

HONG KONG / JUDGMENT

C v. S**[2021] HKCFI 1662****COURT**

Court of First Instance

DECIDED

23 June 2021

CASE / FILE NUMBER

HCMP929/2017

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HCMP 929/2017

**[2021] HKCFI 1662 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO 929 OF 2017**

IN THE MATTER of N, female, a child born on the 20th day of 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 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 B Chu J in Chambers (Not Open to Public) (by Paper Disposal) Date of Plaintiff's
written submissions: 29 April 2021 Date of Defendant's written submissions: 13 May 2021 Date of
Official Solicitor's written submissions: 24 May 2021 Date of Handing Down of Decision: 23 June
2021

DECISION (On Access)

Introduction

This Court handed down a judgment on 3 February 2021 dismissing Father's application for custody, care and control of the ward N, subject to the Mother having to consult Father over N's schooling and N's psychiatric and/or psychological treatment, if any in future ("Judgment"). I shall continue to use the abbreviations in the Judgment unless otherwise indicated herein. As set out in paragraphs 410 and 411 of the Judgment, the then proposals and submissions of the parties made at the time of the trial were overtaken by the event that HKFWS had decided to terminate the provision of its services at the Contact Centre at the end of December 2020. This Court then proceeded to give some preliminary views in relation to access and asked the parties to try to agree, with the assistance of the OS, a draft order on access for this Court's approval. It was further directed that if the parents could not reach an agreement over the draft order, they and OS were to each submit further written submissions within 28 days of not more than 10 pages on their respective proposed access arrangements and this Court will deal with the same on paper. It was further ordered that pending any further order, as stated in the Judgment, the May 2017 Access Order as supplemented by the September 2017 Access Order shall continue save that the access venue is to be either the Kowloon Tong Premises or a public place, to be agreed by N, and the pick up/delivery point to be agreed by the parents, failing which at the entrance of the Kowloon Cricket Club. Subsequent thereto, the Father lodged a notice of appeal against the Judgment. It was not until 29 April 2021 that Father's written submissions were lodged by his solicitors. Mother's written submissions were lodged on 13 May 2021 and the OS lodged his submissions on 24 May 2021. Father's proposals Father's proposals were set out in paragraph 28 of the written submissions lodged on his behalf: With an aim to rebuild the relationship between the Child and the Father, the Father proposes the following defined access arrangement of the Child: "(1) Weekly Defined Access The Father shall have weekly defined access from Thursday until 11:30 a.m. on Sunday morning. The Father shall pick up the Child after school on Thursday, alternatively if it is not a school day, the Mother shall take the Child to the Father's residence at 9:30 a.m. or the Child should be picked up at a mutually agreed venue. (2) School Long Holidays (except summer holiday) The Child shall spend half time with the Father and half time with the Mother except for summer holiday. Whoever takes the 1st half of the holiday will have the 2nd half the following year. (3) Summer Holiday The Father shall have staying access from Monday until Sunday on alternate week. The Mother shall take the Child to the Father's residence at 9:30 a.m. on Monday or the Child should be picked up at a mutually agreed venue while the Father shall be responsible to return the Child to her residence at 9:30 p.m. on Sunday." In addition to the above, Father says he and his family should have N's mobile phone number. Mother's proposals Mother's proposals are set out in a draft order attached to written submissions lodged on her behalf as follows: "UPON the Plaintiff and the Defendant agreeing, acknowledging and undertaking to the Court and to each other that they shall not denigrate or criticise or belittle each other in any manner in the presence of the Minor The minor [N] ("the Minor") shall continue to remain as a Ward of the Court until further order; Paragraphs 4 and 5 of the Plaintiff's

Originating Summons filed on 20 April 2017 for custody, care and control of the Minor (“the Plaintiff’s Originating Summons”) be dismissed; The Orders dated 19 May 2017 and 21 September 2017 for the Plaintiff’s access to the Minor be varied to the effect that, the Plaintiff do have defined access to the Minor, every Saturdays:- From 10:00 am to 9 pm, either in the Kowloon Tong Premises of the Plaintiff’s parents or public places, including but not limited to Kowloon Cricket Club, Tai Kok Tsui Public Library, the clubhouse of One SilverSea, Olympian City Mall and Harbour City Hall (“the Public Places”), as agreed by the Minor; and Pick-up point to be agreed by the Parties, failing which to be at the entrance of the Kowloon Cricket Club; 4. The Plaintiff and the Minor shall travel through public transport during the access; 5. The Minor shall be dropped off by the Plaintiff at the lobby of at the end of the access on Saturday; 6. The Plaintiff shall seek prior consent from the Minor and respect the Minor’s wishes if possible if the Plaintiff intends to:- (a) invite other people such as his family members to join his access with the Minor; or (b) take video recordings of the Minor during the access. 7. If the Minor is unable to attend any of the access sessions in Paragraph 3, make up access shall take place in Sunday afternoon(s) until the missed access session has been made up in full, either in the Kowloon Tong Premises or the Public Places, as agreed by the Minor, failing which remote access shall be provided via Zoom or FaceTime; 8. Upon the Plaintiff providing a mobile phone with a new phone number to the Minor, the Plaintiff shall contact the Minor as he sees fit and reasonable; 9. Updated Social Welfare Report and Updated Official Solicitor’s Report on access be called for in 6 months’ time; and 10. No order as to costs save that the Defendant’s own costs be taxed in accordance with the Legal Aid Regulations. Discussion As pointed out by both the Mother and OS, Father’s written submissions were almost a re-run (and re-litigation) of his case and arguments already put forward in the trial. As the OS has pointed out, Father “regrettably revealed little recognition of the difficulty and challenges afflicting the father and daughter relationship”. As also submitted on behalf of the Mother, Father in his written submissions has continued to put blame on the Mother for her allegations, and that Father’s rehash of old arguments was unhelpful and only indicated his interests and focus still being fixated on proving what he believed to have happened in the past. As mentioned in the Judgment, HKFWS had had assisted the parties together with the OS in arranging the access sessions prior to the termination of its services at the Contact Centre. The parents have also agreed that they will apply for therapy service from Asian Academy of Family Therapy (AAFT) which was previously lined up for the parties by the social workers of HKFWS. During the ensuing sessions arranged by the parents themselves, N had visited shopping malls, the stationery shop at Yau Ma Tei and Kowloon Cricket Club (KCC) etc with Father. However, the OS reported that the carrying out and the quality of the most recent access sessions since late March/early April were not that desirable and that all the sessions took place only at KCC and not anywhere else, and the duration of each of the sessions was unfortunately very brief. Father believed that the negative emotion or attitude on the part of N was related to the disagreement between the parties with regard to N’s schooling. Mother had found a “direct subsidy scheme school” a good choice but Father opined that N should give up the offered placement by the “direct subsidy scheme school” but instead opt for “Central Allocation”. OS further reported that he had a meeting with N on 21 May 2021 over the access arrangements at KCC. N commented that it was actually not about her emotion or attitude but she would

sometimes observe that Father was not in a good mood and that he would dominate the conversation. The parties and N have attended 3 sessions with AAFT and as observed by OS, N was receptive of the Biofeedback process as well as the service rendered by AAFT and that N finds expressing herself at AAFT comfortable and she is willing to continue to attend the sessions at AAFT. However, as reported by OS, family therapy sessions with AAFT can only be arranged or resumed after all legal proceedings including the pending appeal are wrapped up and the parties form the decision that they will no longer resort to litigation at courts. OS opines that as soon as the parties form the decision that they will not further resort to litigation at courts, family therapy sessions with AAFT should be proactively and promptly arranged. Ultimately, OS agrees with the terms of access as mapped out in Mother's written submissions.

Conclusion

Having considered the parties' respective written submissions and all the above, and having regard to the N's welfare and her best interests, I agree with OS's and Mother's submissions that Father's rehash of old arguments is unhelpful. I find his proposed access arrangements are unrealistic in light of his present relationship with N and that Mother's proposals in paragraphs 3 to 8 are more appropriate in the present circumstances. I will only add that upon determination of Father's present appeal, the parties shall use their best endeavours to arrange and attend the family therapy sessions with N at the AAFT. Paragraphs 1 and 2 of Mother's draft order were in fact made on 3 February 2021 pursuant to the Judgment and it is not necessary to repeat those orders. It is not clear as to whether Father is willing to voluntarily provide an undertaking not to denigrate or criticize or belittle Mother in any manner in the presence of N, as indicated in the Judgment. If not, I make an order to this effect. I also order in terms of paragraphs 3-9 of Mother's draft order. As for costs, I will make no order as to costs and Mother's own costs be taxed under Legal Aid Regulations. (Bebe Pui Ying Chu) Judge of the Court of First Instance High Court Solicitors of Chan & Chan, for the Plaintiff Solicitors of Stevenson, Wong & Co, for the Defendant Mr Jason Chan of the Official Solicitor, for the Ward

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