

HONG KONG / JUDGMENT

H v. T

COURT

Family Court

DECIDED

9 February 2007

CASE / FILE NUMBER

FCMC10524/2006

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bjbj FCMC 10524 of 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 10524 OF 2006

BETWEEN H Petitioner and T Respondent

Coram : Her Honour Judge Chu in Chambers (Not Open to Public) Date of Hearing : 12, 15, 18, 19,
21, 22 December 2006 & 5 January 2007 Date of Final Submissions : 25 January 2007 Date of
Handing Down of Judgment : 9 February 2007

J U D G M E N T

A. Introduction

1. The Petitioner (The Mother) and the Respondent (The Father) have made cross applications for the custody, care and control of their 8 year old son C in these divorce proceedings.
2. The Mother issued a petition for divorce on 25th August 2006, and on the same day issued a summons for interim custody of C. The Father then issued his summons for interim custody on 1st September 2006.
3. As the marriage had clearly broken down irretrievably, the parties, quite sensibly, agreed to obtain a Decree Nisi as soon as possible, and, instead of arguing over interim custody, they agreed to proceed to set the matter of final custody down for trial. The matter of ancillary relief is to be dealt with after this custody trial. The Decree Nisi was subsequently pronounced on 31st October 2006. B. Brief Background
4. Most of the background facts are not substantially in dispute.

5. The Father was born in Hong Kong, and is now about 36 years of age. He never knew his own father and has adopted his mother's maiden surname. When he was about 1 or 2 years old, his mother moved to Australia and she later re-married. The Father was basically brought up by his maternal grandparents. His grandfather was a very wealthy man, being in steel, textile and enamelware businesses. The Father went to the United States for further studies in about 1982 when he was about 12. His grandfather died in 1995 when the Father was about 25. In recent years, his mother has returned and has been basically living in Hong Kong looking after his 94 year old grandmother.
6. While still at High School in the United States, in about 1987, the Father met N who was then about 14. They formed a relationship and started cohabiting. As N was underage at the time, they were not able to legally marry. There was a wedding banquet in about 1988, which was attended by their family members, and thereafter the Father and N cohabited as husband and wife for about 4 years in San Francisco in the United States.
7. As a result of their relationship, the Father and N have a daughter, T, who was born in the United States in 1990. T is now about 16.
8. The relationship between the Father and N ended in about 1992, and the Father later returned to Hong Kong at about end of 1993, at the request of his 3rd Uncle to help in his business, of which the Father's mother also held a majority interest at that time. After he moved back, he resided with his grandparents at their house. N and T continued to reside in the United States being supported by the Father's family.
9. The Mother was born in Taiwan, and will soon be 36 years old. Her parents separated soon after she was born, and she was brought up by her paternal aunt, whom she regarded and called mother. The Mother moved to Hong Kong with her aunt in about 1973 / 1974, and later in about 1982 / 1983 she moved to Los Angeles, when her father applied for both her and her aunt to join him there.
10. In about 1995, the Father met the Mother whilst she was on vacation in Hong Kong. The Mother later moved back to Hong Kong in about 1996.
11. The parties were married in Hong Kong in July 1997, and their only child, C, was born on 16th November 1998 in the United States. C is now 8 years old.
12. After the Father returned to Hong Kong, he and N maintained telephone contact and an amicable relationship. Before the parties married, N and T would come to Hong Kong regularly, staying with the Father's grandparents at their house. After the Father married the Mother, T continued to visit her father in Hong Kong almost every year. In 2004, when T was about 14, she came to stay with the parties for about 3 to 6 months. Apparently she tried to get into German Swiss School but failed to do so, and in the end, T decided to return to the United States.

13. In about January 2005, the parties and C moved to a flat in Parkview, but shortly thereafter in March 2005, their relationship broke down and they agreed to separate.
14. The Mother proposed initially that the Father was to move out and to go and live with his grandparents, but the Father suggested that she should move out instead. The Father then went with the Mother to find a flat for her to live in, and eventually the Mother moved into a flat at Le Cachet, leaving C in the care of the Father at Parkview. The parties signed a separation deed on 23rd March 2005 (the 1st Deed). According to this deed, the Father was to have custody of C, who was to remain living with his father. The Mother resided at Le Cachet until sometime in September that year.
15. In September 2005, the Mother decided to move to Taiwan. The reason why she moved to Taiwan is disputed and I will deal with this later in this judgment.
16. In October 2005, as the Father was about to start a new hotel project in Beijing which could require him travelling to China, he requested N to come to Hong Kong to help look after C. Initially, N was to stay for a short period, but later, N stayed on as she and the Father started to rebuild their relationship. The Father and N have now reconciled. The Father now says he intends to marry Nancy when the divorce is final. N has basically been living in Hong Kong with the Father and C since October 2005, except for short periods when she returned to the United States. T has also moved to live with them in summer 2006.
17. Not long after she moved out, the Mother was not receiving the agreed maintenance payments from the Father. This resulted in her consulting her own solicitors in about May 2005. Eventually, as a result of negotiations between her solicitor and the Father s solicitor, a Deed of Variation was signed on 13th January 2006 (the 2nd Deed), varying some of the financial terms in the 1st Deed, but leaving the custody arrangement of C unchanged.
18. It appears that not long after she signed the 2nd Deed, in about February 2006, the Mother started to make plans to move back to Hong Kong, firstly contacting her former Filipina maid Mariam, who had worked for the parties at Parkview, and after the Mother moved out, she worked for the Father until about August 2005. The Mother arranged for Mariam to return to Hong Kong to work for her. It transpired during the trial that by that time W had met a married man by the name of Mr. M. According to the Mother s evidence, she eventually moved back from Taiwan in April / May 2006 to take up residence at a flat in Happy Valley, and Mariam started to work for W in June 2006.
19. After she moved back, the Mother started to request for more access to C.
20. On 19th August 2006, with the Father s consent, the Mother took C to Korea for a vacation. After their return to Hong Kong, she failed to return C to Parkview and kept C in her care.
21. On 25th August, the Mother issued a petition for divorce and also a summons for C s interim custody, care and control.

22. On 5th September 2006, the Father went to C's school to try and pick up C after school, but the Mother also turned up. As the parties were in dispute as to who should be allowed to pick up C, the Mother then issued an urgent application immediately that she be allowed to collect C from his school and that C was to return to her care. I refused her application and ordered that C be returned to his father's care and to Parkview and further granted the Father interim care and control of C.
23. Since then, C has returned to live with his father, N and T at Parkview, although quite recently, they have just moved to a flat in Tai Hang. By agreement between the parties, C stays with his mother every fortnight from noon on Saturday to 9 : 00 pm the following Sunday (the long weekends), and for the alternate weekends from 8 : 00 pm on Friday to 6 : 30 pm the following Saturday (the short weekends). The parties also agreed to access arrangements for last Christmas, New Year and the forthcoming Chinese New Year.
24. At present, C is attending Primary 3 at a Primary School. From Mondays to Fridays, C attends school from 8 : 00 am to 3 : 00 pm. After school, C would go to have English tutorial lessons at a private tutor Renee's home on Mondays and Tuesdays from 4 : 00 pm to 5 : 00 pm. Five days a week, another tutor, Ms Cheung, gives him two hour tutorial lessons on all the subjects at the Father's home, usually from 5 : 30 pm. to 7 : 30 pm. Dinner is at 8 : 00 pm, and after a short rest, C goes to bed at about 9 : 30 pm. On Saturday mornings, C also goes to Renee's home for tutorial lessons, and during the weekend when the Mother has access on alternate weekends, she will pick up C after his tutorial lessons with Renee, and the Mother will drive C back to H's home on Sunday evenings. Recently, C has also been enrolled by his father in a fencing class at school from 9 : 00 am to 10 : 30 am and then every Thursday, C has table tennis lessons.
25. The issue for this Court to decide is whether C should continue to live with his father, N and T, or he should go and live with his mother. C. The Legal Principles
26. s. 3 of the Guardianship of Minors Ordinance sets out, inter alia, that, in relation to the custody or upbringing of a minor, the court shall regard the welfare of the minor as the first and paramount consideration and in having such regard shall give due consideration to (A) the wishes of the minor, if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and (B) any material information including any report of the Director of Social Welfare available to the court at the hearing.
27. Under s. 48 C of the Matrimonial Causes Ordinance, the general principles set out in s. 3 of the Guardianship of Minors Ordinance apply to custody applications in matrimonial proceedings. D. The Mother's Case
28. Mr Pilbrow SC, acting for the Mother, submits as follows :
 - a. for the majority of C's life, until the Mother left Parkview, she was C's primary carer, whereas the Father showed little interest C and that the Father was a poor role model.

- b. The Mother is now in a position to and wishes to resume that role for C. She can provide her total attention to C and has the infrastructure and financial security to cater for it.
 - c. C is bright and has repeatedly expressed his wish to be with his mother.
 - d. The Social Welfare officer confirms that C's relationship with his mother is comparatively closer than that with his father and his recommendation to the Court is that the Mother should be granted C's custody, care and control.
29. The Mother's case is summarized hereinafter.
30. Before she left Parkview, the Mother was the one who essentially organized everything concerning C's daily life and education. She denies the Father's allegation that she had any problems with the discipline of C.
31. The Mother says that the Father insisted on her leaving the matrimonial home at the time of their separation and having little financial security she had little option but to leave C in the care of his father.
32. The Mother says she did not seek any independent legal advice before signing the 1st Deed and she trusted the Father's lawyer, Mr. Andrew Lee, who drew up the deed for her to sign. The deed provided, inter alia, that the Mother was to move out on 27th March 2005. The Mother further agreed in this deed to the Father having custody of C and that C was to reside with his father at Parkview 6 days each week, that the Mother was to have unlimited access, and that C was to reside and live with his mother one day and one night every week at Le Cachet. Further, on advanced notice of not less than 7 days being given to the Father, the Mother was also allowed to take C abroad, for 2 holiday trips a year, one in December and one from June to August, with the trip not lasting more than 28 days each time.
33. The Mother says she agreed to the Father having custody of C at the time of the separation as she was not financially capable of looking after C, she did not wish to cause any disruption to C, and she thought the Father would be able to care for C properly. It is her case that later she found out that the Father was not.
34. She called two friends, Mr. Wong and Mr. Tong, who met the Father when he was living in Los Angeles before his move to San Francisco to be with N. Before the parties separation, both Mr. Tong and Mr. Wong saw the Father regularly. It appears that whilst in California, the Father had enjoyed a lifestyle of partying, smoking and taking drugs, and that lifestyle continued after the Father returned to Hong Kong. The Mother thus complains that the impression the Father gives is one of having been somewhat spoilt, self-indulgent and content to rely on others to cater for his needs and obligations both financially and socially and as such he is not a promising role model for C.

35. The Mother also complains that the Father is disinterested in sports and that C's extra-curricular activities such as tennis, soccer and swimming lessons ceased shortly after she left home. Further, the Father failed to go with C to Beijing for his school field trip, which he cancelled after W moved out, and he failed to take part in C's school activities.
 36. The Mother says she is now in a position to resume her role as C's primary carer. She is now being supported by her boyfriend Mr.M but did not disclose this until the trial. The Mother has provided copies of her recent bank statement and the monthly statement of her securities account to show that her net financial position to be about HK\$12 m, and she further says she would seek financial support of C from the Father if she were to be granted C's custody.
 37. According to the Social Welfare Officer, Mr Fung, C feels more natural and comfortable with his mother and longs to have more time with her than anyone else. There appears to be a close relationship between C and his mother, and that C has repeatedly expressed his wish to reside with his mother. Mr. Fung has recommended that C's custody be granted to the Mother.
- E. The Father's Case
38. The Father's case is summarized hereinafter.
 39. The status quo as to C's current living arrangements, and including his home, school, activities, with whom he lives and how he is being educated and brought up, and the structure of his day should be maintained.
 40. The home environment offered by the Father contains a family unit, there being a mother figure and a half-sister.
 41. As a result of the discipline introduced into C's life, his academic performance and general demeanour have improved, which improvement may be lost if C is to be placed in the Mother's care.
 42. By leaving C in his custody and care in March 2005, the Father says that the Mother has demonstrated a lack of sincere interest in the welfare of the child.
 43. Mr Coleman submits that the Social Welfare Officer Mr Fung's recommendation was given without full knowledge of all the facts and thus the conclusion may be unreliable.
 44. The Father says that the Mother's case as to why she left C with the Father at the time of separation is confusing since she has made numerous exaggerated or fabricated allegations against the Father, which make him appear to be someone not fit and proper to look after C, and yet she agreed to leave C in his care.
 45. The reason that the Mother called the Father's former friends Mr. Wong and Mr. Tong was to paint and N in the worst light.

46. The Mother has not been frank and has been very evasive. She misled the Court by stating in the Statement as to Arrangements filed with her Petition that C was then living with her and that she was responsible for his care and upbringing, and that C's custody was to remain with her. She did not disclose to this Court the existence of the 2nd Deed when applying for an immediate order that she be allowed to collect C from school on 5th September 2005. She did not disclose to the social welfare officer, Mr. Fung, that she has a boyfriend Mr.M who has been supporting her financially, and even during the trial, she has disclosed very little information about Mr.M.
47. It is the Father's case that the reason why the Mother moved to Taiwan was to get married with someone else, and the inference was that she had found a new life in Taiwan and so decided to go there.
48. The Father alleges that the Mother only moved back to Hong Kong to follow the money. He says that it was not her original intention to move back so as to claim custody of C, as according to the Mother, it was in February 2006 when she made the decision to move back, but she only made the application for custody about 6 months later.
49. The 2nd Deed was signed on 13th January 2006, and the Mother had solicitors acting for her then. After her return to Hong Kong, the Mother did not seek to vary the terms of this deed, which although the deed restated that the Father was to have custody of C with unlimited access to her, the express reference to staying access in the 1st Deed was deleted.
50. It is submitted on behalf of the Father that although the Mother's immigration records show trips to Hong Kong during the period she was living in Taiwan, and although she did see C on some occasions, she chose to see him only on small parts of any such visit, when there was no reason why she might not have at least asked to see him much more frequently because of her absence otherwise.
51. It is further submitted that the Mother's professing to care about C has not always been borne out by her actions, such as when C was in hospital, she did not go and visit C, and, apart from speaking to the tutor Ms Cheung over some administrative arrangements, W never telephoned or met with Ms Cheung to ask how C was doing. Further by turning up at C's school with a bodyguard and lawyers on 5th September to attempt to collect C from school caused C great embarrassment.
52. The Father says he would like to marry N once the divorce is over. They are able to provide a complete family, which is good for the upbringing of the C, as the Mother can either provide a single parent family (with no father and siblings) or a family constituting herself and her boyfriend (being a married man with children) which is not healthy.
53. It is the Father's case that he can provide a more secure home for C. C has benefited from the present tutoring system together with the help of his father and N, and according to Mr. Fung, C has gradually improved in terms of better school performance, generally stable emotion, health and social relationships in the past year.

54. Although the Father appears to have less cash than the Mother, he is a man of substance, and that if unfortunately he runs into financial difficulty, his mother and grandmother will also standby to help out, as evidence by the past history. Thus his financial situation is more stable than the Mother. F. The Evidence
55. The Mother has filed a total of three affirmations and she has attended trial to give evidence. She called three witnesses to give evidence on her behalf, namely the two friends, Mr. Wong, and Mr. Tong, and also her domestic helper Mariam.
56. The Father has filed two affirmations and he has also attended trial to give evidence. He called N, and his domestic helper, Catherine, to give evidence on his behalf.
57. There was a further affirmation filed on behalf of the Father by his friend, a Mr Lawrence Lee, mainly in reply to certain allegations in Mr. Tong s affirmation, but in the end, notwithstanding an order that all deponents were to attend trial for cross-examination, Mr. Lawrence Lee was not able to come from the United States, where he lives, to be cross-examined. Mr. Coleman has sought to have his affirmation admitted under the hearsay rules, which is opposed. During the last day of submissions, Mr Coleman indicated that he does not really need to rely on Mr. Lawrence Lee s affirmation. I therefore do not propose to consider or attach any weight to his affirmation.
58. The social welfare officer, Mr Fung, who submitted a report dated 3rd October 2006, also attended trial to give evidence.
59. During the trial, I had the opportunity to observe the demeanour of the parties and the other witnesses. G. Findings on some issues I. The signing of 1st Deed and the 2nd Deed
60. It appears to be the Mother s case that she did not fully understand the terms and effect of the 1st Deed and the 2nd Deed at the time of her signing.
61. The solicitor who prepared the 1st Deed is by the name of Mr Andrew Lee of Messrs. Robertsons, who is also the solicitor now acting for the Father in these proceedings.
62. The Father has known Mr. Lee over 10 years ago after the Father returned from the United States, and Mr. Lee has been the Father s solicitor as well as a social friend.
63. The Mother says in her oral evidence that the idea to have a separation deed was initiated by her, as at that time, her relationship with the Father was very bad and that whenever there were arguments, he would ask her to give him time to mend his ways. The Mother says that at the time they signed the 1st Deed, he promised her that if he did not improve after one year then they would formally divorce.

64. The Mother says she has known Mr. Lee for many years through the Father, and that it was the Father's suggestion to have the deed drawn up by Mr. Lee. The Mother says she went to Mr. Lee's office on two occasions. On the first occasion, she was told by Mr. Lee that he would prepare a formal deed for separation. On the second occasion, when she went, she signed the 1st Deed.
65. In the Mother's 2nd Affirmation filed on 19th September 2006, she said that she had all along thought that Mr. Lee acted for both her and the Father, and that it never occurred to her, nor was it suggested to her by Messrs. Robertsons that she could or ought to seek independent legal representation in relation to the deed. She claimed that it was only recently (presumably in about September 2006) that the terms of the 1st Deed were explained to her in full by her current legal advisers and that she realized that there were terms in there that she was not aware of. She said she had always thought that the 1st Deed was a temporary arrangement between her and the Father, which could be later varied.
66. It was after her 2nd Affirmation that the Father produced a Letter of Confirmation addressed to Messrs. Robertson, which the Mother signed on the same day she signed the 1st Deed. In this letter, the Mother confirmed that Mr. Lee had strongly advised her to obtain independent legal advice in relation to the deed as it would be binding on her in a court of law, and that nonetheless, she was satisfied and insisted that independent legal advice was not necessary and that she was willing to proceed and execute the deed. In this letter, the Mother confirmed that Mr. Lee had interpreted the terms of the deed to her, and that she was fully aware of her rights, the effect of the terms and the consequence and that she was not under any duress or undue influence from the Father or any other person to execute the deed. In her 3rd Affirmation, after seeing a copy of this letter being produced by the Father, the Mother then claimed that she did not remember she had signed the letter.
67. W lived and studied in the United States for about 13 or 14 years. When cross-examined by Mr. Coleman on the letter, the Mother claims that although she could communicate with others in English, she could not speak standard English because when she first went there, she could not even speak a few words in English. However, as Mr. Coleman pointed out to her, it was not her evidence that she did not understand what she signed, and the evidence was that she forgot she signed it.
68. Having heard the evidence, although I accept that the Mother did not obtain any independent legal advice prior to signing the 1st Deed, I am satisfied that her rights to do so were explained to her and that she was aware of her rights and that she herself chose not to consult an independent solicitor. Her standard of English cannot be as poor as she made it out to be since she did not require interpretation for her affirmations. Anyway, I am also satisfied that the terms of the 1st Deed were explained to her.
69. Turning to the circumstances leading up to the signing of the 2nd Deed, it is the Mother's evidence that the first time she approached her own solicitors was in about late May 2005, as H only paid the rent for Le Cachet and her maintenance of US\$2,000 per month for one

month only, i.e. for March 2005 and thereafter he stopped. He also stopped paying for her credit card or the car, and those were the reasons she eventually went to see a solicitor in about May 2005. Apparently, according to the Mother, her then solicitor advised her although she could try to press the Father for what he had promised to pay but then the solicitor was not sure that he could succeed, as according to the Mother, she told her then solicitor that the Father did not have any job or any stable income. Eventually, her solicitor contacted the Father's solicitor and negotiated certain variations to the 1st Deed, which resulted in the 2nd Deed being signed. As the Mother was clearly legally represented by the time the 2nd Deed was signed, I am satisfied that she fully understood the terms and effect of the 2nd Deed as well.

70. Although negotiations between solicitors began as early as May 2005, the 2nd Deed was dated 13th January 2006, by which time the Mother had been living in Taiwan for some 4 months. It appears that the Mother had signed the deed first and then it was sent to the Father's solicitors for him to sign. Anyway, it would appear that she signed it sometime in January.
71. One of the clauses deleted in the 1st Deed by the 2nd Deed was the provision of staying access, although the Mother was still to have unlimited access. Other clauses deleted include the provision of rent for Le Cachet and also the provision of a domestic worker. Further, the car which the Mother was driving before her move to Taiwan was to be sold, and that the net sale proceeds were to be paid to her.
72. When Mr Coleman pointed out to the Mother that the 2nd Deed did not make any provision for any possible return to Hong Kong, the Mother's answer was that the purpose then was to press for the outstanding maintenance from the Father only, and she agreed that the reason she went to see a solicitor was about money.
73. According to paragraph 35 of the Mother's 3rd Affirmation, she had said the issue of the custody of or access to C was never discussed in the course of the negotiations in respect of the 2nd Deed. When Mr. Coleman pointed out to the Mother that in January 2006 she was still content that the best interests of C were that he should live with his father, she gave a rather strange answer that she had never thought of anything about the child and she had never thought of anything about making any variations concerning the child, and that the purpose of her looking for a solicitor was that she wanted to press the Father for the money that he should pay her.
74. Clause 5 of the 2nd Deed states that the Father shall have custody of C and that C shall reside with the Father at the Parkview premises. I am satisfied that in January 2006, the Mother clearly had no intention to change the arrangements for C. II. Reason why the Mother moved to Taiwan
75. The Father alleges the Mother moved to Taiwan in September 2005 because she had a boyfriend there whom she intended to marry. The Mother denies this.

76. According to the Mother's 2nd Affirmation, she was quite depressed after her separation from the Father in March 2005. She said she felt lonely and that during the period between March and September 2005, the Father kept on persuading her to return to him. She said she tried to avoid the Father. When the Father stopped paying rent and maintenance and cancelled all her supplementary credit cards, she said she became very insecure and anxious, as she was worried that she would not be able to sustain herself financially in Hong Kong as she had all along been dependent on the Father. She then said in about June 2005, she found out that her mother's health was deteriorating and that she decided to undergo intensive treatment in Taiwan. She said in about June 2005, she had contemplated the idea moving temporarily either to Los Angeles or to Taiwan to get away. She then decided to move to Taiwan temporarily as it was closer to Hong Kong than Los Angeles, as she wanted to be close to C so that she could return to visit him from time to time. She said she had always intended to come back to Hong Kong permanently when she was more emotionally stable so that she could be closer to C. She further said at that time, she felt that the only way she could get over her depression was to get away from Hong Kong and live in a new environment for some time. Before she left for Taiwan, she had obtained the contact details of Mariam, her former maid, so that the Mother could get in touch with her when the Mother moved back to Hong Kong for good. Anyway, the Mother denies that at that time she had any boyfriend in Taiwan whom she intended to marry, as alleged by the Father to be her reason for the move.
77. At about end of January 2005, less than 2 months before she moved out of Parkview and about 7 months before she left for Taiwan, the Mother had received about HK\$3m out of the net sale proceeds of a property at Bel-Air bought in the parties joint names for investment, which was sold on 31st January 2005 for HK \$38m. The Mother had lent the Father HK\$2.2m out of her own savings and she borrowed another HK\$300,000 from her mother to help the Father buy this joint property in October 2004. Thus, Mr. Coleman submits that the Mother was caught in many lies, one of which was that she said she had to leave Hong Kong because she could not afford to stay, and yet she should have at least the funds from the net sale proceeds of the joint property at Bel-Air.
78. There is no evidence to show that the Mother went to Taiwan because she had a boyfriend there apart from what the Father claimed that the Mother had told him. The Mother was travelling quite frequently, about once a month, after the separation. There is also no other evidence to show that W went to Taiwan because of any financial problems or why she should feel financially insecure. The main reason the Mother decided to go to Taiwan was probably what she had said, namely that she wanted to get away. Although the 2nd Deed deleted the obligation for the Father to pay her rent and to sell the car, this does not necessarily mean that the Mother had intended to leave Hong Kong permanently in September 2005. All it shows is that the Mother no longer required the Father to pay her rent and that she no longer needed the Jaguar car. The Mother obtained Mariam's contact details before Mariam returned to the Philippines, and Mariam's evidence confirmed that the Mother told her if she returned to Hong Kong, she would like to employ Mariam again.

79. In the circumstances, I do not find there is sufficient evidence to show that when the Mother left Hong Kong for Taiwan, she had intended to leave Hong Kong permanently as alleged by the Father. III. The Mother's allegations against the Father
80. The Mother has made a number serious allegations against the Father about him being a poor role model for their son.
81. The Mother has alleged that the Father was an alcoholic and heavy smoker, and that he had taken cocaine. Also, he has never had a proper job, has no motivation to work or to develop a career of his own.
82. It is also the Mother's case that the Father never made any effort to do anything for C or for her, and that he wanted to carry on the same lifestyle he had before the marriage. When she was there, the Father was never interested in C's daily activities nor would he participate in such activities.
83. The Mother called Mr. Wong to give evidence on the Father's lifestyle. Mr. Wong has known H since almost 20 years ago when the Father was living in Los Angeles, and Mr. Wong was also living in Los Angeles at the time but he said they saw each other only very occasionally then.
84. Mr. Wong moved back to Hong Kong for good at about end of 1988, and after the Father moved back, they had met on a regular basis, about once or twice a week, for dinner, drinks or karaoke until last year.
85. In about 1996 / 1997, before their wedding, the parties bought an apartment at Scholastic Gardens where Mr. Wong was then living. They became neighbours. Mr. Wong said in his affirmation that after the parties married, he continued meeting up with the Father together with a group of friends in the evenings for drinks, and that the Mother would join them occasionally, especially after birth of C. Later, the parties moved to Fontana Gardens before C was born.
86. During the 2 or 3 months after the Mother moved out, Mr. Wong says he had been to Parkview for drinks with a smaller group of friends, and there were girls there, and those girls appeared to be hostesses of nightclubs. C was at home but as it was late at night, C was not in the area where they were drinking.
87. In August 2005, the whole group of friends were to go out for a drink as it was the Father's birthday, but later the Father did not show up, and since then Mr. Wong did not have any contact with the Father until sometime in April / May 2006 when they had drinks with mutual friends at Lan Kwai Fong. On that occasion, the Father drank a lot. N only turned up very late. At a later stage, the Father threw several glasses onto the floor before he left. Mr Wong further tells this Court that the Father would scold anyone when he was drunk

88. Mr Wong is married with two children of about 10 and 7 years old, and his children know C. Before the Father and the Mother separated, Mr. Wong and his wife and children would visit the parties and C at Fontana Gardens, on average once a month, and later also visited them at Parkview. Some years back, T had also been to Mr. Wong's home to attend children's parties and had once stayed overnight there for 2 days, when she was about 8 to 10 years old.
89. The Mother called another friend Mr. Tong. Mr. Tong first met the Father also in Los Angeles in about 1986. Mr. Tong himself was then living in San Francisco, and after the Father moved to San Francisco, they met more frequently. Mr. Tong also met N then. When the Father and N were living in Foster City in California, Mr Tong saw more of them as their house was within walking distance from his house.
90. Mr Tong said after the birth of T, he recalled that neither the Father nor N took proper care of her and seriously neglected her wellbeing, as the Father and N simply continued their usual lifestyle of going out partying, drinking or having fun. Mr. Tong claimed that the Father and N often left T with their friends whilst they would themselves go out to have fun.
91. Mr. Tong returned to Hong Kong in about 1992 / 1993 before the Father, and after the Father returned, Mr. Tong was part of the group of friends who often met with the Father for dinner, drinks and / or karaoke.
92. Mr. Tong is married with 2 daughters, aged about 10 and 13. They were living in Fontana Gardens when the parties were living there. According to Mr. Tong, it was always the Mother or the maid who would go out with C or accompanied him to play outside.
93. Mr. Tong says that it is a well-known fact amongst their common friends that the Father likes to drink a lot, and that the Father would become extremely violent and uncontrollable when he was drunk, and would throw glasses on the floor, scold friends and waiters and use foul language.
94. After the parties separated, Mr Tong saw the Father only twice, once at the Lobster Bar for a meal, and the second time at a karaoke bar about one month after the separation. Thereafter, according to Mr. Tong, the Father's behaviour became very strange, and that on a few occasions after the Father called him to go out for drinks, he did not turn up, and did not even call up to explain his absence, and often his mobile phone was turned off and the Father could not be reached for days. Mr. Tong was also with the group of friends with Mr. Wong who gathered together to have a drink on the Father's birthday in August 2005, and the Father failed to turn up.
95. It appears from Mr. Coleman's cross-examination that Mr. Tong himself had some problems during the time when he was living in the United States, and that he did not know whether the warrant for his arrest was still out or had expired, and he has not returned to the United States since he left. Mr. Coleman has challenged Mr. Tong's credibility.

96. Both Mr. Wong and Mr. Tong have known the Father for a long time, and clearly at one time, they were all part of a drinking group and met frequently. I accept that the Father did continue his drinking and smoking and attending karaoke lounges until the parties separation. After the separation of the parties, it appears that the Father only went drinking with them a couple of times between March and August 2005, and then after the Father failed to turn up at his own birthday drinks gathering in August 2005, as Mr. Tong said in his affirmation, not many people in their group of friends would contact the Father any more.
97. The Father admits that he was a heavy smoker before the C was born. He says he was never an alcoholic, but had occasionally drunk a lot on special occasions. He says he has cut down the smoking and drinking after C was born. The Father also admits that he had taken cocaine several years ago but ceased before C was born. He denies that he has taken any cocaine at Parkview.
98. According to the Mother, on one occasion in about July 1996, C told her over the telephone that he accidentally discovered that his father used a paper card to gather white powder and inhaled the white powder in the bathroom.
99. According to Mr Fung, the social welfare officer, C had remarked to him that his father used to smoke and drink a lot , and that his father appeared to have stopped smoking recently. Mr Fung also reported in paragraph 27 of his report that C had said that he once saw his father tampering with some white powder but he dared not ask him what he was doing.
100. The Mother s maid, Mariam, started working for the family in September 2001, when C was a bit more than 2 years old, and the family was then living in Fontana Gardens. She was dismissed by the Father in August 2005, when she moved to work for the Mother, to whom she was contracted, until her contract formally ended in September 2005. She then returned to the Phillippines. The Mother called her in February 2006, and Mariam returned to work for the Mother in June 2006.
101. In Mariam s affidavit, she said the Father smoked a lot at Parkview, and he would drink a lot of beer and wine in his room. There were occasions when the Father s friends came to Parkview at night and drank until early in the morning, and that on two occasions after the Mother had moved out, there was a woman who came late at night and stayed overnight with the Father in his room. Mariam also claimed that before and after the family moved into Parkview and after the Mother moved out, Mariam had found packets of white powder in the Father s room, on top of the closet.
102. The Father called his maid Catherine to give evidence on his behalf. Catherine started working at Parkview on 6th March 2005, just before the Mother moved out. After the Mother moved out, Catherine continued to work for the Father at Parkview. Before the trial, Catherine said she was approached by the Mother to sign an affidavit for her to say that she had found white powder at Parkview after the Mother moved out. Catherine declined to sign such an affidavit for the Mother as she said she had never found any white powder at Parkview.

103. Mr Coleman submits that Mr. Fung's reference to white powder has all the hallmarks of being through the influence or suggestion of the Mother. Mr Fung was not asked any details or to elaborate on this matter during his oral evidence. The Father denies that C ever saw him tampering with white powder, and says that C, an outspoken child, would never be afraid of asking his father something which he does not understand, and if C did see him tampering with white powder C would have asked him what he was doing. Further, a 6 - 7 year old child would not have a sense of fear or mischief when he saw some white powder. The Father has also said both he and C use talcum powder, which the Mother denies.
104. Mr Coleman further submits that Mariam's evidence was confusing, and not convincing. Mariam worked for the parties from 2001 and continued working at Parkview from March and August 2005, after the Mother left.
105. If what Mariam says was to be believed, then the packets were seen by her in the Father's bedroom even before the Mother had moved out. She would have told the Mother and one would expect the Mother to complain about this much earlier. The Mother claimed that C told her in July 2006, and yet this matter was not raised by her until she filed her 1st affirmation on 25th August 2006. Certainly, from the time after the Mother moved out until August 2006, these incidents, if true, did not appear to have given her serious concern, as she was during that period content to leave C in the Father's care. Anyway, having considered the evidence, I am not satisfied that there is sufficient evidence to show that the Father has been taking cocaine at home.
106. On the Father's drinking and smoking, from the copy of the American Express credit card statement (R-5) produced by the Father, one can see there were two occasions in May 2005 when he went to the HKP Karaoke Lounge. I accept that May 2005 the Father was certainly still going to karaoke lounges. N gave evidence that by the time she arrived in October 2005, H was not smoking and drinking a lot. This appears to be supported by what C told Mr. Fung, and also by Mr. Wong and Mr. Tong who had not seen the Father for some time, although Mr. Wong did see him once in about April 2006. From the evidence, it would appear that the Father's drinking and smoking and karaoke may have reduced, at least since about the time when N arrived.
107. In relation to the Mother's evidence that she was the one who organized C's activities before she moved out, this was not really challenged by the Father although it appears that it was the Father who arranged for C to attend LN Kindergarten. The Mother was the one who organized C's play group, and also C's extra-curricular activities. The Mother was the one who engaged the private tutor Renee, who has been tutoring C since he was about 4.
108. The Father himself has said that what the Mother claims to have done for C before she moved out were things that a full time housewife could have done during day time and that he could not have done so because he was working and that he had tried his best to spend his leisure time with C. However I agree that there is some evidence from Mr. Wong that the Father did frequently participate in weekend family activities with C and the Mother.

109. There is no sufficient evidence to show that C had any emotional problems or that he developed a rebellious character before the Mother left. No doubt, when the parties relationship was deteriorating and they were sleeping in separate bedrooms, and arguing frequently, C could be affected somewhat.
110. It is, however, clear from the Father's evidence and Catherine's evidence that C was certainly emotionally upset and rebellious after the Mother moved out. C's behaviour and academic results seem to have greatly improved by now. I am satisfied that after the Mother left, the Father has tried his best to look after C. As soon as the Father found that he might have to travel, even for the day, he requested N to come and help him look after C. Apart from Renee, the Father has arranged for a second tutor, Miss Cheung, to come and help C with his school work. There is also evidence from N, that both she and the Father help C with his school work, apart from the tutors.
111. The Mother has complained that the Father likes to sleep late and C is sometimes left to fend for himself, and is allowed to cook. Apparently, C loves instant noodles, and on 5th April 2006 (Ching Ming Festival), when Catherine was on holiday, he called his mother on the telephone that he was making his own instant noodles as he was hungry, and that his father was still sleeping with N. Also, on the Sunday just before the trial, according to the Mother, C had tried to call her at about 8 am, but was not able to reach her. The Mother claimed that she tried to call C back at about 10 : 00 am but was not able to contact him. His mother eventually spoke to him at nearly 1 : 00 pm. C said he had called his mother as he got up early and his father and N were still sleeping, and that he had some instant noodles by himself. The Father explained that cooking the instant noodles means pressing the hot water switch of the water machine and filling the cup noodles with hot water. I accept that the Mother's allegations in this respect could be a bit exaggerated. However, I am of the view that the Father and / or N should have made a greater effort to get up earlier on the days when Catherine is on leave.
112. So far as the Mother's allegations about the Father not having a proper job are concerned, the Father worked for his uncle's company after he returned from the United States until the business ceased in in 2003 / 2004. It is therefore not quite correct to say that during the marriage the Father had no proper job, although it appears that as it is a family business, the Father would usually turn up in the office late in the morning and would leave early. The Father says he would only go to the office about 4 times a week. His then salary was HK\$30,000 per month, but while in his office, the Father would also trade in properties and stocks. He also had a business trading in fruits from China to Hong Kong. Apart from this, the Father also had other projects which eventually seemed to fizzle out. After his uncle's business was wound up, the Father rented an office in October 2004 at Admiralty, but when the two year lease came to an end, he did not renew. He has since then moved his office to a friend's office at Gloucester Road for which he pays no rent but it seems that he seldom goes there. He has one staff / partner David who works with him. The Father says since he has been working at home, and his partner seems to spend time at Parkview using it as an office.

I accept that the Father has certainly not built up any career of his own and his projects appear to have not been successful.

113. There is also an allegation from the Mother that the Father has triad friends. There is no sufficient evidence to support her allegation. IV. The Mother's allegations against N
114. The Mother alleges that N did not provide proper care to T and thus would not be able to care for C.
115. The Mother has claimed that during the marriage, the Father always complained about N and said bad things about her, such as she was an irresponsible mother, that she would not take proper care of T and spend a lot of his family's money.
116. The Mother has also claimed that in 2004 T was found in possession of drugs and had to be expelled from the school she was attending, and that the school tried to contact N but could not find her, and that when the school telephoned, the Mother was present when the Father spoke to the school. Both Mr. Wong and Mr Tong said that the Father had told them about this incident in 2004. The Mother claims that after T was expelled, she came to Hong Kong to see if she could continue her studies here.
117. The Father and N both deny that T was expelled from the Ln High School in 2004, and they produced a letter from the school to confirm that T was not expelled. According to N, T, while at a boarding school in 2002, was allowed to go out during weekends, and during one of these outings, a girl in her group was caught with drugs in her possession. In the end, N decided that T should change school as N was not satisfied with the school, and the friends T was associating with at the time. I think the Mother, and her friends, probably made a mistake. I accept that there is no evidence that T was expelled from school in 2004.
118. Mr. Tong was called to give evidence about N's character and parenting abilities, but as submitted by Mr. Coleman, he had not seen N for a long time and the incidents he described were many years ago when the Father and N were living in the United States. So far as what he said in his affirmation about N after he returned to Hong Kong in 1992 / 1993, it was not his direct knowledge and only what he was told by mutual friends.
119. Anyway, N attended this Court to give evidence. She appears to be a stable and forthcoming person. She has told this Court that she loves cooking, and that she would cook for the family on some occasions, and that C loves her cooking. In fact, when C was in hospital in August 2006, N stayed with him over night. Mr Fung has also told this Court more that once that N is a very good child carer and I am satisfied that the allegations that the Mother made against N were not justified. V. The Father's allegations against the Mother
120. The Father's main allegations against the Mother is that she has been evasive and not forthcoming, and that money is her object.
121. In the Mother's 1st affirmation filed on 25th August 2006, she failed to disclose to this Court the existence of the 2nd Deed.

122. The Mother was represented by another Senior Counsel, not Mr. Pilbrow, at the urgent hearing before this Court on 5th September 2006. There was no satisfactory explanation for this material non-disclosure.
123. Further, in paragraphs 17 and 18 of her 1st affirmation, the Mother said she was planning to look for a job in Hong Kong to support both herself and C financially. She also said that her mother, who was then living in the United States, was willing to come to Hong Kong to assist her in taking care of C once the Mother found a job. She said with respect to her financial plans, she had some savings and was able to support herself and C for a period of time, and since she would not know when she would have a new job, she would also seek maintenance from the Father for herself and C.
124. What the Mother said in this 1st affirmation was certainly quite different from what she told this Court subsequently during the trial.
125. The Mother only disclosed to this Court for the first time that she is being supported by a boyfriend during her examination in-chief on the first day of this trial. This Court has been told that the boyfriend is called Mr. M, and it seems neither Mr. Pilbrow nor Mr. Coleman has been informed of his full name.
126. According to the Mother, she knew Matthew before she went to Taiwan, but she said that he formally dated her after her return to Hong Kong. The Mother's explanation as to why there has been no mention of this boyfriend in any of her affirmations is that Mr. M is already married with children and she does not wish to implicate any one who is not involved in this case. The Mother admits that Mr. M has met C on several occasions during meals with friends. The Mother says that the chance of her and Mr. M having any further development is slim, and therefore she has never mentioned to C about her intimate relationship with Mr. M, whom C only knows as one of his mother's friends.
127. The Mother says she has been to two trips with Mr. M, one to Beijing and the other one to Shanghai after she has returned to Hong Kong. Mr. M pays for the rent of the Mother's present premises of about HK\$65,000 per month, and in addition he pays her a monthly allowance of about HK\$100,000, out of which the Mother pays for the maid and a driver. The Mother's present accommodation is about 1,800 sq ft. Mr. M has also bought the Mother a brand new Mercedes, which, together with tax paid, costs a little over HK \$1.2m. The Mercedes was registered in June 2006.
128. Under cross-examination, the Mother admitted she met Mr. M before she went to Taiwan and said that after her move to Taiwan, each time when she came back to Hong Kong she visited C and on one occasion Mr. M was also present, and he saw that the Mother was upset and she cried when C left. According to the Mother, Mr. M offered to help her unconditionally and that he would leave her when he knew that her better half appeared. In fact, Mr. M is also funding this litigation with the Father.

129. The Mother says she sees Mr. M about two times each week because he is very busy. She provided very little information about their relationship. When I asked where they would meet, and whether he would come to her place or they would go out. The Mother did not give a direct answer and she said sometimes the two of them would have a meal together and sometimes with a group of friends. I then asked her again and she then answered that she and Mr. M had meals at home and that he did not like going out. The Mother also says sometimes that they could spend two hours, after having dinner, at a lounge in a hotel listening to music.
130. The Mother did not disclose to the social welfare officer Mr. Fung anything about her relationship with Mr. M. She told Mr. Fung that she earned her living by investment.
131. I am satisfied that the Mother has not been forthcoming and evasive about her relationship with Mr. M, and that the Father's complaints in this respect are justified.
132. The Father has also alleged that the Mother did not really care that much about C. The Father pointed out that when C was in hospital from late 15th until 17th August 2006, the Mother did not go and visit him at all. The Mother herself had criticized the Father over this incident saying that C was only accompanied by N when he was admitted into the hospital late on the 15th, and although C was allowed to go home in the morning on the 17th, he was picked up by N only around 4 pm that day. As it turned out, the Father and N had taken turns to keep C company during the time he was in hospital and the Mother did not make any attempt to visit C. The Mother explained that she did suggest to C that she would go to the hospital but C did not want her to be embarrassed as his father and N were there. There was no evidence to show that the Father or N would not allow her to see C at the hospital. I do not understand why a mother would be embarrassed to go and visit her son at hospital. I therefore find it rather strange that she did not seem to have even made any attempt to visit C, although she did say she kept having telephone conversations with C.
133. The Father has also criticized the Mother for not contacting the tutor Ms Cheung to ask how C was doing.
134. The Father has also made allegations about the Mother having not much patience in teaching C, and that the Mother did not spend much time with C and that her relationship with C was not close. The Father claims that the Mother likes playing mahjong and that she would play from about 4 : 00 pm until 1 : 00 am, and that she would become particularly violent if she lost money. Although the Mother admits she plays mahjong, there is no evidence to support the Father's allegation.
135. Catherine started working for the family only a few weeks before the Mother moved out and her evidence was that the Mother and C love each other, and when the Mother was around, C was good, and that when the Mother left, C was sad and then misbehaved, and C had told her that he missed his mother.

136. Having considered all the evidence, the Father's allegations about the lack of care the Mother has for C were not justified. There is no evidence that the Mother was not caring for C properly before she left.
137. There is a dispute as to how often the Mother saw C after she moved out. According to Mr Fung, since the separation, although the Mother had maintained day and staying access to C, such access was irregular. From the Mother's travel record, it seems that after the separation, she was travelling on average once a month and she would stay away for almost 2 weeks each time. There is no explanation from the Mother as to where she went, and the reasons for her travelling, but no doubt this would reduce her frequency of seeing C although it appears that she did visit C at Parkview initially after she moved out. H. The Social Welfare Report
138. Initially, this Court called for a social welfare report in relation to interim custody, but the trial eventually turned out to take place after the Decree Nisi, and thus it is not merely over interim custody arrangements. Mr Fung, however, confirmed at the start of his evidence that his recommendation in the report is not affected by the fact that the trial is no longer in relation only to interim custody.
139. Mr. Fung was the last witness to be called, he did not sit in court while the parties or the other witnesses were giving evidence. He is an independent witness called by this Court, and the role of a social welfare officer in his position has been said to be the court eyes and ears, and he is to investigate and report on matters which are not normally available to the court.
140. In paragraph 32 of his report, Mr. Fung reported that C is quite adjusted to his present disciplined, well-scheduled way of living in the father's home. When asked by Mr. Pilbrow, Mr. Fung explained that what he meant was a regulated rather than disciplined way. In paragraph 32, Mr. Fung went on to say that C feels more natural and comfortable with his mother and longs to have more time with her than with anyone else. His emotional attachment to the mother is so strong that even with some worry about making his father angry he expressly indicates his wish to live with the mother.
141. In paragraph 28 of the report, Mr. Fung has said that C expressed general likeness towards his father, his joy when he was with the mother, and his sadness when he had to leave her after access and that C repeatedly indicated that he missed the mother and he liked to live with her because she was very good to him and it would make him happy.
142. Mr Fung told this Court that he interviewed C on his own at the social welfare office for about one and half hours.

143. Mr. Fung was not aware of the existence of Mr. M, or his relationship with the Mother. He was asked by Mr. Pilbrow as to whether C had mentioned to him about his mother's boyfriend, and Mr. Fung's answer was no. Mr. Fung was further asked by Mr. Pilbrow if C had not mentioned the boyfriend, whether Mr. Fung could deduce that C had not struck up a relationship with the boyfriend, and Mr. Fung's answer was he did not think he had any information to make an assessment.
144. When asked by Mr. Coleman whether he would wish to interview new partners, Mr. Fung's answer was it would depend on whether the relationship would go on. When Mr. Coleman told Mr. Fung that the Mother's rent and living expenses of HK\$100,000 per month are paid by the boyfriend, and whether these facts are material, Mr. Fung's answer was he was not aware of these facts, and when put to him that he should be aware of these facts, Mr. Fung's answer was he wish he had known. Further, when told by Mr. Coleman that the boyfriend has children of his own, whether he would be expected to be told of this as the children may come into contact with C, Mr. Fung's answer was that he believes that he needs to know the situation if someone is going to have some influence on C.
145. Mr. Pilbrow submits that there are two aspects of the Mother's relationship with Mr. M which may have an influence on C :-
- (i) The relationship may flourish and continue to the extent that the boyfriend and the Mother may live together. (ii) The relationship will founder and the financial support presently received by the Mother.
146. As to (i) above, Mr. Pilbrow submits that the Mother has said the chance is slim, and although C has met Matthew, C is not aware of any intimate relationship, and thus he submits that the relationship has to date not had any impact or influence upon C. As to (ii), Mr. Pilbrow submits that if the relationship does founder, the Mother's financial standing is adequate to cater for the loss of the boyfriend's financial support. Hence, Mr. Pilbrow submits that this Court needs not concern itself unduly that this relationship is likely to have any detrimental influence upon C. I. Conclusion
147. I have not made findings on each and every allegation the parties made against each other. I accept the Mother was looking after C properly before the separation. As mentioned earlier in this judgment, the Mother has made a number of serious allegations against the Father, in particular, he being a poor role model and not being able to care for their son, and if this is the case, one cannot help asking why she waited so long to make an application for C's custody. When the Mother herself was asked by her own counsel this question, her answer was after my return to Hong Kong from Taiwan, I think there were a number of occasions made me very annoyed because I think my ex-husband deliberately made me have lesser chance to see my child. The impression she gave this Court was that she only applied for custody because she was upset for not being able to see more of C.

148. The Father and the Mother had both gone through a period of partying, and having fun when they were younger. The Mother herself has admitted that she was a drug user before and she shared the same lifestyle as the Father, but she says she has stopped taking drugs before giving birth to C. Although the Mother has criticized the Father of not having a proper job, it seems that she herself has not found any proper job either after she moved out of Parkview. The Father has clearly continued his partying, drinking lifestyle well into the marriage and certainly up until the separation, but it seems that the Mother also accompanied him on some of those gatherings. After separation, the Father did continue his previous lifestyle for awhile but there is evidence that there has been a reduction in his drinking and smoking since sometime after August 2005. Being left with C and the return of N, who appears to have a firm view on the subject of drugs, drinking and smoking, also gradually seem to have a stabilizing effect on the Father.
149. Mr Pilbrow has queried Does a leopard change its spots especially if the relationship with N should not continue to flourish . N has been back for about almost one and half years now, since October 2005. The relationship between the Father and N went back many years. They lived together for about 4 years and even after they separated, it appears that they continued to maintain a reasonably amicable relationship. There is no reason at present for me to speculate that their relationship will not last long this time. The Mother s own relationship with the Father lasted about 8 years. Mr. Coleman has rightly pointed out that if there is any change in circumstances in the future, it is open to either party to apply for a variation.
150. Neither the Father nor the Mother, or for that matter, N achieved great academic heights. Perhaps that is the reason why they seem to rely on private tutors to help C. Both the Father s and the Mother s child care plan depend to certain extent on private tutors for C. The mother found Renee for C when C was still at kindergarten, i.e. when he was only about 4 years old. After C started primary school, the Mother employed a second tutor called Joanne, and after Joanne, Andy. The Mother has criticized the Father for arranging too much tutoring but Mr Fung seems to think that the present tutoring system is not inappropriate, and in fact, the Mother s present case is that she will continue to employ a tutor for C, in addition to Renee, although it may not necessarily be Ms Cheung. In any event, C s academic performance has, according to his class teacher, made excellent progress during the second term 2005-2006, and his absences from school have reduced from 24 days in 2004-2005 to 9 days in 2005-2006. Mr. Fung reported that both the Mother and the Father were quite satisfied with C s health, behaviour, academic and social development. I think the Father and N should be given some credit for this particularly when the Mother herself admits that she has not assisted C with his schoolwork after she came back from Taiwan.
151. It appears that C may not like N as much as his father or mother, and that he does not like being disciplined by N. C is an only child. The Mother herself has said that she does not doubt that the Father loves C. Both his parents clearly love him. After the Mother moved out, C was left with his father and the maid. His father has not been too strict with him and it is understandable that he does not like being disciplined by N. C may further feel that he no

longer has the exclusive attention of his father when firstly N, and later, T arrives. It is natural for him to show less liking towards N than towards his parents.

152. From Catherine s and Mr. Fung s evidence, it seems C is not unhappy when he is at home with his father and N, and there is no evidence that he is suffering from any emotional problems at home, as he was when his mother moved out. Even the Mother, when asked by her counsel during re-examination whether she had felt that C was unhappy in his circumstances before she left for Taiwan, her answer was No, he didn t mention it to me and when asked whether C is unhappy in his circumstances now, her answer was yes. When asked further when she began to feel that C was unhappy in his circumstances, the Mother answered it was during last summer vacation when on several occasions C had wanted to stay with her one more night but he was not allowed to do so. The Mother also told the court that on one occasion she received a phone call from C who was crying as he said Aunty N refused to let him see his father. It appears to me that C not only likes to have time with his mother, but he also likes to have time with his father.
153. I accept that the Father appears to have to rely on N, assisted by Catherine, to help him care for C whereas if C lives with his mother, she will be the primary carer, assisted by Mariam. I also accept that there is a very strong emotional attachment between C and his mother. Although there is a separate room for C, when he goes over to his mother s flat, it seems from the social welfare report that he often sleeps with his mother, and he would be allowed to go to bed later than he is at his father s home. The Mother also often plays with him when they see other, and C obviously enjoys his mother s company. Being a young boy of 8, no doubt he likes to play.
154. It has been said that a non working mother would be the more appropriate person to care for her child, and to meet the child s physical and emotional needs, particularly when the child is of young age. My main concern here is the Mother s intimate relationship with Mr. M.
155. Whatever the Mother may say, I believe that by the time she came back to Hong Kong in March 2006 to look for a flat and by the time she found and rented her present premises, her relationship with Mr. M must have commenced as she clearly had discussed with him regarding her choice of accommodation for which he was to pay the rent. The relationship has been going on for sometime now, and although the Mother says the chance of having any future with Mr. M may be slim, there is no reason to suspect that the current state will not continue to be maintained.
156. According to the Mother, Mr. M is a busy man, and that she sees him about twice a week but she admits to they having meals at home, and that Mr. M does not like going out. As her own counsel concedes, it may be na ve for one to expect that this is the extent of their relationship. There is no evidence as to whether these meetings take place during the week or during the weekends. Save for a period of about two weeks when C stayed with his mother, at present, C is only with his mother on alternate weekends, and as submitted by

Mr. Coleman, which I accept, it may be easier to hide the relationship from C when C is only seeing her for 1-2 days a week, but if C is there every day, i.e. 5 or 6 days during the week, I believe that very soon C will find out, not so much as to whether Mr. M is married with children, but certainly that Mr. M is his mother's intimate boyfriend and not just an ordinary friend.

157. I do not agree with Mr. Pilbrow that such an intimate relationship would not have any influence on C. As Mr. M is paying the rent for the Mother, he may feel that he has certain rights to the use of the flat, and also the car.
158. The questions then come to my mind would be : What would C's reaction be if he finds out that Mr. M is his mother's intimate boyfriend ? What would C's reaction be if he has to have meals with his mother and Mr. M at home and that Mr. M is there at home about twice a week ? What would C's reaction be if his mother has to go away for a few days with Mr. M during the week without him ? What would C's reaction be if he is excluded from his mother's bedroom when Mr. M is there ?
159. Although Mr. M is supporting this litigation financially, Mr. Fung has not had the chance to meet Mr. M or talked to him. We have no independent confirmation that Mr. M is happy with C residing in a flat for which he pays the rent and expenses. The problem is we simply do not know whether the intimate relationship between the Mother and Mr. M will have any influence or impact on C or not. Maybe there will not be, but at this stage, we do not know.
160. The Mother has had plenty of opportunity to explain her intimate relationship with Mr. M to C, and yet she has chosen not to and keep it a secret from him. Had she explained her intimate relationship to C much earlier, by now Mr Fung would be in a position to report to this Court as to whether such a relationship has any impact on C.
161. In my view, C wishes and Mr. Fung's recommendations have to be seen in the light of the Mother's material non-disclosure.
162. Whether C continues to reside with his father, or moves to reside with his mother, the non residential parent will be allowed frequent contact.
163. The Father has provided a rather stable family environment for C now for almost 2 years, and for almost 1 1/2 years out of those 2 years, there has been a mother figure and a step-sister. C appears to have settled down although he longs to be with his mother. When Mr. Coleman puts it to Mr. Fung that C has become adjusted to a scheduled way of life and it appears to be a way of life which is successful for him, Mr. Fung agreed.

164. On the other hand, if C goes to live with his mother, although the Mother will be the primary carer, there are uncertainties over how her intimate relationship with Mr. M is going to impact on C. In view of such uncertainties, having considered C's welfare and best interest, and notwithstanding his views and recommendations in the social welfare report, I am of the view that C should continue to live with his father. No doubt, if there are any changes in the circumstances in future, it is open to either parent to apply for a variation. J. Access
165. Mr. Coleman has submitted a table regarding the parties' respective access proposals. The parties are largely in agreement save (i) the weekend staying access (ii) how to share the Easter holidays and (iii) who is to have C for this year's Halloween.
166. The Mother has proposed that the non-residential parent is to have staying access to C from Friday 7 : 00 pm to Sunday 9 : 00 pm one week (long weekend) and on Saturday 12 : 30 noon to 9 : 00 pm the other week (short weekend).
167. The Father proposes that the non-residential parent is to have staying access to C only on alternate weekends, from after school on Fridays until 9: 00 pm on Sundays.
168. As C obviously enjoys his time with his mother who plays with him, I will accept the Mother's proposals in relation to weekly access, namely that C is to stay with his mother from Friday 7 : 00 pm to Sunday 9 : 00 pm one weekend (the long weekend) and from 12 : 30 pm to 9 : 00 pm on the other Saturday (the short weekend).
169. For the Easter holidays, I think the Father's proposals are more appropriate as apparently the examinations are usually after the Easter holidays and it is better for C to settle down with the residential parent to study. Thus the Mother will always have the first half of the Easter holidays with C, and Father the 2nd half.
170. As for Halloween, as C was with the Mother last year, I will allow C to be with the Father this year, and they can take turns. The other access arrangements have been agreed by the parties. K. Costs
171. In relation to costs, there is a general principle in custody cases that there be no order as to costs, unless one party has been unreasonable in the conduct of the litigation. In the circumstances, I will make an order nisi that there be no order as to costs. L. Order
172. The effect of my order is : -
 - (i) The Respondent shall have custody, care and control of the child of the family. (ii) There be no order as to costs, including all costs reserved. This is an order nisi, which will be made final after 21 days.
173. So far as the access terms are concerned, I will invite the parties to include such terms as ordered and as agreed in the draft order for my approval. (Bebe P Y Chu) District Judge Mr. David Pilbrow S.C. and Ms Sara Tong instructed by Messrs. Anthony Siu & Co for the Petitioner Mr. Russell Coleman S.C. instructed by Messrs. Robertsons for the Respondent

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Prepared on 26 October 2026 · Esheria