

HONG KONG / JUDGMENT

GCOL nee W v. IHL

COURT

Family Court

DECIDED

18 August 2017

CASE / FILE NUMBER

FCMC10850/2006

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FCMC 10850 / 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 10850 OF 2006

BETWEEN GCOL nee W Petitioner and IHL Respondent

Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not open to public) Dates of Hearing:
13 15 June 2017 Dates of written closing submissions: 4 and 6 July 2017 Date of written replies: 13
July 2017: None received Date of Judgment: 18 August 2017

J U D G M E N T (Relocation and variation of access)

Introduction

AUTONOMOUT There are two applications before me that now require adjudication. First in time is the respondent father s application to vary the access arrangements for the only child of the family, C. This is dated the 6 January 2017 and states as follows: Order to be made that- That the structure of access be re visited on the grounds (a) concerns over the amount of access not taking place. (b) Concerns over the diminished importance of the father. (c) Look at reintroducing family and friends as supervisors to ensure regular contact takes place to improve the child s relationship with the father and his family (d) Phone contact between the Father and child be defined throughout the week. (e) Setup a family phone group to include parents, grandparents, Uncles, Aunties and first cousins. (f) The long term access to be set in place including Christmas day 2017. (g) A clear plan towards the child having overnight access, vacation in Ireland. (h) applying for the child s Irish passport. Any other directions the court thinks fit. Cost of this application be provided for. The second is an application by the petitioner mother for leave to remove C out of the jurisdiction of Hong Kong in order to permanently relocate with her to

Cyprus. The mother, who is from the UK originally, wishes to join her parents who reside in Cyprus for most of the year. The father opposes the mother's application and asks that C, who has just turned 12 years of age, remain living in Hong Kong for the next 12 months in order to build bridges and remove most if not all legal issues. AUTONUMOUT All relocation cases are difficult but this is perhaps more difficult than most, not because of any legal conundrums, but because it is played out against a very difficult background, which has led in turn to a great deal of ongoing and increasingly hostile litigation. Litigation background AUTONUMOUT In November 2007 my sister Judge, HH Judge S D Almada Remedios handed down a specific issues judgment in which she found inter alia that the father posed a risk to the child C because he had viewed deviant pornographic sites and had denied that he had done so. She said in her conclusion as follows:

52. I find, and I know this is very serious, that the father has been playing a game of catch me if you can throughout this whole process when he knew the mother suspected him of viewing pornography. The crushing evidence against him has come out at the eleventh hour at this trial. He has been caught. Yet despite the overwhelming evidence against him, he still feels forthright to tell the court and to deny that it is him viewing the pornography. The evidence in this case is overwhelming against the father. I am satisfied in this case beyond all reasonable doubt that the father was viewing all the pornography on the internet on the home computer, as is alleged and as set out by the computer expert. I find he was the person typing in the key words to the search engines and was responsible for the partitioning of the hard drive, deploying the Evidence Eliminator, the ID Suite and the reduction of the capacity of the hard drive. C, who was born on the XX August 2005 would have been 2 years and three months old at the time of this judgment. AUTONUMOUT On the 4 September 2008 this was followed by a further judgment concerning supervision of access, in which she said as follows: Since 16 November 2007 after the court found that the father was the person viewing deviant pornography on the Internet over the home computer, the father has been having supervised access to his daughter now aged 3. In May 2008 approximately 7 months after the supervision order was imposed the father now applies to have his access to the daughter to be unsupervised. In support of his application for unsupervised access the father relies upon Dr. C's report dated 6 May 2008 where Dr. C opines that continued supervised access to the daughter is no longer needed. The question now before the court is whether the father should have unsupervised access to the daughter.
52. I am unable to place any weight on Dr. C's evaluation or opinion of the father that the father does not pose a risk or is a low risk to the daughter. Dr. C has failed in his evaluation. He has failed to address the father's denial.
53. Dr. C is not up to the task of disassembling and treating the father's denial in this case.
54. These important factors are present before me. From my finding of fact that the father viewed the internet pornography, it can be found that the father is addicted to this deviant pornography. Dr. C has found that this does not disappear within a year. As a result of the length of the sessions of viewing this would mean that the father is indulging in the fantasy of those sites. If there is a fantasy there is an increased risk of acting out the fantasy. As the

father is in denial there is a risk that he will do the thing that is being denied. As the father is in denial it is very difficult for Dr. C to provide a well informed evaluation of the risk he poses. Supervised access is to be continued

55. In all the circumstances I am satisfied that all the indications above show that the father poses a risk to his daughter and the father's access to the daughter shall continue to be supervised until further order. The father's application for unsupervised is dismissed. Since then C's access to her father has been supervised. The supervision is currently undertaken by a professional Nanny Agency. AUTONUMOUT Notwithstanding what can only be described as fairly damning evidence against him, the father has consistently maintained his innocence. He has never accepted the findings in those judgments and consequently has never engaged in any form of counselling or therapy which might recognize these findings as a basic pre requisite. AUTONUMOUT There have been other hearings in relation to access and related matters, but the case first came before me in April 2015 on an application made by the father to vary the access arrangements. By that stage both parents were acting in person and the Children's Dispute Resolution protocol was in place. A Children's Dispute Resolution hearing was held on the 5 January 2016 followed by a second on the 6 June 2016 and eventually consensus was reached as follows: AND UPON the Petitioner [mother] and the Respondent [father] acknowledging and agreeing that in principle it is agreed that the Respondent shall spend additional time with the child of the family, namely, CAL (C), a girl born on the XX August 2005 during the first week of the school summer holiday (i.e. from the 27th June 2016 1st July 2016) and during the last week of the school summer holiday (i.e. from the 8th August 2016 12th August 2016), the exact times for the additional access to be agreed between the parties. AND UPON the Petitioner and the Respondent acknowledging and agreeing that also in principle the public holiday shall continue to be alternated between the parties. In the event that the Respondent would like an alternate school holiday day to a public holiday, then that is a matter that can be negotiated between the parties. The access to take place from 11 a.m. 6 p.m. IT IS BY CONSENT ORDERED that: The order dated the 5th January 2016 shall be varied to the extent that access on Sundays shall be on a 2 Sunday/1 Sunday ratio so that the Respondent shall have access on Sunday 12th June and Sunday 19th June from 11 a.m. to 6 p.m. and then on Sunday 3rd July and 10th July from 11 a.m. 6 p.m. Sunday access shall then be suspended until Sunday 7th August 2016 whereupon access shall recommence on the same basis. The Respondent shall have access on Sunday 7th August and 14th August, 28th August and 4th September and so on and so forth. On the weeks that the Respondent does not have Sunday access, the Respondent shall have access to C on one afternoon/evening after school preferably on Monday at times to be determined. Liberty to apply. There be no order as to costs including all costs reserved. During the CDR hearings it was pointed out to the parties, that this court is bound by the findings made by my sister judge as set out above, given that there had been no appeal. AUTONUMOUT Notwithstanding the fact that some progress seemed to have been made in June, the father nevertheless issued his further summons as set out above. In part this seems to have precipitated the mother's application to relocate. I should add that the mother had

previously sought to relocate to Cyprus and the father had consented to her application and a detailed order to that effect is on the court file dated the 7 November 2012. At that stage the mother had lost her job and relocation seemed inevitable. She subsequently secured a further position and decided to remain in Hong Kong. AUTONUMOUT Nearly five years down the line the mother says that her health is suffering and that she is emotionally, physically and financially destroyed and extremely unhappy . In particular, she is finding it very difficult to manage financially. AUTONUMOUT The father for his part says, for a whole host of reasons, that it is not in C s best interests to leave now. He is very much afraid that his relationship with C will be damaged significantly by such a move. He asks for a further 12 months to try to resolve matters. In that event he suggests that the supervision be suspended on a trial basis and that he and C have an opportunity to try to strengthen their relationship. The main issues AUTONUMOUT In simple terms then the main issues are as follows: Should permission be given for C to leave Hong Kong in order to relocate to Cyprus with her Mother? In the event that permission is given what should be the access arrangements going forward? Should access continue to be supervised? AUTONUMOUT I must now turn to consider the issues, the law and the parties evidence as set out in their affidavits and as given orally by them during the hearing. I also heard evidence from the social welfare officer Ms K and the clinical psychologist, Ms L. The Law AUTONUMOUT In Hong Kong we continue to follow the guidance provided by the English authorities and in particular by both *Poel v Poel* [1970] and *Payne v Payne* [2001] 1 FLR 1053. This was also confirmed by the Court of Appeal in Hong Kong namely *SMM v TWM* CACV 209 of 2009. AUTONUMOUT Consequently, it might be helpful to repeat the actual and most often quoted passage from Lord Justice Thorpe who said in *Payne* as follows: (40). To guard against the risk of too perfunctory an investigation resulting from too ready an assumption that the mother s proposals are necessarily compatible with the child s welfare I would suggest the following discipline as a prelude to conclusion: Pose the question: is the mother s application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child s life. Then ask is the mother s application realistic, by which I mean, founded on practical proposals both well researched and investigated? If the application fails either of these tests refusal will inevitably follow. If however the application passes these tests then there must be a careful appraisal of the father s opposition; is it motivated by genuine concern for the future of the child s welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child s relationships with the maternal family and homeland? What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal? The outcome of the second and third appraisals must then be brought into an overriding review of the child s welfare as the paramount consideration, directed by the statutory checklist insofar as appropriate. In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this

factor. AUTONUMOUT The other point worth highlighting, given Hong Kong's large expatriate community, is set out in *F v H (Children: relocation)* [2008] 2FLR 1667 where it was held that:

- (1) The bar as to practicalities to be jumped by a relocation applicant was set at a wide variety of heights depending on the facts and circumstances of the case. In this commonplace category of cross-border family creation in which the primary carer was returning to a completely familiar environment the bar was set considerably lower than in the case of an applicant who in pursuit of some dream or ambition was proposing to take the children to an unknown and untried environment. The bar was set particularly low if the primary carer was returning, as in this case, to a completely familiar home after a brief absence. AUTONUMOUT In many expatriate cases therefore, *SMM v TWM* being a case in point, it would seem likely that the bar would most probably be set at a low level. In this case, the mother is seeking to relocate to Cyprus, which is where her parents retired to, in part after leaving Hong Kong. Apparently they have historically split their time between Cyprus and Scotland, although the maternal Grandmother also spends a lot of time in Hong Kong in order to support the mother and C. Consequently, although the mother is not asking to relocate to the country of her birth, she is asking to relocate to a place that she is very familiar with and where she has a great deal of family support. The mother and C visit Cyprus at least once a year on average and sometimes more than once a year depending on circumstances. AUTONUMOUT Another very useful case coming out of the United Kingdom is *MK v CK* [2011] EWCA Civ 793. In that case, Lady Justice Black, as she then was, said as follows:
 141. The first point that is quite clear is that, as I have said already, the principle the only authentic principle that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child. AUTONUMOUT With respect I agree. To reiterate, the one and only authentic legal principle that I need be concerned with, is that the welfare or best interests of C, remain the court's paramount concern. I will though largely rely on the guidance provided by *Payne* in coming to that decision. Should permission be given for C to relocate to Cyprus with her mother? AUTONUMOUT In referring to the *Payne* guidelines I intend to concentrate first on the step by step approach outlined by Thorpe LJ from paragraph 13 set out above. Is the mother's case genuine in the sense that it is not motivated by some selfish desire to exclude the father from C's life? AUTONUMOUT The father is concerned that he will be excluded if the mother relocates to Cyprus, especially given the circumstances. He says *inter alia* as follows in his closing submission: Having read G's submission I now feel more strongly than ever that this move is happening far too quickly and this cannot possibly be in C's best interest. I feel there is something very wrong with G's reasons for moving, something is not right. I truly fear I am about to lose my daughter, there is very little in G's submissions that expresses she is truly going to endorse C's relationship with me and our Irish family. Both lawyers clearly state that it is not possible to have a mirror order between

Hong Kong and Cyprus. The lawyer in Cyprus says Since Hong Kong is not a party to any international convention .also since there is not any bilateral treaty it appears that such an order cannot be registered and enforced in Cyprus . G is already saying she doesn t want me visiting C before Christmas that s 4 months without C being able to see her father (para 18). G has made a comment about concerns around C spending time with my family, even in Cyprus which suggests she won t promote that happening. My family are not under a supervision order but I m sure from what she says, G has no intention of allowing C to spend time with them unsupervised (para 10). It is clear that G will not be in Cyprus with C for the start of the school year (para 18). G is now saying she will discuss looking at the supervision in Hong Kong Easter 2019 as I ve already told G in court, there is practically no chance we will be living in Hong Kong by then if C has left. AUTONUMOUT However, I accept, despite the protestations by the father to the contrary, that the mother has supported C s relationship with her father and her extended Irish family in almost impossible circumstances. There is no reason to believe that this will not continue if she is living in Cyprus. AUTONUMOUT I also don t accept what the father says about a mirror order. It is clear that it is possible for there to be a mirror order in Cyprus, if both parties consent. If the father chooses not to consent then there may be a problem. AUTONUMOUT I also accept that the mother has genuine concerns about the father turning up unannounced whether that is in Hong Kong or Cyprus, or indeed elsewhere. She also has concerns about ongoing supervision. I accept that these concerns are genuine. AUTONUMOUT All in all, I accept that the mother genuinely wishes to relocate and that this is not simply motivated by a desire to get C away from her father. In particular, I accept that she is in very straightened financial circumstances and that this is only likely to get worse given the expected increase in rent and school fees. It is also of note that the father s contribution towards C s maintenance has not increased in any substantial way over the years and that although he has indicated from time to time that he may be able to pay more, that this has never eventuated. I also accept that he does not infact contribute towards her school fees. It is of note that during the hearing the father offered to pay the mother an additional HK\$6,000 per month if the supervision was lifted as he currently has to pay this amount to the Nanny Agency. Further it is clear that the mother s health is suffering due in part to the stress of these ongoing proceedings and worries about money. Is the mother s plan realistic, i.e. founded on practical proposals both well researched and investigated? AUTONUMOUT The mother proposes living with her parents and her mother has written to the court confirming that they have two spare bedrooms together at the back of their house in Cyprus where the mother and C can live. Indeed, this is where the mother and C stay when they go to Cyprus for holidays. Although I accept that there is a difference between living together as a three generational family unit on a permanent basis and visiting, it is clear that the mother and C are used to living together with the maternal Grandmother given that she also visits Hong Kong on a regular basis and sometimes for extended periods. I do not foresee any difficulty, as has been suggested by the father, with the parties living together under one roof. AUTONUMOUT I am told that there is a good international school close to the grandparents home called The International School of X. The new academic year starts during the first

week of September. C will need to have an interview, but the indication is that this is for streaming purposes only and that there will be no difficulty in providing her with a place. I accept that this looks like a good fit for C. AUTONUMOUT The mother proposes that C leave Hong Kong towards the end of August and that she will join her in Cyprus once she has worked her notice and packed up etc. It is her intention to try to find a job, similar to the one that she has now, in administration possibly for an international school or law firm.

Alternatively, she may look to retrain. AUTONUMOUT All in all, I accept that the mother's plan is both realistic and sensible. Is the Father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? AUTONUMOUT I accept that the father has genuine concerns about the proposed move to Cyprus, notwithstanding this case's very troubled history. What would be the extent of the detriment to the father and his future relationship with C, were the application granted?

AUTONUMOUT I also accept that the proposed move to Cyprus is likely to have a detrimental effect on his relationship with C, unless all concerned can put some of the bad feeling that this case has engendered behind them and that they can concentrate on making the new access arrangements work effectively. Access proposals AUTONUMOUT The mother proposes as follows: Proposed arrangements for me to remove C from Hong Kong to live in Cyprus. Telephone contact:

- What's App Family messaging group to continue as now
- Skype or FaceTime twice a week unless decided differently between I and C Skype or FaceTime on the following days: I's birthday C's birthday Father's Day St. Patrick's Day Christmas Day Easter Sunday Access Hong Kong I undertake to return to Hong Kong with C at least once a year during her school holidays for a week to ten days. I will provide I with a minimum of six weeks notice for our travel dates. If I am working, I will pay for my flight and I will need to cover half the cost of C's flight. If I am studying, I will need I to pay for half my flight as well as half of C's flight. This is also subject to our securing accommodation with a friend, otherwise I would need I to pay for half our hotel bill. Supervised access to continue with In Safe Hands. Cyprus Should I and/or his family wish to visit Cyprus during the school holidays, I would like six weeks notice of their travel dates. As agreed previously, I would like an undertaking from him that they would not visit T. As per our previous agreement, unless agreed otherwise, I and/or his family would have day access with C for a period of up to ten days in a period of up to three weeks, or seven days in a period of a week to ten days, to be agreed in advance. Supervised access to take place with a nanny to be confirmed. Education
- e) C would attend the International School of X and I would undertake to keep I informed of her schooling progress and any important matters related to her education. Maintenance I currently pays me HK\$13,700 a month for C's maintenance, along with half of any large one-off costs such as school bus, dentist cover, health insurance, camps, school activities. As he will be freeing up around HK\$6,000 from the costs of regular supervision in Hong Kong, I request that he increases this amount to HK\$15,000 a month and continues to pay half of any

large expenses such as health insurance, dental work, etc Health I undertake to keep I informed of any significant health matters relating to C. AUTONUMOUT As ever the main bone of contention from the father s perspective remains the supervision of access, overnight staying access and the father s concern that C does not have a full relationship with her wider family in Ireland. He wishes to be able to take her away on holiday and for extended periods. However, above all of this the father remains adamant that it would be in C s best interests to remain in Hong Kong for another 12 months. Amongst other things he says as follows in his closing submission: I am begging Your Honour to give G and I the chance to mend and heal the suffering we have without question caused our daughter C. On the final day of the trial the psychiatrist spoke of how troubled C is because of G and myself. I sat ashamed and very upset that we had done this to our little girl. Both G and I must do everything we can to reverse and mend the hurt we have caused C. AUTONUMOUT My difficulty is that he does not say how this might be achieved. Both parties have had every opportunity to make whatever application they thought appropriate or to look to other less confrontational ways of trying to resolve their differences, including family therapy and child inclusive mediation. They have not done so. This matter has been in and out of the courts since 2007. I am not sure that delaying the inevitable will assist anyone, least of all C. To what extent would any possible detriment be offset by extension of the child s relationships with the maternal family and homeland? AUTONUMOUT Although C will not be returning to her mother s homeland, she will be going to somewhere that is familiar to her. She will also have the support of her maternal grandparents and in particular her grandmother, to whom she appears to be close. What would be the impact on the mother of a refusal of her realistic proposal? AUTONUMOUT I accept that the mother is at the end of her tether and that a refusal of her proposal is likely to be devastating to her. Social Welfare Report AUTONUMOUT Recommendations made to the court in social welfare reports, although not binding are very persuasive. If the court decides not to follow the recommendations made, then reasons must be given. AUTONUMOUT In this case the Social Welfare officer recommended as follows: Remarks and Recommendation

52. In January 2017, the father made application to Family Court for asking his girlfriend, friends and family supervise his access to the daughter. The mother put up her application for permanent removal to Cyprus in 15 March 2017.
53. It was natural that child generally developed stronger bonding with the residing parent who was taking care of her day to day living. As observed during enquiry, C who had been under the care of her mother ever since the parents separated, her emotional bonding with the mother was undeniably stronger. Though the family burden was mainly supported by the mother singlehanded, Ms W tried her best to maintain the family living at adequate standard. She secured for C with stable schooling and comfortable accommodation with employing stable domestic helper to render childcare assistance to her during the working time of the mother. She took care of her medical and education concern. She demonstrated herself to be a capable parent. To prepare for the relocation of the child to Cyprus, the mother did lots of liaison and arrangement on education. She proposed to relocate to her

maiden home in Cyprus because of have free lodging, lower cost of living, better living and community environment. Besides, she could enjoy emotional and social support from her maiden family. The most important point was that she would not need to work on a full time basis such that she could spend more time with C as well as her parents in Cyprus.

54. From the father's perspective, C's relocation to Cyprus would definitely affect the father-child relationship in view of the geographical distance between two places. After knowing the present relocation application of the mother, the father disagreed with the plan and he was afraid of weakening the relationship with the child if the application of relocation was successful. He was even afraid of that the mother had ill intention for not facilitating the contact between him and the daughter. He believed that face-to-face interaction was essential to facilitate the child to feel being loved by the parents. He also believed that healthy father-child relationship helped to the child to have better development. The geographical distance, time differences and financial burden created difficulty for him to have regular contacts with C practically.
55. The concern of the father was considered reasonable. To ensure the emotional bonding of father and daughter, constant and regular communication and face-to-face interactions would be important. It was noted that Ms W had recognized the father's needs and concern. She made few workable options to facilitate the contact between the father and the daughter in the future by electronic means such as family WhatsApp group, skype or FaceTime. Ms W also agreed to return to Hong Kong with C at least once a year during her school holidays for a week to ten days to access her father during the holidays. She would also help to arrange Mr. L's access to C if he or his family would go to Cyprus to visit C.
56. The maternal grandparents had shown their concern and support to Ms W and C. The maternal grandmother's visit to Hong Kong to support the mother and the child as well as to receive social investigation. She guaranteed an unfailing support to them for their living and financial assistance in Cyprus should their relocation application be granted.
57. Through the social investigation, the investigating officer had the following observations on the mother's relocation proposal: The mother's application for relocation was out of a genuine motivation to enable herself to spend more time to take care of her daughter in a less stressful and supportive environment in her maiden family. All along, the mother adopted an ongoing facilitating attitude in arranging the child access to the father. In order to protect the father-daughter relationship, she did not let the daughter know the reason for the need of supervised access was arising from the sexual risk to the daughter. If the mother really wanted to delineate the father from the daughter, she should take action when she was granted a court order to remove the child permanently from jurisdiction of Hong Kong to reside in Cyprus in the first application or removal in 2012. The living proposal in Cyprus was considered practical and well supported by the maternal grandparents. Considering C was approaching to 12 years old in August 2017 with active and outgoing character, she could easily adjust to new environment and accommodation. Despite missing her father and friends, C accepted the relocation plan to Cyprus out of her love, concern and attachment to

her mother. C was very caring and thoughtful to the mother. She hoped that the move to Cyprus could help the mother to relieve her negative feelings in living in Hong Kong. The father's reasons for objecting the relocation were that the child was entering her secondary school with stable development on her study, social network and well adjustment in her daily life. The removal plan at this stage was not considered as the best interest of the child but only the best interest of the mother. The mother, facing the failure of her marriage and financial and emotional stress, who was presently striving hard to maintain her emotional stability and hope for relocation to gain support for her maiden family which was important to the well-being of the primary carer while the emotional well-being of the primary carer of the child would be crucial for the welfare of the child. The child's relocation plan to Cyprus would inevitably affect her accessibility to the father. The time and cost needed for the father to travel to see the child would be higher in Cyprus. Therefore, the mother provided some options for continuing contact between the child and the father such as electronic means access and undertook to bring the child to Hong Kong for meeting the father at least once per year.

58. In view of the above analysis, and taking consideration of the best welfare and interest of the child as the ultimate concern, the mother's application for relocating the child to Cyprus is supported while supervised access to the father be maintained. For the supervised access in Cyprus after relocation, it is suggested that it can be conducted with the presence of a mutually agreed third party and not limited to nanny agency. This seems to me to be a carefully thought out assessment and I agree with Ms K's analysis of the situation. I will come again to the issue of supervision below. The Clinical Psychologists Report AUTONUMOUT The Clinical Psychologist also provided a careful and detailed report running to some 39 pages. She concludes that: 11 Recommendation 11.1 C's psychological well-being is significantly disturbed by the current court proceeding. It is important for the parents to only use the court as the last resort as further court assessment and legal proceedings will likely cause more psychological harm to the child than doing good. C is under tremendous stress as she is worried that her parents will question her or get upset after reading the information she reported to the court. It is therefore important for both parents to respect her views and to give her freedom to express herself. Both parents should refrain from further questioning on about what she has said in this report. Both parents should also refrain from speaking explicitly or directly about their own view on supervision and on relocation in front of C as this would create pressure on C as she cares about the feelings of both parents. She is scared to reveal her true feelings despite being told to say the truth because she does not want to upset her parents. She is torn, with significant loyalty conflict and consequently blaming herself for causing her parents to be upset. 11.2 At this stage, there is no indication that C needs counselling or psychological assistance. Further questioning will affect C in negative ways. 11.3 If possible, the court may explore alternative parenting options (for example, to settle the mother's financial and emotional stress in Hong Kong to see if the mother's mood will improve. To do so, the father needs to work harder to support C and her mother financially and help alleviate C and her mother's emotional stress

by stopping to make further legal applications). 11.4 If the court approves of the relocation, clear and detailed access plan must be drawn. It is unclear what the legal system is like in Cyprus and hence, it is uncertain whether there will be follow-up on the implementation of the access plan. 11.5 If the court disapproves of the relocation, if C could see the father providing more support (emotionally or financially), C may be less worried and she will see her father more positively (as right now, she sees her father as hurtful to her mother). The court may explore ways to help the mother regain physical and emotional well-being. Given the mother's high level of defensiveness in the current setting, it is unlikely that she will open up in this setting. The mother may not be defensive intentionally, she may not be conscious of this. It is hard for anyone to face their emotional difficulties. If needed, it may be more beneficial for the mother to seek assistance outside of the Social Welfare Department. AUTONUMOUT With respect however given the current stage of the proceedings it is not possible for the court to explore alternative parenting options. The parties have already had some opportunity to look at different options within the Children's Dispute Resolution process. Further there are currently no financial applications before me. Conclusion on relocation AUTONUMOUT Given the current circumstances it seems to me that relocation must be preferable to C remaining in Hong Kong, whether that be for 12 months or longer. In the event that permission is given what should the access arrangements be? Should supervision continue?

40. I did express some concern during the hearing about the continuation of the supervision of access by an outside agency. C is now 12 years old. I have no doubt that as she gets older she will question the necessity for the supervision. I asked the mother for her views and was concerned by the suggestion that supervision should continue until C is 16 years of age. I do not think this will be possible at any level. Alternatively, it was suggested that the situation be reviewed in 2 years time when C is 14 years old. This certainly seems to me to be a more reasonable suggestion. I am also cognizant of the fact that whatever has gone before, (aside from the ongoing and insidious conflict between the parties, that as the Clinical Psychologist has pointed out, is effecting C), it seems that nothing untoward appears to have happened between the father and C. The mother may say that this is because there has been ongoing supervision and clearly there is some force in that argument. But by the same token, it may also be because in reality the father currently poses no risk to his daughter.
41. Given that I accept that the issue of supervision may need to be looked at again and as suggested by the Social Welfare Officer it may be sensible, in the unlikely event that the parties are able to agree, for a third party to be present during access in the first instance. My difficulty is that I have not seen any of the proposed third parties in the witness box and I am therefore unable to form a view as to their suitability. I also accept that there has been considerable disagreement about this in the past. Consequently, I accept that supervision should continue for the next two years, until C reaches the age of 14 whereupon the situation may be reviewed. I also accept that the supervision shall be conducted by a professional Nanny Agency, whether in Hong Kong or Cyprus, unless the parties are able to agree the identity of a suitable third party. Other conclusions

42. Having considered all of the factors above, it seems to me that it would be in the best interests of C to allow her to relocate to Cyprus with effect from the end of August 2017, subject to the mother's proposals for access in paragraph 30 a, b, c, d, e, f and i) above save that it is not possible to impose an undertaking on the father's family in d).
43. I further direct that steps be taken by both sides to obtain a mirror order in Cyprus and that the costs for the same to be split equally between the parties.
44. I would further ask that the mother undertake to inform the father in the event that she wishes to relocate from Cyprus in order to reside with C elsewhere and that likewise the father undertake to inform the mother in the event that he leaves Hong Kong. This should be included in the court order.
45. Both parties have referred to finances in their closing submission, although there are no financial applications before me. Consequently, the current order on maintenance for C shall remain in place. In the event that the mother wishes to apply to vary up, or the father wishes to apply to vary down, then each must make the appropriate application to the court.
46. In so far as the access arrangements in Hong Kong are concerned, and in the event that the father is still based in Hong Kong, I further direct that the cost of C's flight be split equally between the parents. Paragraph 30 b) shall be varied accordingly.
47. Other than as set out above the father's summons dated the 6 January 2017 shall be dismissed.
48. Given that this is a child related matter I shall make an order that there be no order as to costs. (Sharon D. MELLOY) District Judge The Petitioner and the Respondent acted in person PAGE PAGE - A B C D E F G H I J K L M N O 1udk 1udk h+UW h+UW gd+UW gd+UW h+UW h+UW h+UW h+UW gd+UW gd+UW hg/j hg/j h5PY h4_, hU'\$ hg/j gd>K{ gd>K{ hU'\$ hg/ j h4_, h>K{ h>K{ h>K{ h>K{ gd>K{ gdU'\$ gd>K{ gd>K{ hS'T hS'T hS'T hS'T hS'T hS'T hU'\$ hU'\$ h4_, hS'T hD~> hg/j hMh; hU'\$ ohoah hS'T h)qm hS'T hS'T h)qm hU'\$ h>K{ he[w hS'T gd5# gd>K{ hS'T hS'T hS'T h?}> h?}> gd0;. gd5# vhw_ h0;. h0;. h4_, h)qm h0;. h0;. h0;. h0;. hMh; h+ . gdgC hL-X hMh; h+ . hp>: hp>: hp>: hp>: hp>: hp>: hp>: gd#Z gdp>: gd#Z gd'e gd#Z gdp>: gdT_ gd'e gd#Z gdp>: h:g h:g hp>: gdT_ gdT_ xphp`h h:g ~xoi` hS'T hS'T h;_5 h;_5 h;_5 gdVl hp4n h;_5 &`#\$ ypgygpygpg `pgy V A B C D E F G H I J K L M N O P Q R S T U V [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"/> oa6Tw zEnBp b LTiu LTiu zEnB >M6} & 6" |H0t CACV Judiciary English.dot Wanching Yiu Microsoft Office

Word Judiciary CACV Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{0D2A1576-87E4-47C3-A447-D16D4D75E33F}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=111775

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/gcol-nee-w-v-ihl-2017>

Prepared on 26 October 2026 · Esheria