Anonymised version

Case C-307/24 [Momeut] [i]

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

26 April 2024

Referring court:

Cour de cassation (Luxembourg)

Date of the decision to refer:

25 April 2024

Appellant:

NB

Respondent:

Caisse pour l'avenir des enfants

1. FACTS

1 The appellant, NB, lives in Belgium and works in Luxembourg. His wife also works and has an independent income. She has two children from a previous relationship who share the spouses' joint household. The parental authority over those children is exercised jointly by the mother and the biological father, who must pay maintenance of EUR 150 for each child.

2 NB received for a time, for his wife's two children, the family allowance paid by the Caisse pour l'avenir des enfants (Children's Future Fund, Luxembourg), the respondent. The entitlement to that allowance was subsequently withdrawn from him with retroactive effect from 1 August 2016, on the ground that the children were no longer to be regarded as members of his family pursuant to Articles 269

[i] The name of the present case is a fictitious name. It does not correspond to the name of any party to the proceedings.

and 270 of the code de la sécurité sociale luxembourgeois (Luxembourg Social Security Code).

Background to the proceedings

3 The Conseil arbitral de la sécurité sociale (Social Security Arbitration Board, Luxembourg) upheld the appeal and ruled that the payment of the family allowance to NB had to be restored. On appeal, the Conseil supérieur de la sécurité sociale (Higher Social Security Board, Luxembourg)reversed the judgment at first instance and confirmed that the entitlement to the family allowance was to be withdrawn. An appeal on a point of law has now been brought before the Court of Cassation against the decision on appeal.

The contested appeal judgment

4 The Law of 23 July 2016, which entered into force on 1 August 2016, amended the Social Security Code. According to the new Articles 269 and 270 of that code, the children of the spouse can no longer be regarded as members of the cross-border worker's family. In its judgment of 2 April 2020 (*Caisse pour l'avenir des enfants*, C-802/18, EU:C:2020:269) the Court of Justice held 'that a family allowance based on the fact that a frontier worker pursues an activity as an employed person in a Member State is a social advantage within the meaning of EU law' (paragraph 23) and that 'EU law precludes provisions of a Member State according to which frontier workers are entitled to receive a family allowance, on the basis of the fact that they pursue an activity as employed persons in that Member State, solely for their own children, and not for a spouse's children with whom those workers have no child-parent relationship, but whom those workers support, whereas any child residing in that Member State is entitled to receive that allowance' (paragraph 71).

5 For Article 2(2)(c) of Directive 2004/38/EC [1] to apply, the migrant worker must support his or her spouse's child in order to be eligible for receipt of the family allowance. The appeal court considers that the Court of Justice has not recognised a frontier worker as having the possibility of adducing proof thereof by means of the presumption provided for in the first part of the sentence in Article 2(2)(c) of Directive 2004/38 in the case of stepchildren, reserving that presumption to the migrant worker's direct descendants, who are presumed to be family members if they are under the age of 21 (and family members over the age of 21 if they are still dependants).

6 The Court of Justice has stated that the status of dependent member of a family is the result of a *factual situation*, 'which it is for the Member State and, if

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

appropriate, the national courts to assess. The status of a family member of a frontier worker who is dependent on that worker may, when it relates to the case of a child of a spouse […] of that worker, be evidenced by objective factors, such as a joint household shared by that worker and the student, and it is not necessary to determine the reasons for the frontier worker's contribution to the maintenance of the student or make a precise estimation of its amount' (judgments of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15 EU:C:2016:955, paragraph 60, and of 2 April 2020, *Caisse pour l'avenir des enfants*, C-802/18 EU:C:2020:269, paragraph 50).

7 The court of first instance rightly took into account the joint household as a criterion for assessing whether the appellant supports his spouse's children. However, it follows from the wording used by the Court of Justice that that criterion is not the only one to be taken into account, since it was cited only by way of example to illustrate the overarching concept of objective factors.

8 It is common ground that the children live in the household which the appellant forms with his spouse, that the biological mother of the children has an independent income, that the parental authority is shared and that the biological father must pay maintenance for each child. It follows that the mother is able to provide for the half of the maintenance of her children for which she is responsible under the divorce terms. It is recalled that, in principle, each of the biological parents contributes to the maintenance and education of their common children, in proportion to their means, to those of the other parent and to the needs of the children and, in the event of the parents' separation, the contribution to their maintenance and education takes the form of maintenance paid, depending on the case, by one of the parents to the other. Therefore, the biological parents assume the whole cost of the child's maintenance.

9 That finding is not called into question by the statements of payment produced by NB relating to day-to-day household expenses, since it does not follow from that evidence that he is the only debit account holder and it is not specified for which child those expenses have been incurred. In the absence of other evidence, the evidence that the stepfather supports the children is not furnished to the requisite legal standard.

2. GROUNDS IN THE APPEAL ON A POINT OF LAW

First part of the first ground of appeal

10 According to confirmed case-law, the status of family member of a worker is a concept subject to the 'principle that the provisions establishing the free movement of workers, which constitutes one of the foundations of the Union, must be construed broadly' (judgments of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 58, and of 18 June 1987, *Lebon*, 316/85, EU:C:1987:302, paragraphs 21 to 23). That principle applies 'where the contribution of a frontier worker to the maintenance of the children of

his spouse […] is at issue' (judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 59). Applying the broad interpretation principle, the Court of Justice held that the 'status of dependent member of a family of a frontier worker' does not presuppose a 'right to maintenance', but is a 'factual situation' in which that status 'may, when it relates to the case of a child of a spouse […] of that worker, be evidenced by objective factors, such as a joint household shared by that worker and the student, and it is not necessary to determine the reasons for the frontier worker's contribution to the maintenance of the student or make a precise estimation of its amount' ((judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 60), and that the requirement that the frontier worker support the child of his or her spouse is 'a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, on the basis of evidence provided by the appellant, and it is not necessary for them to determine the reasons for that contribution or to make a precise estimation of its amount' (judgment of 2 April 2020, *Caisse pour l'avenir des enfants*, C-802/18 EU:C:2020:269, paragraph 50).

11 However, the judgment under appeal adopts a restrictive interpretation of the status of 'family member' of a frontier worker, in that it made the existence of a worker's contribution subject to the 'reasons for that contribution', depending on whether it was connected to a failure to pay on the part of the biological parents and to an assessment of the 'amount' of that contribution as compared with that of the biological parents, in breach of the case-law of the Court of Justice.

Second part of the first ground of appeal

12 According to Article 2(2)(c) of Directive 2004/38/EC, children under the age of 21 are presumed to be dependants. That presumption applies to the children of the spouses of cross-border workers, as is apparent from the Advocate General's Opinion in Cases C-401/15 to C-403/15, points 70 and 71, which was explicitly confirmed in the judgment in *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraphs 61-62 (concerning a worker who is the 'step-parent' of a student). That solution must also be applied in order to give a broad interpretation of the concept of family member of a worker. By refusing to recognise NB as having the benefit of that presumption, the judgment under appeal infringed Article 2(2) of Directive 2004/38/EC.

Third part of the first ground of appeal

13 Article 45 TFEU on freedom of movement for workers within the European Union entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. The Court of Justice has ruled that Article 1(i) and Article 67 of Regulation (EC) No 883/2004 (…) read in conjunction with Article 7(2) of Regulation No 492/2011 and with Article 2(2) of Directive 2004/38/EC must be interpreted as precluding provisions of a Member

State under which frontier workers may receive a family allowance (…) only in respect of their own children, excluding those of their spouse with whom they have no child-parent relationship but whom they support, whereas all children residing in that Member State are entitled to receive that allowance. Therefore, by ruling as it did, the contested judgment infringed the principle of 'freedom of movement for workers and the prohibition of direct or indirect discrimination' established by the abovementioned provisions.

Fourth (alternative) part of the first ground of appeal

14 It is necessary to refer the following questions for a preliminary ruling, in the event that the Court of Cassation intends to reject the first three parts of the first ground of appeal (the improper refusal to refer a question for a preliminary ruling being a basis for an action for failure to fulfil obligations and constituting a breach of Article 6 of the ECHR):

1. Does the 'principle that the provisions establishing the free movement of workers, which constitutes one of the foundations of the Union, must be construed broadly' (judgment in Depesme and Others *…, paragraph 58) preclude provisions of a Member State from being interpreted as meaning that frontier workers cannot receive a family allowance on the basis of the fact that they pursue an activity as an employed person in that Member State for their spouse's children, when those children are minors and live in the household of the cross-border worker, on the ground that the biological parents of the child also contribute, or are also able to contribute, to the child's maintenance?*

2. Does the presumption based on Article 2(2)(c) of Directive 2004/38/EC according to which children under the age of 21 are presumed to be dependants apply to the children of the spouses of frontier workers who live in their household?

3. Does the principle of the 'free movement of workers' and the prohibition of the discriminations resulting from paragraphs 1 and 2 of Article 45 TFEU and Article 1(i) and Article 67 of Regulation (EC) No 883/2004, read in conjunction with Article 7(2) of Regulation 492/2011 and with Article 2(2) of Directive 2004/38/EC, preclude provisions of a Member State from being interpreted as meaning that frontier workers cannot receive a family allowance on the basis of the fact that they pursue an activity as an employed person in that Member State for their spouse's children, when those children are under the age of 21 and live in the household of the cross-border worker, on the ground that the biological parents of the child also contribute to the child's maintenance, whereas all children living in that Member State are entitled to receive that allowance?

The second ground of appeal

15 The judgment under appeal is criticised for having infringed Article 1 of Protocol No 12 of the ECHR and Article 14 of the ECHR, which apply to entitlement to social benefits. In order to assess whether there has been discrimination within the

meaning of those provisions, the ECtHR attaches a 'highly persuasive value'. It has already found that many Luxembourg provisions discriminate against frontier workers (see, for example, judgments of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411) or of 14 December 2016, *Bragança Linares Verruga and Others* (C-238/15, EU:C:2016:949) or of 10 July 2019, *Aubriet* (C-410/18, EU:C:2019:582). By adopting in this case a restrictive interpretation of the status of 'family member' of a frontier worker and of his contribution to the maintenance of the minor children of his spouse living in their shared home, and in particular by refusing to apply the presumption based on Article 2(2) of Directive 2004/38/EC according to which children under the age of 21 are presumed to be dependants, and by making the worker's contribution to the maintenance of the minor children living in his household subject to the 'reasons for that contribution' and to an assessment of the 'amount' of that contribution as compared with that of the parents, whereas all children residing in that Member State are entitled to receive the family allowance at issue, the judgment under appeal unlawfully discriminated again by drawing a distinction between cross-border workers and resident workers, which constitutes indirect discrimination based on nationality and is not justified by any legitimate objective, in breach of the abovementioned provisions.

3. ANALYSIS OF THE COURT OF CASSATION

Interpretation of European Union law

16 The Court of Justice has ruled that a frontier worker's entitlement to payment of the family allowance for his or her spouse's child with whom the worker has no child-parent relationship is subject to the submission of evidence that he or she fulfils the condition of supporting that child (judgment of 2 April 2020, *Caisse pour l'avenir des enfants*, C-802/18 EU:C:2020:269).

17 Applying that criterion, the appeal courts, in order to justify the decision to withdraw the family allowance,

– stated implicitly, but necessarily, that evidence of the existence of a marriage between the frontier worker and the children's mother and of the existence of a joint household shared by the frontier worker, his spouse and the children, that evidence, taken in isolation or together, did not establish that the condition was fulfilled,

– held that the two biological parents had the means to contribute to the children's maintenance and contributed to it, when the mother was pursuing a professional activity and the father had to pay a maintenance contribution of EUR 150 for each child, in order to conclude that '*the biological parents assume the whole cost of the children's maintenance*',

– stated that the evidence of payments relating to day-to-day household expenses did not demonstrate to the required legal standard that NB supported the children, since it was not established that he was the only holder of the debited account.

18 The concept of 'support' was used at the outset by the Court of Justice in order to state that a frontier worker is entitled to payment of a State benefit as a social advantage, in the case in question, financial aid for higher education studies, for his or her own child, where he or she continues to support that child (judgments of 26 February 1992, *Bemini*, C-3/90, ECLI:EU:C:1992:89, paragraphs 25 and 29; of 8 June 1999, *Meeusen*, C-337/97, ECLI:EU:C:1999:284, paragraph 19; of 14 June 2012, *Commission* v *Netherlands*, C-342, ECLI:EU:C:2012:346, paragraph 35, and of 20 June 2013, *Guirsch*, C-20/12, ECLI:EU:C:2013:411, paragraph 39), without the concept being defined in the course of those judgments.

19 Subsequently, still in the context of a social advantage constituted by financial aid for higher education studies, but concerning a child who has no child-parent relationship with the frontier worker, the Court of Justice clarified the concept of 'support' by stating that it '*d[oes] not presuppose a right to maintenance*' (judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 58), adding that '*the status of dependent member of a family is the result of a factual situation. The person having that status is a member of the family who is supported by the worker and there is no need to determine the reasons for recourse to the worker's support or to raise the question whether the person concerned is able to support himself [or herself] by taking up paid employment*'(paragraphs 58 and 59). It concluded that '*the status of dependent member of a family is the result of a factual situation, which it is for the Member State and, if appropriate, the national courts to assess. The status of a family member of a frontier worker who is dependent on that worker may, when it relates to the case of a child of a spouse or recognised partner of that worker, be evidenced by objective factors, such as a joint household shared by that worker and the student, and it is not necessary to determine the reasons for the frontier worker's contribution to the maintenance of the student or make a precise estimation of its amount'* (paragraph 60).

20 The Court of Justice then applied the criterion of '*support*' to the question whether a frontier worker is entitled to the social advantage constituted by the payment of a family allowance, for a child with whom he or she does not have a child-parent relationship, stating in the grounds of its decision that '*a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, in the case where that worker provides for the upkeep of that child. According to the Court, that latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, on the basis of evidence provided by the applicant, and it is not necessary for them to determine the reasons for that contribution or to make a precise*

estimation of its amount' (judgment of 2 April 2020, *Caisse pour l'avenir des enfants*, C-802/18 EU:C:2020:269, paragraph 50). The Court of Justice took care to state, in fact, '*that the biological father of the child does not pay any maintenance to the child's mother. It appears therefore that FV, the spouse of HY's mother, supports that child, a matter which it is nevertheless for the referring court to verify*' (paragraph 52).

21 The Court of Justice has also found that 'the concept of a "member of the family" of a frontier worker able to benefit indirectly from equal treatment under Article 7(2) of Regulation No 492/2011 is the same as that of a "family member" for the purposes of Article 2(2) of Directive 2004/38, which includes the spouse or partner with whom the EU citizen has contracted a registered partnership, the direct descendants who are under the age of 21 or are dependants, and the direct descendants of the spouse or partner. The Court has had particular regard, in this respect, to recital 1, Article 1 and Article 2(2) of Directive 2014/54' (paragraph 51).

22 The Court of Cassation infers from the statement that the term '*support*' is the result of a factual situation that it is not a purely factual concept excluded from review by the Court of Justice and the Court of Cassation, but that that wording is intended to emphasise that that concept is assessed independently of any right of the child to maintenance (see judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 58).

23 The Court of Cassation then infers from the above that the concept of '*support*', in the context of legislation relating to entitlement to social advantages, constitutes an autonomous concept of EU law which requires a uniform interpretation and application.

24 However, such a uniform interpretation is not currently ensured in the light of the questions raised by the points of law under discussion.

25 In that regard, the Court of Cassation is prompted to inquire about the scope of the example used in the judgment of 15 December 2016, *Depesme and Others*, (C-401/15 to C-403/15, EU:C:2016:955, paragraph 60) to illustrate 'objective factors, such as a joint household shared by that worker and the student', first, as to whether that point is mentioned merely as an example or, on the contrary, as a condition, in which case the question arises whether it is a sufficient condition or a necessary condition, and, second, as to whether the mode of financing of the joint household matters, since it is necessary to investigate whether the frontier worker contributes in part or in full to that financing.

26 As to the needs of the child to be taken into consideration which the frontier worker meets, the Court is called upon to consider whether only the maintenance needs essential to the child's subsistence should be taken into account (food, clothing, accommodation, education …), or whether, in general, all expenditure of whatever kind, including on pleasurable activities or mere convenience (mobile

telephone, restaurants, driving licence …) or even on sumptuous, lavish or luxury items (regular purchases of electronic equipment, holidays in remote countries …) intended to ensure a certain standard of living should be considered.

27 As to the manner in which the frontier worker supports the child, the Court of Cassation wonders whether the frontier worker's contribution to the child's maintenance must take the form of cash payments made directly to the child, or whether it can take the form of expenditure made in the interest of the child. In the same context, the question arises whether the expenditure must be made, as the findings of the Parquet general (Principal Public Prosecutor's Office) seem to suggest, in the specific, or even exclusive, interest of the child, or whether expenditure incurred in the common interest of the family unit (monthly mortgage payments, rent, purchase of equipment used in common …) may be taken into account. Again, on the subject of specific support arrangements, the question arises whether the expenditure made by the frontier worker in order to support the child must have a certain degree of regularity or frequency (mortgage loan, rent, electricity and heating costs, telephone bills …) or whether the assumption of non-recurring costs (occasional purchases of clothing …) is also to be considered. Finally, whilst noting that the Court of Justice states that, in assessing the factual situation, it is not necessary to determine the reasons for the frontier worker's contribution or make a precise estimation of its amount (judgments of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15 EU:C:2016:955, paragraph 64, and of 2 April 2020, *Caisse pour l'avenir des enfants*, C-802/18 EU:C:2020:269, paragraph 50), the Court of Cassation wonders whether any contribution, however small, is to be taken into account, or whether it must be of a fairly significant level, and in the latter case whether that criterion must be assessed in relation to the child's needs or in relation to the frontier worker's financial situation.

28 The origin of the funds may also come into question, in that, in certain cases, the frontier worker maintains with his or her spouse or registered partner, who is a parent of the child, a joint bank account used to pay expenditure advanced in court proceedings in order to demonstrate that the condition of '*supporting*' the child has been fulfilled, without maintaining that account exclusively and without establishing to what extent he or she maintains that account, in which case the question arises whether the contribution to the child's needs comes from the frontier worker.

29 The Court of Cassation also wonders about the scope of the statement made by the Court of Justice in the judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15 EU:C:2016:955, paragraph 62) that '*the EU legislature takes the view that the children are, in any case, presumed to be dependent until the age of 21 years'*, since it needs to ascertain whether any child under the age of 21, on account of that age condition taken alone or combined with other factors, must be regarded as having his or her needs supported by the frontier worker.

30 The parents' contribution to the child's needs must then be addressed. They are bound by law by a maintenance obligation, unlike the frontier worker who is not bound by such an obligation. The criterion of '*supporting*' the child, however, subjects the frontier worker to a factual assessment. Therefore, the question arises whether it is sufficient to establish the existence or extent of the parents' maintenance obligation in order to exclude the existence of the frontier worker's contribution, or whether it is also necessary to ensure that the parents' maintenance obligation was fixed at an appropriate amount, and whether they actually fulfil their maintenance obligation, so as to make a supplementary or additional contribution by the frontier worker unnecessary. In the absence of effective payment of such support, the question arises whether it is necessary to verify whether the spouse or registered partner of the frontier worker has at least tried to take enforcement measures and whether, ultimately, the frontier worker's contribution remedies the failure to pay of one of the parents. In relation to that maintenance support and to the question whether it is fixed at an appropriate amount, the method of fixing the amount by judicial or conventional means may have an effect. Those aspects may be linked to the question, raised above, of what expenditure on the child is to be considered. If only maintenance expenditure essential to the child's subsistence is taken into account, the parents' maintenance obligation will, in principle, cover those needs, rendering nugatory a supplementary or additional contribution by the frontier worker to cover such needs.

31 As regards relations with the child's other parent, the question also arises whether it is relevant to examine the arrangements whereby the child lives alternately with his two parents, since visiting and extended accommodation rights or a shared residence may cause the other parent, in principle, to assume more substantially in kind his or her maintenance obligations, leaving less room for any necessity for the frontier worker to cover the child's needs.

32 All those questions must be seen against the background of the principle that the provisions establishing the free movement of workers must be construed broadly (judgment of 15 September 2016, *Depesme and Others*, C-401/15 to C-403/15 EU:C:2016:955, paragraph 58), and therefore of any limits on that principle.

33 Those considerations lead the Court of Cassation to request a ruling from the Court of Justice on the matter.

4. THE QUESTIONS REFERRED FOR A PRELIMINARY RULING

34 The Court of Cassation asks the following questions:

1(a) Is the condition of '*supporting*' a child, from which is derived the status of family member within the meaning of the provisions of EU law, as applied by the case-law of the Court of Justice in the context of the free movement of workers and of the receipt by a frontier worker of a social advantage linked to the pursuit,

by that worker, of an activity as an employed person in a Member State, for the child of his or her spouse or registered partner, with whom the worker has no child-parent relationship, read alone or in conjunction with the principle that the provisions intended to ensure the free movement of workers must be construed broadly, to be interpreted as being fulfilled, and therefore as conferring entitlement to the receipt of the social advantage,

- merely by reason of the marriage or registered partnership between the frontier and one of the child's parents
- merely by reason of a joint home or household shared by the frontier worker and the child
- merely by reason of the frontier worker's assumption, in general, of expenditure of whatever kind for the benefit of the child, even when
    - it covers needs other than essential or maintenance needs
    - it is made to a third party and benefits the child only indirectly
    - it is not made in the exclusive or specific interest of the child, but benefits the whole household
    - it is only occasional
    - it is less than that of the parents
    - it is merely insignificant in the light of the child's needs
- merely by reason of the fact that the expenditure is made from a joint account held by the frontier worker and his or her spouse or registered partner, who is a parent of the child, without regard to the origin of the funds present in the account
- merely by reason of the fact that the child is under 21 years of age?

1(b) If the answer to Question 1 is in the negative, is the condition of '*support*' to be interpreted as being fulfilled, and therefore as conferring entitlement to the receipt of the social advantage, where two or more of those circumstances are present?

2 Is the condition of '*supporting*' a child, from which is derived the status of family member within the meaning of the provisions of EU law, as applied by the case-law of the Court of Justice in the context of the free movement of workers and of the receipt by a frontier worker of a social advantage linked to the pursuit, by that worker, of an activity as an employed person in a Member State, for the child of his or her spouse or registered partner, with whom he has no child-parent relationship, read alone or in conjunction with the principle that the provisions

intended to ensure the free movement of workers must be construed broadly, to be interpreted as not being fulfilled, and therefore as excluding the right to receive the social advantage,

– merely by reason of the existence of à maintenance obligation imposed on the child's parents, irrespective

  - o of whether the amount of the maintenance claim is fixed by judicial or conventional means
  - o of the amount at which that maintenance claim was fixed
  - o of whether the debtor actually pays that maintenance debt
  - o of whether the frontier worker's contribution remedies the failure to pay of one of the child's parents

– merely by reason of the fact that the child lives periodically, in the context of exercising visiting and accommodation rights or alternate residence or another arrangement, with the other parent?