Internal relocation on the slow boat to the Orkneys

At a time when international travel can be easier and quicker than within national boundaries, can there be any justification for different criteria in law for a relocation of a child with a primary caring parent internally or internationally? This was the issue and challenge for the English Court of Appeal in Re F (2010) EWCA 1428. The mother wanted to move from Cleveland, in the north-east of England, with four children aged 14, 12, 11 and 9, to the Orkneys, islands off the far north coast of Scotland but still within the United Kingdom. The mother and her new husband had strong Scottish links and he had already moved there. The father had regular contact with the children, including alternate weekends and long periods during the holidays. The journey would take a minimum of 9 hours and possibly 19 hours each way. Some of the children wanted to go. Some refused. The father did not seek primary residence and simply opposed the application.

The mother’s application to relocate was refused. It was described as truly exceptional and the Orkneys as one of the most remote places in the UK. It was held not in the best interests of the children. Her appeal was dismissed. She remained in Cleveland looking after the children with the father having regular contact.

The Court of Appeal in its judgement struggled with the fact that previous judicial authorities had created a different, lesser, test for internal relocation as for external, international relocation, the Payne criteria. The leading authority is Re L (A Child) (Internal Relocation: Shared Residence Order) (2009) EWCA 20, a case which had rather got bogged down in the significance of sole and shared residence orders. It had however held that it would be unusual and exceptional to interfere with the reasonable decision taken by a primary carer to relocate internally within the United Kingdom. The Court of Appeal (Wilson LJ) in Re F couldn’t find any easy answer why there should be any different test however were constrained as a matter of law from interfering.

It is now generally accepted that the whole English law of relocation demands urgent change and overhaul. For too long it has placed the priority on the primary residential parent relocating and not on the continuity of the child in his home environment and with the other parent, normally the father, and wider family who remain in that environment. But internal relocation is even easier for the primary residential parent. Yet a train from London to Paris takes four hours. Driving time to the Orkneys from London takes at least 15 hours. Why should there be any different test if a parent gets on the ferry in Liverpool and goes to Dublin instead of Belfast? Professors Patrick Parkinson and Judy Cashmore of Sydney University, carrying out probably the world’s most important longitudinal study on internal and international relocations have found they are invariably similar with common concerns,
issues and anxieties. For the child it is the time distance from the other parent which matters rather than national boundaries. With certain safeguards of course e.g. Hague countries, it is difficult to see how there can be any justifiable difference in criteria of internal and external relocations.

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