

HONG KONG / JUDGMENT

CS v. WCT

[2019] HKFC 161**COURT**

Family Court

DECIDED

5 July 2019

CASE / FILE NUMBER

FCMC1930/2019

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bjbj FCMC1930/2019 [2019]HKFC161 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO. 1930 OF 2019

BETWEEN CS Petitioner and Respondent

Coram: Deputy Judge K.K. Pang in Chambers (not open to public) Date of Hearing: 14 June 2019
Date of Judgment: 5 July 2019

J U D G M E N T (Schooling)

Background

This is the hearing of the respondent father (the father's summons dated 3 May 2019 by which the father asks the court's leave to the children of the family, namely a boy born on 16 July 2014 (the) and a girl born on 26 January 2016 (the daughter) to go to Harrow International School Hong Kong (Harrow) in August 2019. The petitioner mother (the mother) wishes the son continues to go to Kellett School (Kellett) and the daughter continues to go to Victoria (South Horizons) International School (Victoria SH). The parties were married in 2013. Within wedlock, the said children of the family were born. On 22 February 2019, the mother petitioned for divorce. The Father's Case Mr. Yim appearing for the father said :- In or about March 2018, after having carried out extensive research, the parties chose Harrow as their top choice of school for the children and jointly made the decision to make an application to Harrow for the children. On 19 April 2018, the parties jointly made the decision to purchase Harrow's Individual Capital Certificate () for the sum of \$4.45 million from a third party seller. On 4 May 2018, the parties accepted Kellett's offer for the son, waiting for the outcome of the application to Harrow. On 8 May 2018, the

parties sent the sale and purchase agreement of the ICC to Harrow for approval and paid transfer fee in the sum of \$300,000. The parties arranged the children to attend extra tuitions such as classes on simplified Chinese and cursive writings to prepare them for Harrow's curriculum. In August 2018, the son started school at Kellett. In WhatsApp messages dated 27 October 2018, the mother replied to the father that she would accept Harrow's offer for the son. On 10 November 2018, the parties arranged the son to attend an interview at Harrow. The son was not offered a place but was placed in the waiting list. On 4 December 2018, the parties jointly wrote an appeal letter to Harrow to show their continued interest in Harrow. Further, the parties asked for the maternal grandfather and an uncle's help in pleading with one of the Governors of Harrow. On 7 December 2018, the son was offered a place to start year one in August 2019. In December 2018, the parties purchased Harrow's uniform and school bag for the son. On 14 February 2019, the daughter attended an interview at Harrow. On 4 March 2019, the parties separately attended Harrow's year one new parents welcome session. On 9 March 2019, the parties took both children to Harrow's annual charity event. They also brought along the domestic helpers so as to get them familiar with the school environment. The mother purchased two Harrow water bottles for the children. The children were already told that the son would change school to Harrow in 2019/2020 and if the daughter was accepted, she would go to the same school as her brother. On 15 March 2019, the parties received an offer from Harrow for the daughter to start K1 in 2019/2020. On 19 March 2019, the mother suddenly told the father that she no longer wanted to send the children to Harrow. In the circumstance, the father had no choice but to take out the present application. It was also the father's case that Harrow was a better and more suitable school than Kellett to the children. The father set out his detailed reasons in support in his 2nd, 3rd and 4th Affirmations. The mother's case

6. Mr. Ken Chan appearing for the mother took issue on the father's case. He further said :- At all material times, Kellett was the parties most preferred school for the children, which was evidenced by the fact that the parties applied to Kellett for the son soon after the son's birth in 2014 and they did not consider Harrow until the son's application to Kellett was initially rejected in March 2018. She said Harrow was only a backup for the children. Without oral evidence, it was impossible for the court to make a finding on the factual disputes between the parties as to whether Kellett/ Harrow was the top choice/ backup. The parties and the court did not have first-hand knowledge of Harrow and were not assisted by expert evidence . It was therefore risky and insensitive to transfer the children to Harrow. Both Kellett and Victoria SH were close to the children's home in Pokfulam, as Harrow was far away in Tuen Mun. The children were doing satisfactorily in current schools. The father accepted that both Kellett and Victoria SH were decent schools. In the premises, there was no urgency to make any change in the children's present schooling. It was in the children's interest not to make a major move such as starting a new school at the present time. The status quo was preferred. The mother set out her detailed reasons in her opposing 3rd and 4th Affirmations. Legal Principle

7. There is no dispute that the guiding principle in children matters must be the best interests of the children: s.3 Guardianship of Minors Ordinance, Cap.13. My View
8. I hesitate to accept Mr. Chan's bare submission that it is impossible for the court to make a finding of the parties' disputes on whether Kellett/ Harrow was/ is the top choice/ backup without oral evidence. The court is not bound to accept at face value bald allegations made by a party in her/his affirmation. I take the view that, where a party raises a plausible and prima facie sustainable case, the other party is required to give sufficient facts and particulars to show to the court that there is a triable issue.
9. Mr. Yim contended that the mother's case that Kellett at all material times was the parties' most preferred school for the children could not be true, in view of the chronology set out by the father in the above. Nonetheless, it is undisputed that :- (i) the parties chose Kellett for the son not long after the son was born in 2014; (ii) the ICC was purchased after Kellett initially rejected the son and before Kellett's offer to the son; and (iii) they applied Kellett for the daughter later on. I accept that the above undisputed facts provide the backbones that give support for the mother's explanation as to why she chose to go through the motion with the applications for Harrow even after the son started school with Kellett : as the parties then already purchased the ICC, she thought she might as well keep the Harrow option open. Over and above that, regarding the WhatsApp messages 27 October 2018 on which the father relying in support, the father stressed the mother's reply that she would accept Harrow's offer for the son, which begs the question: why he needed to ask if joint decision was already made between the parties as early as in March 2018. It seems that, to properly interpret the meaning of the WhatsApp messages, it might be necessary to investigate the background circumstances to the WhatsApp messages. After having carefully considered, I accept that the mother has managed to show to the court that there is a triable issue of fact on whether Kellett/ Harrow is the top choice/ backup.
10. It is also the father's position that Harrow is a better and more suitable school than Kellett to the children. The father said :-
 - (a) In respect of academic performance, Harrow's students generally obtained better scores;
 - (b) Since Harrow was a sister school of Harrow UK, it paved its students the way to overseas studies especially in the UK;
 - (c) Harrow had better campus in size and facilities;
 - (d) Harrow offered boarding option for students starting from year 6;
 - (e) Extra-curricular activities () in Harrow were more diversified and more readily available for K1 and year 1 students;
 - (f) The sense of belonging or school spirit of Kellett was weak;

- (h) The children would have to switch to the Kowloon Bay campus for secondary education if they studied at Kellett;
- (i) The daughter's place with Kellett was not guaranteed.
- 11. It is not disputed that Harrow has better campus, more diversified ETA for K1 and year 1 students and boarding option for senior students.
- 12. No doubt Harrow UK has a long history and is widely regarded as a top tier English public school with an outstanding reputation in all areas. We must not lose sight of that Harrow International School Hong Kong is a different school that is newly opened in 2012 in Hong Kong, and I take the view that, being a young school, it remains to be seen whether Harrow HK is academically or in other areas stronger than Kellett or other international schools in Hong Kong.
- 13. Both Harrow and Kellett provide UK A-level curriculum. It seems to me both schools prepare their student to go for overseas studies especially in the UK.
- 14. As to Kellett, it is accepted that the children will have to switch to the Kowloon Bay campus for secondary education at Kellett.
- 15. However, on the evidence before me, I am doubtful to the father's assertion that the sense of belonging or school spirit of Kellett is weak.
- 16. Further and despite the father's argument to the contrary, I am prepared to accept the mother's case that, in view of the e-mail dated 24 May 2019 sent from Kellett to the mother, it is highly probable that the daughter, being currently situated between 20 and 30 on the 2020 PFL Reception Waitlist, will be offered a place in Kellett.
- 17. The mother believes, perhaps rightly so, if the children go to Harrow, extra travelling time to be taken on every school day will eat away at the children's time that can be spent on for example bonding with their parents, ETA or rest, etc.
- 18. I place particular significance on the mother's case that it is in the children's interest not to make a major move such as starting a new school at the present time. On 6 May 2019, upon the mother's application, the court made an order that interim shared care and control be granted to the parties on the basis of a week on/ week off arrangement. By consent, CDR hearing was fixed to take place on 12 December 2019 and it was directed that an update Social Investigation Report be called for. At that hearing, counsel appearing for the father stressed the importance of status quo. She expressed deep concerns about whether the newly introduced interim care arrangements would have any adverse psychological impact on the children, particularly taking into consideration the children's young age. Upon the father's request, a clinical psychologist's report was called for. Both reports will be made available shortly before the CDR hearing. I then took the view that under the new arrangements the children still lived close to both parents in the same neighborhood and in very similar living environment they were used to live, and accepted that, looking in the

round, the move was in the best interests of the children, but at the same time, I took notice on the case social worker's observation that, facing the parents continuing conflicts, the children were prone to stress. It is perhaps common knowledge that making a major move such as starting a new school can be stressful time for students. New classes, new teachers and new routines can all be stressful and take time to adjust to. After having carefully considered, I accept that this might not be the time to change the children's schooling.

19. The father has no quarrel with the mother's view that the children are too young to express a view on their schooling.
20. It is accepted that Kellett and Victoria SH are decent schools and that the children's current school performance is satisfactory.
21. To sum up, I agree that, at least for the time being, the status quo is to be preferred, which means that the children will go to their current schools in the next school year. Having that said, I have to clarify that I am open to suggestions/ arguments about the children's schooling after that. I suggest that the parties might wish to consider bringing the matter up again at the CDR hearing. Order
22. By reason of matters aforesaid, it is ordered that :-
 - (1) The father's summons dated 3 May 2019 be dismissed;
 - (2) Both children do continue study at their current schools in August/ September 2019; and
 - (3) Leave to the mother to accept Kellett's offer for the daughter, if any is coming. Costs
23. This is a children matter; I make order nisi that there be no order as to costs of the summons dated 3 May 2019 and the summons 17 May 2019 including reserved costs. The order nisi becomes absolute 14 days after the order is made unless a party has applied to the court for varying the same. (K. K. Pang) Deputy District Judge Mr. Ken S.H. Chan instructed by Messrs. ONG Lawyers, solicitors for the petitioner Mr. Eugene Yim instructed by Messrs. Jonathan Mok Legal, solicitors for the respondent Trial bundle 2, p.402 Trial Bundle 2, p.461
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