

HONG KONG / JUDGMENT

CYMY v. YKKE**[2025] HKFC 97****COURT**

Family Court

DECIDED

9 June 2025

CASE / FILE NUMBER

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**[2025] HKFC 97 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 142 OF 2024**

IN THE MATTER of WNM, a minor and YCM, a minor and IN THE MATTER of Section 8D(2)(b) of
the Guardianship of Minors Ordinance (Cap. 13)

BETWEEN CYMY Applicant and YKKE Respondent

Coram: His Honour Judge S Lo in Chambers (Not Open to Public) Dates of hearing: 6 May 2025
Date of Judgment: 9 June 2025

J U D G M E N T (Jurisdiction under GMO)

INTRODUCTION

By the Amended Originating Summons filed on 16 July 2024 (Amended OS), the Applicant has applied to be the guardian of 2 minors (2 Children). The 2 Children are her nieces: WNM, born in Mainland China in January 2009 and was a holder of a Hong Kong Permanent Identity Card. She is now 16 years old; and YCM, born in Hong Kong in May 2011 and was a holder of a Hong Kong Permanent Identity Card. She is now 14 years old. The 2 Children are the daughters of the Applicant's elder brother (Ernie) and a Ms Wu (Ms Wu). Ernie and Ms Wu both passed away on 12 February 2020 and 27 September 2021 respectively. The 2 Children currently reside in

Zhongshan, the People's Republic of China (), having moved there in or around July 2024 . Since their birth, they have been and continue to be habitually resident in the PRC. It is undisputed that they are permanent residents in Hong Kong although their Hong Kong Permanent Identity Cards have been expired and not yet renewed. Since passing away of their parents, the 2 Children have been taken care of by a Ms Hu (Ms Hu), who is about 23 years old, the daughter of Ms Wu and her ex-husband. Therefore, Ms Hu is the 2 Children's half-sister. The 2 Children have been financially supported since 2020 by:

- i. a Madam Lee, Ernie's mother (Madam Lee), ii. a Mr K Yim, Ernie's brother (Mr K Yim); and iii. the Applicant. While the 2 Children are under the direct care of Ms Hu, the Applicant has arranged for the admission of the 2 Children to an international school in Zhongshan with the agreement of Ms Hu and the 2 Children. The Applicant aged 72 living in the United States (). She was born and raised in Hong Kong. She is a Hong Kong permanent resident and a Canadian passport holder but would frequently travel back and forth between the US and Hong Kong. For the past few years, she has spent a significant amount of time in Hong Kong. She also confirmed that she will remain in Hong Kong for as long as necessary to care for the 2 Children. She has further obtained a Zhongshan Resident Permit in November 2024 in preparation for taking care of the 2 Children in Zhongshan. From the International Social Welfare Report and Hong Kong Social Welfare Report dated 18 December 2024 and 9 January 2025 respectively, the 2 Children's relationship with the Applicant are favourable. Importantly, the 2 Children have clearly expressed their wishes for the Applicant to be their guardian. None of the following persons, who may be the interested parties, oppose the Applicant's application to be the guardian of the 2 Children and each of them have signed a written confirmation to that effect: Ernie's wife; Ms Hu ; Madam Lee; Mr K Yim; Ms Alisha Lam, daughter of Ernie's late elder sister (ie cousin of the 2 Children); Mr Fu Baolin, Ms Wu's father (ie grandfather of the 2 Children); Mr Fu Benyang, Ms Wu's brother (ie uncle of the 2 Children). The Respondent, who is the brother of Ernie and the Applicant, is the only person who has indicated opposition to the Applicant's application. The Respondent is 75 years old and was born and raised in Hong Kong. He holds a Hong Kong permanent resident identity card, a US passport, and recently, a Residence Permit for Hong Kong, Macao, and Taiwan Residents issued by the Municipal Public Security Bureau in the Pudong District, Shanghai, the PRC. He has been living and working in San Francisco, California, USA since 1987 and travels to Hong Kong four times a year on average for business and visiting friends and family. He also has a Shanghai residence permit and travels frequently to the PRC for business and to visit his friends. By the Order of 4 October 2024, the Respondent was joined as a party to these proceedings and further directions were given to enable the parties the opportunity to make submissions to the Court on the issue of jurisdiction. THE RESPONDENT'S SUMMONS The Respondent took out the present summons (s Summons) on 22 January 2025 to challenge the Hong Kong Family Court's jurisdiction and to challenge this court as the appropriate forum. By the R's Summons, he seeks the following orders:- The Amended OS be dismissed for want of jurisdiction; and Further and/or alternatively, the Hong Kong Family Court shall not exercise any jurisdiction it may have in these proceedings

in favour of the Court in Zhongshan (Zhongshan Court), The People s Republic of China, on the grounds of forum non conveniens. The Respondent proposed to be a co-guardian of the 2 Children with the Applicant by making a joint application in the Zhongshan Court. The Applicant refused to accept since she considered that the Respondent does not have the welfare of the 2 Children at heart and has the ill motive since he had commence a litigation against the Ernie s estate concerning the share disputes in a company under HCA1241/2019 . The Single Joint Expert Report By the Order of 3 February 2025, parties were given leave to adduce expert evidence on the issue of guardianship in the PRC by way of single joint expert (). Mr Ryan Tang of Messrs. AllBright Law Offices was appointed as SJE on 13 March 2025. The SJE Report filed 15 April 2025 confirmed inter alia that the PRC would have jurisdiction over the application for guardianship of the 2 Children: Cases of contesting guardianship or application for change of guardianship shall be under the jurisdiction of the people court in the place of the minor s domicile, recorded in their household registration or other valid identification system. If a person s habitual residence is different from his domicile, the habitual residence is deemed their domicile. Habitual residence refers to the place where the person has resided continuously for more than one year. Based on the information provided by the parties to the SJE, the SJE considered that the people s courts shall have jurisdiction to determine any intended application for the appointment of guardianship of the 2 Children either (a) in the pace of their registered household, in Xing Yang City, if they still keep their registered household valid; or (b) their place of habitual residence, in Zhong Shan City. A minor may have one guardian or several people serving as joint guardians. After the minor s parents, the following persons, if competent, shall act as guardian in the following priority order: (a) paternal or maternal grandparents; (b) elder brothers or sisters; any other individual; or (c) any organisation willing to act as guardian, provided that, consent is obtained from the residents committee, the villagers committee, or civil affairs department in the place where the minor s domicile is located. A guardian may be determined through agreement among the persons who are legally qualified to be guardians. The true will of the minor shall be respected in determining the guardian through agreement. Where dispute arises over the determination of a guardian, the guardian shall be appointed by the residents committee, the villagers committee, or the civil affairs department in the place where the minor s domicile is located. A party not satisfied with such an appointment may request the people s court to appoint a guardian. The relevant parties may also directly request the people s court to make such an appointment. When appointing a guardian, the committee involved or people s court shall respect the true will of the minor and appoint a guardian in the best interests of the minor. When the people s court designates a guardian, it shall respect the true will of the minor and formulate it based on the principle of best interests of the minor with specific reference to the following factors: The closeness of life and emotional connection between the candidate and the minor. The priority order of the candidates who are legally qualified to be guardian. Whether the candidate has any history of illegal or criminal activities detrimental to fulfilling their guardianship duties. The candidate s capability, willingness, and moral character etc. Where there is no person legally qualified to be a guardian, the civil affairs

department shall act as the guardian, and the residents committee or villagers committee in the place where the minor's domicile is located may also act as the guardian if competent. The duties of a guardian are to represent a minor to perform civil jurisdiction acts and to protect the personal, proprietary, and other lawful rights and interests of the minor. A guardian who fails to perform his duties or infringes upon the lawful right or interest of the minor shall bear legal liability. (emphasis added) In gist, the SJE considered that the PRC courts shall have jurisdiction to determine any intended application for the appointment of guardianship of the 2 Children either (a) in the place of their registered household, in Xing Yang City, if they still keep their registered household valid; or (b) their place of habitual residence, in Zhong Shan City provided that the 2 Children have resided continuously for more than one year. THE INTERNATIONAL SOCIAL INVESTIGATION REPORT The International Social Welfare Investigation Report (ISIR) was filed on 18 December 2024, in which the social worker made very detailed investigations in the PRC. She attended the property located at the city in Zhongshan where the 2 Children currently resided and also personally interviewed Ms Hu and the 2 Children who confirmed that they all agreed the Applicant should be the guardian of the 2 Children. The Hong Kong Social Investigation Report The Hong Kong Social Welfare Investigation Report () was filed on 9 January 2025 and the relevant excerpts are as follows: Although the Children once held Hong Kong identity cards, they have never lived, studied, or resided in Hong Kong. Both sisters have lived in Mainland China and attended school in Mainland China. Consideration should be given to the applicant's past record of caring for the children, as well as their understanding of the child's personality, traits, and developmental needs. This ensures that any future arrangements align with the child's needs and serve their best interests. The Applicant has had minimal contact with the Children over the past year. While advice may be offered as an elder, there may not be a thorough understanding of the Children's personalities, strengths, preferences, etc. As a US citizen, (the Applicant) travelling long distances to manage matters concerning the Children would be required. This arrangement does not seem to be in the best interests of the children. Given these factors, the social welfare officer expresses reservations about the practicality of the guardianship applications and is therefore unable to make a recommendation (emphasis added) Relevant Sections in the GMO The Amended OS commenced by the Applicant in Hong Kong is based on section 8D(2)(b) of the Guardianship of Minors Ordinance, Cap. 13 (). The material parts of section 8D of the GMO provide as follows:-

- (1) After a parent or guardian of a minor dies, the court may, if it thinks fit, appoint a person to be a guardian of the minor if no guardian has been appointed by the deceased parent or deceased guardian under section 6;
- (2) On application by any person, the court may, if it thinks fit, appoint the person to be the guardian of a minor if

- (b) the minor does not have any parent, guardian or other person having parental rights with respect to the minor. In this case, there is no dispute that the 2 Children do not have any parent, guardian or other person having parental rights with respect to them. In accordance with section 2 of the GMO, court means the Court of First Instance or the District Court . Section 25 of the GMO expressly provides that the Court of First Instance, not the District Court, is not limited with respect to jurisdiction in respect of the appointment of guardians in respect of minors. There is an inherent jurisdiction (*parens patriae*) in respect of the welfare of a child in the Court of First Instance (see section 12(2) High Court Ordinance, (Cap 4)), but not the District Court: QMY v GSS [2015] HKFLR 460 (Court of Appeal judgment 8.3 (confirmed in MY v FT (Jurisdiction) [2022] 5 HKC 645, 32, 34). Besides, there is nothing in Part 3 (ss.5-9A) of the GMO Appointment, Removal and Powers of Guardians that requires the minor in respect of whom the application for guardianship is made to be ordinarily resident or physically present in Hong Kong. More importantly, section 26 of the GMO Jurisdiction over persons not domiciled in Hong Kong provides as follows:- The jurisdiction conferred on any court by this Ordinance shall be exercisable notwithstanding that any party to the proceedings is not domiciled in Hong Kong. Hence, according to this section, in order to trigger the court s jurisdiction, it is unnecessary to prove that the Applicant, the Respondent or any one of them has to be domiciled in Hong Kong. Parties Counsel have not provided any legal authorities nor submitted that any party to the proceedings is required to have any connection or substantial connection in Hong Kong . In my view, it is entirely unnecessary for them to prove that. Further, the GMO requires the court, as a matter of general principle in relation to proceedings thereunder before it, to regard the best interests of the minor as the first and paramount consideration . Section 3 of the GMO General principles provides as follows:-
- (1) In relation to the custody or upbringing of a minor in any proceedings before any court the court shall regard the best interests of the minor as the first and paramount consideration and in having such regard shall give due consideration to the views of the minor any material information including any report of the Director of Social Welfare available to the court at the hearing; Relevant Legal Principles and Parties arguments The leading case in relation to the Court s jurisdiction under the GMO is the judgment of the Court of Final Appeal () in QMY v GSS (2017) 20 HKCFAR (s judgment), where the CFA addressed the following question of law specifically:-
- (a) Does the Court have jurisdiction to entertain applications under the (GMO), in respect of a child who is neither ordinarily resident nor present in Hong Kong? 8 of the CFA s judgment. As set out in the CFA s judgment, the answer to this question is a unanimous 33 (per Tang PJ), 46 (per Fok PJ), 1 (per Ribeiro PJ), 49 (per Stock NPJ), 55 (per Gleeson NPJ). The Court of Appeal decision on jurisdiction issue is overturned by CFA in QMY s case. Mr Chan for the Applicant submitted, which I totally agree, that the Court s jurisdiction under the GMO is a matter of statutory construction. In this regard, the following points were made by the CFA:- The GMO contains no explicit limit on the Court s jurisdiction: 11 of the CFA s judgment (per Tang PJ). The CFA endorsed the Court of Appeal s observation that Unlike the Matrimonial

Causes Ordinance (Cap.179) which restricts the right to petition for divorce in Hong Kong to those who are domiciled here or ordinarily residing here or has a substantial connection here, there is no such restriction in the GMO. There is nothing in the wording of s.10(2) that requires the minor in respect of whom the application is made to be ordinarily resident or physically present in Hong Kong. This construction is supported, as a matter of context, by s.26 of the GMO, which expressly provides that jurisdiction under the Ordinance is exercisable notwithstanding that any party to the proceedings is not domiciled in Hong Kong. It is also supported, contextually, by the fact that, unlike other family law statutes, there is no express requirement of residence or presence in Hong Kong as a condition for the exercise of jurisdiction. Moreover, as a matter of purpose, the GMO requires the court, as a matter of general principle in relation to proceedings thereunder before it, to regard the best interests of the minor as the first and paramount consideration 41 of the CFA s judgment (per Fok PJ). (emphasis added) Concerning the legal principles on forum non conveniens, they are conveniently summarised as follows: The question is whether there is some other available forum having competent jurisdiction in which the action may be tried more suitably for the interests of all the parties and the ends of justice. The applicant for the stay must establish that: Hong Kong was not the natural or appropriate forum in the sense that it did not have the most real and substantial connection with the action; and That there was another available forum which was clearly or distinctly more appropriate than Hong Kong. If the applicant is able to establish both (a) and (b), then the plaintiff in the Hong Kong proceedings had to show that he would be deprived of a legitimate personal or juridical advantage if the action was tried in a forum other than Hong Kong. If the plaintiff was able to establish this, the court would have to balance the advantages of the alternative forum with the disadvantages that the plaintiff may suffer: 28-30 of the CFA s judgment. Ms Booth for the Respondent submitted that in QMY v GSS, the applicant mother applied for a maintenance order, rather than custody order, under section 10 of the GMO, which is immediately distinguishable from the R s Summons. That case concerned a child born out of wedlock, and an application against the respondent father, who was a Hong Kong permanent resident, for him to pay for the maintenance for the child notwithstanding that the child was habitually residing in PRC and not living in Hong Kong. Ms Booth argued that: The exercise of the Court s discretion is fact dependant (32-35 of the CFA s judgment). In this instance, the Court was solely concerned with maintenance for the child (24-25). Jurisdiction was established by serving the respondent, a Hong Kong permanent resident, who acknowledged service within the jurisdiction (38-39). The same does not apply in the present case. Nevertheless, the Court s jurisdiction to grant the s. 10 GMO order was still subject to the question of forum conveniens (27). The challenge by the respondent was ultimately dismissed. The Court s power to decline jurisdiction when faced with an application for a stay based on forum non conveniens must be distinguished from the Court refusing to exercise its discretion to make or refusing to make any order in guardianship proceedings. In respect of the former, the Court should be guided by the forum non conveniens principles, though always bearing in mind in the application of these principles that the interest of the minors was of paramount importance (34). Ms Booth further relied

on LN v SCCM (forum non conveniens) HYPERLINK "<https://plus.lexis.com/apac/document/documentlink/?pdmfid=1539266&crid=3655aab2-9fab-447b-ab39-c0ac8077fb5d&pddocfullpath=%2Fshared%2Fdocument%2Fcases-hk%2Furn:contentItem:5PJX-X711-DY33-B1PN-00000-00&pdcontentcomponentid=305740&pdproductcontenttypeid=urn:pct:412&pdiskwicview=false&pdpinpoint=&prid=d775a71a-f2cf-4a8a-ad52-f51ea59969e8&ecomp=cgpck>" \o "Hong Kong Family Law Reports"

[2013] HKFLR 358 29 submitting that in general, the jurisdiction where the children reside should try the matter. Rayden & Jackson on Divorce and Family Matters, 18 Ed, Vol 2, at 36.44, cited in MY v FT (Jurisdiction) [2022] 5 HKC 645, 39 stated that the Court s choose, as a matter of policy, not to exercise such when another public authority has power in the substance of the matter. My view on District Court s jurisdiction under section 8D(2)(b) GMO To start with, it is very important and necessary to repeat that the GMO contains no explicit limit on the Court s jurisdiction . In other words, the legislature never expressly imposes any restriction, requirement, pre-condition or whatsoever that the minor in question must be physically present in Hong Kong or cannot be a habitual resident elsewhere. There is also no evidence before me that the legislature has such intention. For the purpose of comparison, the legislature did expressly impose some restrictions on the Court s jurisdiction in some statues, like the Matrimonial Causes Ordinance, Cap 179 and the Parent and Child Ordinance, Cap 429. The general principles in common law that the jurisdiction where the children reside should try the matter, and that the Court s choose, as a matter of policy, not to exercise such when another public authority has power in the substance of the matter are not rigid rules of law without exception. Each case has its own facts. In any event, I cannot accept that these general principles shall affect the true construction and interpretation of section 8D(2)(b) of the GMO, or other provisions in whatever statute, as to whether or not the District Court or other court has the necessary jurisdiction. In my view, if the court really interprets this particular section by imposing a pre-condition that the minor cannot be a habitual resident elsewhere, it will be very likely to create some scenarios which are out of our imagination and totally undesirable, unjust and unreasonable. I do not think that it is appropriate for me to image what the scenarios are in this judgment. It seems at first that the argument made by Ms Booth for the Respondent that as QMY v GSS is a case about an application for a maintenance order (rather than a custody order or order relating to children matters) under section 10 of the GMO, the CFA s judgment shall be distinguished and not applicable in the present case, is very attractive. With due respect, I disagree with this argument. According to the CFA s judgment, the CFA was to determine the certified question of law whether the Court have jurisdiction to entertain applications under the GMO, rather than under a particular section of the GMO, in respect of a child who is neither ordinarily resident nor present in Hong Kong. The answer is affirmative. Ms Booth for the Respondent tried to argue that if QMY v GSS is a case about an application for a custody order, an order for access or other matters relating to children welfare under section 10 of the GMO, the decision of the CFA may not be the same. I disagree but such argument may have some forces in respect of the

application under forum non conveniens principle, but not jurisdiction issue. My interpretation of the CFA's judgment is that the District Court do have jurisdiction to entertain all kinds of applications made under any provisions of the GMO, in respect of a child who is neither ordinarily resident nor present in Hong Kong. I consider that I am bound by the CFA's affirmative answer. I might have to answer the next question, namely whether the Court should decline or refuse to exercise such jurisdiction solely on the ground that the child in question who is neither ordinarily resident nor present in Hong Kong. I would have no doubt to answer 34 of the CFA's judgment as per Tang PJ said, agreed by other CFA justices: The second question: If such jurisdiction exists, does the Court have a discretion (whether by reference to the Court's inherent jurisdiction or otherwise) to decline jurisdiction other than on forum non conveniens principles? Here the court's power to decline jurisdiction when faced with an application for a stay based on the ground of forum non conveniens must be distinguished from the court refusing to exercise its discretion to make or refuse to make any order in guardianship proceedings before it. In respect of the former, obviously the court should be guided by the forum non conveniens principles, though always bearing in mind in the applications of these principles that the interest of the minor is of paramount importance. My answer is no. That is to say, the District Court have no discretion (whether by reference to the Court's inherent jurisdiction or otherwise) to decline jurisdiction other than on forum non conveniens principles. The general principle that the jurisdiction where the children reside should try the matter shall be one of the very important factor but not the conclusive factor for the court to consider declining jurisdiction. It is inappropriate for me to lay down a list of other relevant factors here. As said in 34 of the CFA's judgment, the Court's power to decline jurisdiction when faced with an application for a stay based on forum non conveniens must be distinguished from the Court refusing to exercise its discretion to make or refusing to make any order in guardianship proceedings. In respect of the former, the Court should be guided by the forum non conveniens principles, though always bearing in mind in the application of these principles that the interest of the minors was of paramount importance. Hence, I have to bear in mind that the interest of the 2 Children was of paramount importance. Besides, the 2 Children are Hong Kong permanent residents with a right of abode here. The Hong Kong court shall be very reluctant to decline jurisdiction over them. 18 of the CFA's judgment (referring to *In re Willoughby (An infant)* (1885) 30 Ch D 324) stated that: it is only under extraordinary circumstances that the Court would make an order when the infant is not here, and when there is no property here, and when the persons who have the custody of the infant are not subject to the jurisdiction, as they would be if resident in this country. Arguably, where the child is habitually resident elsewhere, and where there is no relief available to the child in another jurisdiction to determine any intended application for the appointment of guardianship of the 2 Children, the Applicant may apply for guardianship order to the Court of First Instance under inherent jurisdiction. Nevertheless, it is entirely out of the scope of the discussion in this case. To conclude, I am of the view that as a matter of statutory construction, the District Court do have jurisdiction to entertain application for

guardianship order under section 8D(2)(b) of the GMO, in respect of a minor who is neither ordinarily resident nor present in Hong Kong, but habitually resides elsewhere. Enforceability of guardianship order made under section 8D(2)(b) of the GMO in PRC Although parties counsel had not made any written submissions on this issue, I am of the view that a guardianship order made under the GMO by a Hong Kong court is not enforceable in PRC according to the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region made between the Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region in February 2022 (Arrangement). The relevant Hong Kong court orders in the matrimonial or family proceedings are set out in Schedule 3 to the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance Cap 639, reflecting Article 3(1)(2) of the Arrangement, which only include an order in relation to custody but no mention of guardianship order. Nonetheless, Mr Chan rightly quoted 21 of the CFA's judgment (per Tang PJ) stated as follows: In the case postulated by Cheung JA, given that the jurisdiction of the court is not expressly limited by s.10 of the GMO and since in *Re Willoughby (An Infant)* the Court made the order even though it could not be enforced, it may be, though I do not decide, that in a proper case an infant's status as a permanent resident may persuade a Hong Kong court to make a guardianship order under s.10. In the circumstances, I am of the view that this court can still make the guardianship order even though it could not be enforced in the PRC. My view on forum non conveniens The burden no doubt lies on the Respondent to prove that all the requirements in the relevant principles are satisfied. According to the first principle, the question is whether there is some other available forum having competent jurisdiction in which the action may be tried more suitably for the interests of all the parties and the ends of justice. It is undisputed that the 2 Children have not resided continuously in Zhong Shan City for more than one year, until July 2025. I am of the view that obviously according to the SJE Report, the PRC courts in Zhong Shan City or Zhongshan Court do not have jurisdiction to determine any intended application for the appointment of guardianship of the 2 Children in the meantime. Or only after July 2025, the parties or any of them will then be entitled to commence application for the appointment of guardianship of the 2 Children in Zhongshan Court. Regarding the PRC courts in Xing Yang City, Ms Booth for the Respondent fairly conceded that this court shall not take into consideration as only Zhongshan Court but not Xing Yang Court is mentioned in the R's Summons and that as a matter of fact, the 2 Children do not have valid registered household in Xing Yang City. Hence, Xing Yang Court is not an available forum having competent jurisdiction. In other words, at the date of the Amended OS or R's Summons, or even up to the date of this judgment, there is no other available forum having competent jurisdiction in which a guardianship order can be made in respect of the 2 Children. This is already fatal to the Respondent's application. It also answers the query made by the Respondent as to why this application is not being brought by the Applicant in the jurisdiction where the 2 Children actually reside. Indeed, there is no

evidence that the Respondent has ever tried to commence the guardianship proceedings in PRC. He did not provide any reason as to why he did not do so. If he did commence the guardianship proceedings in PRC, he can apply for stay of the guardianship proceedings in Hong Kong. But in the present case, he obviously cannot. It further illustrates that the general principle that the jurisdiction where the children reside should try the matter shall not and cannot be rigidly applied without any flexibility. As said in the SJE Report, Zhongshan Court only has the necessary jurisdiction only when the 2 Children habitually resides in Zhongshan for more than a year. That is also the reason why I shall refuse to decline to exercise the jurisdiction in the present case. In my view, in the best interest of the 2 Children and to protect their interests, the court no matter in Hong Kong or PRC shall issue the guardianship order as soon as practicable. Although according to the SJE Report, where there is no person legally qualified to be a guardian, the civil affairs department, the residents committee or villagers committee shall act as the guardian, I consider that bearing in mind the best interest of the 2 Children, if the Applicant is legally qualified to be their guardian, it is unnecessary for the said department or committees to act as the guardian. Whether Zhongshan Court is the clearly and distinctly more appropriate forum to deal with the 2 Children s guardianship Since I have already determined that Zhongshan Court do not have jurisdiction to determine any intended application for the appointment of guardianship of the 2 Children, I do not think necessary to answer the issue whether Zhongshan Court is the clearly and distinctly more appropriate forum to deal with the 2 Children s guardianship For the sake of completeness, I would say that Hong Kong is geographically very close to Zhongshan. The driving time is about 1.5 or 2 hours. Common sense tells that the culture, living environment, language etc of these 2 places are very similar. Indeed, many Hong Kong people are working or living there after their retirement. I do not immediate see how Zhongshan Court is the clearly and distinctly more appropriate forum than Hong Kong Court to deal with the 2 Children s guardianship, especially when an international social welfare report is ordered by the Hong Kong Court for ascertaining the wishes of the 2 Children and any other matters, such as medical or education issues etc, if necessary. The 2 Children who are 16 and 14 years old respectively, are no doubt mature enough to express their wishes to the social worker or other people. Further, as the 2 Children s primary carer, Ms Hu who is also a habitual resident of Zhongshan, did not wish to be joined as a party. She expressed in writing confirmation that she agreed this Court to grant an order of guardianship to the Applicant. The 2 Children s wishes are in favour of the Applicant. In my view, even if the guardianship proceedings are commenced in the Zhongshan Court as suggested by the Respondent, the judgments made by the Hong Kong Court and the Zhongshan Court will be very likely the same. In other words, there will be no risk of conflicting judgments of these 2 forums. Ms Booth also relied on MY v FT, in which the minor concerned was in Singapore and the Mother instituted proceedings under the HYPERLINK "<https://www.elegislation.gov.hk/hk/cap512>" \t "_blank" Child Abduction and Custody Ordinance, Cap 512 against the Father who abducted the minor without trace. It was held that questions of custody were to be dealt with by the courts of

the jurisdiction where the minor habitually resided, as well as any question relating to education and medical matters (ie Singapore): 44 of the judgment. I think that this case commenced under Cap 512 is totally irrelevant to the present case issued under the GMO. If necessary, I find that Zhongshan Court is not the clearly and distinctly more appropriate forum than Hong Kong Court to deal with the 2 Children s guardianship.

Conclusion

The parties also raised the issue whether the Respondent had submitted to the jurisdiction of the District Court. Due to the finding and conclusion made above, I consider unnecessary to determine this issue. In the circumstances, the R s Summons must be dismissed. I can see no reason that costs shall not follow event. I order that the Respondent do pay all costs in relation to this application to the Applicant, including all costs reserved, if any, with certificate of counsel, to be taxed if not agreed. This is an order nisi to be absolute unless any of the parties apply to vary the same within 14 days. (Simon Lo) District Judge Mr Albert Chan instructed by C.Y. Tsang & Co., Solicitors for the Applicant Ms Madeleine Booth instructed by Oldham, Li & Nie., Solicitors for the Respondent Bundle pg.206, para.9 of SIR Bundle pg.192-193 Bundle pg.99-122 Family Court means that division of the District Court which is for the time being assigned by the Chief Justice to deal with Matrimonial Proceedings and / or Family Proceedings, as defined in the Practice Direction 15.12. See also section 2 of the Family Procedure Ordinance, Cap 646, definition of Family Court Court of Appeal decision on jurisdiction issue is overturned by CFA in QMY s case. Comparing with Part II of the Matrimonial Causes Ordinance Cap 179, court s jurisdiction in divorce proceedings etc. 11 of the CFA s judgment (per Tang PJ) 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 h_?o h_?o h_?o h_?o h_?o h_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o gd_?o o gdC`s gd\_?o gd\_?o gd\_?o gd\_?o gd\_?o ~pf~f~f~[P~ h\_?o h\_?o h\_?o h\_?o h\_?o h\_?o gdS~ gdS~ gdS~ a]VJV gdS~ gdS~ htIU hjxN htIU htIU gdS~ gdS~ gdC`s hjxN mH <sH < htIU htIU htIU htIU htIU gdS~ gdS~ uf\fpFD htIU htIU htIU gd x gdS~ gdS~ |r|h|YMYA|7 h x h x h x h x h x h x lcUHC mH <sH < gdS~ gdC`s gdS~ |`|Q gdc; gdc; gdS~ gdS~ gdc; gdS~ gdC`s gdS~ gdS~ hC`s gdS~ gdS~ gdl* mH <sH < gdS~ gdS~ gdS~ zpz^Q gdc; gdC`s gdS~ gdS~ qbqXRH ndnW gd =C gdS~ zj]S yoy\_ hm}u h =C gdC`s gdS~ gd =C hm}u hm}u hm}u gdC`s gd =C gdS~ sfsfs s\s\s\ hm}u {qj} [d[O htIU gdC`s gd =C gdS~ hm}u hm}u hm}u hm}u hm}u hm}u gdC`s gd =C gdS~ vovh }tkbk hfAN gdm} u meWJC hjxN hjxN hjxN hjxN hfAN hfAN sl`X` gdm}u [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"/> T\$mrm <xX> *\3M VBZ

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