

HONG KONG / JUDGMENT

CWM v. SAS aka AS

[2024] HKFC 79**COURT**

Family Court

DECIDED

16 April 2024

CASE / FILE NUMBER

FCMC9999/2020

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**[2024] HKFC 79 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 9999 OF 2020**

BETWEEN CWM Petitioner and SAS Respondent also known as AS

Coram: Her Honour Judge Thelma Kwan in Chambers (not open to public) Date of Trial: 13 15
June 2023 Date of Opening Submission: Petitioner and Respondent 6 June 2023 Date of Closing
Submission: Petitioner 1 August 2023, Respondent filed on 12 July 2023 Date of Judgment: 16 April
2024

J U D G M E N T (Relocation)

This is an application by the Petitioner Mother () to relocate to Melbourne Australia with the children of the family. Respondent Father () opposes her application. The parties have two children, their son L born in March 2013, and daughter A born in February 2017, (collectively the Children). They are respectively age 11 and 7. Background of Parties M is 44 years of age. She is a local born Chinese. M went to Melbourne, Australia when she was 17, she finished her schooling there and qualified as a Certified Public Accountant. She obtained Australian citizenship in 2004 and returned to Hong Kong in 2005. She has a stable job as an accountant / finance business partner. F is aged 45. F says he is a Chinese national of Indian heritage . He was born in India of Indian ethnicity and resides in Hong Kong. He also says he studied in Hong Kong and lived most of his life here. F says he runs a company formation business in Hong Kong. The parties met in December 2008. F says they married in Bali in December 2011, M says that was only a

spontaneous romantic ceremony and that they married in Hong Kong on 9 September 2012. They separated in October 2018, F moved out of the former matrimonial home. The Children were born in Hong Kong. They initially studied in an international school here, but then moved to a local school after the parties separated due to limitation in finances. In addition, M arranged for L to study the Australian syllabus as of August 2022. In January 2022, M moved out of the former matrimonial home with the Children to live with her parents.

Procedural History

M petitioned for divorce in October 2020. Decree Nisi was granted on 11 May 2021. By consent, an Order was made on 4 August 2021 which gives parties joint custody, with care and control to M and defined access to F on Saturdays. There was a further Order made on the same day wherein parties undertake to be equally responsible for the Children's expenses including any increment thereto. F is ordered to pay the sum of \$11,250 as maintenance for the Children. However, F has never paid under this maintenance Order. Decree Absolute was pronounced on 18 August 2021. An updated SIR was called in 12 months time from then to consider the issue of staying access with F. In that August 2022 report, F told the SWO that he sometimes stayed overnight at his workplace in Kwai Chung, and sometimes lived with his extended family in Hong Kong. He said to the SWO that he intended to rent a place but failed to proceed with this plan. The SWO did not make the recommendation as F refused home visits and failed to provide a stable abode for overnight access. On 20 September 2022, M applied to relocate with the Children permanently to Melbourne, Australia. Affirmations were exchanged, updated SIR and International SIR were called. Parties and the SWO attended trial, F acts in person. M's case M calls this a return home application. She says she has always intended to return to Melbourne, which is why she had enrolled the Children in an international school initially. She had spent almost 8 years in Melbourne, where she attended secondary school, university and obtained her professional qualification. She is familiar with the city, and her sister () still lives there. M will have access to C's house as accommodation for herself and the Children, who will have their own rooms, and live in better accommodation with a backyard. She has identified schools in the neighbourhood; transition would be easy as both Children were previously in international school here, and L has commenced working on the Australian syllabus. She will have the support of her parents (who will also move there) and C for emotional support and care of the Children. She also says she can transfer on her current job to work in Melbourne or find a new job there, her Australian qualifications will enable this. She has friends in Melbourne and she is familiar with the local community. The two major push factors from Hong Kong are financial and emotional. At time of trial, she was facing the predicament of needing to move out from her parents home and to rent accommodation, her stress is exacerbated by the fact that F has never paid any maintenance under the August 2021 Order, which was also the reason the Children have to switch from international to local school. On the emotional end, M says she is under constant pressure from F, who is verbally abusive, and constantly put the Children in the midst of arguments. F's Case F says it was not their plan to move, but only the M's. In his brief two pager opening submission, H made several points which are irrelevant to the substance of the current proceedings, including

saying that M has incited him to derail from his good character and commit crime (with no details); L was tortured by the maternal grandmother (but produced no evidence); costs of the divorce proceedings; issue with M's renewal of A's passport; that he did not receive pleadings and documents on time; that parties have agreed to divorce by consent without financial disputes; that M's lawyer has solicited [M] to get [M] a better deal and position [F] to bankruptcy; and that M and her family have ulterior motives to abscond from Hong Kong (but produced no evidence). The relevant points he made are: He alleges that the SIR and the ISIR are biased. Both Children are excellent in Cantonese and Mandarin, they will finish primary school in Hong Kong soon and are born here and well settled. In his closing submission, F produced an email chain showing that he was in direct contact with the International SWO from 17 May until 13 June (date of trial), and once on 7 July; which were never mentioned at trial. This was his unilateral contact with the international officer, the person who penned the report was on leave and F communicated with the latter's colleague to complain about the report. Eventually he was directed to lodge his complaint via proper channel. Needless to say, the Court has no knowledge of this exchange until after the trial, and M has no opportunity to deal with this information. Regarding his complaint to the International SWO, F says that the fact that the Children have Indian heritage was not brought to the attention of the ISWO; and that the photos of C's house was from third party sources. From his closing submission, F's objection to the application includes the following additional points, he says: M's poor standard of English cannot secure a job in Australia. The school M intends for the Children requires one year of proof of residence. C's house is on mortgage and cannot be rented out. M has been looking for suitable job posting since April 2022. The public school offer placement to only Australia citizens and the Children are not Australian citizens. Chinese is not available as a language subject in school. C needs to look after the maternal grandparents and cannot look after the Children. The maternal grandmother has a bad temper, and assaulted her husband. W's home is in Hong Kong. F also quoted from excerpts from a number of articles in his closing submission for his following propositions. These were not in evidence before me nor brought up at trial: Fatherlessness is a growing problem in Australia (article dated 2007). Fatherlessness lowers educational performance (article dated 2002). Fatherlessness increases crime (article dated 1993). Fatherlessness increases sexual problem (article dated 1986, 2003, 2007). Fatherlessness increases physical and mental health problems (article dated 1997 and 2004). Fatherlessness are the major social problems (articles dated 1990, 2002). Fatherlessness increases physical and sexual child abuse (articles dated 1993, 1996, 2004, 2006 and 2009). F says M and her family have emotional problems and it is therefore good to have F around as it is possible to have the above happen to the Children. The Social Investigation Report. Social Investigation Reports. There were three SIRs, and one ISIR. The first two SIRs in July 2021 and August 2022 respectively dealt with custody care and control issues, and the possibility of staying access to the F (mentioned above). The third one in April 2023 supports M's relocation application. The SWO spoke with both Children, who were excited and happy for the relocation plan. L said he intends to work hard to study Chinese in Hong Kong but looks forward to not having homework in Australia. Both know that they can keep contact with F via phone, video calls and WhatsApp. L knows that M will take him to Hong Kong during Australia's summer holidays. The SWO went through the Payne analysis, and came to the following conclusions: That

M's plan was based on her genuine belief that it will be for the best interest of the Children to relocate to Melbourne, as M and her family members are committed to facilitate remote and physical access with F, she believes that M does not intend to exclude the Children from F. That M's plan is realistic as the ISIR confirms M's proposal on accommodation, education and social support to be solid. Maternal grandparents and C will provide moral support for M and care support for the Children, maternal grandmother has also offered financial assistance to M. SWO acknowledges that F's opposition is based on his insistence that Hong Kong is the Children's home, that he thinks it is not necessary for the Children to relocate to Australia; and his lack of trust for M to facilitate her proposed access plans. SWO is of the view that the Children would benefit from the stable relationship and comprehensive support from the maternal side of the family during their initial transition. And that they will be fine under M's continuous care and their wellbeing could be maintained. The SWO supports M's relocation application, and proposes reasonable access to the F, that Children return once a year to Hong Kong during their school holidays, and to have daily remote access with F. Despite the F's cross examination of the SWO, I am of the view that the SWO's basis of support for the relocation remains unshaken.

International Social Investigation Report The ISIR is tasked with providing information on M's intended school, the accommodation, the community, and C's support. C has been living in Melbourne since she went there to attend high school. She now works as an interpreter in a local hospital, has stable hours from Monday to Friday and can work from home. She intends to use her leave to help her sister and the Children settle down in Melbourne in the initial months. As for accommodation, C will transfer a property she owns to M when she moves over. This is a 3-bedroom townhouse which can comfortably accommodate the family. This is situated at a well-resourced residential suburb with shopping, restaurants, outdoor areas and library for the Children, all within proximity to where they intend to live. C told the international SWO that they are a close-knit family. The maternal grandparents will also move to Melbourne, and all three generations will be together. She confirms her commitment to look after the Children, with whom she maintains contact speaking once a week when she calls M. C also states that there are many Chinese migrants in Melbourne, and the Children will not lose their connection to the Chinese culture through the community and the Chinese Baptist church which she (and the M used to) attends. The report also states that the Children are regarded as Australian citizens by descent and will be eligible for Australia's public health system Medicare. As Australian citizens, the Children are also entitled to free schooling. The international SWO, who visited the school the M intends for the Children, comments that the school is multicultural, has a strong reputation, large array of extracurricular activities, and is in close proximity to the intended residence. The ISIR considers C's to be deeply committed to support M in her relocation, and intends to help practically, financially, and emotionally. She also believes M's plan is thorough and beneficial to the family in all the areas she investigated. Legal Principles My starting point is found in s.3 of the Guardianship of Minors Ordinance (Cap. 13), which states that the best interest of the minor is the first and paramount consideration. The applicable principles governing relocation application were based on the English Court of Appeal case of *Payne v Payne* [2001] Fam 473 and adopted by our Court of Appeal in *SMM v TWM* [2010] HKFLR 308, [2010] HKLRD 37 CA where Cheung JA summarised them at 21 of his judgment as follows: 2)

- 3) The application should be approached as follows: Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask, is the mother's application realistic, i.e. founded on practical proposals both well researched and investigated? If the application fails either of these tests, refusal will inevitably follow. If, however, the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland? What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal? The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist in so far as appropriate. (per Thorpe LJ at paragraph 40)
- 4) In short, the relevant factors are: The welfare of the child is always paramount. There is no presumption created by section 13(1)(b) of the English Children Act 1989 in favour of the applicant parent. The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight. Consequently the proposals have to be scrutinised with care and the Court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end. The effect upon the applicant parent and the new family of the child of a refusal of leave is very important. The effect upon the child of the denial of contact with the other parent and in some cases his family is very important. The opportunity for continuing contact between the child and the parent left behind may be very significant. (per Butler-Sloss P at paragraph 85) In the case of *BA v BL (Child Relocation)* [2019] 4 HKLRD 23 the Court of Appeal per Cheung JA reiterated and further elaborated on the approach to be taken in relocation cases: 4.12 This led to the more recent decisions of the English Court of Appeal such as *K v K* where it is stressed that, in the determination of applications for permission to relocate, the welfare of the child was the paramount consideration. The three judges in *K v K*, Thorpe, Moore Bick and Black LJ were of the same view on this point. 4.13 4.14 Ultimately it is one of the factors to be considered in the overall assessment whether the relocation is in the best interests of the child and the weight to be attached to this factor depends on the facts of the case. The value of *Payne* is that it "identifies a number of factors which will or may be relevant in a relocation case, explains their importance to the welfare of the child, and suggests helpful disciplines to ensure that the proper matters are considered in reaching a decision but it does not dictate the outcome of a case", per Black LJ at [144] in *K v K*. In my view *Payne* is not to be jettisoned. The relevant factors provide a structured framework in which the appraisal is to be made holistically. ... I also found the following from Lady Justice Black (as she then was) in the abovementioned case of *K v K* [2011] EWCA Civ 793 to be of assistance:

141. The first point that is quite clear is that, as I have said already, the principle the only authentic principle that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child. HHJ I Wong has in his recent case of JTMW v NAV FCMC 8504/2017 [2020] HKFC 244 succinctly summarized important points of principles enunciated in the case of ZJ v XWN at paragraphs 53 - 55:
53. The Court of Appeal endorsed what Vos LJ said in *Re C (A Child) (Internal Relocation)* at [82] and [83],
82. I add a few words in an attempt to summarise the position that has now been reached. As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional.
83. ...
54. The Court of Appeal also dealt with the use of the welfare checklist in the balancing exercise. The welfare checklist is only an aide-memoire. A judge is not required to mechanically list every factor to demonstrate that he has considered the same.
55. The Court of Appeal emphasized that the guidance in *Payne* or *SMM v TWM* or the welfare checklist are simply tools to assist a Family Judge in making the multifactorial assessment to reach a result which is in the best interest of the child after taking account of the potential impact on the parents: at [30]. The consideration of guiding legal principles will be incomplete without citing what has been referred to as the welfare checklist factors, which have been listed in our Children's Proceedings (Parental Responsibility) Bill, and has yet to be passed as law in Hong Kong (the Welfare Checklist). These are factors that should be taken into account when determining issues relating to children and where their best interest is to be considered: 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. With regard to recognition of Children's point of view, it is of assistance to refer to the case of *Re D (Abduction: Rights of Custody)* [2007] 1 AC 619 at 641 F-G, which involves a child then age 8: But there is now a growing understanding of the importance of listening to the children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reason for failing to hear what the child has to say than it is for refusing to hear the parents' views. With these principles in mind, I shall proceed to apply them to the case at hand. The Analysis Is the application genuine and not motivated by M's desire to exclude F from the Children's life M genuinely believes that life in Melbourne offers better living environment, better school options and education environment, better work-life balance for her which will allow her more time with the Children, and bonding and care support with maternal family which are all in the Children's best interest. According to the second SIR in August 2022, the access has generally progressed smoothly since August 2021. Both parties agreed that this was the case. Also looking at the SIRs, it is evident that the Children have a good relationship with the F, there is no sign that M has been obstructive as otherwise it would be apparent in their interaction with F. Both Children report that they like and enjoy meeting with F through their weekend access. M makes the following proposal to F for access arrangement should relocation be allowed: Daily remote access with the Children at fixed time Returning the Children to HK once a year for at least two weeks during the Children's long holidays for F to have day access with them Subject to the F giving 14 days notice to visit Melbourne with travel itinerary and intended accommodation, if F comes during the Children's holidays, M will split the holiday time with F giving him day access from 9am to 9pm Subject to the F giving 14 days notice to visit Melbourne with travel itinerary and intended accommodation, if F comes during term time, he can have ad-hoc day access on weekday evening from 4:30 to 7:30pm, and day access during weekends from 9am to 9pm; subject to Children's school time and activities F did not address these access arrangement during the trial, nor make any counter proposals so it is taken that this is something that he can and will work with. From the evidence before me and hearing M in oral evidence in court, I am of the view that the M's application is genuine and for the benefit of the Children; and that she is not doing this with a view to exclude F from the Children's lives. Is the application realistic and found on proposals well researched and investigated As said, M calls this her return home application. She says that she has planned to return to Melbourne

for the longest time, therefore putting the Children in international kindergarten. She has offered to arrange Australian citizenship for F which he declined. She is the Children's primary carer, spent time with them after work and on weekends, and attend all their school functions. However, the divorce has taken its toll on her, and she finds living in Hong Kong stressful, especially in her interaction with F. She feels that the lifestyle, environment, healthcare and work-life balance for herself of living in Australia will be beneficial to the Children. Accommodation M will take up residence at her sister's townhouse. It is 1,900 square feet with a backyard and 3 bedrooms. The Children will have their own rooms which is a much nicer environment than their Hong Kong accommodation at the time of trial. Schools M says the education system in Australia, with which she is familiar, is less stressful and inspirational. She also says that F has agreed to the Children's education in Australia which is why they had initially enrolled the Children in an international school with English as a teaching medium. However, absent F's maintenance payment, she has no option but to change the Children to local schools. The school that M has found is near their intended residence. Under the Australian system, schools are assigned in proximity to residence. This likelihood assigned school has a diverse curriculum, and options on extra-curricular activities. Financial M has been working for her current employer for 11 years, this company is a subsidiary of a listed company in Australia. She has also worked closely with the Melbourne office, the colleagues there have become friends and she has indicated to her supervisor of her wish to be transferred. She has kept an eye on job opportunities based on her qualification and experience. She says that she is not able to start the process formally until she has result from this application. M's supporting affidavit for her application shows that she has done some budgeting for herself and her family with the assistance of internet searches and her sister. She anticipates general expenses around \$30,475 and Children's expenses to be \$9,169. This totals \$39,644 per month. She has factored into this budget child minding fees and her increased tax payment. According to her, the salary she expects should be in the range of AUD115,000-135,000 per annum (i.e. \$609,500-715,500), with which she is able to support the livelihood of herself and the Children. The work culture in Australia also supports a work-life balance, which will give her more time to be with the Children and help with their adjustments, care and development. Care Plan Besides the point on work-life balance, M will have her sister and her parents to help her look after the Children. M's sister C has lived in Australia for more than 20 years, she is single and is close to M. She and the Children have video calls with each other on a weekly basis. The Children have also met C when they last visited Melbourne, L remembers her well, while A is too younger to remember their pre-covid visit to Melbourne. The Children have lived with their maternal grandparents after M moved out of the former matrimonial home. They are close to them and will continue with this family bonding as they settle into life in Melbourne. F's Opposition F says that the sister's apartment is under mortgage and cannot be rented out, nor could it be transferred to M as she has no job in Australia. However, it does not appear that W is expected to pay rent for the sister's apartment although rental payment is factored into her budget. Nor did F produce anything in support of these allegations. F says that the school requires a one-year proof of residence but provide no evidence to support this

requirement either. He also says that this school does not offer Chinese in their curriculum; M says that she has been and will continue to enrol the Children in mandarin classes. I find M's relocation plan well researched and thought through; there were limited cross-examination on this at trial, and I do not find the F's opposition to the relocation plan well sustained. I am of the view that M's plan remains unchallenged. Is the F's opposition motivated by genuine concern for the future of the Children's welfare or is it driven by some ulterior motive? F says in his affirmation in opposition that his family has been in Hong Kong for a few generations, he says he is proud to be a Chinese national and so are the Children. He says he has no intention to migrate to another country; and that the Children's roots are in Hong Kong. He says the M's application is due to anti-China sentiments. He says the Children has large extended family on the paternal side in Hong Kong, who can give them support. F further says Hong Kong is a low tax jurisdiction and offer more opportunities than other countries, and that it is safer and better than Australia to raise Children and better than Australia in everything and everyway. He also says M's mother and sister have serious mental disorder. In retort, W says that the Children are not close to F's extended family, and only see them once or twice a year. This was not challenged by the F at trial. I believe that F does care for the Children and they have a good relationship. I am not of the view that F has an ulterior motive in opposing M's application. However, F is entrenched in his own beliefs and from the evidence before me, he is unable to see beyond himself nor is he open to the options and the quality of life the Children can have beyond Hong Kong. To what extent would that detriment be offset by extension of the child's relationship with the maternal family? M's sister lives in Melbourne. It also appears that the maternal parents will also be moving to Melbourne. The Children spent time living with the maternal grandparents after M moved out from the former matrimonial home. There is no doubt that the Children will have continuing care and bonding with the maternal side of the family. It is F's case that the maternal grandmother has been abusive of the Children. He says that the maternal family has serious mental illness. These allegations are not borne out by the SIR; nor did F adduce any evidence to support his allegation. I believe that the Children will further develop a tighter relationship with the maternal family. I accept C's position that the family are close and supportive of each other. The Children will no doubt be benefitting from this connection. What would be the impact on the M on the refusal of his realistic proposal? M says that F has a volatile personality. After the parties separated and prior to the divorce proceedings, F has created scenes at home, and was verbally abusive with demeaning and racist comments in front of the Children. He accused M's mother of child abuse and reported to the Social Welfare Department in October 2019. F made a report to HK police in December 2019 claiming the Children were abducted by the M when according to M, he was fully aware that they have taken a cruise to Taiwan; F's report resulted in M's arrest for kidnapping in front of the Children by the Taiwan authorities. After the commencement of the divorce proceedings and before the Order for the Children were made, M says there was an incident in April 2021 when F decided to take only L out but not A, and insisted on a staying access without informing M where they were; police were called again. It was also mentioned at trial that F would call M's home, but insisted on speaking

only to L, involving his young child in access arrangements. From the oral evidence, it seems that calling the police is a habitual happening between the parties, and often involving and affecting the Children. W's counsel brings my attention in his closing to a number of revelations about F: H has accused W of racism, there was no supporting evidence and W was not cross-examined on this. There were in evidence a number of email exchanges and it is submitted that the comments show that H himself has been racist, harassing, and abusive to W; the following being only a small part of what have been produced in evidence: Fraud by Chinese for features and better than to have person with integrity.. Fraud face and family in term of you. Bit no dignity Like yours .. kidnapping or fake marriages like (September 2021) The most rubbish DNA factory DNA. Nor clearing floor like your mother sister .. I am sure your bloody mother have ton clearing job. L and A want I'll be ashamed if your (October 2021) Fact your maid is your mother (October 2021) Children Keep my children out of your mother fuckerrrk out of your fucking rubbish father (October 2021) Your Father your father is rubbish mother fucker (October 2021) You the most rubbish DNA want to marry me when you know I am not interested ,, why plot it ,, so you have rubbish DNA and we don't match ,, stop imagine children as pets,, I have seen your fucking mentally .. buying cats and dogs,, , Please,, be wise (December 2022) But I don't give the fuck, xx so you can't have my children as pets Australia is not your country nor my country,, , you want to talk,, ok, (December 2022) Your father will go to prison,, it is evidence ,, , so no mercy (December 2022) you need to see a psychiatrist. There is Ms Wrong in your brain (May 2023) W's counsel reminds me that H claims that the emails were not intentional, that he was drunk and not mentally stable, then he blames W for causing his alcoholic condition. It was pointed out that despite H saying that he had quit drinking, he was still sending offensive messages to W just before the trial in April and May 2023. M says that the stress that was caused by F has made life here intolerable, and also affecting the wellbeing of the Children. The lack of financial support also put her in a very difficult position. I accept that M is suffering emotionally from the situation created by F's on-going behaviour. Unhappy mothers will always impact children, it affects their ability to care for and support them. It must be true, therefore, allowing M's application will alleviate M's exposure to the above-mentioned stress triggers, and better place her to be well engaged in the Children's care. Will the granting of the Relocation Application be detrimental to the F and his future relationship with the Children It is clear from the SIR that the Children have a very good relationship with the F. F says the same thing in his closing submission quoting from the SWO. M has put forward a number of propositions for F's access to the Children in her revised Proposals. She also says that she has worked with F on his ad-hoc access request and change weekend access to suit his schedule. This was not contested. She continues to be supportive of a strong relationship between father and Children. I believe M's evidence and find her to be a credible witness generally. I accept her access proposals and believe that she will continue to enable F's participation in the Children's lives. Other factors to consider Wishes of the Children It is clear from the SIR that the Children are keen to go to the Melbourne, they also appear to prefer an international school curriculum. The SIR says that the Children are struggling somewhat under the local school system. The Children have

expressed the ease with which they can contact F remotely. Applying the Welfare Checklist and the abovementioned legal principles, I shall take their wishes into account. F's conduct was cross examined extensively by M's counsel on his use of abusive language and the way that he has been harassing M, some of which have been mentioned above. I accept that from the evidence before me, that F has continuously conducted himself in such a way as to cause stress on M due to his abusive language not only on her but also her family. Under cross examination, F did initially deny his use of language, but when shown the bombardment of emails (excerpts above) he sent including those during small hours of the morning, he admitted that he was under influence of alcohol, and agreed that it was harassing, abusive and would cause stress to W. He said he was ashamed and blamed it on his drinking. According to the M's (unchallenged evidence), F has often involved police in his access with the children. Sometime in December 2022 over an access on Saturday, F said to W in an email: Hi, [T], I am downstairs of your home,,, if you don't release L and A and let me have my day with my children Then I have no choice to call the police for assistance. When this was brought up in oral evidence, W says that this would happen whenever he did not get his way, F has claimed that his family members and best friends are police officers. One time in around November 2022, F called the police in front of A when L was delayed meeting up with F during the weekend access, which caused A to return home crying, shivering and asking L to come down. I also accept M's evidence that F has consistently shown a lack of sensitivity and insight as to how his actions would impact the Children. The F's conduct in these regard cause me concern and is a factor that I am taking into consideration in my balancing exercise, the continuous stressful impact on M and the involvement of the Children in the parties contention are unhealthy for their development.

Financial considerations Given that F has not paid for the Children's maintenance, M says she has to compromise the Children's education by enrolling into local schools. M also says she cannot maintain the Children's standard of living in Hong Kong. As her parents (with whom she was living at the time of trial) will eventually move to Melbourne and will sell their residence, M needs to find a place to rent. M has also cut down her own expenses in order to enable the Children to develop different interests in their ECAs. M's stance that Hong Kong has a relatively more expensive living standard is therefore not an unreasonable basis for her wish to move to Australia where she can see her financial position as a single mother supporting the Children a much better option. M will have less stress on the financial front, and their best interest well served in a situation where M is not struggling both financially and emotionally, and their standard of living can be maintained and improved. Dealing with F's objection W's counsel says this in his closing submission: H could provide no evidence for his spurious and bare allegations (1) that W has a boyfriend, (2) that W is anti-national, (3) that W's brother is an asylum seeker in the UK, (4) that defined telephone access is not happening, (5) that he was refused holiday access and (6) that he was sexually assaulted by W's maid. I have to agree, under cross examination, F said more than once that he knows that in civil litigation, he has to oppose everything. This probably stems from his knowledge from his legal training and working as a paralegal in a law firm. Then he said he has chosen not to do so as not to affect M. He brought up new responses to questions

never before mentioned in his affidavits, and when challenged, repeated that he does not wish to affect the M. F's objection to the relocation being the Children's roots are here in Hong Kong will be taken into account in my final decision, but his other allegations about school requiring one year proof of residence and C's house not being able to be rented to M due to a mortgage are unsubstantiated allegations. He was also wrong about his Children not being Australian citizens, the ISWO confirms that they are by descent; and hence be able to enjoy the free education and healthcare in Australia. Furthermore, I find F's evidence under cross examination on his education, training and work extremely confusing. He claims he studied a legal diploma in HKU in 1999, did trading business in shoes in China between 2002 to 2005, and took a law course in London in 2006, first he said it was in London then said it was just a remote course but he did not graduate. Then he said he was in London in 2006 but did not do anything. He refused to answer counsel's question as to his work history from 2007 to 2016, and when pressed said he was unemployed. He then said he was a paralegal at a law firm from 2016 for two years and started his own company formation business in 2018. He says there is no business now due to the pandemic but he has other source of income from India. I find his version of events generally unsupported by evidence. He was evasive in his responses and contradicts his own written evidence in court. I do not find him to be a credible witness. F quotes a number of articles about how Fatherlessness affect Children in his closing submission, these are quite dated and was not put into evidence at all for M to respond. I have therefore not taken these into consideration. Holistic assessment of what is in the best interest of the Children: the Balancing Exercise I have only one guiding principle in making determination of such a nature, whether I am of the view that allowing the Children to relocate to Australia is in their best interest. This is not a case where one party is uprooting themselves from Hong Kong and moving to a foreign unfamiliar country. M is taking the Children to a place with which she has nexus, family support and familiarity. I accept M's evidence of her long-established intention to move to Melbourne, which is evidenced by how she prepared the Children from their kindergarten education in an international school setting and enrolling L into the Australian curriculum at a young age. I accept M's relocation plan, and that in particular her budget is formulated with input from her sister who has knowledge of the standard of living in Melbourne. I also accept M's undertaking with regard to the Children's annual return to Hong Kong, and her access proposals. M's counsel submits that F never said that he is not able to travel to Australia to see the Children. Counsel reminds me that F admitted to having financial resources from his father's land in India. F's suggestion in his reply affirmation that M can leave by herself and he can take over the M's role with the support of his family has no basis. No evidence has been put forward in his ability to do so in terms of accommodation, finances and care support; nor has he shown that the Children have a close relationship with his side of the family. I conclude that the Children will have better education, accommodation, and living environment in Australia, supported by a healthcare system to which they have access. They will have more time with M who will enjoy work-life balance, and they will enjoy more bonding with their maternal grandparents and aunt. The Children will continue to have contact with F via various remote means, access with him in Hong Kong annually and as and

when he chooses to visit them in Melbourne. Therefore, I find that relocation to Melbourne, Australia is in the best interest of the Children. Children s passports M has raised in her reply affirmation that F did not respond to her ask for the Children s Australian passport to be renewed. It is not clear why F did not consent. M says that their interaction in the past has made their ability to communicate very difficult and asks for sole custody. While I have observed their communication and accept that this could be difficult; I will maintain the Order for joint custody at this point of time. F is directed to co-operate on the issue of Australian passports for the Children. M has liberty to apply to vary custody if joint custody poses continuing difficulties. The Order I make an Order in terms of M s application and allow relocation of the Children to Australia with immediate effect. For the avoidance of doubt, the Order made on 4 August 2021 granting joint custody of the Children to the parents, care and control to M do stand. The access proposals by M (per her revised statement of proposals and paragraph 49 above) are to be incorporated into the Order. The Court accepts her undertaking put forward by her counsel with regard to the Children s annual return to Hong Kong. Removal restriction in the Order of 4 August 2021 shall be uplifted and removed. I make no Order as to Costs. This to be a Cost Order nisi to be made absolute within 14 days of this Order. (Thelma Kwan) District Judge Petitioner represented by Mr Shaphan Marwah instructed by Charles Russell Speechlys LLP Respondent acting 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 yrykdk]VPJ gdro gd77 gd*~ h3`q hjfz hFR? gd~[gd77 {q{g{ aZaTaHaTaTa hjfz hFR? huqm h*(R huqm huqm hnHW huqm huqm hWji hFU- gd=| hFU- hWji hFU- hWji gd=| gd=| gd=| gd=| gd=| gd=| gd=| ~rh\rh h*(R gd=| gd=| gd=| gd=| gd=| gd[# gd[# xocoUIU=U=U=U=U gd[# gd[# gd[# gd[# gd[# gd[# {o{o{c} gd[# gd[# gd[# gd[# he;b he;b gd[# gd[# gd[# gd[# gd[# gd[# xrlrf flf f he;b hb6s he;b h*uH he;b gd[# gd[# gd[# gd[# gd[# h*uH gd[# gd[# gd[# gd[# vpvpv hu]= hG5M hu]= gd[# gd[# gd[# gd[# hG5M hG5M gd[# gd[# gd[# gd[# gd[# hQdu }tj} hfL hQdu gd[# gd[# gd[# gd[# gd[# {ocoWo hfL hfL gd[# gd[# gd[# gd[# hfL hfL hfL ymym ulcl}c hQdu gd[# gd[# gd[# gd[# gd[# gd[# gd[# gd[# hL0. jfjfjf hL0. ha14 h/ (^ gdlZ gd` ` gd` ` h*fG &`#\$ gdlZ mH <nH sH <tH mH <nH sH <tH mH <nH sH <tH mH <nH sH <tH [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"/> *&F!^ #@mv 88\$L/ X\ h&g%|?z6 REq2 73E= XAR} | *Rm(z]qmx! Cgnz #e0rx#T \$ \ x #e0r *&F! REq2 \$ \ x 73E= h&g% jAx9 & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title L8Rs (\$Rs 0x6Rs (\$Rs 0x6Rs <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources xmlns:b="http://schemas.openxmlformats.org/

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