

HONG KONG / JUDGMENT

AC v. MFHJ

[2025] HKFC 51**COURT**

Family Court

DECIDED

18 March 2025

CASE / FILE NUMBER

FCMC17626/2012

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bjbj FCMC 17626 / 2012

**[2025] HKFC 51 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 17626 OF 2012**

BETWEEN AC Petitioner and MFHJ Respondent

Coram : Deputy District Judge S. Allison in Chambers (By paper disposal) Date of Petitioner s
Written Submissions: 17 October 2024 Date of Judgment: 18 March 2025

RULING

(Leave to Appeal)

The application The Petitioner filed her leave to appeal application on 17 October 2024 (the Leave Application) against my decision dated 20 October 2023 (the Judgment) which was in respect the Respondent s two summonses to vary the amount and manner of financial provision which should be made for the benefit of the daughter (). There has been a delay in the filing of the Leave Application by the Petitioner of 11 months. The Respondent has not filed any submissions in reply to the Petitioner s Application. The Petitioner filed her affidavit of service dated 10 December 2024 regarding the Leave Application and I am satisfied that the Respondent is aware of the present Leave Application. Proposed Grounds of Appeal In essence, the Petitioner seeks leave to appeal against the Judgment on the following grounds: The Respondent did not produce or disclose that he was receiving financial aid from SF s school at the time of the hearing, in particular for the year 2024/2025. According to the Petitioner, the Respondent received a letter from the school dated 23 June 2023 offering the Respondent financial aid of 75% school fee

discount for the 2024/205 school year which he did not disclose at the time of the hearing. Item 3 of Annexure 1 of the Order should be HK\$4,065.00 and not HK\$16,120.00 because Respondent had misrepresented at the hearing the actual amount of SF s Y9 school registration fee paid. The Petitioner seeks to rely on fresh evidence in support of this Ground. The Court erred in including Items 6 to 11 (inclusive) of Annexure 1 of the Order as amounts to be paid by the Petitioner. According to the Petitioner, these amounts should in fact be paid back to her by the Respondent. The Petitioner did not apply for a stay of the Judgment in the Leave Application. Consequently, she would have had to continue to comply with the Orders made in the Judgment regardless of the Leave Application. The applicable law and legal principles The jurisdiction to grant leave to appeal is contained in Section 63A of the District Court Ordinance, Cap.336 which provides that leave to appeal shall not be granted unless the court is satisfied that the appeal has a reasonable prospect of success or there are some other reasons in the interests of justice that the appeal should be heard. The applicant for leave, that is, the Petitioner in this case needs to show that she has an arguable case with reasonable chances of success on appeal. A reasonable prospect of success means an appeal with prospects that are more than fanciful but which do not need to be shown to be probable (SMSE v KL [2009] 4 HKLRD 125; KNM v HTF, HCMP 288/2011). The duty of showing reasonable prospect of success falls upon the Petitioner. Order 58 r 2(4)(b) Rules of the District Court, Cap. 336H stipulates that all applications for leave to appeal from a judgment, order or decision which is not interlocutory, must be made within 28 days after the making of the court order. This means that if either party wished to apply for leave to appeal against the Judgment, they had to do so on or before 17 November 2023 (i.e. 28 days after 20 October 2023). The principle concerning leave to appeal out of time is well established. In Tang Chai On v Tang Sing Ki [2016] 5 HKLRD 104 the Court of Appeal stated:

- [9] In the exercise of its discretion, the court will take into account the length of the delay, the reasons for the delay, the chances of the appeal succeeding if an extension of time is granted, and the degree of prejudice to the other party if the application is granted. Where the delay is substantial and not wholly excusable, the applicant must show a real prospect of success on the merits, not merely a reasonable prospect of success. The fact that the litigant was acting in person and ignorant of the law is generally not an excuse for delay. (Chen Cheryl Deanna v Chen Pak Yin Stella (HCMP 1061/2017, 4 August 2017) At the expiration of the appeal period as prescribed in the rules of the court, the successful party should be entitled to regard the legal dispute as concluded and not worry that the judgment could be challenged at any time in the future. In the absence of any good reason, the court would not extend the appeal period. All litigants, including litigants acting in person, have the duty to find out the relevant appeal period and to lodge an appeal in time. (Ho Kwok Cheung v Yim Yee Mui (HCMP 773/2017, 19 September 2017) Since this is an application for leave to appeal from the Family Court, parties are also expected to comply with specific case management practice implemented in August 2018, by the Family Court regarding applications for leave to appeal. In this case, the Petitioner is aware of the case management practice because she provided a copy of the case management notice to the Respondent by registered post on 18 October 2024. The Petitioner s delay in filing the Leave Application The Petitioner s Affidavit

dated 17 October 2024 filed in support of her late Leave Application states simply The reason for late application for appeal is due to Application for Ancillary Relief and Variation of Maintenance Order was submitted on 22 December 2023. Judge Thelma Kwan mentioned Leave to Appeal is required. These two sentences do not provide any reasons or helpful explanation as to why the Petitioner did not file the Leave Application on time. The fact that the Petitioner filed another application on 22 December 2023 is neither here or there and does not assist the Petitioner in explaining the reasons for the delay. Furthermore, the Petitioner was aware as early as 11 June 2024 at the PTR hearing with Her Honour Judge Thelma Kwan that a leave to appeal application should have been made. There is no explanation from the Petitioner why she did not file the Leave Application immediately in June 2024, nor has she explained why she only filed the Leave Application four months after the PTR hearing. The fact that the Petitioner is acting in person is irrelevant. If the Leave Application was granted, this would no doubt cause prejudice to the Respondent, who filed his summonses to vary the financial provision for SF back in 2021. The trial was fixed and heard in July 2023, and the Judgment handed down on 20 October 2023. In the absence of a timely application for leave to the appeal by the Petitioner, the Respondent was entitled to believe that the question of SF's financial provision, was concluded 28 days after the handing down of the Judgment. It would be an injustice to the Respondent to permit the Petitioner to delay her Leave Application for 11 months, without good reasons. For the above reasons, I am not satisfied that the Petitioner has set out her explanation to excuse the substantial delay. I am, therefore, entitled to dismiss the Leave Application due the Petitioner's failure to prosecute her application with due diligence. I will do so accordingly. For the sake of completeness, I will nevertheless go into the merits of the substantive grounds of appeal in the event that my decision to dismiss the Leave Application for failure to prosecute with due diligence was overturned by the appellate court. For the reasons set out hereinbelow, I do not find that the Petitioner has a reasonable prospect of success in the appeal and I refuse to exercise my discretion to allow the Petitioner's Leave Application out of time. Ground 1 of the Leave Application This ground lacks merit and has no reasonable chance of success. Having read the Petitioner's submissions, it is clear that she misunderstands how SF's maintenance was calculated on a broadbrush basis. As explained at paragraphs 90 and 91 of the Judgment, I had considered SF's financial needs and the issues de novo and had regard to all the circumstances of the case: s 11(7) of the MPPO. The Petitioner's submissions on this ground, in which she refers to information on school fees and school registration fees stems from the Petitioner's mistaken belief that she is to contribute half of SF's actual school fees and school expenses or alternatively, that the sum of HK\$10,000 in maintenance is only for SF's actual current education expenses. This is apparent from the Petitioner's submissions where she asked the Respondent if she could contribute half of the actual school fees directly to the school. The Petitioner's approach is patently incorrect. At paragraphs 107 of the Judgment I had explained how the sum of HK\$10,000 per month was calculated on a broadbrush basis. I set it out here again for the Petitioner's reference and have highlighted the relevant points.

- [107] Going forward, the general guiding principle for maintenance for SF is that the petitioner is to contribute 50% of all of SF's education expenses, which will include but not limited to her tuition fees, school trips, computer repairs, and school books. The petitioner's contribution will be paid to the respondent by way of maintenance payment. The maintenance will be paid monthly; even though school fees are only payable for ten months there will be other education expenses to be paid. On a broadbrush basis, the sum of HK\$10,000 per month is a reasonable figure as it will include not just school fees, but the annual registration fees, school trips, computer repairs / purchase of new computer. No doubt there will be other expenses which SF will incur for school which is not taken into account but this contribution by the petitioner is a reasonable and fair amount. More importantly, the parties are strongly discouraged from nitpicking precise figures for SF's education costs, which all go to the benefit of SF at the end of the day.
- [108] I accept the petitioner's undertaking that she will continue to pay for SF's maths tuition and for the avoidance of doubt, I would expect the petitioner to continue to top up SF's octopus card to meet SF's transport costs to school. The Judgment took into account that there may be a discount provided to the Respondent for school fees and school registration fees. Nevertheless, I found on a broadbrush basis that the sum of HK\$10,000 was a reasonable amount for the Petitioner to contribute towards all of SF's education expenses because the maintenance was to cover more than just her actual school fees. The purpose of determining that there be a single monthly figure for maintenance was to avoid precisely what the Petitioner has just done in her Leave Application of going through each and every school expense and then trying to work out on a monthly basis what she will pay. The amount of maintenance for SF's benefit is reasonable in light of my findings in the Judgment that the Petitioner had exaggerated her expenses and does have the ability to contribute towards SF in a more significant way (paragraph 73(i)); and the Petitioner's contribution would be for a limited time as SF was 16 years old at the time of the Judgment and maintenance would continue to be paid until SF completed full time tertiary education (Paragraph 98(iii)). I stand by my Judgment for the amount of maintenance for SF of HK\$10,000.00 and that it should be paid by the Petitioner to the Respondent each month. The Petitioner has no reasonable prospect of succeeding on this ground Ground 2 of the Leave Application Under this ground, the Petitioner submits that the Respondent only paid HK\$4,065.00 for SF's 2021 school registration fee, and that he had failed to disclose this at the trial. It was the Respondent's evidence at the trial that the registration fee due to the school in 2021 was HK\$16,120.00, and half of that sum being HK\$8,060 was the Petitioner's contribution. It was also the Respondent's evidence at trial that he had owed SF's school a sum of HK\$94,000. In support of this ground of appeal, the Petitioner seeks to rely on an email from SF's school dated 16 September 2024 as evidence that the Respondent only paid HK\$4,065 for SF's Y9 registration in April 2021. (Fresh Evidence) When seeking to adduce fresh evidence for the purpose of an appeal, the applicant must satisfy the *Ladd v Marshall*

[1954] 1 WLR 1489 conditions. The Court of Appeal adopts a strict approach in applying the Ladd v Marshall conditions because: when a litigant has obtained a judgment in a court of justice he is by law entitled not to be deprived of that judgment without very solid grounds. (Brown v Dean [1910] AC 373 at 374 per Lord Loreburn LC) Hence, in order for the Court to consider the Fresh Evidence, the Petitioner needs to satisfy three conditions under the Ladd v Marshall rule, namely: (1) it must be shown that the evidence could not have been obtained with reasonable diligence for use at trial; (2) the evidence must be such that, if given, it would probably have an important influence in the result of the case, though it need not be decisive; and (3) the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible; Fresh or further evidence may be adduced on the otherwise situation, under which the applying party has to satisfy the court that: it is one of the exceptional cases where the Ladd v Marshall conditions do not apply, or apply only in modified form; or (2) the evidence relates to matters which have occurred after the date of trial or hearing. The Petitioner has not overcome the first condition of the Ladd v Marshall conditions. She has not explained why she did not obtain or was not able to obtain the email from the SF s school prior to the trial with due diligence, particularly since the school registration payment in question relates to the year 2021 which is two years before the trial. The Petitioner has also not explained the reason for the delay in obtaining the email almost one year after the Judgment was handed down. For this reason, I have disregarded the Fresh Evidence when dealing with Ground 2 of the Leave Application and I do not see any reasonable prospect for this ground of appeal to succeed. Ground 3 This ground relates to items listed at Annexure 1 items 6 to 11. The Petitioner contents that I erred in taken into account these items as payment to the Respondent, when the Petitioner submits that these items should be paid to her instead because the Respondent had already deducted these payments from maintenance due to the Petitioner. These items are: 6. Trip to Beijing HK\$3,150 Computer SF (HK\$4,500 x 50%) HK\$2,250 CAS trip October 2019 HK\$1,500 CAS trip November 2019 HK\$2,650 SF computer repair HK\$1,125 Dental (HK\$13,700 x 50%), computer repair (HK\$1,600 x 50%) HK\$7,650 In the Judgment, at paragraphs 22 and 23 there was an explanation that the Respondent had calculated a reduced sum of maintenance to the Petitioner, based on various deductions he had calculated, however, since he had actually ceased maintenance payments sometime in the second half of 2019, and I had found that it was a misdescription by the Respondent to list the items as deductions . Instead, since no maintenance had been paid and the Petitioner was claiming arrears in maintenance, it was more accurate to consider these items as payments the Respondent wished to court to take into account in calculating any arrears or variation in the maintenance. Hence, the item claimed as deductions were never actually deducted from the maintenance due to the Petitioner because at the time, the Respondent was not paying any maintenance. The Respondent was discharged of any maintenance payable to the Petitioner for the period 1 June 2019 to 1 September 2020 at paragraph 114 of the Judgment. Consequently, there was no unpaid maintenance due to the Petitioner by the Respondent. The Petitioner s evidence was that she agreed to contribute towards the some

of the various items. It was also the Petitioner's evidence that despite her agreement to contribute towards the cost of the SF's school trip and the dental costs, she had not made these payments to the Respondent because she was demanding that the Respondent provided all of his financial documents prior to her making any contribution. Therefore, Items 6-11 were those items the Petitioner had promised to contribute towards but had not done so at the time of the trial. I had considered that it was reasonable for the Petitioner to contribute towards Items 6-11 and ordered the Petitioner to make the payment to the Respondent, so that he could use the money to settle the outstanding debt due to SF's school. Therefore, the Petitioner does not have any reasonable prospect of success on Ground 3 of the appeal. Leave refused

34. For the reasons set out above, I conclude that the Petitioner's application for leave to appeal against the Judgment is made belatedly without any cogent explanation. There is no prospect of success in any of grounds of this intended appeal. I, therefore, order that the Petitioner's Leave Application dated 17 October 2024 made out of time be dismissed, In the absence of any submissions from the Respondent on the Leave Application, there should be no order as to costs. (Sasha Allison) Deputy District Judge The Petitioner acting in person The respondent acting in person Letter from the Petitioner to the Family Court Registry dated 10 December 2024 Paragraph 55 of the Judgment For example, for the Petitioner's agreement to contribute to school trips and dental see paragraphs 104 and 106 of the Judgment respectively. 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 h>L4 hB1W gd/n gd2s ~tj^RF hHk. hHk. gdDE& gd\$h xlcZcQc hDE& hHk. h\$h h\$h hHk. h\$h gd\$h gd~! gd~! gd~! gde& h\$h gdXd gd\$h gdXd gd:p gd~! hz3@ h\$h gdg\$ gdz3@ hFYI hhP" hz3@ gdyg gdyg gdyg gdFYI gdFYI hFYI hFYI hFYI hFYI hFYI hFYI hFYI gd(% gd(% gdU+ h8x(h8x(h8x(gd8x(gd8x(gd8x(gd8x(gdB\ gd8x(h^u\ h8x(gd== gd8x(gd== yt== gd== yt== gd== yt== gd== yt== gd== yt== gdsI gd8z gdsI h^u\ yukgcg hm9[hB1W hB1W h(@O hY" gdsI gdm9[gd(@O gdsI &`#\$ gdsI ; :V yt== ; :V yt== ; :V yt== ; :V yt== ; :V yt== [Content\_Types].xml \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r ~*P(5 .}x E /,EE\ 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.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> H; < L&9<8 aVkjfZ kvPb o0\X W t8D aVkj L&9< F9v G if G _!L z}I4 A@AK _!L :`XU #P`:`XU q/Ab G if:`XU pMqA@AK zEv6 >3 }q/Ab & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/

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