

HONG KONG / JUDGMENT

A v. ABC

COURT

Family Court

DECIDED

4 September 2012

CASE / FILE NUMBER

FCMC8759/2010

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bjbj FCMC 8759 / 2010 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 8759 OF 2010

BETWEEN A Petitioner and ABC Respondent

Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not Open to Public) Dates of Hearing:
25 28 June and 18 20 July 2012 Written closing arguments filed: 26 July 2012 (Petitioner) and 31
July 2012 (Respondent) Written replies filed: 16 August 2012 (Petitioner) and 15 August 2012
(Respondent) Date of Judgment: 4 September 2012

J U D G M E N T (Custody)

Introduction

AUTONUMOUT This is an application by a Petitioner mother for sole custody and care and control of the two children of the family, a girl who is now aged 13 and a boy who is now aged 11. Although the mother originally said that she would like the father to have some form of access, this is also in issue. The father for his part also seeks sole custody and care and control of both children. AUTONUMOUT This case concerns the arrangements to be put in place for two children, who have walked with their feet . At present both children are refusing to have any form of meaningful contact with their father. Serious concerns have also been raised with respect to the father s mental stability and his history of mental illness. The father is also alleged to have behaved in a way which borders on both mental and physical abuse of the children something that he has subsequently denied. The issues AUTONUMOUT The present issues before the court are: Whether custody and care and control of the children should vest in the sole name of the mother, or in the sole name of the father or whether some other arrangement should be

put in place? What arrangement, if any, should there be for access by the non custodial parent?

Background

AUTONUMOUT The parties married in 1997 and the children were born, a girl and a boy, in 1999 (X) and in 2000 respectively (Y). The mother worked as a clerk until the second child was born whereupon she became a full time housewife and the primary care giver of the children. The father works for the Government. The father s mother (the paternal grandmother) also assisted with child care when the children were small. AUTONUMOUT Unfortunately it would appear that the marriage was a troubled one from the start with a number of reported incidences which necessitated the involvement of the Police, the Social Welfare Department and a number of different Non Government Organisations. The couple were in counselling for a long period of time but to no avail. The mother complains that the father would often behave in an argumentative and unreasonable manner. In her second affidavit dated the 5 May 2011 she highlights in particular a number of incidences from 2007

2008. These culminated with the father being hospitalized in a hospital for five days following a mental breakdown. In August 2008 the parties separated. AUTONUMOUT In June 2010 the mother issued divorce proceedings based on the father s unreasonable behaviour. This was later amended to a petition based on one year separation with consent. The decree nisi was pronounced in May 2011. AUTONUMOUT Access has been very problematic. For a while the father saw the children every Saturday sometimes in the presence of his sister the children s paternal Aunt. In June 2011 there was an incident which led to the children simply running away from their father. In the Social Investigation Report dated the 5 December 2011 the social welfare officer has described this incident from their perspective. She said as follows:

10. On the other hand, X and Y said respectively that in June 2011, the father suddenly changed the meeting place and asked them to go to BB Railway Station to meet him. They thus took a train on their own from CC Railway Station to BB Railway Station to meet their father, but were blamed by the father for being late. X, Y and their father took a DD Line train heading for EE. Originally, they intended to go to Admiralty. But since the father kept asking questions, they missed the F Station where they had to change train. When they arrived at EE Station, X and Y left the compartment and stayed on the platform, whereas the father stayed inside the compartment. When the compartment doors were about to close, the father forcibly pushed open the doors and shouted at them fiercely and loudly, ordering them to go back to the compartment. Therefore, they followed their father s instruction and went back to the original train. The train travelled in the direction of DD. When they almost reached DD Station, they went back to BB Station again. At that time, it was already sometime after 11 a.m. During that time, the father blamed them for being late and the consequence of missing the breakfast serving time. The father arranged them to sit in the public seat of a coffee shop in BB and he went to buy food for them.

11. On that day, amongst the questions put by the father, they included that the father demanded to get back from them the money spent on the snack which he had given them. Since they were unable to do it, the father blamed them for not keeping the promise. The father also asked them in details the whereabouts of the pocket money which he had given Y previously. At about 1 p.m. to 2 p.m., they requested to leave. They, on one hand, heard the father say their legs were on their own bodies while on the other hand, heard the father say they were not allowed to leave. When the father was sitting and had his eyes closed, the children, in a low voice, told him twice that they had to leave first. After that, they left by themselves. When the father discovered it and chased after them, they were so flustered that they hid and avoided (him) and ran away. As they were worried that their mother would ask them to go back to see the father, therefore they only called their mother afterwards to ask for help and ask her to pick them up. AUTONUMOUT Since then there has been very little contact between the father and the children. Access was formally suspended pending receipt of reports on the 12 August 2011. Attempts by the court to try to get access up and running again have largely failed, notwithstanding the active involvement of the Social Welfare Department (see orders of the 30 December 2011 and the 30 March 2012). AUTONUMOUT It is against this background that the parties make their respective applications. The law Custody, Care and control, access and shared care AUTONUMOUT The law governing applications concerning children in Hong Kong can mainly be found in the Matrimonial Proceedings and Property Ordinance, Cap 192 and the Guardianship of Minors Ordinance, Cap 13. Section 19 Matrimonial Proceedings and Property Ordinance, Cap. 192 states that
- (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of 18- (Amended 69 of 1997 s. 28) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree; AUTONUMOUT The general principles governing such applications are set out in s.3 of the Guardianship of Minors Ordinance, Cap. 13, which says that: GENERAL PRINCIPLES
- (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of the income of any such property-
- (a) in any proceedings before any court (whether or not a court as defined in section 2) the court -
- (i) shall regard the best interests of the minor as the first and paramount consideration and in having such regard shall give due consideration to - (A) the views of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and (B) any material information including any report of the Director of Social Welfare available to the court at the hearing; For the avoidance of doubt s. 48 C Matrimonial Causes Ordinance, Cap. 179 adds that section 3 of the Guardianship of Minors Ordinance (Cap 13) (which provides that the welfare of the minor shall be the first and paramount consideration) shall apply in relation to any order for the custody care or

supervision of a child which may be made under this Ordinance or the Matrimonial Proceedings and Property Ordinance (Cap 192). AUTONUMOUT Although not mandatory the Family Court has on occasion been assisted by a draft checklist of factors based on s.1(3) of the Children Act 1989 and s. 68F (2) of the Family Law Act 1975 in Australia as set out in the Law Reform Commission's Report on Custody and Access as follows: the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding; the child's physical, emotional and educational needs; the nature of the relationship of the child with each of the child's parents and with other persons; The likely effect on the child of any change in the child's circumstances; The child's age, maturity sex, social and cultural background and any other characteristics which the court considers relevant; The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents; Any harm which the child has suffered or is at risk of suffering; Any family violence involving the child or a member of the child's family; How capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; (a broader formulation along the lines of) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis; The range of powers available to the court under this Ordinance in the proceedings in question; Any other fact or circumstance that the court thinks is relevant. AUTONUMOUT I will refer to some of these factors in so far as they appear to be relevant when discussing the circumstances surrounding this particular case. The mother's open proposals AUTONUMOUT The mother seeks an order for sole custody and care and control of the children. In an ideal world she would like the children to have access to their father and suggests that the father should have reasonable defined access with a supervision order. It is unclear how this might work given the history. When asked the mother was open to the possibility of the children and the father attending some sort of a counselling/therapy programme designed to re-establish meaningful contact between them. The father's open proposals AUTONUMOUT The father also asks for an order for sole custody and care and control. He acknowledges that the children would most probably be unhappy but says that this would be better for them. The social welfare officer recorded his views as follows:

35. In Mr. A's view, he should take up the responsibility to take care of the children. Therefore, he hopes he can be granted the custody and the care and control of the two children. His way of supervision should be better than that of Ms. A's (the mother). He should be able to provide the children with better things. During the three years in which he had parted with the children, he said he could see the changes of them. In the past, Y would not lie awake in bed lazily and be late. In the morning, he would sit quietly to wait for his milk. Now, he will lie awake in bed lazily and be late for the access meeting. In respect of their studies, he will strengthen his supervision on the children and follow-up with their further school arrangement. According to him, if he was granted the custody of the children, the children would be unhappy. Also, it will be hard for them to be put under his supervision. He is also

not good at dealing with feelings and requires improvement. Nonetheless, in his view, his supervision on the children may be bitter medicine, but it will do good. They will feel laborious, but it is beneficial to them. He thinks that the children are too fat now and they are in lack of exercise. He will regulate them and they must have appropriate exercise. The second thing is that the children need more life experience, as it is not enough for them to focus on their studies only. If Mr. A is not granted the custody of the children, he hopes he will be granted defined access. At least, the defined access order made on 24th March 2011 has to be maintained. He disagrees to reduce the number of access. The evidence AUTONUMOUT I must now turn to consider the issues, the law and the parties evidence as set out in the parties affidavits and as given orally by them during the hearing. For the avoidance of doubt, in so far as the matters set out in this judgment differ from the evidence of the father or mother, that is because I have preferred the evidence of the other party or because I do not find the evidence given credible, or because I consider that the documents produced confirmed my findings of fact. In addition I have had the opportunity to observe the demeanor of the parties while they gave evidence in court. AUTONUMOUT In addition I have heard evidence from the social welfare officer and the clinical psychologist, both of whom were court witnesses. During the course of the trial it also became evident that I would be assisted if a student guidance officer, who worked at the son s (Y) school at the time of one of the alleged incidents, was also called to give evidence. I am grateful to him for agreeing to come to court in order to assist at such short notice. I will refer to him as Mr N. In addition I gave leave and allowed the father to subpoena two other people Ms A a student counselling teacher and Ms L, a medical social worker. Whether custody should vest in the sole name of the mother, or the father or whether some other arrangement should be put in place? AUTONUMOUT In considering this question I will refer to some of the factors identified in the check list referred to above.

- (9) Any harm which the child has suffered or is at risk of suffering; AUTONUMOUT The father admitted during the trial that he is still seeing a psychiatrist and that he is on medication. He confirms in his affidavit of the 5 May 2012 that he was diagnosed with depression in 2007 and that he has continued to receive medical support since then. This was confirmed by Ms L, the medical social worker. I accept that although his condition appears to be under control that there may be a risk of a relapse. AUTONUMOUT As set out above there were a number of incidences recorded by the mother where the father s mental health appears to be in issue. Physical punishment and repeated questioning of the children and others AUTONUMOUT The mother complains that the father would ask the children the same or similar questions repeatedly and that when they were unable to answer him correctly they would be punished. This included physical or corporal punishment. The father admitted on occasion beating both of the children with a clothes hanger and a small umbrella. He disputes however that his behaviour was abusive. In his closing submission the father says as follows: Alleged child abuse/family violence/unreasonable behaviour

5. Specific instances of several occasions (later alleged as of 13th & 18th Sept 2007), 24th Nov 2007, April 2008, 25th Jun 2008 and 23rd Aug 2008 were alleged against the Respondent of committing child abuse, family violence [examination in chief evidence of the Petitioner] and/or unreasonable behaviour. The Respondent denies all of such allegations saved that punishment/corporal punishment was exercised in some of the instances to the extent that no injury of any kind say bruise had ever be made/resulted, further and that the Respondent punished the son less than ten times and the daughter less than five times in various ways say stand still, stand still with knees in bending position (sit on an invisible chair), push up, hitting with hand/umbrella (souvenir type, not of structural one)/hanger (soft/bendable or small one) but not with fist or cane. After all, punishment/corporal punishment was not the major mean / main theme of parenting normally adopted by the Respondent. When the children were growing up, they were even asked to suggest way of punishment and/or reward themselves such that they would be more willing to accept the consequence aroused and on the other hand significantly apprehend the fulfilment of their own undertaking laid beforehand. AUTONUMOUT During her examination in chief the mother elaborated on the evidence in her affidavit and described those incidences referred to above by the father, where he appears to behave in an out of control manner and where she alleges that the children had been subjected to unreasonable and excessive corporal punishment. Unfortunately the mother did not observe all of these incidences directly and was repeating in part what both the children and the paternal grandmother had told her. The mother described the first incident in September 2007 where the father and paternal grandmother were at home and the father was questioning the son. When the son could not answer his questions the father allegedly struck him with a clothes hanger. The son was subjected to a series of blows. The mother said that there were bruises on the son s back which were originally red and then turned to blue. The skin however was not broken. This led to the mother seeking assistance from the X Council on parenting. She did not however report the matter to the Police. AUTONUMOUT In November 2007 there was a further incident described by the mother as follows in her affidavit of the 5 May 2011:
16. In or about 24th November 2007, I went to give private tutorial lessons and when I returned home at around 6pm, the Respondent was standing at the bedroom door holding an umbrella, asking questions. The children were trapped inside the bedroom. The Respondent kept asking and asking questions with no intention to stop and the children were frightened. I tried to enter the bedroom but the Respondent did not let me in. I was worried and so I called the police for assistance and also informed the Respondent s sister.
17. When the police arrived at the door, the Respondent hid the umbrella away at once in the toilet and told the police that nothing had happened. The mother produced a copy of a police report during the trial that confirmed that the Police had been called. It seems however that no further action was taken. AUTONUMOUT To an extent these allegations were collaborated by Mr N the student guidance officer who came to court at short notice. He confirmed that he did find bruising on the son s back when he examined the son, following the mother s complaint that Y had been beaten. This was in September 2007 and

consequently seems to have been with respect to the earlier incident. It should be noted that the son would have been only have been 6 years old at the time. AUTONUMOUT On another occasion, in April 2008, the father apparently took the children to the roof top and asked them questions continually. Although the mother did not witness this herself she recorded what the children had said to her as follows:

18. In or about April 2008, my children told me that the Respondent brought them to the rooftop where he asked the children questions non-stop again. The children were unable to answer the questions and the Respondent became very angry and at one point of time, threw his keys away nearly hitting X. It was fortunate that the Respondent did not lose control of himself. Given the violent temper of the Respondent, I was very scared that he would do something harmful to the children out of impulse. AUTONUMOUT The medical social worker Ms L confirmed what the mother had said and that as a result of this incident the mother and children subsequently moved to a refuge centre. AUTONUMOUT In addition to the mother s stated concerns I also observed for myself the father s behaviour in court. For example I noted that he has a tendency to continually ask the witnesses very detailed questions. Often he would repeat the same or similar questions even when I had asked him not to. I would accept that the father does have a tendency to repeatedly ask questions in the hope of obtaining the answer that he seeks or the answer that is correct in his eyes. AUTONUMOUT The daughter expressed her own concerns about the questioning to the social worker when she said that
10. Originally, both Ms A and Mr A were working full time. After the eldest daughter X was born, she was under the care of Mr A s mother for a year before being sent to a nursery daycare at the age of one. When the second child Y the son was born, Ms A started to look after the children full time. In terms of childcare, Ms A tended to reason with the children, while Mr A was concerned with the moral education and academic result of the children and he was rather strict with his standard. Mr A had arranged the children to travel to another school area for better schooling. They used to study at XX Primary AM School. Mr A was responsible for bringing them to school and either Ms A, Mr A s mother or himself would pick up the children after school. Mr A supervised the children s study and often guided them by asking questions, and sometimes corporal punishment was used. According to X, she remembered that when she was in Kindergarten, her father used to question her, How many quarters are there in an hour? She did not know the answer and the father asked her to think over it for several hours. The longest record of questioning started from the morning till the afternoon, or from the afternoon till late at night. If the children failed to come up with the answer, the father would usually scold them, punish them to stand still, punish the younger brother to stand still with his knees in bending position or to do push up, etc.
11. Y also mentioned that his father used to keep on questioning him very often. If he did not know the answer, the father would ask him to think over it and find out the answer on his own without giving him any hint. If he failed to answer, he would be scolded and punished

physically. Usually the corporal punishment would be delivered by hitting with hands, canes, umbrellas or hangers. Sometimes he would be asked to keep on thinking till the middle of the night and would not be allowed to sleep. For instance, when he was in Kindergarten, the father asked him about ways to ease the heat of the summer. He was pushed by the father to stand still, but due to the long hours of standing still and he dared not go to the toilet, he wetted his pants. Moreover, the father had asked him to memorize the classical Three Words Scripture (San Zi Jing). When he failed to do so, he was punished to stand still for several hours. When he was in Primary One, his father punished him to sit on an invisible chair and keep that position for half an hour. When he was in Primary Two, his father asked him questions about Chinese calligraphy, the answer to which he did not know and was thus punished physically by the father. On the other hand, Y also remembered that the father would give them praise and encouragement, for example, when he got a full mark in dictation. During holidays, the father would go shopping with them, and the father also bought a scooter for him and his sister to play together.

27. As far as access is concerned, at present what X worries most is that the father will use the access time to keep asking her questions incessantly. She is worried that her father will still interrogate her about the incident in June. Therefore, she indicated that she all along resists to seeing the father again. In X's view, her father will be dissatisfied with whatever explanation they give. She expects that no matter how they answer, the father will keep interrogating them. X also complained that her father had questioned them about their views on custody a number of times. He would even interrogate them on how the investigating social worker put the question and how she answered. He would then say that her answer was not good. This made her feel stressful. Moreover, the father always put to them all sorts of questions, for example, questions in relation to mathematics, general studies and various sorts of matter. If she was unable to provide him with a very detailed answer, the father would shout at her and scold her loudly. According to X, she was always in great terror when meeting her father. She is even fed up with it. Even though her father told her that he would improve, in fact, apart from not using corporal punishment, he made no change as to his speaking loudly and asking questions incessantly. AUTONUMOUT Although under cross examination the father disagreed that he would punish the children if they could not answer his questions, there is little doubt that he did so and that this mode of disciplining was very unpopular with the children. From the father's perspective he said that they had to understand that there were rules and that there were consequences for breaking those rules. He did not appear to give any consideration to the possibility that his rules were unreasonable or that the children were frightened of him and of being punished unjustly. It seems that this was a constant theme within the home and I accept that this is partly the reason why the children hold such a negative attitude towards their father now. In addition I accept that the father does have a tendency to continue to ask questions in an excessive manner. Unreasonable academic requirements AUTONUMOUT The father also had high academic requirements. The children were expected to do well in school. This of itself is not unusual. However, as referred to above, in addition the father required the children to

memorize an ancient Chinese text. Each day they were required to memorize 8 sentences. Each sentence comprised of three characters. They were very young at the time. The father said that he also memorized the text. When I asked him why he would require such young children to do this, he said that it was part of the learning process. The father admitted to slapping the children if they got the characters wrong. He did not consider such punishment excessive or the exercise itself unreasonable. AUTONUMOUT All in all I do consider that some of the father's past actions have bordered on the abusive both physically and mentally and I can quite understand how this might colour the children's view of him now. In particular I accept, on the balance of probabilities, that the children may have suffered some harm as a result of the father's past behaviour.

- (h) Any family violence involving the child or a member of the child's family; AUTONUMOUT I have set out above a number of incidences above relating to the corporal punishment of the children which I will not repeat again here. The children and the mother do not appear to have been subjected to any other form of physical abuse although there were several occasions where the situation within the home seems to have verged out of control. The children would have been aware of these tensions and were no doubt affected by them. In particular the mother describes an incident before the father was admitted to hospital where during the course of an argument the father threw three knives into the washing machine. She explained it thus:
19. In June 2008, the Respondent and I had another quarrel relating to the way we teach our children, and at the heat of quarrel, the Respondent took out 3 knives from the kitchen and threw it into the washing machine to release his anger. I was very scared especially when the children were also in the Flat. I dare not say anything but let the Respondent burst out in anger. After a while, the Respondent calmed down and asked if I would like to send him to the hospital through the Medical Social Worker Ms. M. I thought the Respondent realized that he was emotionally unstable and needed treatment. However, I could not contact Ms. M at the time because there was a No. 8 Typhoon earlier that day and Ms. M was not on duty. So I dialled 999 to call for an ambulance. The police asked me the details and I honestly reported the matter. The Respondent was then sent to a hospital.
20. The doctor at the hospital opined that the Respondent needed hospitalization and his condition required him to be transferred to XXX Hospital for psychiatric treatment. The Respondent refused to be admitted. The doctor said it is a must for the Respondent to stay in the hospital because he might cause harm to the children if he were allowed to be discharged and go back home. In fact, the doctor said I should have sent him to the hospital as early as when the Respondent beat Y up with the hanger. The doctor also suggested that the Respondent be transferred to XXX Hospital subject to compulsory admission and deliberately made a request to XXX Hospital that the Respondent could not be discharged at his own request, unless with my consent. During his stay in the hospital, Ms. M called me and suggested me to consider living separate from the Respondent for the sake of the safety of the children.

21. The Respondent was in XXX Hospital for 5 days. Under the pressure from the Respondent's family and request of the Respondent, I consented his discharged thereafter. This incident shows that the Respondent has mental problem and it was not suitable for him to be with my children. This set the alarm that I had to make arrangements for my children and we have to live separate from him. the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding; AUTONUMOUT The daughter X is now 13 years of age and the son Y 11. There are both able to express their own views clearly. In particular it seems that X is now very angry with her father. The court was shown a number of e-mails from the social welfare officer which were written by X to the father which were both rude and abusive. I will not repeat them again here. AUTONUMOUT Both children however clearly expressed a wish to continue to live with their mother. The social welfare officer described X's current views on access as follows:
9. X wishes very much to continue to live with the mother. She said that she could share bits and pieces of her life with the mother, who would give her guidance. On the other hand, X said she would not frankly tell the father her thoughts as she worried that the father would not accept them and would, instead, have her do what he wanted her to.
10. As for access, at first, she held the view that seeing the father was acceptable (to her) and she was willing to schedule meetings via emails. However, it irked her that on each occasion, arrangements had to be made in such a way that accommodated the father's suggestion. Because of this, she used rude and disrespectful words in emails to communicate with the father. In addition, the father said that he would not force her to meet him. For these reasons, she has not proposed any access meeting on her own initiative since the meeting in February. Although she said that she did not want to see the father, her complaint was merely about having limited leisure time at this stage. Future arrangements would depend on her future schedule. She did not appreciate the fact that the father communicated with her in his emails in a tone that (showed) friendliness and closeness because that was not the usual way the father treated them. She said that the mother encouraged her from time to time to see the father, advised her not to use rude or defamatory words and had never stopped her from seeing the father. AUTONUMOUT In so far as Y is concerned he told the social welfare officer that he: 11. also wishes very much to continue to live with the mother. He said if he had made any mistake, the mother would punish him by having him do housework and not allowing him to play computer games. He felt that it was reasonable and he followed the mother's guidance. On the other hand, Y thought that the father had been unreasonable in dealing with them by way of smacking and scolding all the time. Even if he promised he would reward them when they fulfilled certain requirements [e.g. to write from memory a certain number of vocabulary], the promise had never been kept. He would even deny having ever said that and behaved as if that had never happened. The siblings were both greatly dissatisfied with that and hence they did not easily trust the father any more. That notwithstanding, Y did not resist access meetings much. He, however, only agreed to see the father (if) the sister, X, wished to do so. In the last few months, he wrote fewer emails to the father. He hoped that the father could take a more

active role in sending him emails which he would be happy to read and reply to.

AUTONUMOUT Given the ages of the children I have attached significant weight to their own views as expressed here when reaching my conclusion. the nature of the relationship of the child with each of the child s parents and with other persons; AUTONUMOUT The children have a very close relationship with their mother, whereas the relationship with their father is extremely strained. A great deal of work will need to be undertaken by all concerned if the children are to have any form of a meaningful relationship with their father in the future. The likely effect on the child of any change in the child s circumstances; The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child s parents; How capable each of the child s parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; AUTONUMOUT Generally speaking I accept that it would be devastating to the children if their current living arrangements were altered and if they were asked to live with the father. I do not believe that that would be in their best interest. I do not agree that the father s approach would be beneficial to the children or that he has demonstrated that he is capable of meeting their needs. His attitude towards parenting continues to be a matter of significant concern to the court. The Social Welfare Report AUTONUMOUT Recommendations made to the court in social welfare reports although not binding are generally considered to be persuasive. AUTONUMOUT In this case the social welfare officer filed three reports. In all three reports the social welfare officer recommends sole custody and care and control to the mother. I agree with those recommendations. AUTONUMOUT In so far as access is concerned there has been a lot of involvement by the Social Welfare Department, given that I have made orders for supervision and access continued to be hugely problematic. AUTONUMOUT Unfortunately the father stopped co-operating with the social welfare officer making it very difficult for her to take matters further. She said in her last report of the 30 May 2012 as follows:

12. Despite various phone calls made to Mr. A after the family court hearing in December 2011, the undersigned had not been able to reach him. Thus the undersigned wrote to Mr. A in January 2012 to contact him for the purpose of explaining the implementation of the supervision order. The leaflet entitled Parents Forever was also posted to him for reference. The undersigned also phoned Ms. L (transliteration), a medical case worker of YYY Psychiatric Centre so as to invite Mr. A to contact the undersigned. In February, Mr. A phoned the undersigned, saying that he had not yet received any reply from the children in relation to the suggestion of visiting the grandmother. He also had some views about the tone of the children s emails. Unfortunately, a detailed discussion did not ensue and the undersigned was just told to read the emails. The undersigned phoned Mr. A again, but was unable to get hold of him. Later, the undersigned sent him two letters in May to invite him for a meeting in the undersigned s office. In his written reply to the undersigned, Mr. A said to the effect that he did not consider it beneficial to see the undersigned again. He also stated that after the making of the interim supervision order on 30th December last year, it had been more difficult to see the children than before and so far, he had only had a two-

hour gathering with them. He suggested that the undersigned read the emails and attached to (his reply) was a copy of the emails after 21st October 2011.

13. In his emails to the children, at first, Mr. A mainly expressed himself in English, primarily asking about how the children were doing, their studies and asking after Ms. A. Such emails were also means of contact for arranging access. He also stressed that although he wanted very much to see the children, they should only meet when they were willing to. Later, at the children's request, he expressed himself in Chinese in (his) emails, the contents of which included casual chats, messages of care and extending regards (to them).
14. Mr. A also stated in his written reply that considering the interest of the children, he was still the better parent to have custody of the two children. AUTONUMOUT On that basis she recommended that the father simply be granted reasonable access to the children with no supervision order. AUTONUMOUT The difficulty that I have with that recommendation is that it could put the children in an impossible situation with the father demanding to see them and returning to court when that did not happen. It seems to me that unless the parties work on the underlying problems that there is really no possibility of any meaningful access taking place. Consequently I am reluctant to make an order at this stage that I fear has very little prospect of success or of being complied with. The clinical psychologist report AUTONUMOUT The clinical psychologist filed her report on the 15 December 2011. She recommended as follows:
19. Based on the observations and findings during the present assessment, which was limited to the information I could gather, it is my recommendation that sole custody of both the daughter and the son to be granted to the mother. My recommendation is based on the following considerations: Wishes of the children: Both the daughter and the son indicate without hesitation that they want to live with the mother. They are asked this question separately and it is believed that they stated their wishes genuinely. Relationship and bonding with the parent: The mother has been the main caretaker of the children since their birth. They have enjoyed good bonding and relationship all along. Though the children may express their dislike towards certain aspects of the mother's parenting, they are clearly more emotionally attached to the mother than to the father. Continuity of care and living: The children have been living with the mother since they moved out in 2008. They have settled down in a new district and new school environments, which they claimed they adjusted well and enjoyed. If custody is to be granted to the father, it would mean a disruption of current lives of the children. The father also stated he wanted the children to change to a better school. Though this may be the father's good intention and his acceptable standard of good education for the children, it may not be the wishes of the children nor is it suitable for them. Parenting capacity: It's obvious that both parents have their strengths and weaknesses at parenting, and the mother's parenting is not faultless. Nonetheless, the parenting style of the father may not be suitable for the children. His incessant questioning style may not be age-appropriate and his over-emphasis on the knowledge base of the children, while ignoring the emotional and development needs of the children, may not be

comprehensive and beneficial for the children in the long run. Potential risk and harm to the children: The father suffers from depression and is currently under psychiatric treatment and medication. He admitted that he was at times moody and hot-tempered. Although his depression may have been relatively stable recently, there is still risk of relapse or worsening of his depression, which will compromise his ability to take care and parent the children. Besides, the father has history of beating the children. Though he now claims that he does not resort to violence anymore, such history should still be taken into consideration.

20. Potential capacity for cooperation between parents for children issue: Sole custody of the children for the mother is suggested as the mother's opinion that the father is controlling and dominating and she may not be able to exercise her custody right if joint custody is granted is supported. The children will inevitably be involved and suffered if there are on-going and protracted conflicts between the parents over the children's issues.
21. As regard for access issue, clear and defined access for the father is suggested. Though the father may not know how to relate with the children in a manner that is suitable for the children, it is clear that he loves and cares about his children and wants to provide the best in term of education for the children. Despite the separation of the parents, the continuing connection and bonding between the children with the father is to be fostered as far as possible. The children's resistance and grievances towards the father are understandable. However, it doesn't mean, that there should be a strict cut-off between them and the father. Nonetheless, in order to have a better relationship with the children, the father should work hard to change his style of relating to his children, gaining more insight into the children's developmental and emotional needs, and try not to blame the mother for the access difficulties between the father and the children. During my second interview with the father, effort was made to help the father to make adjustment in the way he relates to the children and to understand the children from the children's perspective. The father was receptive to the advice and claimed that he was trying to improve in this aspect. He indicated his willingness to have more advice on parenting and how to relate with his children. As such, it is suggested that supervision order and assistance of a social worker in access and parenting issue will be beneficial for all parties. AUTONOMOUT I largely agree with these recommendations. However in order for them to work the father has to fully cooperate with either the Social Welfare Department or some other agency with a view to improving his own parenting skills. The children also in the first instance need to re-establish contact with him in a safe environment. The character of the parties The mother AUTONOMOUT The mother came across as being rather anxious. Clearly these proceedings have been a huge strain on her. However she also seemed to want to support the father's relationship with the children, in what are obviously very difficult circumstances. This is to be encouraged. The father AUTONOMOUT The father seems to have very little insight into his own behaviour or its effect on both the children and the mother. I accept that he has some mental health issues and that he is seeking treatment for his depression. However if he is to take this matter forward he needs to accept that significant work needs to be done on his part in

order to re establish meaningful contact with his children. What arrangement, if any, should there be for access by the non custodial parent i.e. the father? AUTONUMOUT In the circumstances I will suspend access for 6 months save for indirect access by e-mail, text or letter. I do so in order to enable the father to attend some sort of intensive counselling and/or therapy programme on parenting. There shall be liberty to apply. Therefore in the event that the social welfare officer believes that the children and the father are ready to resume some form of contact in a safe environment, then a letter should be written to the court and directions will be given accordingly. To that end there shall be a supervision order in place for the next six months. A short progress report on access only shall also be filed in six months time. Costs AUTONUMOUT Given the nature of this dispute I will make an order nisi to be made absolute at the expiration of 14 days that there shall be no order as to costs. AUTONUMOUT Consequently I will make an order as follows:

- 1) Sole custody and care and control of X and Y shall be granted to the mother.
- 2) Access shall be suspended for six months pending a further order save for indirect access by e-mail, text and/or letter.
- 3) There shall be a supervision order in place for the next six months.
- 4) An updated social investigation report be called for in 6 months time with respect to access only.
- 5) Liberty to apply.
- 6) There shall be an order nisi that there be no order as to costs. Such order to be made absolute in 14 days time. (Sharon D MELLOY) District Judge Ms Fan of Messrs Hastings & Co for the Petitioner The Respondent acted in person PAGE - PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V y n y n y n h n X hc{* h nX hc{* hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ gdc{* gdc{* gd nX hc{* hc{* ha~ hc{* hc{* hc{* hc{* hc{* gd}< gdlim gd`lU xtxohbh h`lU hT9\ ha~ ha~ hc{* hc{* hlIm hH80 gd5u gd`lU h2oS h2oS h&Nl h'=q gd*f gdWYo gdWYo gd*f gd*f gd*f \ a\$ gd*f \ a\$ gd*f gd*f gd*f gd*f ujaVM gd*f gdG! gd\O gd:P {sosjaZaZa |x|snfaf\f\f hLim vnjne umimd h85b hjss hjss hjss hjs hjs hjs hysp h85b h85b h85b gd85b gdJB h85b h85b h85b h :r h :r gd1Tm gd :r HIPE HIPE HIPE h :r h :r h1Tm hG,0 |u|ouoho h[, h[, h[, gddJ gd[, gd4# gd6, ua]a hOO? hOO? h\$u\$ hOO? gd#\ hL%? hL%? gd8f gdL%? gdL%? gdN)r gdN)r txto gdzOk gdN)r hzok hzOk hzOk hzOk hzOk hLim &'#\$ gdlim hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ hT9\ [Content_Types].xml lw}, \$yi} _rels/.rels theme/theme/themeManager.xml K Y, sQj)# theme/theme/theme1.xml w toc'v)'I'n 3Vq%'#q xjr :T'ZaG I u3 L+M2 e/O* \$*\$c?)6-r lqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relspk theme/theme/themeManager.xmlpk theme/theme/ theme1.xmlpk theme/theme/__rels/themeManager.xml.relpk <?xml version="1.0"

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