



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 28

F36/17

OPINION OF LADY WISE

In the cause

MCB

Pursuer

against

NMF

Defender

**Pursuer: M Hughes; TLT**  
**Defender: Shewan; Drummond Miller LLP**

29 March 2018

**Introduction**

[1] The parties in this case were never married but were involved in a relationship for some years and lived together for about a year following the birth of their child. The child who is the subject matter of these proceedings is 5 ½ years old. To preserve the anonymity of her identity I will give her the name Holly and refer to her by that name throughout this opinion. Holly's parents are both Scottish and she has lived in this jurisdiction since birth. Her mother, the defender, now wishes to remove Holly from Scotland and take her to live in Northern Cyprus ("North Cyprus") where the defender's own mother lives, having retired there from Scotland. The pursuer, Holly's father, raised these proceedings to prevent Holly's

removal to North Cyprus pending a full hearing. It was agreed that, as there was at least an evidential onus on the defender in relation to the change of circumstances she proposes, she should lead at proof. She seeks a specific issue order entitling her to remove Holly from Scotland to live in North Cyprus and also a Residence Order. The pursuer opposes both orders and seeks the regulation of contact between him and Holly. I heard a proof over a period of 4 days. Both parties had lodged very detailed affidavits setting out their positions. One of the witnesses, the defender's brother, RF, had sworn an affidavit but was unable to attend court and so his evidence is untested.

### **The applicable law**

[2] Both parties to this action hold full parental responsibilities and parental rights in respect of Holly. The relevant parental responsibilities are outlined in section 1 of the Children (Scotland) Act 1995 and the corresponding parental rights are listed in section 2 of that legislation. Section 11(1) of the 1995 Act provides that the court, in circumstances such as those that arise in this case, may make orders in relation to:

- (a) Parental responsibilities
- (b) Parental rights
- (c) Guardianship or
- (d) The administration of a child's property.

The orders sought by the defender in this case are in terms of section 11(2)(c) and (e) which provide as follows: -

- "...(c) an order regulating the arrangements as to –
  - (i) with whom or
  - (ii) if with different persons alternately or periodically, with whom and during what periods,

a child under the age of 16 years is to live (any such order being known as a “residence order”);

...

(e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a)-(d) of subsection (1) of this section (any such order being known as a “specific issue order”);”

For his part, the pursuer seeks a Contact Order in terms of section 11(2) (d) of the 1995 Act regulating the arrangements for contact between him and his daughter.

[3] The test to be applied by the court where any order under section 11 is sought can be found in section 11(7) which provides:-

“...in considering whether or not to make an order under subsection (1) above and what order to make, the court –

- (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all;
- (b) taking account of the child’s age and maturity, shall so far as practicable –
  - (i) give him an opportunity to indicate whether he wishes to express his views;
  - (ii) if he does so wish, give him an opportunity to express them;
  - (iii) have regard to such views as he may express.”

As indicated, Holly is 5 ½ years old, and the parties were agreed that she has not yet attained an age and maturity such that her views should be taken into account. Accordingly, the two elements of the applicable test that must be applied in this case are a) that Holly’s welfare must be the paramount consideration and b) that I should make no order unless I consider that it would be better for Holly than making no order at all.

[4] Relocation cases such as this one have become an increasingly common type of dispute between separated parents, one of whom wishes to settle outside the jurisdiction in which the child is being brought up. Where both parents hold parental responsibilities and rights the removal of a child habitually resident here outside the United Kingdom is unlawful other than with a court order where the other parent does not consent – see section 2(3) of the 1995 Act.

Any person reaching a major decision involving his or her fulfilling a parental responsibility or exercising a parental right must also have regard, so far as practicable, to the views of any other person who has parental responsibilities or parental rights in relation to the child – section 6 of the 1995 Act. There was no dispute between counsel in this case as to the applicable law or the way in which the courts in this jurisdiction have settled the approach to relocation cases. In *M v M* 2012 SLT 428 at paragraph 9, Lord Emslie, giving the decision of the Inner House confirmed that in relocation cases “the welfare and best interests of the child or children concerned are paramount, and fall to be judged without any preconceived leaning in favour of the rights and interests of others”. The position in Scotland has differed to the approach in England where the reasonable plan of a parent with sole primary care of a child, including the effect of the refusal of an application to relocate on that parent has been a material factor (*Payne v Payne* [2001] 2WLR 1826). Such an approach forms no part of the law of Scotland.

[5] The correct approach to applications of this sort was summarised by Lady Smith in the case of *Donaldson v Donaldson* 2014 FAML 126 at paragraph 27 as follows:-

“Since the decision of this court in the case of *M v M*, it has been clear that, on an issue of relocation, it is no part of our law that a judge requires to regard any particular factor as having greater weight than any other. It would, for instance, be wrong to proceed on the basis that there is a rule that the most crucial assessment required is as to the effect that a refusal of the relocation application will have on the applicant. This is often conveniently described as a “presumption free” approach; it accords with the court’s duty to regard the welfare of the child as the paramount consideration. That is not to say that, in an individual case, there may not be features which are of particular importance when considering the welfare of the individual child concerned. The availability in each jurisdiction of some particular medical treatment or educational provision that the child requires would be an example. Much will depend on the facts of each case.”

It has been acknowledged in cases such as *M v M*, cited above, that there are cases in which significant weight can attach to a reasonable relocation plan of a parent with care of a child.

Much will depend on the particular circumstances of the case, the advantages and disadvantages for the child of the proposed move with the wishes and interests of each parent receiving no greater weight than they deserve in the circumstances.

[6] There is an evidential burden of proof in a relocation matter on the parent seeking to relocate with the child. That parent must show (1) that relocation would in fact be in the best interest of the child concerned; and (2) that from the child's perspective it would be better to allow relocation than to make no order – *M v M* cited above. It is neither instructive nor appropriate to try to formulate any list of applicable factors as relocation cases are fact sensitive and scrutiny of the particular circumstances of the dispute and the child is what matters – *Donaldson v Donaldson* cited above and *GL v JL* 2017 Fam LR 54. Finally, it is important in any case involving children that the decision maker must not be distracted from the primary focus of the effect of any order upon the welfare of the child concerned so that a nexus between the central issue and the findings of fact made by the court is demonstrated – *NJDB v G* [2012] UKSC 21 at paragraph 31.

### **Undisputed facts**

[7] Many of the background facts in this case were not in dispute and some of them have an important bearing on the decision to be made. The following is a summary of the context in which this application came to be made and the undisputed circumstances of each parent in so far as bearing on Holly's care and upbringing.

[8] The defender is 43 years of age and has two children. Holly is her younger child. Her older child is a son, who for the purposes of this action will be called Lachlan and who was almost 11 years old at the date of proof. Lachlan was born in Cyprus and has no contact with his father to whom the defender was not married. Having been born in Scotland to Scottish

parents the defender lived here until she was 18 years old when she decided to go travelling. She lived in the United States of America, in Australia and New Zealand. In 2004 she moved to North Cyprus together with her mother, MMF, and her brother RF. The details of the move to North Cyprus are set out in the defender's principal affidavit number 22 of process paragraph 5. In short, the defender's mother bought a plot of land and built a property on it which was completed in 2006. The defender lived in North Cyprus until December 2008 when she came to Scotland (her affidavit gives the date as a December 2009 but she corrected that in evidence saying it had been an error). She returned to Scotland with Lachlan without informing his father that she was doing so. She had always found work in the places she lived over the years. The defender gave up work in about December 2006 just before Lachlan's birth and has not been in employment since then.

[9] The parties met shortly after the defender came to Scotland and began their relationship. Although they were involved in a relationship for some years they did not live together until around the time that Holly was born. The defender and Lachlan had previously lived in a separate flat in the same building as the pursuer lived with his mother. Shortly after Holly was born the parties and the two children moved to a property that is in the same town in the West of Scotland as the defender and his mother have lived for many years. The parties registered Holly's birth together. Unfortunately their relationship deteriorated and they separated at the end of October 2013 just after Holly's first birthday. Shortly after separation the defender and the two children moved to another property in the same town. At the beginning of 2015 she and the two children moved to a smaller town, 30 miles to the North West of where the pursuer and his mother live. She moved there principally because she had been searching for primary schools for both Lachlan and Holly and had discovered that the primary school in the new smaller town had particularly high standards. She remains resident

in that town although she required to move from the property she had rented initially when it was sold by her landlord.

[10] The defender attended college in 2016 and 2017 and has now graduated with a Higher National Certificate (“HNC”), a qualification that would allow her to work as a medical receptionist. She has not been able to secure employment in that line of work since summer 2017. While she was still at college she decided that she would like to leave Scotland and live in North Cyprus in her mother’s home. She made that plan in about February 2017 and her solicitors wrote to the pursuer to inform him of her decision. That letter states that, “...our client has decided to return to reside in Cyprus in June 2017. Our client will, of course be taking [Holly and Lachlan] with her.”

[11] The child Lachlan lived in family with the pursuer, the defender and Holly from the time of Holly’s birth until the parties’ separation. He already had a close relationship with the pursuer, that having been built up during the course of the parties’ relationship. Lachlan thought that the pursuer was his natural father until late 2016. Since the parties separated the pursuer has maintained contact with Holly. Initially this was on an informal basis. The parties communicated well and amicably until this relocation dispute arose in 2017. The pattern of contact tended to be that the pursuer would spend one weekend day per week with Holly. As time went on he started to keep her for overnight contact, with the defender’s agreement. The dates and times of contact were sometimes changed by the defender. The pursuer did not object to that. Since this dispute arose contact has been put on a more regular footing and the pursuer now enjoys residential contact with Holly every second weekend from early evening on Friday until late afternoon on a Sunday. On 26 December 2017 the defender’s mother, having been present when the pursuer attended to collect Holly for contact, telephoned the police to report that she thought he had been drinking or was under the influence of alcohol.

She did not seek to enquire of the pursuer whether he had been drinking before he drove away from the defender's home with Holly. The police later attended at the pursuer's home and he submitted voluntarily to a breathalyser test, which had a negative reading for alcohol.

The pursuer pays aliment for Holly in the sum of £400 per calendar month.

[12] The pursuer is also 43 years of age and lives in the home that the parties set up together around the time of Holly's birth. He is a graduate of the University of Paisley and has worked for many years in the financial services sector, including as a stockbroker. He is an only child and has a very close relationship with his mother, who is a widow. The pursuer has a close and loving relationship with Holly. She looks forward to the weekends during which she has residential contact with him and he engages her in a number of age appropriate activities during contact periods. The pursuer's mother, CB, is actively involved with Holly and also has a close relationship with her. The defender and CB did not have a close relationship when the parties were together. There has been no direct contact between them since the parties separated. Holly enjoys a good relationship with certain members of the pursuer's extended family. In particular, his cousin, DT, has twin daughters aged 5 who enjoy spending time with Holly who is effectively the same age.

[13] North Cyprus, properly known as Northern Cyprus, is a partially recognised state that comprises the north-eastern portion of the island of Cyprus. Officially recognised, only by Turkey, as the Turkish Republic of Northern Cyprus, is the part of Cyprus to which Turkish Cypriots fled following the coup d'état in 1974. The official language of North Cyprus is Turkish. The currency is the Turkish Lira. The current minimum average monthly wage in North Cyprus is approximately 2,020 Turkish Lira which equates to approximately £397. Any national from an EU member state can go to North Cyprus for a period of 90 days on a visitor's visa. Thereafter an extension of that visa would be required. This is a relatively simple process

and requires only a visit to Southern Cyprus where a further visa can be obtained as a matter of routine.

[14] There are some restrictions before a job can be offered in North Cyprus to a foreign national. The employer must try to fill the vacancy with a Turkish Cypriot. In the event that the vacancy cannot be filled by a Turkish Cypriot the job can then be offered to a foreign national.

[15] Northern Cyprus is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. There is accordingly no mechanism in law to seek the return of a child abducted to that jurisdiction. Further, a court order from this jurisdiction in relation to contact arrangements between the pursuer and Holly would not be recognised or enforceable in Northern Cyprus. Neither would a minute of agreement between the parties be so enforceable. Under the law of the Turkish Republic of Northern Cyprus if the mother and father of a child were never married then the father would have to apply to the courts in that jurisdiction first to be recognised as the child's paternal father and thereafter for access (visitation) rights. Generally under the law of Northern Cyprus custody of a child is given to the mother unless there are mitigating circumstances. The source of these undisputed facts relating to North Cyprus are letters from Naomi Mehmet & Partners, Advocates and Legal Advisers and Harris Kyriakides LLC Solicitors, both dated 8 January 2018 and lodged in process as 6/6/2 and 7/56 respectively.

### **Evidence at proof on disputed issues**

[16] The central dispute in this case involves a comparison between Holly's current circumstances and those in which she would be likely to live in North Cyprus. Ultimately there were seven areas in which there were disputed issues to resolve. These were:-

1. The defender's employment prospects
2. Accommodation
3. Education
4. Childcare
5. Financial situation
6. Family relationships and maintenance of contact
7. Environmental factors

The following is a summary of the evidence at proof on each of these disputed issues in turn.

### *Employment*

[17] The defender's position in evidence on the first of these issues, her employment prospects, was that she is currently unemployed. She has applied for two jobs with NHS 24 but felt she was restricted in what she could seek because she currently has no childcare facilities. She would like to work full-time as it was always her intention to do so once Holly was attending primary school. She has not applied for any work outside her desired field of medical administration. Under cross-examination the defender indicated that she thought she would earn somewhere between £17,000 and £20,000 if working for the NHS as a medical secretary. It is likely that she would have to start at the lower end of that scale. She accepted that if she was not leaving to live in North Cyprus she would require to look for jobs outside her desired sector. The defender's position was that in comparison with her lack of employment here she had been offered a job in Cyprus. In support of that contention she produced a letter (number 7/1/47 of process) from a Doctor Turk who is a medical practitioner at the University of Kyrenia Hospital. Doctor Turk is the defender's mother's treating physician. The letter is a short one and states that Doctor Turk would like to offer her a job in

the administration department in the University of Kyrenia Hospital. The defender accepted that she had produced no formal offer of employment. She had obtained the letter from Doctor Turk personally when she had visited North Cyprus in October 2017. He told her that it would be up to the hospital admission board to issue any formal offer including any details of salary. She stated that Doctor Turk had told her that the salary would be in the region of £20,000 - £25,000 sterling. She stated that Doctor Turk was unable to put that, or any other terms and conditions of any job offer in writing because the human resources department of the hospital would require to do all of that. The defender said that if a job with Doctor Turk didn't work out, there were many other hospitals both in North and in South Cyprus and a number of estate agents and lawyers businesses in which she could do secretarial work. She had previously worked in a secretarial capacity for a lawyer in Cyprus before Lachlan's birth. She said it was easy to find work as a native English speaker. Under cross-examination the defender accepted also that she didn't really know what her earnings would be in North Cyprus. She agreed also that she had not explored the possibility of securing part-time work and using a breakfast club facility for the children. Evidence was led also from IR, a fellow student with the defender on the HNC course. IR confirmed that most of the students had been unable to secure jobs in NHS administration following completion of their qualification. She had required to continue working in her previous role as a domestic assistant in a hospital.

[18] The pursuer has always worked on a full-time basis. His employment situation was relevant to the issue of financial circumstances and is dealt with under that heading.

### *Accommodation*

[19] The defender's current accommodation in the West of Scotland comprises of a two bedroomed flat which is rented by her. It is an older property which is not in the best state of

repair. Work needs done to the roof. The defender shares a room with Holly who is in a smaller bed than her and Lachlan has his own bedroom. The defender described a number of accommodation issues she had encountered since separation from the pursuer. He had not given her the opportunity to remain in the house that they lived together, the title to which is in his sole name. She was clear that her current property in Scotland was not a reasonable long term solution. She had found herself with nowhere else to go in the summer of 2017. She had known that the landlord of her previous property, which had been attractive and suitable accommodation, was selling it. She had hoped to raise funding to purchase that property given its convenient location for the children's school. Unfortunately she had been unable to raise funding and had not been able to purchase it. Under cross-examination, some estate agents particulars relating to private rented properties were put to the defender. It was clear that a number of these would not be available to her as she is in receipt of state benefits, something not welcomed by many landlords. Others would require the children to change school. The defender accepted that there were available properties in suitable areas in the West of Scotland in which she could live with the children. The issue of the less than satisfactory accommodation that she is currently living in is linked to her not having paid employment.

[20] If the defender moved to Cyprus she would live with her mother for the foreseeable future. The defender's mother owns a detached property in the countryside in North Cyprus. It is a three bedroomed home in which the defender's mother and the defender's brother currently reside. Under cross-examination it was put to the defender that her mother's property would not provide sufficient accommodation for the defender and the two children in its current state and that it was too small to be converted easily. The defender accepted that work would have to be done and said that there were plans already in progress to convert a

little study in the property into a fourth bedroom. This would be a small room but would at least fit a bed, a bedside table and a desk. There were further plans to convert one of the other bedrooms which has a very high ceiling with a mezzanine level so that a further separate sleeping place could be created. The living area was a good size and the property has patio doors all round with outside space including the swimming pool and a large side garden. There was a dispute about the extent to which the property was isolated. The defender described it as being in the countryside but it was put to her on behalf of the pursuer that the property was isolated and that there were no children nearby. An email that the defender had sent to the pursuer from Cyprus when she was there on holiday in the summer of 2013 was put to her. In that email she had stated of the situation at her mother's house:-

“Weird, feels like a million miles away from any and all civilisation whilst at mums. Nice for a wee while but I can see why (RF) is slowly becoming a complete recluse. They're going to move back to Scotland anyway. Mum told me the other night”.

The defender responded that she had simply intended to convey that the property in Cyprus was very quiet compared with the bustling town in the West of Scotland where she and the pursuer lived. She accepted that at the time she had conveyed that she might get bored being in North Cyprus permanently but she disputed that Holly and her brother would become similarly bored there as they would be attending school. She confirmed that the nearest shop is in a town 15-20 minutes drive away from her mother's house. In her evidence, the defender's mother confirmed the opportunities for adaptation of her property in North Cyprus to create two other sleeping areas. She said that the work could be carried out very quickly.

[21] The defender was also asked about a previous plan she had had to acquire property in Cyprus. She explained that about 10 years ago she received a sum of money as an inheritance from her late father. She had paid the sum of £17,500 to a company for a plot of land on which she had hoped to build a house. On 27 March 2017 she sent an email to the pursuer in

connection with the proposed plan at that time to purchase her rented accommodation and the difficulties in obtaining secured borrowing for that. That email 6/2/17 of process, sent after the defender had intimated an intention to move to North Cyprus stated the following:-

“I’m in negotiations with the builder in North Cyprus that I have already paid £7,500 for a plot and foundations. I am planning on getting a mortgage in Cyprus on the strength of my mums house, easiest way to go and before any reunification of the island as I wouldn’t be able to afford anything should that happen.”

The defender accepted in cross-examination that in that email she had deliberately misrepresented to the pursuer that she was in current negotiations with a builder when in fact the company had been dissolved about 3 years prior to 2017. She indicated, however, that the pursuer knew that was the case. There was a little evidence about the price of properties in North Cyprus. Property prices appear to be rather lower than in Scotland. In any event, there was no evidence of any concrete plan on the part of the defender to acquire a property in Cyprus in the foreseeable future as she clearly doesn’t have the resources to do that. The evidence presupposed that she would be living with her mother and brother in her mother’s property.

### *Education*

[22] Turning to the important issue of education, I have already found that it was an undisputed fact that the current primary school attended by Holly and her brother is an excellent one. Holly is thriving there and there are no concerns whatsoever about her educational development. She was described as a bright and articulate child. The disputed issue related solely to the proposed arrangements for Holly’s education in North Cyprus. The defender explained that she had identified the English school of Kyrenia as an appropriate place at which she would wish to educate Holly and her brother Lachlan. In documentation

lodged at number 6/61 of process details are given of the school. That document states that with the exception of Turkish and other languages all classes are taught in English. The curriculum integrates the philosophies, aims, objectives and content of an international medium system with the Cyprus Turkish education system. The international English medium element leads to the pupils eventually sitting the International General Certificate Secondary Education (IGCSEs) and the International Baccalaureate Diploma Programme (IB). The defender initially described school as following the “British system” of education although accepted that this document appeared to indicate that the qualifications towards which the pupils appeared to work were different to those available within the Scottish state system of education. The school in Kyrenia is a private one and the current fees payable are about £5,000 per annum per child and so the cost for both children would be approximately £10,000 per annum. The defender’s position was that she would be able to pay the school fees from her earnings in North Cyprus from full-time employment there as she would have no accommodation costs and no childcare costs. It was put to her that there would be a 50 minute drive each way from her mother’s house to the English school were the children to attend there. She accepted that but said that the hospital at which she would hope to work was only about 10 minutes’ drive from the school. She had driven to the hospital with her brother in October 2017 and it had not taken her more than an hour. The defender was challenged on whether she would be able to afford the school fees for the English school in Kyrenia and that Holly and her brother would require to attend a local state school near to her mother’s home where they would be taught solely in Turkish. The defender was adamant that she would not let that occur and said that she would not have her children educated within the state system there. She had established that there are places available for both Holly and Lachlan at the English School of Kyrenia should she be permitted to relocate.

*Childcare*

[23] The issue of childcare was contentious at proof. The background to this was that the defender has only very rarely used paid childcare on an occasional ad hoc basis where she lives currently. Her mother came to Scotland and lived with her for about 18 months so that she could complete her college course. She (MMF) looked after the children so that the defender could study and attend college. MMF is 72 years old and in reasonable health. However, as confirmed in her Affidavit,( although curiously denied by the defender in her Supplementary Affidavit) MMF suffers from angina for which she has consulted Doctor Turk, cardiologist, in North Cyprus. She also required one hospital admission in this country in October 2017 for a chest infection. She is currently physically able to care for the children when they are not school. The dilemma for the defender while living in this country is that she would have to earn at a reasonable level in order to remove herself sufficiently from the benefit system and be able to pay for rented accommodation and childcare. Her position in examination in chief was that she had explored what available childcare there was in the area before and after school for the children with the manager of "B.A.S.I.C. Creche", a local child care provider. An email from that organisation (number 7/68 of process) confirmed that the service was currently full with a waiting list on every day except a Friday. Under cross-examination the defender had shown to her a more recent email from that manager confirming there are in fact spaces in the breakfast club for children and that other after school spaces become available at various times in the year. The defender confirmed that she was aware of the breakfast club operated by B.A.S.I.C. Creche and that it runs from 7am in the morning and that the children are taken by bus from the childcare facility to the local primary school for 8:30am. The defender maintained that notwithstanding this more recent information about some availability at B.A.S.I.C. Creche, she would require complete "wrap

around care” in order to undertake full-time work. She accepted that sending the children to the breakfast club would partly resolve the childcare issue but that unless after school care was also available she could only work part-time.

[24] The pursuer and his mother both indicated that they would be in a position to provide back-up childcare. To date the pursuer’s mother has not been involved in any such arrangement. She works full-time albeit on a rota that allows her to work only 4 days at a time. She does not have the same set days each week in which she doesn’t work. The pursuer himself works full-time. The defender has not tended to ask him to be involved in any back-up child care arrangements, partly because until very recently she had her mother living with her. There was an occasion in October 2017 when, unknown to the pursuer, the defender had gone to Cyprus to assist her brother who was unwell, leaving the children in the care of her mother and MMF required a brief hospital admission. She contacted the pursuer who agreed to keep Holly at his home for longer than had been planned in order to cater for that unforeseen circumstance.

### ***Financial situation***

[25] As already indicated, the defender’s current financial situation is that she is dependent on state benefits, although receives the sum of £400 per calendar month from the pursuer by way of aliment for Holly. She accepted that if she secures part-time work she would qualify for working tax credit or its equivalent. It was the pursuer’s financial position that was the subject of more contentious evidence. Prior to May 2015 he worked as an employee in the financial services industry in Edinburgh, commuting each day for work. He was earning about £40,000 gross per annum and at one time received a bonus of £30,000 in addition. In May 2015 he registered a company of which he is a director. Effectively he works on his account in

providing consultancy services and the limited company is the vehicle through which he is paid. He holds 51% of the shareholding in the company and his mother has the other 49%. His position was that he went into business on his own account in the hope and expectation that he could earn more for himself than the salary he had been paid as an employee for similar work. In the event, he has not been particularly successful and said that he now realises that he was foolhardy to think that he could earn more as a consultant than as a sales trader working for someone else. His work involves the provision of dealing/trading services and also some financial information technology work.

[26] In March 2016 the defender received a letter from the child support agency, number 7/11 of process, stating that the pursuer's declared net weekly income was £208.58. The pursuer stated in evidence that his current net income is £958 per calendar month. In 2016, as a result of the income figure provided, the child support agency assessed that the pursuer would require to pay aliment of £31 per week for his daughter Holly. That would amount to about £134 per calendar month. Following receipt of that assessment, the defender contacted the pursuer by email on 11 April 2016. That email is reproduced as number 7/10 of process and narrates the defender's concerns about the reduced amount of the CSA assessment. The email includes the following passages:-

*"I have 1 month from the date of the letter to appeal it. However, upon appeal; the details go to an independent firm based in NI who will investigate further. I don't want to get you into trouble for defrauding the CSA, so I would rather not go down that road.*

*If you choose to reduce [Holly's] payments however, we will have to move again. So in the interim I need to know what you intend to do. As I mentioned, I only have 1 month to appeal this decision."*

The pursuer agreed that he would continue to provide £400 per calendar month as child support for Holly notwithstanding the level of the CSA assessment. In evidence, the pursuer said that he thought the allegation relating to defrauding the CSA was "a bit over the top" at

the time although it did not concern him unduly because he said he wasn't committing any fraud. He is regulated by the Financial Services Authority ("FSA") as a fit and proper person and was well aware of the repercussions of such conduct. In any event, he had all along kept up the payments of £400 per month. He said that the child support agency had contacted him for some sort of routine review but he had not at any time actually sought to reduce his child support payments either informally or through that agency. He is currently struggling to meet these payments together with his other commitments, which include a mortgage, and he obtains financial support from his mother. He organised an unsecured loan to meet payment of legal fees prior to applying for Legal Aid. He and his mother have a joint bank account and his mother deposits money into it on which he can draw. The pursuer's mother confirmed that position in her evidence. It was put to the pursuer that he might well chose not to continue to pay the higher level of aliment of £400 per month after the conclusion of these proceedings to which he replied that he has never missed a payment to date and that he (with the assistance of his mother), had paid for some extras including air fares to North Cyprus.

[27] There was a considerable amount of evidence about statements made by the pursuer and his mother offering to provide some financial assistance to the defender so that she could remain in this country, perhaps by moving to more suitable accommodation than she is in at present. The pursuer accepted that he had not made any specific financial offer to the defender to this effect and neither had his mother. However, he would be in a position to act as guarantor for rental agreement and he would consider re-mortgaging his property if he thought it would assist his daughter. As running his own consultancy business has not been as successful as he would have hoped he has reached the stage where he realises that if matters do not improve he will require to secure employment to improve his position. He confessed to some embarrassment that he hadn't managed to achieve the type of performance in his

consultancy business that he had hoped. He explained that there had been changes to the regulation of the industry that had affected small brokerage houses that he had not foreseen. It was suggested to the pursuer that he had not provided full disclosure of his financial situation. He explained that he had recently applied for legal aid cover for these proceedings and had submitted to the Scottish Legal Aid Board all bank statements, both business and personal together with 2 years of audit accounts which are in any event submitted to company's house. If he was found to be financially dishonest in any way he would lose his CF30 qualification and be investigated by the FSA.

[28] The only other matter relevant to the current financial situation was that the defender's mother, who is in receipt of a UK state pension, has some other resources the extent of which was not disclosed in evidence but allows her to pay the sum of about £250 per month at present to cover the storage costs in relation to the defender's furniture. She confirmed in cross-examination that she would be able to provide some financial support for her daughter whether she was in North Cyprus or in this country.

#### *Family relationships and maintenance of contact*

[29] The most contentious area of the disputed evidence related to the maintenance of family relationships especially contact between Holly and the pursuer. The defender's position was that she and Holly enjoy a very close relationship. They adore each other and she described their relationship as "perfect". Lachlan and Holly also love each other and have always enjoyed a close sibling relationship. Holly is also very close to the defender's mother, MMF, who lived with them for a considerable period of time until the autumn of 2017 to enable the defender to attend college. So far as her relationship with the pursuer is concerned, while there was clearly unhappiness and even resentment about the accommodation situation

after the parties separated, the defender described informal arrangements for contact for at least 3 years after the parties separated that were from her perspective perfectly satisfactory. A number of texts and other messages between the parties were put to her in evidence. The tenor of these was that the pursuer would tend to send a message to the defender asking when it would suit for him to have contact with Holly. The defender would indicate which day might suit her and the pursuer would agree. It was not in dispute that the pursuer had enjoyed a close relationship with Lachlan until after the parties separated. Initially he attended for contact also but the defender's position was that after a while he stopped wanting to go. That was in late 2016/early 2017. Both parties appeared to have accepted the situation although after these proceedings were raised there was an unfortunate exchange of correspondence between the defender's solicitor and the pursuer's solicitor in September 2017 (numbers 7/65 and 7/66 of process). In essence, the defender instructed her solicitor to convey her disappointment that the pursuer hadn't asked to see Lachlan and the pursuer's solicitor's response was that the pursuer had no legal or other obligation to see Lachlan. By that time the parties' communication was extremely tense. At some point the defender decided to tell Lachlan that the pursuer is not his father. She said that she sought advice from friends and looked at the internet for information and the advice she had gleaned was that it might be harder for Lachlan to deal with the information once he was a teenager.

[30] The defender commented that the pursuer's mother, with whom she has no relationship, appears to be present almost all the time during the pursuer's contact with Holly. She described the pursuer's mother as "quite involved" with contact, although she did not explain whether she regarded that as a positive or a negative feature. Her position was that the pursuer's extended family had not been involved on a regular basis with Holly prior to these proceedings being raised. There had always been contact on birthdays and at Christmas

and other special occasions but contact between Holly and her external family on the paternal side was now more frequent. The defender accepted without reservation that a disadvantage of her moving to North Cyprus with Holly and Lachlan was that Holly would not be able to retain the kind of regular residential contact she has had with her father to date. She described it as “vital” that her daughter maintains contact with the pursuer because “*she loves him and enjoys spending time with him and his family*”. However, she said that she would make sure that whatever contact could be achieved would be maintained. The pursuer would be welcome to visit them in North Cyprus and Holly could come over to Scotland to see her father. The school holidays in North Cyprus are longer than in this country and she could spend one half of the summer holidays (about 6 weeks) with the pursuer each year. In addition contact could be maintained by Skype and other electronic means.

[31] Under cross-examination, the defender accepted that she had severed Lachlan’s relationship with his father by coming to live in Scotland at the end of 2008. She said that cutting off contact with Lachlan’s father was not the primary reason she came to Scotland but she knew that moving here would prevent that. Lachlan’s father had become involved with “Reunite” after the move and had sought to obtain contact with his son. The position in relation to the lack of enforceability of Scottish court orders and minutes of agreement in North Cyprus was not disputed. The defender’s position was that such enforcement would not be necessary because she would allow contact willingly between the pursuer and Holly were she allowed to move to North Cyprus as she considered the situation was very different from the one she had been in with Lachlan’s father, who had been a volatile and abusive character.

[32] Certain messages between the parties when the defender was on holiday in North Cyprus with the children in the summer of 2016 were put to her. In these, there are examples of the pursuer asking to speak with the children but being unable to do so because the

defender responded by saying that Holly was in bed or being moody or asleep in the afternoon. The defender accepted that there were times when the pursuer had wanted to contact his daughter and had been unable to do so. She accepted that there had been one occasion where she had been avoiding his calls. She accepted that she refused a suggestion by him that he have Holly to stay overnight on her return from North Cyprus after a separation of 6 weeks and that it might be thought that allowing contact was not high on her list of priorities but stated that any such refusal of contact "wasn't done maliciously". She agreed that she always found it difficult to let go of Holly for contact and stated that she had been advised that she had no legal obligation to permit the pursuer any contact at all. She seemed to understand that, as he is registered as Holly's father on her birth certificate that had given him some sort of rights but she seemed unclear as to what they were. She accepted that she held the pursuer's mother responsible in large part for the breakdown in her relationship with the pursuer and in an exchange of messages on 5 October 2016 where she had not permitted the pursuer's mother to throw a birthday party for Holly the defender had stated under reference to the pursuer's mother's role in the breakdown of the relationship "that's why you don't get to kiss her [Holly] goodnight 7 days a week". The defender accepted without qualification that on any occasion when the pursuer had been asked to step up to the mark as a father he had done so, such as in October 2016 where Lachlan had been unwell and the pursuer had agreed to take Holly for longer. Prior to the current dispute there was good cooperation and co-parenting when required. She accepted that the significant role that the pursuer plays in Holly's life can only be exercised to its current extent if she does not move to North Cyprus. When it was specifically put to her that it would be better in that case for Holly to remain here so that the pursuer could continue to be in her life she replied "I would stay here if I could stay here". She then accepted that she would have to make enquiries to see how she would be able to do that.

She appeared to accept the proposition that it would be better for Holly to stay in Scotland than move to North Cyprus, although claimed in re-examination that she was clear that it would be better for Holly to relocate.

[33] The pursuer in his evidence explained that his primary concern in relation to the defender's proposed move with Holly to North Cyprus was that it would be detrimental to his relationship with his daughter if he didn't have the same frequency of direct contact with her. He considered that Skype contact would be of insufficient quality to maintain that close relationship. He also regards the fact that Northern Cyprus is not party to the Hague Convention on International Child Abduction as a second but very significant concern, together with the lack of enforceability of any court order or contract between the parties there. He said he would be devastated if Holly was to be removed to North Cyprus. He would miss her terribly and she in turn dotes on him. He felt that if Holly remained in this country she would benefit from the things that he could help her with in relation to her education, financial help and most importantly contact with him and his extended family. He disputed that his family had only become regularly involved with Holly since these proceedings were raised. They have known Holly since she was born. However, since she has become more independent of her mother it has been easier for him to take her on family day trips to Millport where some of his family members have caravans. He accepted that his relationship with Holly had developed more intensely after she attained the age of 3. He had begun to ask for holiday contact to which he had received no response. He accepted that he could have been more involved in his daughter's life in the earlier years and accepted that his desire for far greater contact had developed as she grew older and was able to undertake more activities with him. In addition, however, his work commitments meant that he was relatively restricted in the time he could spend with her. While he had enjoyed a long weekend with Holly in

August of 2017, the defender had not agreed to his proposed holiday contact in the October break that year. He had Holly with him for a period of 4 nights over the Christmas holidays in 2017/18. In so far as there might have been some increase in the contact his extended family had with Holly after court proceedings were raised, the pursuer attributed that the contact had become much more regular and reliable and so it was easier to plan visits with his family.

When it was put to the pursuer that on a move by Holly to North Cyprus a 6 week block of contact in the summer would make up for the time and he and his family were able to spend with her as a result of her relocation, he responded that children grow up quickly and Holly would miss the regular interaction and exchange of stories and information that he currently enjoys with her. He would be unable to take a block of 6 weeks holiday in the summer from work.

[34] The pursuer's mother explained that, although the pursuer is an only child, there are five generations of a family line currently on her side. Her own grandmother is still alive and is aged 105, her mother is 85, she is 63, the defender is 43 and Holly is 5. She considered that it would not be in Holly's interest for her contact with her father and with his side of the family required to take place in blocks of summer contact. She knows how much Holly looks forward to seeing her father for contact and stated that she has been known to have a tantrum if she thinks she is going to see her father and then for some reason it is cancelled.

[35] The pursuer's cousin, DT, confirmed in her evidence that being able to rely on regular fortnightly contact had made it easier for her to make arrangements to see Holly. DT works as a warehouse administrator and has twin daughters aged 5. She met the defender several times during the course of the parties' relationship and since then sees the pursuer and Holly as often as she can. She described the pursuer as an excellent dad and explained that her two girls enjoy spending time with Holly. She would be unable to afford to visit Holly in Cyprus.

She would love to see her more often than she does at present. The pursuer's further extended family includes DT's brother and sister, her brother has a son who was quite friendly with Lachlan when the parties were together and a daughter who is a year older than Holly. DT is involved in the family holidays at the caravans at Millport. Her sister gave birth to a child in November 2017. Holly enjoyed meeting that baby recently.

### *Environment factors*

[36] A number of issues arose about the environment in which Holly would live were she to move to North Cyprus. In 2016 when the defender and Holly and Lachlan were on holiday in North Cyprus the pursuer emailed her in relation to the civil unrest going on at that time in Turkey. However, there was no real suggestion that the political situation in North Cyprus was unstable. While the tensions between north and south on the island are well documented, the defender painted a picture of extremely easy access between the two parts of the island and that was not challenged. The pursuer raised the issue of road safety on the island. He had produced information indicating a relatively high number of road accidents and it was put to both the defender and her mother that this presented a danger. However, he accepted that the defender had driven in North Cyprus when on holiday there and that they had come to no harm. He maintained that the standard of driving in North Cyprus was dangerous and that the indigenous population tended to drive older vehicles that were less safe than those driven in this country.

[37] The pursuer had also raised an issue about the safety of the environment in North Cyprus in the defender's mother's home in that the swimming pool at the property is not fenced and there were said to be snakes in the garden. He accepted again that no harm had come to Holly during the times that she had been on holiday to that property. Much was

made of the hot and sunny climate in North Cyprus by the defender and her mother. This was promoted as a positive factor in favour of relocation there. The pursuer and his mother had concerns about the fairness of Holly's complexion and whether living in such a hot climate would be good for her.

## **Discussion**

[38] Dealing first with the credibility and reliability of the principal witnesses, this is not a case in which the evidence of one party can be wholly accepted and another witness's evidence rejected. Both the defender and the pursuer seemed to me to be doing their best to tell the truth. However, I had some concerns about the reliability of the defender's evidence. Her counsel accepted in submissions that a view would have to be taken on the defender's apparent agreement in cross-examination that Holly's best interests would best be served by staying in Scotland rather than going to North Cyprus. As the defender's whole case is predicated on the fact that she believes it is better for Holly to relocate it was suggested that her apparent agreement could be ignored and explained by her being very tired at the end of a lengthy cross-examination and perhaps under the mistaken impression that she required to agree with everything put to her. I accept entirely that the defender's overall position in the case is that she wishes to relocate and that the apparent concession made requires to be seen in context. However, it did give me cause to doubt the reliability of some of the defender's evidence and whether she understood the importance of some of the issues being put to her. Similarly, while I have no doubt that the pursuer was doing his best to answer all questions as honestly as he could, there are one or two aspects on which it is difficult to know whether to rely, such as his stated intention to provide financial assistance to the defender, with the assistance of his mother, so that she could move from her current accommodation. His

intentions in this regard may have been genuine but seemed a little optimistic in light of his current financial situation. Overall both parties sought to advance their respective cases with as much force as possible and both may have overstated some matters in their original affidavits but when faced with a contrary position that seemed to be accurate were reasonably willing to make concessions.

[39] The two grandmothers, the pursuer's mother and the defender's mother, exhibited a deep love and affection for their respective children and for their shared granddaughter, Holly. They were both rather partisan in their evidence in a way that was simply a manifestation of the loyalty of each to her own child. Again, however, I had no reason to doubt the credibility of either of those witnesses and have taken into account that any overstatement in their evidence will have been unintentional. I was impressed by the evidence of DT, the pursuer's cousin and have no reason to doubt the evidence she gave. The defender's former fellow student, IR, was also credible and reliable. The defender's brother, RF, as indicated gave evidence only by way of affidavit evidence. To a large extent his evidence was supportive of the situation in North Cyprus, the accommodation arrangements and so on. He suffers from some health difficulties, as a result of which he has had no direct contact with Holly over the last year or so. On all of the disputed issues there was tested evidence from the defender and her mother and so I have not required to give any real weight to RF's untested evidence on such issues.

[40] While I have separated the evidence on the disputed issues on which there was evidence at proof into chapters for convenience, when applying the test in section 11(7) of the 1995 Act to the facts of this case, there are clearly some of those factors which have much more significant bearing than others. There can be no question of a balance sheet type analysis where the advantages to Holly of relocation are set against the disadvantages with a view to

providing a total for each. For example living in a country where the sun shines brightly with fairly intense heat much of the year might well be regarded by many as advantageous, but even if so, it is in my view easily outweighed by the disadvantage of lengthy separation from a much loved parent.

[41] It might be useful first to comment on the way in which the defender's plan to relocate with Holly developed. The defender's mother said that she felt her daughter was struggling in this country because of the problem of securing proper child care so that she could work and that, combined with the accommodation difficulties, led to her suggesting to her daughter that she relocate. No date was put on that suggestion but it must have been prior to February 2017 when the letter was sent from the defender's solicitor to the pursuer explaining that the defender had decided to move to North Cyprus. Notwithstanding that he holds parental responsibilities and rights in respect of Holly, the pursuer was not consulted prior to what the defender saw as a decision being taken by her that she would relocate. That much is clear from the terms of the solicitor's letter from which I have quoted at paragraph [10]. I am prepared to accept that the defender seems to have been confused about the precise extent of her obligations in this regard, but it is clear that she knew that she could not leave the jurisdiction permanently without the pursuer's permission. I accept her evidence that she had no intention of relocating to North Cyprus without either the pursuer's permission or an order of court. It was apparent from her evidence that she regarded the pursuer's opposition to her plan as extremely unreasonable. The deterioration in the parties' ability to communicate effectively and to co-parent in respect of Holly largely arises from that. The defender appears not to have appreciated how upsetting and inflammatory the receipt of a letter from her solicitor informing him of his daughter's departure to live in another country would have been to the pursuer. For his part, the pursuer appeared unwilling to enter into any meaningful dialogue with the

defender before raising proceedings. All of that is now in the past but it gives some insight into why there was considerable focus at proof on the minutiae of the details of the parties' communication prior to 2016/2017. I have referred to that evidence only in the most general terms as it was not particularly useful in determination of this case. What matters is the evidence relating to Holly's current circumstances and those which would likely pertain if she relocates to North Cyprus so that a conclusion on what would be better for her can be reached.

[42] It is indisputable that the defender currently feels trapped in the situation of having the care of two children while being unable to earn the kind of income that would remove her from the state benefit system completely. The problems she identified with her current accommodation are related to that. If permitted to take Holly to live in North Cyprus, the defender and her two children would live with the defender's mother and brother. The defender's mother's property sounds desirable, particularly in a holiday context and has been perfectly adequate for the defender to stay with the children for several weeks. However, it is not currently in a state that would provide suitable permanent accommodation for the defender and children to settle. The defender's mother indicated that the necessary adaptations could be done very quickly but they have not actually been carried out to date. That is not a criticism of the defender's mother at all; she has not known whether the alterations would be required. More importantly, prior to the defender deciding that she wished to relocate to North Cyprus, she did not appear to regard it as somewhere with the necessary amenities that would lead to her being content to live there in the longer term. It is evident from the plain terms of the email she sent to the pursuer when she was on holiday there in 2016, referred to at paragraph [20], that she regarded it as an isolated place that is perfect for a break but not for the long term. From the perspective of what is best for the child, Holly would be moving from a property that, while regarded as unsatisfactory by the defender

is just adequate for her needs to a property that currently has one additional bedroom but would require to accommodate three additional people. The quality of the property in North Cyprus is undoubtedly superior to Holly's present living circumstances, but its isolated location some distance from the nearest town and with no evidence of other children living nearby, prevents it being in my view a factor militating strongly in favour of the move.

[43] So far as education is concerned it was agreed by all that the quality of state education in this jurisdiction is far superior to that which would be available in North Cyprus from Holly's perspective. The defender herself stated that she would not countenance sending Holly to state school in North Cyprus where she would be educated in Turkish. I have no reason to doubt the credentials of the English school in Kyrenia. The fact that it would constitute a change from the Scottish system of education to IGSE's and probably the International Baccalaureate is something that might possibly affect the ease of Lachlan's transition but is unlikely to have any impact at all on Holly who is only now in the second half of her first year of formal schooling. The main issues relating to the defender's proposals for educating Holly in North Cyprus relate to the cost and location of the English school there. Holly currently attends a local village school in the west of Scotland and she would become a commuter to school in North Cyprus. The journey would be at least fifty minutes in the car each day, each way, a total of one hour and forty minutes per day. Many children require to travel to school for a variety of reasons, but it is not something that at the moment Holly has to do. She is at an age where she is forming friendships within her peer group. I consider that on balance the easily accessible local school she attends in the West of Scotland, the standard of which is particularly high, is preferable to her being educated at the English speaking school in North Cyprus. While the defender indicated that Holly may have to move from her current school if there is a further house move within this jurisdiction, it is not possible to reach any

conclusion about that and I have compared the educational provision only of the two schools discussed in any detail in evidence.

[44] Then there is the issue of the cost of private education in North Cyprus. That is directly related to the question of whether the defender has shown that she has a job offer in that jurisdiction and so must be considered together with the evidence on that matter.

[45] I am not satisfied on the available evidence that the defender has the firm offer of a job within the administration department of the University of Kyrenia Hospital. While she had by the date of proof lodged a letter (7/47 of process) from Doctor Turk, her mother's physician, this is in very brief and general terms. It does not specify the nature of the job at all simply that it would be in the administration department. No start date or other terms and conditions, such as salary, are mentioned. In her evidence, the defender accepted that no formal offer could be available until she had been interviewed by the human resources department.

Further, although the defender's solicitors had stated to the pursuer as early as February 2017 that the defender had such a job offer, which she confirmed in evidence was the same job as referred to in Doctor Turk's letter, by the proof in February 2018 she had been unable to provide anything formal from the hospital administration, despite having had a year to do so.

It was unclear whether jobs in the hospital were routinely available or whether this was a specific job that had not been filled. According to the undisputed evidence, an employer such as a hospital would require to attempt to fill any vacancy with a Turkish Cypriot before offering it to the defender. There was no evidence of any such procedure having been embarked upon. In cross-examination, the defender accepted that she didn't really know how much she would earn if she were to receive a firm and formal offer for the job in question.

While she had put a figure of £20,000-£25,000 on the proposed job initially, she seemed to accept when pressed that that was not something she could state with any certainty. In any

event, it seemed a little odd that Doctor Turk would have given her an indication of what she would be paid in Pounds Sterling when the currency of North Cyprus is the Turkish Lira, albeit that the euro is now in fairly wide circulation and payment in that currency would not have seemed too unusual. Standing the rather lower national minimum wage in North Cyprus as compared with this country, I am unable to rely on any evidence that the defender would earn at least £20,000 as a starting salary in North Cyprus without vouching of that position. On the other hand, I do not doubt that the defender would be able to find some sort of employment should she relocate. She worked previously for a lawyer in North Cyprus and also has considerable experience, albeit from some years ago, in working in a variety of jobs without difficulty. She is a personable and seemingly capable individual. I find that she could secure employment either here or in North Cyprus, albeit there seem to be few opportunities in this jurisdiction in the field of medical administration which would be her first choice. Even if she was able to secure employment at a starting salary of £20,000 per annum in North Cyprus, she would require to spend at least one half of her gross salary on school fees for the children if they were to attend the English School of Kyrenia. She would have no such outlay in this jurisdiction, but she would have accommodation costs. Those accommodation costs would allow her and the children to have their own home, albeit rented, whereas in North Cyprus living with her mother would be rent free but not constitute the type of independent living that she has sought to maintain in this country. While there are advantages and disadvantages of the accommodation and education options, it seems to me that these relate primarily to the defender's desire for a particular way of life rather than being rooted in Holly's best interests.

[46] In order to secure employment the defender requires childcare arrangements for both children. Her mother has been able to provide that in this country by coming to stay with the defender while she undertook her college course. As the defender's mother is retired, she is

free to come and go from North Cyprus as she wishes, although she stated in her affidavit that she would prefer to stay in North Cyprus more of the time and that she had remained in Scotland for longer than intended purely to assist her daughter. The defender's mother would be available to look after the children while the defender worked in North Cyprus if that was required. The proposed arrangement were the children to attend the English School in Kyrenia seemed to be that the defender would drive them to school on her way to the hospital (or wherever she was working), but if she was working full-time inevitably her mother would require to collect them from school at least some of the time. More importantly, they would be living with the defender's mother who would then be available all the time when the children were not at school. In order to work in Scotland the defender would have to pay for childcare and even with two school age children the cost of that would not be inconsiderable if she secured full-time employment. I accept the evidence that indicated that her local childcare facility currently has spaces in its breakfast club that would enable the defender to work part-time and that places would probably become available over the course of a few months to a year that might in due course allow her to work full-time. This situation is, however, far less satisfactory from the defender's perspective than relying on her mother. The defender has not relied on the pursuer for occasional back up child care other than on two specific occasions mentioned in evidence. The first was when Lachlan was unwell and she asked the pursuer to keep Holly for a little longer than normal and the second was when the defender's mother required to be in hospital when she was looking after Holly and the pursuer helped out. The pursuer and his mother both indicated a willingness and a desire to be more involved in such arrangements and stated that they would help the defender as much as they could if she continued to live in Scotland. Although I accept that they were willing to do so, standing their work commitments, they cannot provide more than occasional back up child care in

unforeseen circumstances. The defender requires more reliable child care provision for her to work. As matters currently stand, she can better secure the sort of “wrap around” child care she seeks by living with her mother in North Cyprus, unless her mother is prepared to continue to come to Scotland for blocks of time to assist her. It is in Holly’s best interests that, where her care is to be provided by someone other than one of her parents, the arrangements made are safe and reliable. While safe and reliable child care can be provided in both jurisdictions, it would be easier for the defender to organise that in North Cyprus by enlisting her mother.

[47] So far as the financial situation in so far as it affects Holly is concerned, I accept that the pursuer is paying as much as can reasonably be expected of him for Holly’s support. His earnings reduced considerably after May 2015 when he started in business on his own account. He did so at a time when the parties were not in dispute about anything in particular and were communicating well in relation to informal contact. I reject the suggestion that there was somehow a relationship between his decision to go into business on his own account and a desire to pay less for his daughter’s support. His explanation as to the reasons for doing so and his disappointment and embarrassment that matters have not worked out as he planned was satisfactory and appeared genuine. His agreement to continue paying at the higher level despite his reduced income was also something that arose quite some time before any indication that the defender wanted to move to North Cyprus. I reject the suggestion that it was somehow related to the threat made by the defender that he might be investigated for fraud. I appreciate that the defender will have been anxious and upset when she thought that payments of child maintenance might reduce, but she appears to have made an allegation that the pursuer was somehow committing a fraud without any detailed understanding of his current financial circumstances. The pursuer’s mother, who is a retired bank manager, appears

to have reasonable resources which she is willing to share with her only child to support him through this time. I do not regard that as unusual or in any way sinister. More importantly, it is not clear to me that Holly will be better provided for in a material sense if she is in North Cyprus rather than in Scotland. On the defender's current plan payment of school fees would swallow up more than half of her earnings and broadly negate the benefit of living in rent free accommodation. As indicated, the defender's mother has some resources from which she currently states that she pays the sum of £250 per month to store her daughter's furniture. That sum of money could be put to better use in assisting the defender were she to find unfurnished accommodation in this jurisdiction and her mother indicated a general willingness to support her daughter financially regardless of where she lived. There was no evidence from which I could conclude that the defender would be in a position to purchase or even rent her own home in Cyprus in the foreseeable future. She has not made any real effort to date to secure employment in this jurisdiction, partly because of her stated intention to relocate. It seems to me to be likely that her difficult financial circumstances can be resolved in a way that would not require relocation.

[48] It is the undisputed evidence about the closeness of Holly's relationship with both her parents and her two grandmothers that is most informative on the issue of family relationships and the maintenance of contact. The defender accepted freely under cross-examination that the most important people in Holly's life are her two parents. It is to the defender's credit that she did not seek to undermine the importance of the relationship between the pursuer and his daughter. The defender and her mother were keen to emphasise the particularly close relationship Holly has with her maternal grandmother who has been an almost constant presence in her life over the last 2 years. However, it did not seem to me that the pursuer's mother's love for and commitment to Holly was any weaker, simply that circumstances had

dictated the amount of time that CB had been able to spend with her granddaughter. She takes the opportunity to see Holly on almost every occasion that her son has contact and there was evidence of the pleasurable activities she and Holly have enjoyed together. In short, Holly's current situation is that she is surrounded by adults who adore her. She lives with her mother who has been her primary carer since birth. She adores her father and looks forward to seeing him on a regular basis. She has spent concentrated blocks of time with her maternal grandmother and shorter but regular and beneficial visits with her paternal grandmother. All of the evidence supported a conclusion that she is a contented child with appropriate and fulfilling relationships with all of the adults in her life.

[49] Although there was to some extent a dispute about the amount of time that the pursuer's extended family had spent with Holly prior to the start of 2017, I do not consider much turns on that. The pursuer's extended family including his cousin, DT, and her siblings had developed a relationship with Holly, albeit that they did not have the kind of routine contact with her that has been possible since the more reliable arrangements that are now in place. Those more fixed arrangements have been implemented at a time that coincides with Holly becoming more independent of her mother in a way typical of children who attain school age. She has enjoyed the stimulation provided by her twin female cousins with whom she can now enjoy a range of activities. She also has a great grandmother and a great-great grandmother on the paternal side. Those extended family relationships are important, just as Holly's relationship with her uncle, RF, who lives in North Cyprus is important. The protection of those relationships is less central to Holly's life, however, than the relationships with her parents and her grandmothers. Were Holly to relocate to North Cyprus the contact she would enjoy with her father and paternal grandmother would, even in the absence of a dispute, be limited to holiday contact. That is a poor substitute for Holly for the kind of

regular residential contact she has experienced with her father to date. The pursuer would not be able to take a six week break from work in the summer and the defender's proposal in that respect was unrealistic, particularly in light of her seeming reluctance to agree to holiday contact to date. I formed the impression that in the early years of Holly's life the defender had facilitated only such contact as she felt did not interfere with her care of Holly. She had a tendency to restrict contact and to change arrangements. For his part, the pursuer was not assertive enough in his demands for contact and tended simply to accept whatever the pursuer proposed. He was slow to demand a role in her education and to pursue extended holiday contact. Matters have moved on since then and the pursuer is now an integral part of Holly's life. She looks forward to seeing him regularly and it would undoubtedly be detrimental to her interests were that contact to be restricted. The pursuer lodged a number of photographs and a contact diary which support his evidence about the depth of his relationship with his daughter.

[50] Turning to the issues of the absence of any mechanism for enforcement should contact arrangements break down following a move to North Cyprus, I accept as genuine the defender's statement that her current position is that she considers the maintenance of contact between Holly and her father to be "vital" for Holly's interests and that she wouldn't seek to jeopardise that. The difficulty is that, however genuine her current intention, her circumstances may change. When she lived in North Cyprus in the past, she had a relationship with Lachlan's father, who was involved in his son's life until the defender took the decision to return to Scotland. She accepted that her motivation had been, at least in part, to put a distance between Lachlan and his father. All parties were agreed that Lachlan's father was a volatile character without whom the defender's life had improved. The fact remains, however, that the defender has taken unilateral action in the past to avoid continuation of a relationship between

one of her children and his parent. In doing so, she managed to avoid a situation where there was any independent scrutiny of that relationship and a determination of what level of relationship, if any, Lachlan's father should have with him. I consider that, just as the defender regarded herself as entitled to write to the pursuer, through her agents, indicating that, without question, she would be taking Holly with her on relocation to North Cyprus, she may find reason in future to regard it as her decision whether to alter any holiday contact arrangements between the pursuer and his daughter. In that situation, the inability to enforce orders from this jurisdiction or even agreements between the parties in the local courts in North Cyprus, would become a significant concern. I thought it unfortunate that, even when the parties were communicating well and the children were in Cyprus on holiday, the defender did not always facilitate telephone contact between the pursuer and Holly. I am unable to conclude with any confidence that even this type of contact would be facilitated to the full extent required to maintain communication between visits if relocation was allowed. There are few arrangements between the separated parents of a 5 year old child that subsist without any alteration for a 10 or 11 year period. The relationship between the parties has deteriorated significantly since February 2017. While counsel for the pursuer expressed some optimism that relations might improve following the conclusion of these proceedings, considerable effort will be required on both sides if that is to be achieved. In any event, Holly's needs and desires will change over the coming years. Standing the undisputed importance of the pursuer in her life, I conclude that it is a considerable disadvantage of a move to North Cyprus that Holly would be living in a jurisdiction where her father's parental responsibilities and rights are not recognised and which would not recognise or enforce a contact order from this jurisdiction.

[51] I have already indicated that mention was made of certain environmental factors in North Cyprus were concerned. I do not find it established that there are any identifiable risks

to Holly in such a move. Northern Cyprus appears to be a relatively stable place in which to live and, despite its history, is a popular tourist destination with an enviable climate. The statistics on road safety and the concerns about snakes in the garden would have been more forceful had these been expressed at a time when the defender was taking Holly and her brother on holiday there. In the context of a planned relocation to a place where the defender's mother has lived contentedly for some years, I do not regard them as material.

[52] I have balanced the various relevant factors for and against relocation to Cyprus for Holly having at the forefront of my mind the need to have her welfare as the paramount consideration I conclude that she enjoys a settled life here in Scotland where she benefits greatly from close family relationships on both sides. She attends an excellent local school and is developing friends and interests independent of her home life in a manner entirely appropriate for a child of her age. Her mother, who has been her primary carer since birth, wants to achieve a better lifestyle for herself and for Holly and her brother. She has an idea that she can do that by moving to North Cyprus, but she has not proved the existence of a specific job offer and her children would require to travel some distance each day if they are to be educated within an English speaking system. The cost of that English speaking education would be disproportionately high in comparison with the defender's likely earnings, even if those were in the region of £ 20,000 - £25,000 per annum, which I have found has not been proved. The likely diminution of the strong bond that has developed between Holly and her father is the single biggest factor militating against granting permission to the defender to relocate. Her relationship with her father, which both sides accepted was vital to her, would be reduced to holidays. Further contact through skype and similar means of communication is far less satisfactory than physical contact. It may be the best available option for some relationships, but there is no current pressing need for Holly's relationship with her father to

be limited to that. I reject the defender's assertion in her Affidavit that a move to North Cyprus is "...*entirely based around absolute necessity for us*". I consider that the defender has not yet explored sufficiently the ways in which she could improve her current situation without leaving the country.

[53] In conclusion, I consider that Holly's best interests would best be served at the present time by her remaining in Scotland. I cannot conclude that it would be better for Holly to grant the defender the order she seeks than to make no order at all. In those circumstances I will refuse to make the specific issue order sought. Counsel for the defender very properly accepted that the residence order she concluded for was only really necessary in the event of a move to Cyprus as documenting the position in a way that the defender could use in the event of any future dispute. Accordingly, I would not intend to make an order for residence. Parties were agreed that they would be likely to be able to agree on the specific terms of ongoing contact, including holiday contact following a decision in principle on the issue of relocation being made. Accordingly, before making any formal orders, I will fix a by order hearing so that I can be addressed on that matter and also on any question of expenses.