

HONG KONG / JUDGMENT

IT v. LWYG

COURT

Family Court

DECIDED

24 September 2015

CASE / FILE NUMBER

FCMC18087/2013

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bjbj FCMC 18087 / 2013 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 18087 OF 2013

BETWEEN IT Petitioner and LWYG Respondent

and FCMP 276 / 2013 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION FAMILY COURT MISCELLANEOUS PROCEEDINGS NUMBER 276 OF 2013

IN THE MATTER of infant LS alias IS, a boy born on XX June 2010; the Minor and IN THE
MATTER of Sections 3(1)(a) & (b), Section 10(1) and Section 23 of the Guardianship of Minors
Ordinance, Cap 13

BETWEEN LWYG Petitioner and IT Respondent

(Consolidated by Order of Her Honour Judge Melloy dated 17 July 2014) Coram: Her Honour
Judge Sharon D. Melloy in Chambers (Not open to public) Dates of Hearing: 8, 9 and 11
September 2015 Written submissions on outstanding issues: 10 September 2015 Date of Ruling: 24
September 2015

RULING

(Access arrangements)

Introduction

AUTONUMOUT This is a high conflict case concerning the arrangements for the only child of the family, a little boy, S who was born in June 2010; he is now 5 years of age. AUTONUMOUT The parties asked to be given time to negotiate and on the 9 September they asked for an order to be made in the following terms: Consent order BY CONSENT, it is ordered that: Joint custody of the child of the family, LS alias IS, a boy born in June 2010 (the Child), be granted to both IT (the Respondent in FCMP 276/2013 and the Petitioner in FCMC 18087/2013) (hereinafter called the Mother) and LWYG (the Applicant in FCMP 276/2013 and the Respondent in FCMC 18087/2013) (hereinafter called the Father), with care and control be granted to the Mother; Save and except specified hereinbelow, the Father do have access to the Child every Thursday from 4:00pm to 8:15pm, and overnight access every Friday from 4:00pm to 8:15pm on Saturday. The arrangement do commence from 10th September 2015; Both Parties shall share the Child s long school holidays (Summer Holidays, Easter Holidays, Christmas Holidays, Chinese New Year and Mid-term Break (if any)), equally, save as provided as follows:- Summer holiday be shared equally between parties on a 14-days rotation pro-rata basis; On odd numbered years (2015, 2017, 2019 and so on), the Child shall stay with the Father on the Child s birthday (XXth June) and the exact time period for such access is to be decided by the Court after hearing submissions from the parties, whereas the Child shall stay with the Mother on the first half of the Easter holidays (with the Father having the second half of the Easter holidays) and Mid-Autumn Festival from 6:00 pm on the 15th day of the eighth month of the Lunar calendar to 6:00 pm on the 16th day of the eighth month of the Lunar calendar. On even numbered years (2016, 2018, 2020 and so on), the Child shall stay with the Father on the first half of the Easter holidays (with the Mother having the second half) and Mid-autumn Festival from 6:00 pm on the 15th day of the eighth month of the Lunar calendar to 6:00 pm on the 16th day of the eighth month of the Lunar calendar., whereas the Child shall stay with the Mother on the Child s birthday (XXth June) and the exact time period for such access is to be decided by the Court after hearing submissions from the parties. 5 Save and except otherwise agreed by the parties, for the Father s access to the Child, if the Child is to be directly picked up from school, the Father shall do to it personally. When the Child is handed over to the Father for access, the hand-over shall be done through third-parties; 6 Progress report be called for and be submitted [to be decided by the Court] months from the Order to be made; 7 There be liberty to apply; and 8 Costs be reserved; 9 And IT IS DIRECTED that the Child be not removed from Hong Kong without leave until he attains the age of 18 years but provided that if either parent do give a general written undertaking to the Court to return the Child to Hong Kong when called upon to do so, and unless otherwise directed with the written consent of the other parent, that parent may remove the Child from Hong Kong for any period specified in such written consent. Either parent may request the Immigration Department not to issue passports allowing the Child to go abroad without his/her knowledge. Either parent may serve this Order on the Director of Immigration to restrain the Child from being removed from Hong Kong. AUTONUMOUT As indicated in the consent summons the parties were unable to reach

agreement on the following matters: 4.1 how the Child shall spend time with the parties on the parties respective birthdays, Father s Day and Mother s Day; 4.2 the exact time period for the parents access to the Child on the Child s birthday on XX June; 4.3 how the individual public holidays within the Child s school calendar for the academic year 2015-2016, namely, 1st October 2015 (National Day), 21st October 2015 (Chung Yeung Festival), 4th April 2016 (Ching Ming Festival), 2nd May 2016 (Labour Day), 14th May 2016 (Buddha s Birthday), 9th June 2016 (Tuen Ng Festival) and 1st July 2016 (HKSAR Establishment Day) shall be split; 4.4 how the Child s holidays (including public holidays, school holidays and other days on which the Child will not have to attended school) within his school calendar for the academic year 2015-2016 shall be split; 4.5 how the Child s New Year and Lunar New Year holidays shall be spent with the parents;

AUTONUMOUT The central issues however were these: How should the Christmas school holiday be split given that the Father s birthday is on the XX December and that the Mother wishes to enjoy Japanese Chinese New Year with S in Japan each year from the 31 December 3 January? How should the remainder of the long school holidays be divided? How should S s birthday and the parent s birthdays be dealt with? How should the single public holidays be divided? How should Mother s day and Father s day be dealt with? Should there be any amendment to the parties consent order referred to above? The Mother s and Father s case Both parties filed detailed written submissions setting out their case on the all of the outstanding points. I will not repeat those submissions here. Reference should be made to those submissions if deemed necessary. The law in Hong Kong AUTONUMOUT The general principles governing applications relating to children s issues are set out in s.3 of the Guardianship of Minors Ordinance, Cap 13, which states that: GENERAL PRINCIPLES

- (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of the income of any such property-
- (a) in any proceedings before any court (whether or not a court as defined in section 2) the court -
- (i) 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; AUTONUMOUT In so far as access is concerned, this is generally said to be the right of the child, as opposed to the parent. In other words the child has the right to see and to have a relationship with both of his parents, even where the circumstances are difficult as here. Discussion How should the Christmas school holiday be split given that the Father s birthday is on the XX December and that the Mother wishes to enjoy Japanese Chinese New Year with S in Japan from the 31 December 3 January each year? AUTONUMOUT Each party s position on this is set out in their written submission. I accept that it would be preferable for S to have the opportunity to spend time with his Father on his birthday, although given the circumstances it will not be possible for

that to happen every year. I also accept, as has been agreed in principle, that it is reasonable for the Mother to request that she spend Japanese New Year with S. Likewise the Father wishes to spend Lunar New Year with S. I also agree that both parents should have an opportunity to spend Christmas with S from time to time. With all of this in mind I will make an order as follows: The Mother shall spend the whole of the Christmas/New Year school holiday with S in odd years with effect from 2015. This year the holiday commences on the 22 December 2015 and ends on the 3 January 2016. The Father shall spend the whole of the Christmas/New Year school holiday with S in even years with effect from 2016 save that the Mother shall have the care of S from 10 am on the 31 December 2016 until the start of the spring school term. How should the remainder of the long school holidays be divided? Chinese New Year AUTONOMOUT The parties have agreed in principle that the Father should always be able to enjoy Chinese New Year with S. Thus the Father shall always have access to S from 6:00 pm on Chinese New Year s eve until 6:00 pm on the 3rd day of Chinese New Year. The remainder of the Chinese New Year school holiday shall be spent with the Mother. Easter AUTONOMOUT The parties have agreed the division of the Easter school holiday in principle, although this is also tied into other arrangements for the child s birthday and the mid autumn festival. For the avoidance of doubt the child s Easter school holiday shall be divided equally between the parents. In 2016 the child shall be in the care of the Father for the first half of the Easter school holidays and with the Mother for the second half. This shall be the arrangement in all even years. In odd years beginning in 2017 the child shall be in the care of the Mother for the first half of the Easter school holidays and with the Father for the second half.

10. In 2016 the school holiday commences on the 24 March 2016 and ends on the 4 April 2016. This is a period of 12 days. The child shall be dropped off by the Mother s domestic helper at the Father s home at 10 am on the 24 March and the domestic helper shall pick him up at 10 am on the 30 March. In this way each parent shall spend 6 days with S over the Easter school holiday. The summer school holiday
11. The parties have agreed in principle that the school summer holiday shall be split between the parties on a 14 day rotation pro rata basis. The school summer holiday commences on the 9 July 2016. For the avoidance of doubt the summer school holiday runs for 7 weeks. The Father shall have the first two weeks from the 9 22 July; the Mother the following two weeks from the 23 5 August. There are 26 days left. The Father shall have the next 13 days from the 6 18 August and the Mother shall have the last 13 days from the 19 31 August. Pick up and drop offs shall be at 10 am on the first day of each part of the rotation. Third parties shall continue to assist with pickups and drop offs. How should S s birthday and the parent s birthday s be dealt with?
12. The Father s birthday is on the XX December and that has been dealt with as set out in paragraph 7 above. In other words the Father will have an opportunity to spend some time with S on his birthday on an alternate year basis. The Mother s birthday is on the XX September. The Mother is fairly relaxed about spending time with S on her birthday.

Consequently no special provision will be made in this respect. However it should be noted that generally the Mother would expect to spend some time with S on her birthday in any event. This year her birthday is infact today, which is a Thursday and is a normal school day for S. Thursday s are also the Father s access day. However the Mother would have had an opportunity to mark her birthday with S before he went to school in the morning. Next year her birthday will be on a Saturday which means that she will see S when he returns from his weekend access with his Father and can celebrate with him on the following day.

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