to behave in a manner that was not in the children's best interests.

43 Given the hostility that the mother has shown towards the father, I am not confident that she will actively facilitate the children's contact with the father. In order for children abroad to maintain a healthy relationship with the parent who is left behind, the parent who is with the children would have to proactively facilitate contact. This is going to be unlikely in the present case. As Dr Ung noted in his preliminary opinion in his first affidavit filed on 15 November 2012:

> 24. … relocation would likely result in difficulties for the children to maintain a close relationship with their father. Conditions stipulated on the moving parent are often not followed. Already the affidavits reveal both sides complaining that the other party is not complying with stipulated orders. If such difficulties already are happening with alarming frequency whilst both parents are in the immediate vicinity of each other, it can only be anticipated to worsen with international relocation. …
>
> …
>
> 30. Judging from the voluminous affidavits and the vitriolic claims and counterclaims, it is apparent that both parents have a mutually negative [attitude] towards each other. This is likely to play out in relocation where one major concern would be a less than supportive role played by the moving parent to maintain strong parent-child ties with the 'left-behind' parent.
>
> > Social science research suggests that one of most important factors in predicting whether a child will have a strong relationship with the "left behind" parent after a move is the attitude of the relocating parent. If the moving parent is emotionally and practically supportive, a strong relationship can be maintained despite long distances and less frequent contact.

> Conversely, without those supports, it will be difficult for a non-moving parent to maintain a strong relationship with a child when the separations are of longer durations or the visits more difficult to arrange.
>
> – Canadian Relocation Cases: Heading Towards Guidelines Pg 302-3
>
> [original emphasis omitted]

44 Granting the mother's relocation application would likely mean that the father's role in the children's lives will be greatly reduced. The reduction of the father's role would be detrimental to the children's development. It is in the children's best interests for them to continue to have a meaningful relationship with both their mother and father. Given that the children are young, they would benefit from more regular interaction and physical contact with both parents. Given the fact that the father is an active and involved father who is genuinely concerned about the children's welfare, the reduction of his role in the children's lives would be all the more distressing and should be avoided.

*Inadequacy of the relocation plan also calls the mother's motivation for relocation into question*

45 When the parent who is granted care and control wishes to permanently remove the children of the marriage from the jurisdiction, the court will scrutinise his or her plan for relocation with care to satisfy itself that there is a genuine motivation for the move and that the move is not intended to bring contact between the children and the parent who is left behind to an end: *Payne* at [85(d)]; *HKMB v LKL* [2007] HKCU 291 at [69]–[89]. The Singapore High Court in *Tan Kah Imm v D'Aranjo Joanne Abegail* [1998] SGHC 247 at [55]–[57] also appears to have adopted this approach. The court noted that the mother's decision to relocate "did not arise suddenly"; she had "made concrete preparations and done most of what she could to ensure a smooth transition"; she "bore no ill-will or grudge" against the father; and she "truly believed that [relocation] was in the best interest and welfare of the children" (at [57]). Ultimately, the mother was allowed to relocate to USA with her children.

46 A close scrutiny of the mother's relocation plan in the present case shows that it was not thoroughly thought through and the preparations that she undertook were not sufficiently concrete. This calls into question her motivation for relocation. The inadequacy of her relocation plan suggests that she did not bring her application primarily to seek the emotional and psychological support of her extended family in Canada. Rather, I am of the view that the relocation application was motivated by a desire to avoid the unpleasantness of having to maintain contact with the father.

47 In her first affidavit filed in the relocation application, the mother stated that she intended to send the children to public school and that Toronto had three schools in the public school system offering the International Baccalaureate ("IB") programme which CIS offered. In her third affidavit dated 12 August 2013, she stated that she had been researching schools for almost a year and that she had "more or less narrowed the school search" to seven schools. The father contends that none of these schools offer the IB programme. What I consider more telling of her true motivation for bringing the relocation application is the fact that it appears that she only approached the schools a long time after the relocation application was filed. The e-mails that she exhibited in her affidavit dated 12 August 2013 to show that she had been communicating with schools in Canada and making enquiries with a view to select an ideal school for the children were all sent after the relocation application was taken out. The pre-registered bookings for the children to attend public school, which the DJ referred to, were also done in 2013, after the relocation application was taken out.

48 This suggests that she did not have a concrete plan for the children's education at the time of

the relocation application. I agree with the DJ that it would not be unreasonable for the mother "to wait for the final outcome of the relocation application before *finalising* … [the] school transfer arrangements" [emphasis added]. However, in the present case, the mother's failure to take *any* steps towards securing places for the children in a school in Canada prior to her taking out the relocation application calls her true motive for wanting to relocate into question. If the children's welfare was a significant concern, I am of the view that she would have done much more in terms of their future education in Canada.

49 I also note that her e-mails to her real estate agent to secure suitable accommodation in Canada do not appear to have been as regular as the DJ made them out to be. He stated that the mother had made arrangements to find accommodation in Canada from as early as July 2012 and that she "had been in weekly contact with her real estate agent in Canada for this purpose". However, the mother exhibited only three e-mails between her agent and herself that were sent between 19 July 2012 and 20 July 2012. All the other e-mail exchanges with her real estate agent were in August 2013. Her instruction to her real estate agent in July 2012 was essentially to look out for property listings. There does not appear to have been any effort to narrow down the properties that she may possibly be interested in purchasing or renting. In the circumstances, I thought that her efforts to find accommodation in Canada were also inadequate.

50 It was true that after taking out the application, the mother had taken some steps towards ensuring a smooth transition to Canada. Therefore, the relocation to Canada is now likely to be less chaotic. However, the purpose of carefully scrutinising the relocation plan is not just to ensure that the relocating parent has a sufficiently clear plan as to what he or she will do to settle abroad so that the children will not be harmed as a result of uncertainty and confusion caused by the move. It also serves to sieve out relocation applications that are brought for illegitimate reasons.

51 Given the numerous court battles between the parties and the low regard that the mother has for the father, I am of the view that the mother brought the relocation application primarily to avoid the unpleasantness of having to deal with the father rather than to seek the emotional and psychological support she claimed she needed to get over the acrimonious divorce. In coming to this conclusion, I was influenced by the inconsistent positions adopted by the mother.

52 In her earlier affidavit dated 6 June 2011 filed shortly after she moved out of the family home, the mother stated (at para 28):

> … I skype with my nieces and my sister and I have reconnected since the divorce has been going on. I am friends with everyone I have been friends with since 2002 when we moved to Singapore and I have made several new friends as well. …

She also adduced evidence of a medical report, issued in June 2012, which stated that the mother displayed resilience and good coping skills in dealing with her daily life in Singapore. Her doctor observed that the mother had worked through her guilt and loss over the marriage and reflected a quiet resolve to pick up the pieces and move on. This assessment was made three months before the mother filed the re-location application. It did not support the DJ's finding that the mother needed to regain confidence and self-esteem. When it came to her relocation application, the mother's position was that she lived a transient life in Singapore and that she did not have many close friends or any family to afford her the emotional and psychological support she needed. The mother's fairly swift change of heart raises doubts as to whether she genuinely feels isolated and in need of a community in Singapore.

53 In *Re W (Children*) [2009] EWCA Civ 160 at [19]–[20], the English Court of Appeal agreed with

the judge below that the court is entitled to take into account the fact that the relocation application was brought "to avoid the inconvenience and unpleasantness of conserving contact" in deciding whether the application should be allowed. Ultimately, in that case, the primary caregiver's application to relocate from England to New Zealand was denied. Although it is not explicit in the judgment, this would presumably be a factor that weighs against allowing relocation since it suggests that the actual reason for bringing the application is to sever contact with the parent who is left behind whom the relocating parent finds distasteful to deal with. I am of the view that in the present case, the mother's relocation application was brought precisely for this reason. When she is settled in Canada, she may sever contact with the father in Singapore or make it difficult for him to have access to the children. This would be an undesirable outcome.

*The children enjoy a stable life in Singapore*

54 To reiterate, my primary reason for allowing the appeal against the order permitting relocation is that it is in the children's best interests for them to continue to have a meaningful relationship with their father and I do not believe they will be able to do so if the relocation takes place now. Apart from this, it should also be noted that the children lead a stable and comfortable life in Singapore which is the only home they have known since 2008 when they moved here as infants. They are enrolled in school in Singapore. Presumably, their friends are all in Singapore as well. By contrast, they only know Canada as a holiday destination. They are unlikely to find much immediate community and support in Canada. The father points out in his written submissions that their extended family is scattered across North America and only meets a few times a year. He also points out that none of the relatives are in the same age group as the children except for his sister's children who live in Quebec, some distance away from Toronto. Therefore, there is a real likelihood that the children will feel a sense of displacement for at least a short period if they were to move to Canada. I found that it would be in the children's best interests to not put them through that experience at this stage of their lives. As the children grow older and more independent and mature, the situation may very well change.

*The mother's argument that the father could look for employment in Canada is misconceived*

55 In her affidavit dated 12 August 2013, the mother contended that the father could easily find employment in Canada given his years of experience practicing corporate law in some of the biggest international law firms in the world. The father, however, contended that having spent 13 years in Asia, his experience of Canadian law was outdated and that he was unemployable there. He relied on the opinion of a Canadian legal recruiter who expressed the same view of his employability in Canada. The DJ did not express an opinion on this matter and it does not appear to have influenced his decision. I have one brief comment regarding this issue.

56 In cases such as the present, where families voluntarily relocate overseas for whatever reason, they must bear the consequences of that choice. In the present case, one of the consequences is that the father, who is the main income earner, has developed a depth of expertise in a regional market. His expertise is not transferable to their home country. However, the mother and children are still dependent on the father's income stream. The DJ considered that the mother would become financially independent in Canada. However, the mother only argued that her job prospects were better in Canada. She did not contend that she would become financially independent there. All she said is that returning to Canada would "help financially". Therefore, once in Canada the mother and children will continue to be dependent on the father and the maintenance that he provides. In these circumstances, the mother is not entitled to argue that the father should also relocate if he wants to be close to the children. The financial loss that would likely result as a consequence of his relocating would be contrary to the best interests of the children.

**Conclusion**

57 I allowed the appeal and dismissed the relocation application for the reasons set out above. I ordered the mother to pay the father's costs of the appeal and the relocation application fixed at $5,000 all in.