

HONG KONG / JUDGMENT

**C v. S****[2020] HKCA 35****COURT**

Court of Appeal

**DECIDED**

7 January 2020

**CASE / FILE NUMBER**

CAMP223/2019

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CAMP 223/2019

[2020] HKCA 35 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO. 223 OF 2019 (ON AN INTENDED APPEAL FROM HCMP NO. 929 OF 2017) IN THE MATTER of N, female, a child born on 20 November 2008 in Hong Kong and IN THE MATTER of section 26 of the High Court Ordinance (Cap. 4) and IN THE MATTER of Order 90, rule 1 of the Rules of the High Court (Cap. 4A) and IN THE MATTER of section 3 of the Guardianship of Minors Ordinance (Cap. 13) and IN THE MATTER of the Inherent Jurisdiction of the High Court BETWEEN C Plaintiff and S Defendant Before : Hon Cheung and Chu JJA in Court Date of Decision : 7 January 2020 D E C I S I O N Hon Cheung JA (giving the Decision of the Court) : 1 This is an application for leave to appeal by the father against the order of B Chu J dated 21 June 2019. The Judge had previously refused to grant leave. We consider that it is appropriate to determine the present application on paper without a hearing. N is a ward of the Court. She requires treatment of a psychiatrist. On 20 June 2018, the Judge ordered that N is to receive treatment at Yaumatei Child and Adolescent Mental Service (‘Yaumatei Child Service’) and she is to be accompanied by her parents jointly to Yaumatei Child Service but neither parent is to be present during her treatment. Dr Ho, who has become the treating psychiatrist for N informed the Official Solicitor that she would like a free hand in devising treatment methods for N, namely, she may need sessions to be conducted with N and the mother, N and the father, or N with both parents. Dr Ho was concerned that the terms of the Judge’s order may prevent that. The Official Solicitor, therefore, prepared a consent form for the parents’ agreements which provided that : ‘1) We shall not enter the consultation room with N during her consultation, treatment, follow up sessions with any medical doctor, clinical psychologist, psychiatrists, psychologists (in private or public service) (collectively referred to as ‘medical professionals’); 2) We shall comply with the directions/requests of all medical professionals, social welfare officers, other experts, the Official Solicitor (collectively referred to as ‘the professionals’) who are involved in treating N, supervising access

arrangements or in any aspect related to any welfare issues of N; 3) We shall not stop, interrupt, obstruct the other parent to talk to the professionals so long he/she is so requested/directed by the professionals to provide any information directly/indirectly related to N; and 4) We consent that the professionals can exchange any information concerning N, be it related to the parties or N herself, so long the same is directly or indirectly relevant to the wellbeing of N.' The parents duly signed the consent forms. Although the parents signed the consent form, Dr Ho was still concerned that she may need the approval of the Court before she could implement the treatment method of having interview sessions with different parties. The Official Solicitor then wrote to the parties on 29 March 2019 inviting them to give their respective consent 'to allow Dr Ho, or any medical professionals at the Yaumatei Child Service to have the authority to treat, interview, assess N in any way professionally considered appropriate'. The mother duly signed her consent on 4 April 2019. However, the father delayed in responding and later further correspondence ensued between the father and Official Solicitor indicating their respective views on the matter. The Official Solicitor then issued a summons dated 7 May 2019 seeking an order in terms of the requested consent direction which we have set out in [1.6] above. On the day before the hearing of the summons, the father sent a document entitled 'Consent Summons' seeking in addition to the direction sought by the Official Solicitor the following directions : ' 2. Neither party shall obstruct or interfere in any way with the other party being interviewed by a medical professional if the medical professional believes that it is in [N's] interest to see the party to be interviewed. Neither party shall refuse the request to be absent by the medical professional at Yaumatei Child Service during the other party is being interviewed by that medical professional. 3. If a treating medical professional at Yaumatei Child Service wishes to conduct an interview with 1) N and the mother; 2) N and the father; 3) N with both parties; and 4) Either party on their own. then the said professional shall be at liberty to require the same and both parties shall use their best endeavours to ensure that such an interview takes place as soon as reasonably practicable.' After hearing the parties, the Judge granted the Official Solicitor's application and refused to order the additional orders sought by the father. Six grounds of appeal were advanced before the Judge which the Judge had summarised as follows : 1) Refusing to consider the father's directions ('Ground 1'); 2) Condemning the father for being unavailable for the hearing on 29 May 2019 ('Ground 2'); 3) Holding that the father did not consent to the Official Solicitor's summons ('Ground 3'); 4) Condemning the father for wanting to meet the Official Solicitor and Dr Ho ('Ground 4'); 5) Criticizing the father for asking for four directions which would cause delay ('Ground 5'); 6) Holding that the usual order in a child welfare matter was that costs should follow the event ('Ground 6'). The same six grounds but with additional arguments in two of the grounds were contained in the father's draft notice of appeal included for the present application. It is not necessary for us to address each of the six grounds as the Judge had dealt with them individually in her decision on leave. We agree with her view. The additional arguments of the father do not carry his case further. The only point that is worth commenting is the father's contention that, in the interest of the ward, the Court should

have considered the additional proposed directions. While we agree in principle that the Court's duty in wardship case is not limited to the dispute between the parties but rather to act in the best way to serve the true interests and welfare of the ward, we are of the view that, in the context of this case, there is no substance in the father's complaint that the Judge had refused to consider his proposed directions. The Judge had not ignored the proposed directions, rather she had considered them but held that they would not assist Dr Ho (or other treating doctors) in formulating the new treatment plan for N which ultimately is the only purpose why the issue was raised in the first place. The proposed directions contained matters as to how the parties should behave themselves towards the interview directed by the doctor; how the interview should be conducted; whether the parties could request an interview and disclosure of the order based on the father's proposed directions to the treating doctor. These directions are either unnecessary or onerous in terms of giving a free hand to Dr Ho to devise a treatment plan. We can well envisage these proposed directions will cause arguments and delays in the implementation of the new plan. We see no merit in this application and we will dismiss it with costs to the mother and the Official Solicitor. We will summarily assess the mother's costs and the Official Solicitor's costs at HK\$40,000 each. As the mother is on legal aid, the mother's own costs are to be taxed in accordance with Legal Aid Regulations. As the father's application is totally without merit, we order, pursuant to Order 59, rule 2A(8) of the Rules of the High Court (Cap 4A), that the father is not allowed to apply for an oral hearing to reconsider this application. (Peter Cheung) Justice of Appeal (Carlye Chu) Justice of Appeal Mr Richard Todd and Ms Jennifer Fan, instructed by Chan & Chan, for the plaintiff Stevenson, Wong & Co., for the defendant Mr Eric Leung, instructed by the Official Solicitor, for the ward

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