



IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION

2024: No. 116

BETWEEN:

D

Applicant

- and -

J

Respondent

DECISION

Before: **Hon. Alexandra Wheatley, Assistant Justice**

Appearances: **Georgia Marshall of Marshall Diel & Myers Limited, for the Respondent**

Adam Richards of Richards Limited, for the Applicant

Dates of Hearing: 22, 23, 24, 25, 26 and 30 September 2025,
1 October 2025

Dates of Submissions: 6, 7 and 8 October 2025

Date Decision Circulated: 31 December 2025

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Leave to Remove Children from the Jurisdiction; Welfare of the Children the Paramount Consideration; UK Welfare Checklist as Guidance

DECISION of Assistant Justice Alexandra Wheatley

INTRODUCTION

1. This decision concerns the Respondent's (hereinafter referred to as **the Mother**) application dated 9 April 2025 for permission to remove the parties' two children (hereinafter collectively referred to as the **Children**), from Bermuda to live in the United States¹ on a permanent basis (the **LTR Application**) and that she be granted sole care and control².
2. The Applicant (hereinafter referred to as **the Father**) opposes both aspects of that application. He asks that the Children remain in Bermuda in what he contends is the arrangement most consistent with their welfare. His position is that, if the Mother remains in Bermuda, the parties should share the Children's care on an alternating weekly basis; but if the Mother relocates to the United States without the Children, he should have their sole care with structured and meaningful contact to the Mother.
3. A social inquiry report dated 16 September 2025 (the **SIR**) was prepared by the Court Appointed Social Worker (**CASW**), Ms Nichole Saunders, following an independent investigation. The SIR recommends dismissal of the LTR Application. The Court received submissions from both sides regarding the weight to be attached to the SIR. The Father relies upon it as a careful and balanced assessment aligning with his proposals. The Mother criticizes it as failing to engage with what she says are central aspects of the case, including her employment situation and the children's needs, and she contends that it does not reflect the Children's wishes or the historic caregiving arrangements.

¹ The City and State have not been included to provide anonymity.

² This position evolved during the hearing to the Mother confirming that she was seeking an order for joint care and control and will be addressed in the expanded Reasons referenced in paragraph 19 below.

SUMMARY OF THE PARTIES' POSITIONS

The Mother

4. The Mother submits that the Children's welfare requires relocation to the US. She emphasises that both children were born and initially raised there and retain strong educational, cultural, and familial connections. She asserts that A has experienced bullying and social isolation in Bermuda and that B displays behavioural dysregulation requiring enhanced support. Her position is that the proposed US schools were selected because they offer more appropriate academic and therapeutic provision tailored to each child's needs. She provides evidence of suitable housing close to the schools, access to medical and therapeutic services, and a support network centred on the maternal grandparents.
5. The Mother further relies on a change in family circumstances, namely her father's recent stroke and declining health. As his only child, she says she has an emotional need to be nearby and that the Children have a limited opportunity to develop a meaningful relationship with their grandfather. She contends that refusal of relocation would unduly sever the Children's maternal family ties at a critical time.
6. On caregiving, the Mother describes herself as the Children's primary carer, responsible for schooling, medical appointments, and daily routines. While acknowledging the Father's increased involvement in recent years, she questions his insight into the Children's particular needs and characterises his parenting as rigid and, at times, disengaged. She rejects suggestions that she lacks capacity to cope, attributing earlier difficulties to illness, an accident, and pandemic-related disruption. She says her current employment affords sufficient flexibility to meet the Children's needs.
7. The Mother proposes a contact regime which she says would preserve a meaningful relationship between the Children and the Father, including regular virtual contact, extended holiday time, alternating festive periods, and monthly in-person visits in the US. She challenges the SIR as being incomplete and insufficiently balanced.
8. In summary, the Mother presents relocation as a proportionate and necessary step to secure the Children's emotional, educational, and familial wellbeing, while maintaining continuity of her care and safeguarding the Father's relationship through structured contact.

The Father

9. The Father opposes the Mother's application and seeks to preserve the Children's lives in Bermuda. He says the family has lived there since 2022 and that the Children are now

settled in their schools, activities, and community. In his case, Bermuda is the Children's home, offering a stable, safe, and child-centred environment well suited to their ages, with short travel distances and ready access to outdoor activities and extracurricular pursuits.

10. The Father states that, for the past two years, he has been the Children's primary day-to-day carer. He says his flexible working arrangements allow him to collect the Children from school and support their extracurricular involvement, contributing materially to their wellbeing. He contends that relocation would disrupt this routine, introduce longer journeys in a dense urban environment, and reduce the children's participation in activities they currently enjoy.
11. He submits that the proposed move would undermine the Children's stability and security. The Children, he notes, left the United States at a young age and would have limited recollection of life there. He argues that they would face multiple transitions such as, new schools, a new home, and separation from their father's daily care. He also expresses concern that the Mother's work commitments would necessitate reliance on third-party care and elderly grandparents.
12. The Father raises particular concern about the impact of relocation on his relationship with the Children, questioning the Mother's assurances about promoting contact. He relies on the SIR, which recommends that the Children remain in Bermuda and highlights the challenges relocation would pose for the father-child relationship.
13. On practicality, the Father contrasts the simplicity of Bermuda with the logistical demands of the United States, including school travel in different directions and longer commute times. He disputes the Mother's claim that relocation is necessary for her employment, asserting that she can continue working in her current role in Bermuda.
14. Therefore, the Father invites the Court to dismiss the application, adopt shared care if the Mother remains in Bermuda, or alternatively place the Children in his sole care should she relocate, contending that these outcomes best reflect the Children's welfare.

THE LAW

15. The Court has jurisdiction to determine the LTR Application in accordance with section 46 of the Matrimonial Causes Act 1974.
16. Both parties agree that the welfare of the child is the Court's paramount consideration when determining an application for permanent relocation. That principle, described as the "paramountcy principle," overbears all other considerations, however powerful or

reasonable they might appear. Counsel cited Bermudian and English authorities to anchor this proposition and to guide the Court's exercise of its discretion in relocation cases.

17. The recent Bermuda Court decision, *Father v Mother* [2025] SC (Bda) 48 Civ, confirms that the child's welfare remains the overarching principle in relocation matters and adopts, as persuasive guidance, modern English authority that emphasizes welfare-based analysis. Such analysis stems from the statutory welfare checklist set out in section 1(3) of the Children Act 1989 of England and Wales (**UK Welfare Checklist**). While not binding on this Court, Bermudian authority has recognized that it may be of assistance in structuring the welfare analysis. The case of *Father v Mother* treated the checklist as a useful aide-mémoire, which considers the children's wishes and feelings in light of their age and understanding; their physical, emotional, and educational needs; the likely effect of any change; any harm they have suffered or are at risk of suffering; and the capability of each parent to meet their needs. The parties invited the Court to have regard to these factors where relevant, but not to treat them as exhaustive or as a substitute for the ultimate welfare judgment.
18. The parties also relied on the line of English authorities that include *Payne v Payne* [2001] Fam 473, *K v K (Children: Permanent Removal from Jurisdiction)* [2011] EWCA Civ 793, and *Re F (A Child) (International relocation: welfare analysis)* [2015] EWCA Civ 882. The point made was that the only true principle to be extracted is that welfare is paramount; the further guidance in those cases is valuable insofar as it identifies factors likely to be important in particular cases, but it is not to be treated as rigid rules or presumptions.

DECISION

19. It had been my intention to issue this decision with full reasons by the end of the year; however, this simply was not possible particularly given the length of the hearing where the oral evidence alone spanned over a period of seven days. Given that I recently had to determine an interim application for holiday access/care for the Children as well as taking into consideration the nature of this application which relates to the welfare of children, I have decided to confirm my decision of the LTR Application.
20. For the avoidance of doubt, this decision has only provided a brief snapshot of the issues I have taken into consideration. My comprehensive analysis and reasons for arriving at this decision will be issued in due course.
21. It goes without saying that in reaching my decision, I have given careful and thorough consideration to all the evidence presented, including the oral evidence, all documentary materials (affidavits and exhibits), and the submissions made by Counsel on behalf of the parties (both written and oral).

22. I direct myself that the paramount consideration in determining this application is the welfare of the Children. All other considerations, including the wishes, convenience, or interests of either parent, are subordinate to that overriding principle.
23. In reality, the Court must choose between maintaining the Children's settled life in Bermuda, with arrangements that preserve meaningful relationships with both parents, and sanctioning a relocation that would fundamentally alter those relationships.
24. Having conducted a global, comparative welfare analysis and having considered, *inter alia*, the factors set out in the UK Welfare Checklist, I conclude that relocation to US does not best promote the Children's welfare. The disruption involved, the loss to the father-child relationship, and the absence of demonstrated necessity outweigh the benefits advanced.
25. The welfare of the Children, considered as a whole, points clearly towards the Children remaining in Bermuda. The application for leave to remove is therefore refused. As such, the Father shall have care and control of the Children. The Children shall continue to attend Saltus until such time as the parties may agree otherwise or until further order of the Court.
26. The Mother shall have the following access with the Children:
 - (i) Weekend access in Bermuda, as and when the Father can facilitate, but no more than two weekends in each month.
 - (ii) February and October half-term breaks either in Bermuda or in the United States.
 - (iii) The full Easter break either in Bermuda or in the United States.
 - (iv) The first three weeks and the last three weeks of the Summer Holidays.
 - (v) The Christmas Holidays shall be shared equally between the parties by one parent having the first half (to include Christmas Eve and Christmas Day) and the other parent having the second half (to include A's birthday). As the Children were in the Mother's care for the first half of the Christmas Holidays for 2025, the Father shall have the first half of the Christmas Holidays in 2026. Thereafter, the parties will rotate this provision each year.
27. As it relates to audio-visual access/contact, during all times when the Children are in the care of one parent, the other parent shall have video contact with A as requested by A, up to ½ hour per day. In addition, the other parent shall have regular ½ hour zoom calls with both children every other day so as to ensure that B has contact with that parent. The

Children shall be provided with an electronic device such as an iPad which shall be utilized for the sole purpose of having audio-visual contact with the other parent.

28. The parties shall be heard on the issue of costs subsequent to the issuing of the comprehensive reasons.

DATED this 31st day of December 2025



ALEXANDRA WHEATLEY
ASSISTANT JUSTICE OF THE SUPREME COURT