

HONG KONG / JUDGMENT

# HKW v. YYC

**[2024] HKFC 143**

## COURT

Family Court

## DECIDED

1 August 2024

## CASE / FILE NUMBER

FCMC3123/2021

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bjbj FCMC 3123/2021

**[2024] HKFC 143 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE  
REGION MATRIMONIAL CAUSES NO. 3123 OF 2021**

BETWEEN HKW Petitioner and YYC Respondent

Coram : His Honour Judge S Lo in Chambers (Not Open to Public) Date of Petitioner s  
submission : 6 February 2024 Date of Respondent s submission : 19 February 2024 Date of  
Respondent s supplemental submission : 27 February 2024 Date of Decision : 1 August 2024

D E C I S I O N ( P s Leave to appeal )

This is the application taken out by the petitioner ( ) on 6 February 2024 for leave to appeal against my judgment given on 9 January 2024, in which I made an order that parties do have joint custody, M do have sole care and control of Cazzie, a girl born in July 2019, with defined access to the respondent ( ) as follows: F do have day access during the school day every Wednesday from 10 am to 1:15 pm (if Cazzie has afternoon class) or from 12 noon to 5pm (if Cazzie has morning class) 10 January 2024, provided that F is off duty or on leave; F do have day access every alternate Saturday starting from 13 January 2024 from 10 am to 7 pm, provided that F is off duty or on leave; F do have day access every alternate Sunday starting from 21 January 2024 from 10 am to 7 pm, provided that F is off duty or on leave; During the long school holidays such as the Chinese New Year, Easter and Christmas, F do have 2 additional day access per week from 10 am to 7 pm, provided that F is off duty or on leave; such days to be agreed by the parties, failing which the SWO shall make necessary arrangements; During the Summer Vacation, F do have 3 additional

day access per week from 10 am to 7 pm, provided that F is off duty or on leave; such days to be agreed by the parties, failing which the SWO shall make necessary arrangements; On single school holidays that fall between Mondays and Fridays, parties shall share equally and F do have day access from 10 am to 7 pm, provided that F is off duty or on leave; such days to be agreed by the parties, failing which the SWO shall make necessary arrangements; F do have staying access per week from 10 am to 7 pm the following day during the long school holidays such as the Chinese New Year, Easter and Christmas, provided that either F's mother or the domestic helper hired by F is present during the staying access; such days to be agreed by the parties, failing which the SWO shall make necessary arrangements; F do have 3 days 2 nights staying access per week from 10 am on the 1st day to 7 pm on the 3rd day during the Summer Vacation, provided that either F's mother or the domestic helper hired by F is present during the staying access; such days to be agreed by the parties, failing which the SWO shall make necessary arrangements; For the avoidance of doubt, if F selects staying access during the long school holidays, there be no additional day access as per para. (iv) and (v) above; M do have video access to Cazzie during staying access with F for 15 minutes every day from 8:30 pm to 9 pm; F do have video access to Cazzie for 15 minutes twice a week from 8:30 pm to 9 pm; such days to be agreed by the parties, failing which the SWO shall make necessary arrangements; All handovers shall be at MTR station in Tseung Kwan O district or such other place mutually agreed by the parties. I further order in the Judgment that: supervision order for 12 months be granted; progress report be filed one month before the expiry of the supervision order; the parties do jointly appoint a parenting co-ordinator with costs to be shared equally in accordance with para. 5 of the Order made on 21 July 2021; F be allowed to approach the school of Cazzie for the purpose of obtaining Cazzie's information in school and school holidays; F shall immediately provide M and SWO with his new roster if his present 8-day work schedule changes; Penal notice be endorsed and personal service be dispensed with. M mainly disagrees with the order for defined access to F and also applies for stay of execution pending the outcome of this appeal. This application is disposed of on paper without oral hearing pursuant to the New Arrangement for Application for Leave to Appeal in the Family Court issued on 13 August 2018 ( New Arrangement ). Legal principles Section 63A(2) of the District Court Ordinance provides that for leave to appeal to be granted, the intended appeal should have a reasonable prospect of success or there should be some other reasons in the interest of justice why the appeal should be heard. A reasonable prospect of success involves the notion that the prospect must be more than fanciful but which do not need to be shown to be probable (see KNM v. HTF, HCMP No.288/2011 per Hartmann JA at paragraphs 8 and 9 of the Judgment). Discussion Ground 1 Ms Leung for M submitted that the defined access arrangement places excessive caring time and responsibility upon F which is contrary to the best interest of Cazzie. As mentioned in para.70 and 71 of the Judgment, I am fully aware of the 8-day work schedule of F and his heavy reliance on the help of his mother and the newly hired domestic helper to look after Cazzie. That is the reason why I impose the condition of provided that F is off duty or on leave during the access time and made an order that F shall immediately provide M and SWO with his new roster if his present 8-day work schedule changes . I consider that the defined access granted to F is not excessive if and when he is off duty or on leave and he is assisted by his mother and/or the newly hired domestic helper during the access time. This

Ground has no merit. Ground 2 Ms Leung for M submitted that the order for defined access as per sub para. (iv)-(v) and (vii)-(viii) above is made on a fundamentally different structure from the recommendations made by SWO in the updated SIR and without justification. In my view, the court is never bound by the recommendations made by SWO in the SIR. The family judge has always the unfettered discretion to order the access arrangement, which is in the best interest of the child in question and suitable in the circumstances. I understand that F s work schedule may change suddenly out of his control and hence, supervision order for 12 months is necessary so that the SWO may monitor the situation closely. This Ground has no merit. Ground 3 Ms Leung for M submitted that there is no strict rule on equal sharing of long school holidays. In reality, I am of the view that the F s access in long school holidays is very likely to be less than 50% due to his work schedule. Further, it cannot be ignored that the order for defined access as per sub para. (vii)-(viii) is made on the condition that provided that either F s mother or the domestic helper hired by F is present during the staying access . In my view, F together with either his mother or the domestic helper must be able to look after Cazzie during stay access. This Ground has no merit.

## Conclusion

To conclude, M has failed to demonstrate any reasonable prospect of success in her intended appeal and there is no other reason in the interests of justice why the appeal should be heard. Her application for leave to appeal should be dismissed. As no leave be granted for appeal, I fail to see why her application for stay shall be granted. M s summons dated 6 February 2024 be dismissed entirely. Regarding the question of costs, there is no reason why costs shall not follow event. Initially, F acting in person lodged his skeleton submission in opposition on 19 February 2024 and subsequently, legal aid was granted to him. Mr Shaphan Marwah, counsel for F, lodged a supplemental submission together with a list of authorities on F s behalf on 27 February 2024. Perhaps due to the legal aid rules, F has not lodged his statement of costs in accordance with para. 9 of the New Arrangement. Thus, I order that costs of this application be paid by M to F, to be taxed if not agreed. F s own costs be taxed in accordance with the Legal Aid Regulations. ( Simon Lo ) District Judge Ms Bridget Leung instructed by CL & Co. Solicitors for the Petitioner Mr Shaphan Marwah instructed by Mike So, Joseph Lau & Co. for the Respondent PAGE \\* MERGEFORMAT - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V m^O@ gd(c gdVo] gdVo] odUIUd=d=d5 hVo] hVo] hu\_! hu\_! hu\_! hu\_! hu\_! hu\_! gdu\_! gdu\_! gd! [ hu\_! hu\_! hu\_! gd! [ gd! [ plplplpl\ hu\_! hu\_! &`#\$ gd! [ gd! [ xrxr `VLB gd! [ mH <sH <P mH <sH <@ mH <sH <Z [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"

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Prepared on 29 October 2026 · Esheria