

HONG KONG / JUDGMENT

CYYC v. TVKT

COURT

Family Court

DECIDED

16 June 2016

CASE / FILE NUMBER

FCMC14649/2014

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FCMC 14649 / 2014

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

MATRIMONIAL CAUSES

NUMBER 14649 OF 2014

BETWEEN

CYYC

Petitioner

and

TVKT

Respondent

Coram: Deputy District Judge Susan Wong in Chambers (Not Open to Public)

Dates of Hearing: 6, 11, 12 and 13 May 2016

Date of Judgment: 16 June 2016

Dates of Closing Submission: 18 and 20 May 2016

J U D G M E N T

(Boarding School)

This is a trial to determine whether the only child of the family, M should study at a boarding school in the United Kingdom (UK) in September 2017 when he would be at the age of 13.

The Petitioner Mother asked for:

Leave be granted for her to make the appropriate applications to small boarding schools and her current choice is Epson College or Bryanston School because they have a high proportion of boarders to day pupils. She also provides the names of Lancing College and Christ's Hospital School as two backup schools;

The Father would use his best endeavour to facilitate the application process and the preparation thereof;

In the event that M is accepted by more than one school, both the Mother and the Father do endeavour to agree the best one for M;

Leave be granted for the Mother to remove M out of the jurisdiction to UK to attend boarding school.

Brief family history

The Mother was born in Hong Kong and she has an elder sister and brother who are respectively 13 and 11 years older than her. The Mother received primary education in Ghana and secondary boarding school in UK at the age of 11. She then graduated from a law school in England and had been a solicitor until she retired from her practice on 30 November 2014.

The Father was born in Vietnam and he received education in Hong Kong before he went to university in the United States (USA). He is currently not employed.

The parties were married in Hong Kong in August 2001. M was born on (Date and Month Deleted) 2004. It is not in dispute that shortly after he was born, the Father gave up his employment and had become a house-husband or in the Mother's words, a 'guytai'. M is now 12 years of age and he has been studying at the (Name of School Deleted) and is now in Year 7.

Divorce petition was issued by the Mother on 4 November 2014 and decree nisi was pronounced on 21 September 2015. Despite that however, the parties had still been living together until 1 February 2016.

At some stage in the course of the proceedings, the parties managed to agree joint custody and at the CDR hearing, they also agreed a share caring schedule whereby the Mother would be responsible for M every Mondays and Thursdays and the Father would have Tuesdays and Wednesdays and they both have alternative Friday, Saturday and Sunday. In effect, each of the parents has 7 days in a schedule of 2 weeks. As for the question of care and control, both parties have decided to adjourn the issue until this application is concluded because if M is allowed to attend boarding school in the UK, both Ms Yip representing the Mother and Mr Pilbrow representing the Father submitted that the argument would be academic in that it would only be

a question as to how to divide the exeats and school holidays between the parties.

Why is it the need to make the present application?

The Mother said that it has always been the consensus between the parties that M would be leaving (Name of School Deleted) at the age of 13. It is the Father's constant change of stance making this application inevitable.

The Father on the other hand said that although there is no question that M should go abroad for tertiary education, there has not yet been any consensus for M's secondary schooling.

With respect, I do not agree. It is obvious that from his Form E filed on 22 December 2014, under the column 5.4, the Father mentioned that M will stay at (Name of School Deleted) until he attends boarding school in the UK which may be when he turns 13 or 14 years old. In the Form J dated 16 February 2015, the Father also said:

"M would go abroad to study when he is 13, and his present situation should not change until then, for his good and healthy development."

However, in another letter by the Father's solicitors to the Mother's solicitors dated 4 May 2015, "In relation to the future education of M, our client has an open mind." In the 7th paragraph, "..... we are instructed to request your client to consider M's future education in a broad manner, as studying in a boarding school in UK is not the only option for M. We would welcome your client to explore more options, such as countries, local or overseas, boarding school or day school and types of schools and curriculum. We also advise your client to find out the wish of M as to what he would like to have for his education and career, so that options can be explained and made available to him."

Ms Yip submitted that in a letter from the Mother's solicitors to the Father's solicitors dated 11 May 2015, the penultimate paragraph stated that, "Our client is willing to explore other options in particular US boarding schools. Is your client also like minded?" The Father however made no concrete response to this letter.

Ms Yip also submitted that in the Father's Concise Statement of Issues for CDR dated 3 November 2015:

11 "For Issue (3), Respondent himself thinks that the Child should stay in (Name of School Deleted) until the Child reaches the age for college or university, because Respondent is worried that he will be too young for boarding school even at the age of 13 as suggested by the Petitioner."

12 "However, in the best interest of the Child, Respondent proposes that a psychologist should examine whether the child is suitable for boarding school, and if so, Respondent would follow professional advice and will support the Child to study at a boarding school (to be agreed), and is ready to move with the Child to ensure that he will be properly taken care of when he will be on holiday (but of course, will also ensure that he will learn to be independent when studying abroad)."

It was against this background that the parties have jointly appointed Dr Craigen who is a clinical psychologist specialising in psychometric testing to give expert opinion.

In the report dated 3 March 2016, Dr Craigen concluded that:

“The data suggests that M could potentially benefit from a live-in educational opportunity that provides more structure and routine, allows for increased autonomy and encourages greater self-reliance....It may be of benefit to do so earlier rather than later.

Test data and clinical interviews reveal M to be a delightful individual with an abundance of cognitive, academic, social and emotional strengths. When attempting to predict the likelihood that M will perform well and will achieve positive life outcomes in general as a result of attending boarding school, it was necessary to gain insight into the cognitive, social and emotional factors that are likely to either foster or undermine M’s motivation and engagement towards a variety of academic tasks and social situation. Although past behavior is often considered one of the best predictors of future behavior, it is important to note that environmental conditions in themselves present a unique variety of protective and risk factors and those currently supporting the development of M’s strong sense of autonomy, competence and relatedness will probably change or may even be absent in a new environment. With this in mind, the presence of well-developed social skills, good emotional and psychological health and extremely advanced reasoning skills make it likely highly that M will adjust rather quickly to a new environment, form new, close friendship bonds and continue to perform adequately academically. Therefore, at this present time, there is no evidence to suggest that he would not continue to positively and age-appropriately develop should he be placed in a carefully chosen overseas boarding school with frequent and consistent parental contact and visitation access.

Boarding schools have a responsibility for teaching academic and life skills as well as buffering the negative effects of family, community, and the student’s personality, attitude and behavior in order to steer students towards positive academic outcomes. The data suggests that M could potentially benefit from a live-in educational opportunity that provides more structure and routine, allows for increased autonomy and encourages greater self-reliance.

Yet, only the parents of a potential boarding school student can make the final decision as to what they think is best for their child.”

As the Father still objects to M going to boarding school after this report was made, judging from the above history, I have no hesitation to find that the Father has changed his stance.

Furthermore, I also find that the Father’s lack of response to the Mother’s solicitors’ letter dated 11 May 2015 undesirable.

Having said that however, I note what the Father said in paragraph 9.5 of his 2nd Affirmation dated 11 May 2015:

“M’s well-being has been the paramount concern to me throughout the years. M has come to 11 years of age. There have been some discussions previously between the Petitioner and me with M about him going abroad studying in boarding school at the age of 13 or 14. There was however no serious discussion with M on this topic. I have made searches for suitable schools in the UK, as the Petitioner wishes to send M to UK perhaps to follow her footstep to receive education in boarding school. Recently I have some discussions with M as to what he wishes to do for his future and career. He indicated that he wishes to do computer programming. Based on my experience and knowledge, and advices from the experts and professional friends in the field of computer programming, the USA is preferable to the UK. In any event, (Name of School Deleted) is teaching on IB, and USA schools and colleges also run on IB. The UK schools and colleges run mostly on GCIS. Further, I have also considered the local education opportunities here in Hong Kong for M. It is found that one of the options for M is to complete his courses at (Name of School Deleted) in Hong Kong before going to university here, or abroad. By the time M is of the age to go to university, he would be able to be independent.” (with my emphasis in bold)

The Father also repeated in his oral testimony that when M started learning computer programme around 2 years ago, M soon indicated that he wanted to be a videogame programmer. The Father therefore thought that if M had to go to boarding school, he should go somewhere which offered advanced computer technology. From his own research, the Father considered USA a viable option because 7 out of the top 10 universities around the world on computer technology are in USA. The Father also alleged that he had done some research himself including those boarding schools within 2 hours’ drive from where there are international airports such as Seattle, San Francisco, Los Angeles in the West coast and Boston, New York and Chicago in the East coast but had come up with the conclusion that M should not be going anywhere. When asked by Ms Yip, the Father admitted however that his research had not been featured in the correspondence nor in his affidavits filed and that he had also forgotten the names of the schools that he had researched.

The Father further said that it was because of M’s development that he has therefore asked the Mother not to be narrow-minded on the options available and had even suggested Germany as one of the alternatives.

Although I find that the Father’s stance has changed and may have caused confusion, this trial is about children’s related matter. Children’s matter changes because they are growing up every day. In view of M’s indicating a preference to be a videogame programmer as his purported career which I do not think either the Mother or the Father has any dispute, I accept the Father’s explanation as to his change of stance.

As to the Father’s alleged research, I am not putting any weight on it because even in Court, he could not give any further details. In any event, this trial is only about whether M should study at a boarding school in UK, I therefore would not consider research (if any) on USA boarding schools.

When questioned by Ms Yip as to why the Father mentioned Germany out of nowhere, he explained that at the 2nd mediation meeting with the Mother, he was caught off guard when the mediator unexpectedly asked the parties which country M should attend boarding school. At that time, it was only on his mind that there could be two types of boarding schools that he would consider: i) those English speaking countries which he mentioned Canada, USA and Australia; and ii) those countries with advanced computer technology where he said Germany, Israel and Japan.

As even the Mother admitted in her oral testimony that the mediator at the 2nd meeting had suddenly changed the topic, I accept the Father's explanation.

The approach I should take in this case

Ms Yip in her opening submitted that:

"... it should be a decision of the parents. If they cannot agree, the Court would have to trust one of the parents who demonstrates the most knowledge and insights into the issue and to allow him or her to make the best decision for M. After all, the Court will not know M better than either of the parents."

Obviously, Ms Yip is referring to the Mother.

In paragraph 6 of the Mother's 15th Affidavit, she said:

"... My involvement in M's education is actually more far-reaching than that. It was I who researched and chose M's kindergarten – Victoria Educational Organisation – and his primary and secondary school – (Name of School Deleted). The Respondent went along with all my decisions with regard to M's education. I was the parent who, despite having to hold down a very demanding full time job, investigated the schools in Hong Kong, arranged the site visits and filled in all the application forms. I did not miss one interview. I was the one who received and filtered all the results. The Respondent was perfectly happy with this arrangement and even represented to third parties that I was solely in charge of this area...."

With respect, in PD v KWW [2010] 4 HKLRD 191, Hartmann JA said in paragraph 36, "It is to be emphasised in the strongest terms that if one parent only is given custody, that parent is not thereby given an absolute and independent authority to act without further reference to the non-custodial parent. Any such potential misunderstanding was quashed in Dipper v Dipper [1980] 3 WLR 626 in which Ormrod LJ said:

"It used to be considered that the parent having custody had the right to control their children's education, and in the past their religion. This is a misunderstanding. Neither parent has any pre-emptive right over the other. If there is no agreement as to the education of the children, or their religious upbringing or any other matter in their lives, that disagreement has to be decided by the court."

In the same case, Cumming-Bruce LJ, another experienced family judge, said:

“... it (is) a fallacy which continues to raise its ugly head that, on making a custody order, the custodial parent has a right to take all the decisions about the education of the children in spite of the disagreements of the other parent. That is quite wrong. The parent is always entitled, whatever his custodial status, to know and be consulted about the future education of the children and any other major matters. If he disagrees with the course proposed by the custodial parent he has the right to come to the court in order that the difference may be determined by the court.”

It is therefore clear that in case of dispute on children's matter, it is for this Court to determine what course to take whether the parties have joint or sole custody.

The Law

I do not think the law is in dispute: my determination is based on whether it is in the best interest for M to leave Hong Kong to study at a boarding school in UK at the age of 13.

The Mother's case

Apart from the consensus reached between the parties that M would go at the age of 13, the Mother also relied on the evidence and the report prepared by Dr Craigen. In short, Dr Craigen concluded that M's emotional intelligence is in the high range and that he is also extremely intelligent who is cognitively capable of attaining outstanding academic outcomes and yet his current academic results fail to reflect this. In her oral testimony, Dr Craigen also concluded that M has excellent level of optimism and he is adaptable, sociable, like to do the right thing, but lacks assertiveness. As the parents cannot agree on their expectation on M, co-parenting may not work just by M shifting between the parents' two homes. She said that the issue might become even more complicated. Sending M to boarding school would therefore serve as a buffer and there is no evidence to suggest that M cannot develop better at a boarding school.

The Mother said in her oral testimony that she is particularly concerned about the risk of M to remain in (Name of School Deleted) because of his academic performance and the acrimonious environment at home. Although the Mother is trying hard to co-parent and is also trying hard to alleviate the acrimony, she does not believe having 2 homes would relieve the pressure; she said that it is still a stressful environment. When put by Mr Pilbrow that M has already got used to that environment, the Mother admitted that the relationship with the Father had not been well over the past 10 years but it was not acrimonious because there had been no conflict of interest until her discovery of the Father's financial misconduct. The Mother also said that M is now growing up and is fully conscious of the acrimony and he puts on a brave front. M is obviously stressed about his parents' cold war. In her opinion therefore, M needs to be removed from the pressure resulting from the divorce and to rebuild his character to be assertive and independent. The Mother disagreed that M is not yet ready for boarding school because even if he has commenced puberty, there has not been any sign of his emotional change.

In paragraph 35 of her 15th Affidavit, the Mother also said that:

“.....boarding school provides the best of both worlds, giving M a good opportunity to learn how to be more independent and solve issues for himself, and also enabling him to spend time with his parents when we are less stressed and less focused on trying to criticize and belittle each other.”

Ms Yip also submitted that there were two teachers being interviewed by Dr Craigen, who also said that M is not benefiting from the home environment.

The first teacher – Ms (F)

She is the primary school counsellor at (Name of School Deleted) and has known M since 2009. Ms (F) describes him as a clever, honest and resilient young man who manages himself well. She reports that M is rather guarded, slow to warm to people and tends to hold in his feelings but has a good and longstanding friendship group. M came to Ms (F)'s attention when he was in Year Six following an incident in which he had lain under a basketball hoop and asked peers to throw balls to land on his face (“the basketball incident”). He then attended individual sessions with her although in them he sometimes said nothing. Ms (F) reports that M judges himself harshly, gives himself much criticism, and generally holds in his frustrations although these can become evident in his friendships. She adds that overall M functioned reasonably well in Year Six. When directly questioned about his suitability to attend boarding school, Ms (F) responded that in her opinion Germany, which had been mentioned to her as a potential location for the schooling, would not be ideal because M could feel further isolated with no family support there.

Ms (F) mentioned that standard in-school-screening tools had revealed M's character strengths as kindness, curiosity, creativity, humility and forgiveness. She believes that while kindness is definitely a strength, she also sees some negative manifestations of this characteristic in M's behavior as he dislikes hurting anyone's feelings and appears to avoid putting himself in situations where this could be a possibility. Ms (F) also has some mild concerns about the potential emotional impact on M of the Father and the Mother's acrimonious split. She feels that although M may not admit it openly, it is possible that he is experiencing much angst as a result of feeling caught in the middle of his parents.

The second teacher

Dr Craigen said, “As part of this assessment, an interview was conducted on January 12th, 2016 with Ms (J), M's Student Advisory and current Homeroom Teacher at (Name of School Deleted). She has taught M for many years. She describes him as a lovely young man who is well behaved, empathetic and sensitive with a warm demeanor. She reports that M is also a very fragile individual and extremely distressed by the parental discord; on the outside M appears to be doing very well but she believes he is under internal pressure. She believes that M feels unable to talk to his parents about his problems and about how he is doing at school but reports that he discloses this information to her in written form. She adds that he is very concerned about social situations and fitting in with peers, and does not want others to feel he is “annoying, weird or gross”. Furthermore, Ms (J) reports that M is uncomfortable in large groups and finds it challenging to work in groups because of his discomfort about fitting in with peers. She notes that he has a good

friend with whom he always attends Advisory sessions but is slightly nervous during these. For example, M never takes off his shoulder bag, finding some psychological safety in keeping it on. She also reports that M dislikes leadership roles and responsibility because of his fear of being wrong. Academically, she reports that M is doing reasonably well but is definitely feeling stressed. M has also disclosed to her that he is not performing academically as well as he would like to because he is unable to focus on his homework due to the current environment at home. When directly questioned about M's suitability to attend boarding school overseas, Ms (J) replied that a new environment would enable M to develop a new identity and leave behind his fears and insecurities but he may benefit from remaining with the security he derives from his current peer group. She adds that because M does not cope well with large groups and transitions, a potential boarding school should be a small and intimate one in which M could benefit from close relationships with teachers and peers.

The Father's opposition

Although at some stage in his oral evidence, the Father said that he would not resist if M wanted to go to a place full of bullies, he had drawn my attention to a renowned book *The Making of Them: The British Attitude to Children and the Boarding School System* written by Nick Duffell, a boarding school survivor, a UKCP registered psychotherapist and a supervisor, a BACP Senior Clinical Practitioner. In his 11th Affirmation, the Father has extracted paragraphs after paragraphs about the dark side of the boarding school in the UK. He has even through his lawyers sent me the whole book.

For my part, I do not wish to go into details of the book but as Ms Yip in her opening submitted that:

"... every system has advantages and disadvantages. It would be placing the most invidious task on this Court to have to decide the pros and cons of boarding schools or to decide the suitability of M going to boarding school purely based on the subjective views of other unrelated person who do not know M at all. It leads nowhere, not least to the determination of the best interest of M. If anything, it leads to sinking into the quagmire of debates about the merits and demerits of the boarding school system in the UK. The main question however is whether a particular child fit into the system given his character and background."

I entirely agree and I therefore would not give any weight to the content of the book.

The Father also argued at paragraph 8.4 of his 11th Affirmation when he said:

"He would not have the chance to see normal things which an non-boarder would see and experience.....He would not have the chance to see what people are like during his child's age. He would be brought up without doing normal things of a child.....it has been proved that the child would become a different person, with cutting-off emotion to his parents, upon coming home during term break, should he survive the first day, first week, and first month of boarding school life. He would become defensive, always looking out avoiding from trouble."

As this is only the Father's speculation without expert or any other evidence to support, I do not accept those comments.

In the Father's evidence, he also mentioned a talk by Mr Drennan which the Father described that although he has not been greatly influenced but the talk has served the purpose of alerting him because he had since thought twice whether boarding school suits M. He said that the talk not only talked about the dark side of the boarding school but also the reasons for sending children to boarding school for example:- a) family unable to take care of the children, b) ill-treatment of the children or c) urgent needs. He then talked about the society being not suitable for the formation of boarding school. The Father said in the past, there was a need for the mass production for personnel to be raised to send children to training etc. Again, I am not putting any weight on this talk nor comments as those are made without any expert and other support.

Although I found some of the Father's evidence inconsistent, ill-reasoned and I tend to agree with Ms Yip when she submitted that he sometimes never answered questions directly, this trial is about children's related matter. As even the Mother admitted that the Father and M are in close relationship, I would therefore only consider whether it is in the best interest of M to go to boarding school at the age of 13.

The Father said in his 10th Affirmation that:

"5.1 I would like M to continue to study at (Name of School Deleted) which he has been attending since year 1 at the age of 6 years old, and is familiar with the environment, with all his friends and peers around in Hong Kong. There is no doubt that best education is available to M here. He would not need to adapt to a totally strange and new environment, to survive the system and routine that is different from home, and to rebuild friendship with peers and confidence in the teachers and the institution. There is no guarantee that M would be able to adapt to or even survive such a big change of his life. There is no positive gain that M would be benefited and which he cannot achieve here if he continues to study at (Name of School Deleted), until he enters university and when he can make his own choice."

The Father said that boarding school is not suitable in the light of M's personality and his ability. As M is introvert, immature and adapts slowly to his surroundings and people and that he is also timid and is afraid of troubles, all these features would mean that he is prone to bullying. The Father said he is not suitable to go to UK at the age of 13 because of the effect brought by boarding school emotionally and mentally. In the letter by the Father's solicitors to the Mother's solicitors dated 21 May 2015, "He would not be able to help himself in the event of being bullied by other participants....". The Father also said that there are also drugs and other problems and sending M to boarding school would be difficult for him every day.

As M is already 12 now, what is his view?

In Dr Craigen's report, she said, "During conversation, M informed the examiner that he is "a little anxious about the future". He also disclosed that he feels both his parents give him too many choices to make, even when something is unrelated to him, and he would be happier if they gave him fewer. He added that if he were unaware that there was a choice about whether or not to go

to boarding school at thirteen he would simply do as he was told. He further stated that his ideal school would be a small one in which he knows everyone, although he feels (Name of School Deleted) is sufficiently personable. He would also like his ideal school to be one that offered exciting classes. M informed the examiner that the current relationships he has with family members are very good, with no need for change, and that each of his parents has a different parenting style but they are equally good at being a parent.”

In the Father’s 11th Affirmation, he had invited me to look at the e-mail from Dr Oswalt to the Mother on 8 April 2016. Dr Oswalt is the Director of Child and Family Therapy, Hong Kong Psychological Society Registered Psychologist who is recommended by Dr Lora Lee the co-parenting counselor of the parties as a Counselor for M. In the email, Dr Oswalt said:

“I wanted to update you both on our session today. M was a joy and so wonderful to meet... we did a lot of pros and cons about boarding school. It became obvious that he would prefer to stay in HK for the time being.”

The Mother admitted in her oral testimony that M did mention having gone through the pros and cons with Dr Oswalt but he did not mention that he prefer to stay in Hong Kong and the Mother did not push for an answer because she does not want to give him any choice to upset him. When asked whether M has in fact formed a view but did not express himself, the Mother said it is difficult to say.

In my view, since Dr Oswalt did not give evidence in this Court, and given M’s character that he does not want to say things to hurt either of his parents and M has repeatedly said that he would prefer not to be given choices but rather be directed by his parents, I would not consider Dr Oswalt’s email as if M has expressed his view.

Discussion

By looking closely at Dr Craigen’s report, I would first of all deal with the two teachers’ comments. Although Ms Yip submitted that Ms (F) was only talking about Germany when she was questioned about the suitability of M attending boarding school and therefore UK was not on the teacher’s mind, as Ms (F) did not give evidence in Court and neither Dr Craigen could elaborate further when questioned by Mr Pilbrow why Ms (F) had mentioned Germany, I tend to agree that Ms (F) had in mind not only the language barrier but the lack of family support because Dr Craigen said that those were the words used by Ms (F).

In M’s situation, it is clear that M has no family support in UK. In paragraph 32 of the Mother’s 14th Affidavit:

“It is also important to me that there is a strong network of support upon which I can rely in the country in which M goes to school, particularly if I am not living there permanently myself. Whilst I do intend to spend a lot of time in the UK were M to go to school there, I would still feel more assured as to my son’s health and safety knowing that I could rely on the list of longstanding, loyal and willing friends in the UK....who have each told me they would be more than happy to help and support M however they can. Of course that does not mean that M would be looked after by them. It would still be

the responsibility of the school to do so.”

Looking at this paragraph, at most, M would have the support of those longstanding, loyal and willing friends of the Mother but not family support.

As for Ms (J), I am of the view that her comment is neither here nor there. The Mother in paragraph 21 of the Mother’s 14th Affidavit said that:

“I am troubled by Ms (J)’s findings in the Report. Her impression of M is of a very disturbed young man who is so fragile and under such internal pressure, he won’t even take his computer bag off in class (something also mentioned verbally to me by M’s science teacher, Dr (DH), at the latest parent-teacher conference on 17 March 2016) and confides in Ms (J) only through the writing of his problems. I can tell that M adores Ms (J).... I agree with Ms (J)’s view that a new environment would enable M to develop a new identity and leave behind his fears and insecurities.”

With the greatest respect, apart from making the above comment, Ms (J) also added:

“but he may benefit from remaining with the security he derives from his current peer group.”

For the reasons given, I therefore do not agree with Ms Yip that the two teachers have voiced their total support for M leaving to boarding school.

Both teachers have however expressed their opinion on M’s character. Ms (F) reported that M is rather guarded, slow to warm to people and tends to hold in his feelings. She also said that while M’s kindness is definitely a strength, there are some negative manifestations because M dislikes hurting anyone’s feelings and appears to avoid putting himself in situations where this could be a possibility. Ms (J) also reported that M is uncomfortable in large groups and finds it challenging to work in groups because of his discomfort about fitting in with peers. With this type of character in mind, would M fit in boarding school?

Although Dr Criagen was of the opinion that M could adapt to the change, the Father on the other hand said that whilst Dr Craigen is the psychologist, Dr (M), whose comment was also quoted in Dr Craigen’s report, is the most experienced in terms of expertise.

What did she say to Dr Craigen?

As part of this assessment, Dr Craigen said that an interview was conducted on January 28th, 2016 with Dr (M), Secondary School Counselor at (Name of School Deleted).

“She reports that the Mother approached her at the start of this academic year to inform her about the family situation and her concerns about M. Dr (M) has met with M and reports that he does not seem outwardly too sad or worried and has adjusted to the family situation as best he can. She does not believe that he needs to be immediately removed from the family for his safety and believes that once the parents are in separate dwellings the current parental pull on M will lessen. When directly asked about his suitability for overseas boarding school at age thirteen, Dr (M) stated that an adolescent changes much between the ages of eleven and thirteen so it is difficult to determine now what will be the best option for him at thirteen. She adds that at (Name of School Deleted) many Year Ten students attend boarding school in (City H), China for the whole of that academic year so this could provide M with a

natural break from his current situation whilst maintaining his friendships with peers, which is very important at thirteen. Moreover, it could potentially be possible for him to go there for Year Eight or Year Nine. Dr (M) further stated that she believes it is inappropriate to ask a child at age eleven to decide if they want to enroll at boarding school.”

The Mother objects to the idea of (City H) as it is only a new concept at (Name of School deleted) and there has been a mixed feedback and further there was too much free time and so students enter into relationships. In any event, she is also concerned with the pollution problem because M has been suffering from eczema and asthma/breathing difficulties since he was a child.

For the purpose of this trial, I think it is rather premature for me to consider whether M should attend (City H) in Year 10. However, I note the comment made by Dr (M) that it is very important for M to maintain his friendships with peers at thirteen. In this respect, Ms (F) said that M has a good and longstanding friendship group here. The Mother in her oral testimony also agreed that M likes his buddies. M also said to Dr Craigen that his ideal school would be a small one in which he knows everyone and he feels (Name of School deleted) is sufficiently personable. As reported by Dr Craigen, M enjoys school and likes his teachers. With these in mind, is it in M's interests for him to leave?

In Dr Craigen's report, it was asked how comfortable M is when meeting new friends, does M have the ability to form close friendship bonds and whether he is likely to seek help from others? It was found that M himself reports his level of comfort when in the presence of others as being a little lower than that of his peers. Furthermore, his parents are concerned that M finds it difficult to be assertive in group situations, is prone to being passive in terms of initiating peer interactions and is rather lacking in leadership traits. M also perceives these behavioural traits as areas of weakness for him.

The Mother when questioned by Mr Pilbrow said that she did not notice M feeling uncomfortable in large groups. When further questioned by Mr Pilbrow that by studying in boarding school, the students are bound to live together in large group. The Mother in reply said that M had been to Taipei at the age of 8 and he also went to camp like outdoor tent with portable toilet. Recently, M has also gone to Xian for 11 days and 10 nights. Although there were complaints, she said M managed.

Although I have no questions that M was doing fine in those trips, they were only short trips organized by the school or the parents which I would say most of the children studying in international school in Hong Kong would have experienced. It is very rare that the children could not manage. Here however, we are talking about a big change from day school at (Name of School deleted) to a boarding school in UK which the Mother also agrees in her oral testimony that certain children fit in with the culture but not all.

I disagree with Ms Yip when she submitted in paragraph 3(n)(iv) of her closing submission that “M survived six or 10 days at camp, does not mean he will not survive life at a boarding school. Six to 10 days is a big deal to a child of M’s age.” It is contrary to what the Mother said in paragraph 22 of her 15th Affidavit:

“... I am entirely in favour of such trips away from home, but I do not believe 11 days out of 365 in a year will make sufficient impact in M’s case.”

The Mother admits that there would be anxiety of M moving from the known to the unknown. She however added that planning for the future is always a risk because there is no crystal ball. The question to ask is why is there the need to change?

Underperforming in (Name of School deleted)

One of the concerns of the Mother is that (Name of School deleted) is not digging out M’s potential.

In M’s Progress Report from 25 August 2015 to 19 January 2016, M has achieved Grade 6 out of 7 in Product Design and Music, Grade 5 out of 7 in Drama, 5 and 6 out of 8 in English and 6 and 7 out of 8 in Maths and in Individuals and Societies. His assessment achievements are all 6 out of 8. M is in Chinese Mainstream Band 1 and has achieved 4-7 out of 8. Dr Craigen however reported that there were no concerns raised in M’s school reports about his academic performance or behaviour.

In the Progress Report, the Advisor Comment is that:

“M is a considerate and amiable student who has settled in well to secondary school. He has developed a few close friendships and places great value on trust and authenticity. With a passion for learning, M has stated that maths is an exciting learning experience and one of the best things about secondary school for him is getting to learn so many new things across all his subjects. He has worked hard to keep up to date with all the various assignment requirements which is an indication of his development of strong time management skills. M is admired by others in advisory for his self-regulation, honesty and integrity. He is a quiet, self-contained person who, when prompted is full of lively interest in diverse topics and ideas. Although initially shy with others, to his credit, he has been open to working with others in partner and small group activities, thus enabling him to develop the relationship in the group. Overall, a commendable start to secondary school life!”

As to the Head of Year Comment:

“M has made a promising beginning to secondary school and a smooth transition. He has a thoughtful manner and is gradually increasing his profile in the group as his confidence grows, having already established a friendship group. M has now established a good routine that will allow him to continue developing personally and academically.”

As noted, M is enjoying the diversity of topics and idea that his current secondary school is offering. The Father said in his oral evidence that (Name of School deleted) offers excellent and splendid education. The Mother in her oral testimony also said that, “There were times when the

Father did not think much of (Name of School deleted) because of their lack of pastoral care although it is good academically.” In that case, if both parents agreed that (Name of School deleted) is good academically, why do the Mother and Dr Craigen think that a change to boarding school would enable M to develop his potential?

In paragraph 25 of the Mother’s 15th Affidavit, she said:

“According to the test results in the Report, M is a very intelligent boy scoring ‘very superior’ and ‘above average’ in most of the broad range of skills and abilities tested, yet this side of M has not been reflected, or even identified, in his performance at (Name of School deleted). I have attended 8 years’ worth of parent-teacher conferences at (Name of School deleted). I have received around 15 reports on M over these 8 years... and never has the hidden potential been identified by anyone. Not once, face to face, has any teacher told me frankly about M’s weaknesses or how I can help him deal with them, save for the Chinese teacher this year who mentioned that M should move from Band One to Band Two. When she did, she did not proffer any suggestion as to how M could retain his place in Band One if he wanted to.....The only prize M has ever won at school, was a bar of chocolate for trying hard at cross country (in which he came last). Physical education is also the subject M has scored highest in, again for his willingness to try and not because of his sporting prowess. My impression is that at (Name of School deleted) relies on student’s own initiative whether to find ways of doing well academically, or signing up for other activities to develop them in other ways. This approach is not helpful in developing M’s potential. What is more, when problems started to occur, this appeared to have been overlooked by at (Name of School deleted). The most notable example is when M’s Year 6 home room teacher did not even see fit to tell me about the incident in which M asked for basketballs to be thrown on his face so he could die. She decided that it was too “insignificant” an occurrence to report to me. The only reason I found out about it was because I happened to have been there to see her on another matter, and she mentioned it as an aside to me. My point is that, especially in light of the Report....any beliefs I still had that at (Name of School deleted) is the right school to nurture and develop M’s potential and lead him to great things in life, have now gone.”

Looking closely at the Progress Report, save for the Chinese subject, I cannot understand why the Mother said that M is underperforming. Is that solely because when the Mother took M to the Dolphin Education and Academic Asia to discuss his education prospect in UK that they had never recommended Harrow or Eaton or in the Mother’s words: they said M is not the Harrow or Eaton type? Given Dr Craigen’s finding that M is highly intelligent, is the Mother therefore of the opinion that M is underperforming?

The Father however said in his oral testimony that although he is happy to learn from Dr Craigen that his son is highly intelligent, M is not gifted. The Father further said that if M is so highly intelligent, why didn’t the Mother who claimed that she had known M better also failed to notice that quality over the past 12 years? The Father said that he had talked to Ms (F) recently over the phone and she made the comment that boys’ performance fluctuates and they do better in subjects that they like and are not good at subjects they do not like. She said that it is normal for boys to do better when they are in secondary schools and she said things could change.

For my part, I accept this entirely because it is common knowledge that boys generally develop at a later stage than girls when they are young. Given that M is only in his first year of secondary school and this is the Progress Report for the first 6 months of his performance, my view is that M has been coping very well.

As for the Chinese subject, even the Mother agreed that by attending boarding school, M's Chinese language skills may become less strong. The Mother also said, "In any event, even though Chinese is important, it has never been an emphasis in M's day-to-day life. Both the Respondent and I speak predominantly in English to M, interspersed with some limited Cantonese." It therefore appears that there is no difference whether M stays or leaves.

With regard to the Mother's complaint about the Year 6 home room teacher failing to draw her attention about the basketball incident, I notice that the matter has already been dealt with by Ms (F) and the Mother has also taken step to see to the matter by seeking advice from a child psychologist, it is therefore no longer in issue. In case there are other unexpected incidents happening, I am sure the Mother would deal with those. After all, M is already attending the therapy sessions of Dr Oswalt.

In relation to other benefits to M of attending boarding school, the Mother said in paragraph 37 of her 15th Affidavit that:

".....an additional benefit.....will be his exposure to extra curricular activities. At the moment, M is a very introverted individual. The activities he likes to engage in after school are all lonely ones – ceramics, guitar lessons, golf practice at the driving range, swimming. The selection of activities are partly M's own choice given his personality, but also driven by the Respondent's insistence that M attend activities only where there is convenient parking for him.....It goes without saying that indulging in a hobby, or playing a sport or a musical instrument as part of a team or group brings with it many skills and satisfactions that cannot be achieved when playing alone. Boarding schools in the UK pride themselves on their after school activities and encourage children to participate in as many as possible. I am hoping this extra "nudge" by the school will help propel M along the way to becoming more involved with others in a team or group setting, which will be invaluable to him in later life, free from any restrictions imposed by his father's habits."

With respect, the whole statement appears to me that boarding school might not suit M's character. If indeed the current activities are chosen by M and that he is enjoying them, what is wrong with that? If the Mother however wishes M to do others of her preference, given the Mother is now retired, I am sure she could take M to those activities instead of relying on the Father to drive M. Hong Kong is a place where you can survive even without a car.

In my view, since M started secondary school and the Mother in her oral testimony also agreed that he is more diligent, given the time, I think M would score better. There is however no guarantee that a UK boarding school would dig out M's potential within the Mother's expectation.

Dr Craigen in her oral evidence said that because M wants to be a videogame programmer and because he is struggling academically, it would be beneficial for him to change. She however agreed that M need not leave Hong Kong solely for the change.

With respect, I disagree with Dr Craigen when she said that M is struggling academically. The only time that was mentioned in her report was when M's homeroom teacher Ms (J) mentioned that:

"Academically, she reports that M is doing reasonably well but is definitely feeling stressed. M has also disclosed to her that he is not performing academically as well as he would like to because he is unable to focus on his homework due to the current environment at home." (With my emphasis in bold)

Even the Mother confirmed in her evidence that Dr Craigen (in a follow up call with her on 17 March 2016) is indicating that perhaps it is the absence of factors such as a positive home learning environment and parents being involved in his schooling, that is holding back M's incredible potential.

With respect, M felt the stress not because he is struggling academically as evidenced by the comments in his Progress Report. It is the home environment.

As there is no evidence to suggest that M would definitely perform much better in a UK boarding school, I do not find this reason substantiated.

Before I finish with this topic, I wish to add that I have no comment as to the to-be appointed headmaster in (Name of School deleted) and the debacle surrounding the new headmaster at the (Name of Another School deleted) when the Mother drew my attention in paragraph 20 of her 15th Affidavit. All I can say is that not a lot of schools encountered the debacle but even if I am wrong, I cannot make my determination just on a possible fear of debacles.

To remove M from the acrimonious environment

In paragraph 19.2 of the Mother's 14th Affidavit, she said:

"Having been caught in the middle of a Cold War at home since 2014, with neither me nor the Respondent communicating with each other, yet still living under the same roof, M has learnt, unhealthily, to internalize his feelings. As a result, M has had no outlet to express his real emotions about the divorce and the suffering he has felt, other than through other events that should otherwise have been small and insignificant...."

The Mother further observes that M seems to be somewhat anxious, sad and overly sensitive and has had occasional meltdowns. For example, when dining with another family at a restaurant M's friend inadvertently deleted information from M's iPad and M became very distressed and complained of an inability to breathe. The Mother also describes incidents in which he overreacted to the presence of a wasp last summer, was overly dramatic when he ate some spicy food and in 2014 was so distressed about forgetting to take a notebook to school that he lay beneath a basketball hoop there and wanted peers to drop the ball on his face.

The Father also gave an example that one day in or around 2014 when the parties had already started the divorce proceedings but were still living under the same roof, the Father was helping M for shower. All of a sudden, the Mother rushed into the bathroom and with something of a topic that the Father could not remember, the Mother yelled at the Father in a violent manner. After the Mother left, the Father felt really sad and sat on the floor by the bathtub and he felt M was sad too but was sympathetic that M patted his father's back and said, "Dad, it is OK." The Father said that he felt so emotional and M must have felt what was going on between the parties.

For my part, I have no difficulty in finding that M has been caught in the loyalty conflict. As Dr Craigen said in her report:

"M is a fragile individual and extremely distressed by the parental discord; on the outside M appears to be doing very well but she believes he is under internal pressure..... His parents' use of psychologically aggressive tactics within their interactions is unlikely to go unnoticed by M..... His complete avoidance of showing any parental preference may be an indicator that he feels rather vulnerable and perhaps even frightened of hurting either parent. Undoubtedly the responsibility he feels towards protecting his parents would at times be burdensome and possibly anxiety provoking but his loyalty to them holds him stuck steadfastly in the middle of a rather unpleasant marital split."

In this respect, I have to criticise both parents' way of handling the matter.

The Mother said in her Form J dated 16 February 2015:

"As the Respondent and I still live in the same premises, the situation at home since commencement of these divorce proceedings has become tense and unpleasant. The Respondent has become increasingly difficult to live with. Firstly, he recently installed surveillance cameras in the study at home to prevent me from entering and using the room. Secondly, he has become increasingly argumentative with regards to our differing parenting styles and is unwilling to compromise. Thirdly, he causes disorder in the household when he delivers instructions to Maria (the household helper) which he clearly knows are in conflict with my previous or standing instructions. All these matters together create additional tension in the household which is certainly not the most ideal environment for M to be living in. It is in the interest of all persons if the accommodation arrangements could be sorted out as soon as possible so that M does not need to be subjected to further tension and stress."

In the Father's Form J dated 16 February 2015, he also said that:

"In the past years and in numerous occasions, the Petitioner shouted and scolded at domestic maids.....It happened in front of me and M, who was frightened, scared and stressful every time by the Petitioner's conduct. I have made complaint through my solicitors to the Petitioner's conduct. However, bad temper, shouting and scolding at the maid has not stopped and happened in front of M.....In my view, I am very worried of the stress that M has suffered and would suffer...."

Whilst both parents seemed to have acknowledged their worries as to the acrimonious atmosphere which would have an impact on M, they have nevertheless chosen to carry on that way. The Father had even reported the Mother to the Police of suspected theft in May 2015 because he had reasons to believe that some of the documents used in these proceedings had been hacked from his personal computer and 2 mobile phones.

I have no doubt that M loves both parents. In one of Dr Craigen's Perception-of-Relationship-Test, it was found under the heading:-

Task VI: Here is a little horse and two stables (Labeled "Mom" & Dad"). It's time for the horse to come in.

M hesitated to make his mind up on this task. He drew another horse stable in between both "Mom's" and "Dad's" houses with equal distances. M's response indicates he is incredibly aware of his importance to both parents. As such, he is unwilling to show a preference for either one.

In Dr Craigen's report, she mentioned the degree to which each parent offers emotional security to M and the likelihood of significant and/or debilitating emotional distress in the absence of each parent.

M's mother reports that he appears somewhat emotionally distressed. She believes this could be a result of him "bottling up" his emotions. M's father agrees that M has a tendency to "hold in" his emotions. M himself indicates that once he is emotionally triggered, it takes him longer than others his age to recover. His high EQ and well developed capacity to empathize with the feelings and viewpoints of others are likely to facilitate a profound awareness of his importance to each of his parents.

Given the situation, is the parents' behaviour hurting M so that he was suffering from stress? The answer must be yes.

I believe there had been a lot of tensions after the Mother's retirement but before the Father moved out. In particular, it is said in the Father's Form J that:

"M sleeps in the master bedroom. It is M's choice as with whom, the father or the mother, he would require to sleep every day. When M requests me to sleep with him, then the Mother would sleep in the guest room, and vice versa."

In the Mother's Form J, she said:

"As the Respondent has not yet moved out, and there are only two bedrooms in the home, on days when I am in charge of M, I share the master bedroom with M. On days when the Respondent is in charge, he shares the master bedroom with M."

No doubt this sort of living arrangement would have caused a stressful environment.

However, as said by the Father which was not challenged, he had moved out from the matrimonial home to a serviced apartment on 1 February 2016 and his new flat would be ready for him to move in when the renovation would have been completed at the end May 2016. As

reported in Dr Craigen's report, M will then reside for equal time with each parent. In that case, does M need to be removed from the acrimonious environment at the age of 13? I do not think so. There would be no adverse influence because the parents would be living in two different flats. The stress in that case should therefore be able to be removed from M. As said by the Father in his oral testimony, when the Father moved out, he initially had worries about M but he was surprised to note that M even got involved with the design of the Father's new home. The Father further said that when M visited the Father at his serviced apartment, he was happy as if M was on 'holiday'. I believe in that.

Furthermore, I notice from Dr Craigen's report that her evaluation were conducted on 16, 23 and 30 January 2016 which were before the Father moved out. Her observation was therefore before the change of the living environment of the family. I agree with Dr (M) that M need not be immediately removed from the family and I also believe that once the parents are in separate dwellings, the current parental pull on M will lessen.

To build up assertiveness and to learn to be independent

In paragraph 40 of the Mother's 14th Affidavit, she said:

"Sending M to boarding school is not abdicating parental responsibility. M is at an age whereby he no longer needs much physical care, because it is age-appropriate to go to boarding school now. Emotionally, apart from continuing to receive parental love and support, he should open up to challenges and learn independence. On the other hand, staying in Hong Kong will expose him to unnecessary and impossible situations: loyalty conflict, tossing between homes, pressure from knowing that parents are litigating and arguing over how and where he should be etc..."

The Mother also said to Dr Craigen that she has no concerns about M's ability to cope with and thrive at boarding school when he reaches the age of thirteen. She also believes that M would develop increased resilience and independence by doing so. Moreover, she strongly believes that he would benefit greatly from being removed from an environment in which there is much parental discord and a complete breakdown of communication between his mother and father.

As I have already dealt with M's loyalty conflict and tossing between two homes in the earlier part of my judgment, I need not repeat myself.

I have reservations however with regard to the Mother's comment that M does not need much physical care. Mr Pillbrow used the word mollycoddle to describe M because he is driven to school daily by his Father, has his fresh lunch delivered to school and the Mother also said that she is predominantly the one to take M to medical and dental appointments including orthodontist. In Ms Yip's opening submission, she also tried to persuade me how extremely caring the Mother is when she submitted in paragraph 37 that:

- c) the Mother strives to take care of M instead of delegating it to anyone, not even the domestic helper;

- f) Before the Mother retired, Mother would sleep with M over the weekend and even on weekdays when she could; she would put M to sleep. After Mother retired, she continues to sleep with M on days she is in charge of taking care of M;
- g) Mother was responsible for selecting extra-curricular activities, and Mother does not only select but also accompanies M to attend these activities;
- p) the Mother was also actively involved in preparing festive and birthday events and holiday trips for M;
- s) Mother is also responsible for M's medical condition and physical exercises;
- t) She administers eye-drops and the wearing of mouth guard; and upon detecting knock-knees, immediately took M to consult an expert;
- v) Mother takes care of M's wardrobe too and
- w) Before the Mother's retirement, she tried her best to take care of M in the morning. After Mother's retirement, she is always there for M before and after school to look after his needs.

The Mother reported to Dr Craigen that M sleeps less than is typical for his age and has problems both falling asleep and waking up in the morning. The Father on the other hand said in paragraph 9.1 of his 2nd Affirmation:

"In many occasions, the Petitioner failed to put M to sleep in bed because she has adopted the way which she thought would show how good she was being a mother. However, when the Petitioner eventually failed to put M into sleep, she became agitated and it ended up that she stormed out of the bedroom and told me to put M to sleep instead. I have managed to put M into sleep without failure."

For the purpose of this determination, I do not have to rule whether the Father's version is correct. The point is both parties have no dispute that M needs company when he sleeps.

Given this background information, I disagree with the Mother that M no longer needs much physical care. Although the Mother said that by being mollicoddled, it does not mean that M would not be able to survive in the boarding school. I agree. But should M open up to the challenges to learn independence at a boarding school in UK at the age of 13?

Ms Yip in her closing submission said that M needs to explore more sports, more games, more opportunities, see more things, enjoy the company of more friends of diversified backgrounds and races, nurture in the training of different cultures, perhaps even make more mistakes in a new environment, experience the challenge of having to make his own bed, cook his own meals, clean his own rooms.

The Father said in paragraph 8.2 of his 11th Affirmation:

“At boarding school, he would not receive or get support from home and parents every day. He is expected to be “independent” which means no one to ask help from during term time.... In my view, a broken home is better than no home to a child.”

The Mother on the other hand said in paragraph 39 of her 14th Affidavit:

“Were M to go to boarding school in the UK in September 2017, I would envisage that both the Respondent and I would wish to spend a considerable amount of time nearby at the outset to ensure he was settling in well, scouting the neighbourhood.....”

The Father disagreed with such an arrangement and said that it is a gamble. When questioned by Ms Yip, he disagreed that the risk to send M to boarding school can be minimized by careful selection of the school. If it fails, the Father asked what they can do: should M come back and look for another school? The Father asked why there could not be a steady development because at (Name of School deleted), the parents can provide the support every day if M needs. Although the Father agreed that the advantage of a boarding school is that the facility is more and the system promotes children independence and better organisation, the Father said that he had read from an article that according to research, dependence is a natural process in the childhood. Child can learn from the grown-up, inter-personal relationship and trust through bodily contact with parents and people he trusts in intimate relationship. He said that both Dr Lora Li and Dr Craigen had agreed that there is no need to learn independence.

Ms Yip in her closing submission said that M possesses all the qualities of being able to mix well with people: both peers and adults; M is adaptable to new environments, M is socially adept and can deploy behavioural strategies to socialize with people. He is only lacking in independence and assertiveness, with a relatively low self-concept. He can therefore benefit in a boarding school which promotes exactly these aspects.

I must admit I have found this part of my decision very difficult to make. Both parents have presented some forceful arguments. I have thought of the matter over and over again. I took notice however that both parents agreed that M is timid, introvert and lacks independence. Dr Craigen said in her oral testimony that M is lacking in assertiveness but has been very well cared for. Her data however did not suggest that M is sad and disorganised because she said that people forgot what they can do at the age of 11. She said that M may not have changed greatly in terms of his capability and intelligence. She also agreed that boarding school fits some but not others and her data suggested that M is in between them.

In her report, Dr Craigen said that:

“M’s teachers report that he struggles to assert himself when he is with peers that are in the process of making decisions that will affect the whole group. These traits are likely to make conflict extremely uncomfortable for M. Given his propensity to “bottle up” his emotions, he probably is also less likely to be able to proactively resolve conflicts and he may struggle with intense emotions without mentioning his difficulties to anyone.....His relatively low self-concept scores suggest that M is not fully aware of his outstanding strengths. ...Traits like kindness and loyalty may become barriers to the attainment of his own goals should he allow his boundaries to be continuously crossed.”

When questioned by Mr Pilbrow, the Mother said that:

“By having a character of too kind, there are strength and weakness in it. It is an advantage because it is the strongest of the community, also he is resilient. For those who are tough, although it is strength, it is not to be encouraged.”

I agree but that means that there are uncertainties.

Although Mr Pilbrow has tried to put forward the fact that M had been bullied when he was six at the swimming pool changing room, I accept that it has not been happening for a long time and things changed to the brighter side. As reported by Dr Craigen:

“M informed the examiner that he gets along well with peers and enjoys joking around with them or playing Minecraft.”

However, the fact that M has not been bullied since he was six, was it because he has the parents' support throughout all those years? In paragraph 19 of the Mother's 15th Affidavit, she said:

“...up to Year 3 at (Name of School deleted), I wrote several emails to the teacher, some of them at the Respondent's behest, about M being bullied by his class mates such as DT, FTC, and WR (the fact that WR was also a good friend of M's shows the type of non-assertive, timid personality M has. He would rather be bullied by his own friend then stand up to himself....He (the Father) also forgets by his own lawyer's letter.....in which he forbade me from taking my own son to after-school swimming lessons at the (Name of School deleted) pool because the male changing room was full of bullies.”

The letter that the Mother mentioned is dated 24 December 2014, it was said on paragraph 1 of page 2 of the said letter:

“Our client has been accompanying M into the male changing room since the very first session of swimming lessons. He saw kids being bullied for too often.....Would she (the Mother) not be worried to send M to the changing room without his father to accompany him, and let him to deal with bullying by himself?....”

One of the oppositions raised by the Father is that there are full of bullies in boarding school; he however also acknowledged in his oral testimony that bullying can happen at every school around the world. Nevertheless, given M's character of being too kind like what the Mother described him as “always allows others in front of him in a queue and will put their needs before his own”, I am not sure whether boarding school suits M at the age of 13. But if M stays in Hong Kong, it is unlikely that he would get bullied again because he has nearly finished his 1st year of secondary school and he has made many friends. In any event, the parents are with him every day. In case there is any issue of bullying, I am sure they would deal with it.

I accept that M loves his school and teachers. By allowing the Mother's application, M would lose the classes that he enjoys and the classmates that he loves. Ms Yip in her opening submission said that many of M's best friends since around year 2 had left (Name of School deleted) in succession. She argued therefore M has to make new friends every single year. She submitted this is life at an international school.

If M were to go to boarding school in the UK however, this would be a completely new environment. I agree with Mr Pilbrow that friendship does not build up overnight.

With regard to the learning of independence, as mentioned in the closing submission of Ms Yip when she talked about the camp and the school trips in paragraph 3(n)(iv):

"Six to 10 days is a big deal to a child of M's age. The fact that the school arranged this kind of activity in the first place indicates clearly their recognition of the need to train children's ability to express their independence and assertiveness."

So, if (Name of School deleted) is already organising those trips with an aim to train independence and assertiveness, why does he have to leave at 13 but not when he is older?

When asked by Mr Pilbrow as to the fact that primary school learning should be fun and secondary should be tighter, why not give (Name of School deleted) a try as M is just in the first year of secondary school, the Mother said it is running out of time because 13 is the optimal age. She said that as GCSE is taken at 16 so that 13 is the pointer for new intake in order to allow time to settle in.

In the Mother's 14th Affidavit, she said:

"Year 9 is the natural point at which overseas students join the UK boarding school community. Schools prepare themselves for new intakes at Year 9, so it is the time when they are focused and interested. Year 9 allows children enough time to settle into the new way of life in a pressure-free environment, before serious studies for GCSEs or diplomas are undertaken."

Ms Yip in her closing submission has invited me to read articles on boarding school in UK. In an article, "Why working out harder doesn't give you a licence to pig out afterwards" dated 29 January 2016", it however said this:

"Hong Kong parents continue to send their children to British boarding schools for A-levels in preparation for a British university...." "The academic quality of boarding schools, rather than specific location, and access to their university of choice are still the prime motivations for heading to Britain between the ages of 13 and 17, while most say 16 is the best age to make the transfer..."

From this article submitted by the Mother, it seems to suggest that M does not have to go at the age of 13.

The Mother in paragraph 10 of her 15th Affidavit said:

“When M goes to UK boarding school, I believe he will immediately be at ease in his surroundings. He might have complaints about his bedsheets and bathrooms, but he will soon become used to those.”

The question is how soon?

Again from those articles that I was invited to read, there is an article written by Ben Fogle: Without boarding school I’d be nobody, he said:

“I loved my home, I loved my dogs and I loved my family....I will never forget that feeling. I stood helplessly in the drive way.....as my parents’ car disappeared back down the drive. I didn’t stop crying for a year.....I don’t know how it happened, but one day I woke up and I was happy. Suddenly from heading home most weekends, I would go for a month without an exeat. The homesickness had gone and I began to love school....Up until then I had always deferred decision making to my parents – a shrug of the shoulders and a monosyllabic grunt was all I had to offer – but suddenly I was forced to make decisions on my own. My confidence grew; I stood taller....” (With my emphasis in bold)

In the same article, the author said that his wife also cried for a year when she started boarding but is now grateful for the experience.

Although Dr Craigen said that it is highly likely that M will adjust rather quickly to a new environment, Ms (J) who has taught M for many years was of the view that M does not cope well in transition. As their opinions; one being an expert and the other one has known M for a long time are contradictory, given that it is the Mother’s case that M’s potential has not yet been dug out, is it still one year the time we are talking about?

I can understand that the Mother would like M to follow in her footsteps. However, having heard and observed the Mother in giving oral evidence and from what I read from Dr Craigen’s report, her character is not the same as M. I have reservation that he should open up the challenges at the age of 13; M may not be ready for that given his character.

Dr Craigen when questioned by Mr Pilbrow disagreed that M is not adapted to change and yet she admitted that it is highly likely that at the beginning it would be tough because it is a big change. She also admits that there would be risk but not high risk, she reconfirms that M would adapt with no social problems. If it is the case, as I have already found that it is not necessary to remove M at this stage, why is there the need to take the risk, albeit not high?

Ms Yip in her closing submission said that:

“it is common sense that sending M to a boarding school can train his independence. He will be away from the family. He will have to learn discipline. He will be looking after himself with the assistance of the school...”

In my view, I cannot understand why the parents could not work together to allow M to be independent progressively but to rely on boarding school to train him to be so.

I disagree with Ms Yip when she said that the available evidence and the reasonable inference to be drawn from the existing evidence, as indicated by the Father's oral evidence, is that despite any good intentions, co-parenting is not gaining much mileage and is unlikely to make big strides.

The Father said in his oral testimony that since the moment that he cut the umbilical cord, he loved and cared for M and it has been his life and duty. He said the dispute between the 2 grown-ups can be distressful to M and it is the child who is being punished.

The Father also said that during the 30-minute debriefing session with Dr Craigen, she said that if co-parenting works, it is better than sending M to boarding school and she suggested the parents to work harder. The Father said that co-parenting has been working for 3 months but was stopped because he thinks the Mother wants to make co-parenting fail so that her application would succeed. He is hoping co-parenting to continue as soon as possible so that Dr Lora Lee can teach them the co-parenting skill. Although the Mother denied the Father's allegation and said that it was stopped because Dr Lora Lee was on Easter holidays, there is no evidence to suggest that the Mother would not attend the session again since it is for M's benefit that co-parenting can work effectively.

Ms Yip in her closing submission also said that:

"Without disrespect, Father strikes as the kind of person with whom one would find it hard to start a conversation, not to mention engage in a serious discussion, which requires reasoning."

All I can say is where there is a will, there is a way. No matter how difficult it is, the parties have to try to learn the co-parenting skill because M suffers from the adults' conflict. Can the parents wake up to the problem and face it? M is the only child of the family and he is a good boy. M is trying to please both parents at the expense of himself suffering. I disagree that it is a wishful thinking to believe the parties can work together with regard to co-parenting. I hope that by seeing Dr Craigen's report, the parents can come up with some consensus in particular on the child-related issue. In my view, by sending M to boarding school might not reduce the number of litigations in Court. The parties might still come back for my decision as to which boarding school M should attend etc. and in any event, there are still the AR proceedings. Towards the end of this trial, Ms Yip has already informed the Court that she has prepared another Summons for application whether M would be allowed to go to UK this summer.

Should M attend boarding school, it is likely that he will continue to see his parents often because the Father reported that he would visit M on a monthly basis should M attend boarding school abroad. The Mother also has the time and financial means to visit him often. Given Dr Craigen's findings that those conflicts would not be going unnoticed to M, unless the conflicts disappear, M would know no matter whether he is in boarding school or in Hong Kong. All I can say at this stage is that it takes two to tango and yet it takes two to compromise. I have seen cases that have worked. After all, the parents in this case are highly educated.

As Dr Lora Lee mentioned in her email to the parties on 20 February 2016, “I hope that you come to see me since you have decided that you love M more than you dislike the other parent, and you desire a change in your communication with each other ...”

Even Dr Craigen said in the last part of her conclusion that:

“given M’s reluctance to be part of this decision making process and with a desire to preserve his overall psychological health, it is highly recommended that the Father and the Mother proactively attempt to find ways to overcome their relational dysfunction (eg attending therapy) in order to more effectively co-parent their child.”

Conclusion

Having considered the matter, and in particular that:

Dr Lora Lee have been engaged, who saw the improvement in the parties’ communication and dealing with M’s matter and the Father said in Court that he is 200% willing to get involved in co-parenting;

the Father has moved out from the matrimonial home;

M likes his school and teacher as reported by Dr Craigen and the Mother also admitted that M has made a lot of friends;

there is no evidence that M is dissatisfied with (Name of School deleted); and

for the reasons that I have given,

I am not satisfied that M should leave at 13 because I would not take the risk of sending him to a UK boarding school even though the risk is low.

Costs

As this is a child-related matter and Mr Pilbrow has already submitted that the Father would ask for no cost order, I will make an order nisi that there shall be no order as to costs, to be made absolute at the expiration of 14 days. There shall be certificates for Counsel.

Order

The Mother’s application is dismissed.

Last but not least, it remains for me to express my gratitude to both Ms Yip and Mr Pilbrow for their helpful assistance in this trial.

(Susan Wong)

Deputy District Judge

Ms Anita Yip, SC instructed by Withers, Solicitors for the Petitioner

Mr David Pilbrow, SC instructed by Edwin Yun & Co, Solicitors for the Respondent

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