

What happens when you want to remove a child from the jurisdiction

The breakdown of marriages can sometimes have devastating effects on children as they are often caught in the middle of contentious custody battles. The situation can be even more emotional when one parent wishes to move to another jurisdiction with the child. In such cases, the parent who wishes to remove the child from the jurisdiction must either have the other parent's written consent or permission of the Court.¹

In all contentious relocation cases, the court's primary consideration is the welfare of the child.² In evaluating the child's welfare, the court must have particular regard to the factors in section 3(3) of the Children's Law (2012 Revision) (commonly known as the welfare checklist):

- a) The ascertainable wishes and feelings of the child (having regard to the child's age and understanding);
- b) The child's physical, emotional and educational needs;
- c) The likely effect on the child of any change in circumstances;
- d) The child's age, sex, religious persuasion, background and any relevant characteristics the court considers relevant;
- e) Any harm which the child has suffered or is at risk of suffering;
- f) The capability of each parents in meeting the child's needs; and
- g) The range of powers available to the Court under the Children Law.

The leading case for relocation in the Cayman Islands is *B v B*,³ which set out the principles that should be applied by the courts in considering these matters.⁴

Firstly, the welfare of the child takes precedent over any other consideration, however powerful and reasonable they may be.

Secondly, the court should consider guidance from previous cases and review the evidence presented by both parents.

¹ Children Law (2012 Revision), s 15

² Children Law (2012 Revision), s 3(1)

³ 2013 (1) CLR 271; confirmed by the Court of Appeal [2014 (2) CILR 234]

⁴ Ibid, paras 63-93;

Thirdly, in considering the guidance, the following questions should be addressed:

- i. Is the application genuine in the sense that it is not motivated by some selfish desire to exclude the remaining party from the child's life?
- ii. Is the remaining party's opposition motivated by genuine concern for the future of the child's welfare or is driven by some ulterior motive?
- iii. What would be the extent of the detriment to the remaining party and his/her future relationship with the child were the application granted?
- iv. To what extent would the detriment to the remaining party if the application were granted be offset by extension of the child's relationship with the applicant's family and, if applicable, homeland?
- v. Is the application realistic and founded on practical proposals both well researched and investigated?
- vi. What would be the impact on the applicant of a refusal of their realistic proposal? The weight placed on this will increase if the child resides with the applicant.

Fourthly, as every case is unique, the guidance should not be applied rigidly; the court should have unfettered discretion in deciding what is in the child's best interest.

Finally, there is no presumption in favour of the parent with whom the child resides. In all cases, the court will need to consider and apply the principles to the evidence presented by both parents.

The outcome of relocation cases can be difficult to predict as they are always fact dependent.⁵ A parent who wishes to remove a child from the jurisdiction should never assume that they will be granted permission; instead, it will be important to convince the court that the relocation is in the child's best interest notwithstanding the loss of contact with the other parent.

The following is a non-exhaustive list of the factors a parent should consider before making an application:

- a. Reasons for relocation;
- b. Financial considerations;

⁵ Re B (Children) 2008 EWCA Civ 1034

- c. Details of living arrangements in relocating country;
- d. Details of employment in the relocating country;
- e. Welfare arrangements for the child in the relocating country (such as schools, extra-curricular activity, medical facilities);
- f. Impact on relationship with parent who would be left behind;⁶
- g. Emotional and financial impact of refusal on the parent seeking relocation;⁷
- h. Arrangement to ensure and encourage a continued relationship with the parent left behind;
- i. Child's wishes;⁸

The court will then carefully consider all the relevant factors in the case, guidance from previous cases and the welfare checklist to determine if removing the child from the jurisdiction is in the best interest of the child.

Basically, the court will ask both parents why relocation is in the best interests of the child or why not. The court will then weigh the factors against each other to determine which is best for the child.

Given the psychological and emotional aspects of these matters, as well as the fact that they require careful planning, it is advisable to obtain legal advice before making or opposing an application to remove a child from the jurisdiction.

For more information about removing a child from the jurisdiction, please contact Yvonne Mullen at Yvonne@broadhurstllc.com or 1-345-949-7237.

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⁶ Re B (Children) 2008 EWCA Civ 1034

⁷ Re B (Children) 2004 EWCA Civ 956; Re S (a child) 2005 2 FLR 239

⁸ Re W (Children) 2008 EWCA Civ 538