

HONG KONG / JUDGMENT

JRMW v. NAV**[2018] HKFC 90****COURT**

Family Court

DECIDED

5 June 2018

CASE / FILE NUMBER

FCMC8504/2017

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bjbj FCMC 8504 / 2017

**[2018] HKFC 90 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 8504 OF 2017**

BETWEEN JRMW Petitioner and NAV Respondent

Coram: His Honour Judge I Wong in Chambers (Not open to Public) Date of Hearing: 1 June 2018
Date of Judgement: 5 June 2018**Judgment**

(Temporary Removal)

The Application AUTONUMOUT Subsequent to my judgment dated 16 April 2018 (the Relocation Judgment) dismissing the petitioner father s application for permanent relocation of the two children of the family, L and B, to Denmark, the petitioner now applies, by way of a summons on 30 April 2018, to vary the order that I gave on 18 July 2017 prohibiting the children from leaving Hong Kong (the Stop Order) and for having various costs orders granted in his favour to be summarily assessed. AUTONUMOUT In addition, by a separate summons the petitioner also applies for leave to appeal against the Relocation Judgment. AUTONUMOUT The application for variation of the Stop Order contains various limbs. The one that requires immediate attention is the one for the petitioner to take the two children out of Hong Kong from 1 July 2018 to 31 August 2018 for the purpose of holidays and/or family visits. The petitioner said he and the children are going to stay mainly in Denmark during the summer vacation. AUTONUMOUT The hearing is

fixed for 15 minutes only. Given the constraint in time, I indicated that I would only be able to deal with the petitioner's application for leave to remove the children out of Hong Kong during the summer vacation. The other matters have to be adjourned to a further date, with the remaining limbs of his application for variation of the Stop Order to be dealt with after the determination of his application for leave to appeal against the Relocation Judgment. The petitioner's grounds AUTONUMOUT The petitioner's grounds are simple and straight-forward the status quo ought to be restored. The relocation trial is now over and all the parties including the children should be allowed to resume their normal life. The children are devastated that they are not allowed to return to Denmark. It would help them if they could have a good holiday there in the summer. It is not in the children's best interest to continue to be denied overseas holidays and their ability to visit their paternal family and friends in Denmark. The respondent's opposition AUTONUMOUT In her usual fashion, the respondent opposes everything being applied for. She referred to the event happened last year when the children, with the leave of the court, were out of Hong Kong enjoying their summer vacation in Denmark the petitioner applied for permanent relocation in the middle of the vacation and sought to keep the children to remain in Denmark until the conclusion of his application, hence trying to create a fait accompli. She described it as the petitioner's secret scheme to permanently remove the children from Hong Kong. The Stop Order is the result of the petitioner's action last year. His action alone has caused this situation. The relocation trial has proved that the petitioner is willing to lie in order to gain unfair advantage over her. The petitioner can no longer be taken for his word. AUTONUMOUT The respondent relied on what the petitioner said in his grounds of appeal where he continuously stated that Hong Kong is a prison we are under house arrest, and we want to return home. It is the petitioner's own words, stated repeatedly, that give cause to concern that given the opportunity to leave Hong Kong, there is a significant risk that the petitioner will permanently abscond with the children. She drew my attention to the petitioner's situation, as stated in his grounds of appeal, that he is on indefinite sick leave and will no longer receive any income after October 2018. These create multiple factors for risk that the petitioner could attempt to abscond with the children. AUTONUMOUT The respondent also stressed that, as can be seen in his grounds of appeal, the petitioner is emotional and irrational. She doubted the stability of his mental state. AUTONUMOUT If the children are to stay in Hong Kong for the summer, this serves an excellent opportunity for her to reconnect with them. There will also be time to have a psychological evaluation on the petitioner. The Official Solicitor's Stance AUTONUMOUT The Official Solicitor has no objection to the application. In his Note dated 24 May 2018, the Official Solicitor agreed that the relocation trial is now over and all the parties including the children should resume their normal lives. It means that for the best interests of the children, they should be allowed to travel and take their holidays as they did in the past. AUTONUMOUT Whilst the Official Solicitor acknowledged the petitioner was found to have fabricated his intimate relationship with his domestic helper, he took the view that there is no other evidence to suggest that the petitioner will ignore and/or breach any court order if permission for temporary removal is granted. AUTONUMOUT The Official Solicitor assessed that the risk for the petitioner to abscond with the children is remote. His reasons are: There are outstanding legal proceedings yet to be determined. They are:- the question of ancillary relief; the petitioner's application for

leave to appeal; and the petitioner's claim for costs against the respondent. Though the petitioner is on indefinite sick leave now and will stop receiving any salary after October 2018, there is no indication that his employment will be terminated. AUTONUMOUT The Official Solicitor concluded that with all these unfinished businesses, the chance for the petitioner to abscond is low. The Official Solicitor therefore has no objection to the petitioner's application. Discussion AUTONUMOUT To begin with, contrary to what the petitioner says, the relocation trial is not over yet. The petitioner has applied for leave to appeal and this is due to be dealt with. AUTONUMOUT In addition to what I have mentioned in paragraph 7 above, the petitioner said the Relocation Judgment has had a devastating impact on him. He will soon have no income. He complained that in spite of the facts that he has the sole custody of the children, the children's clear wishes and there is no physical access for the respondent, they are confined and are not even allowed to go home on holiday, unless with leave from the court. The children's wishes to relocate to Denmark have been totally ignored by the Official Solicitor, the judge and their own mother. Their resentment towards their mother, the judge, their solicitor (ie the Official Solicitor) and Hong Kong itself is unavoidable. He also mentioned that he does not expect that he can return to fly the cargo roster again as he has to prioritise L and B's well-being. AUTONUMOUT I agree with the respondent that what the petitioner said in his application for leave to appeal is quite alarming. During argument, I asked the petitioner how he could persuade the court that he would return the children to Hong Kong after the summer vacation. He referred to what he did last year. Upon being so directed by the court, he swiftly arranged their return within the time frame. He also expressed his understanding that Denmark is a state party of the 1980 Hague Convention. Apart from the usual undertaking from him to return the children, he is willing to acknowledge that Hong Kong is the children's habitual residence and to pay a security of \$100,000 into court within 14 days. He produced an admission letter from an international school in Hong Kong and proof of payment of deposit to show that L is due to commence his secondary school in Hong Kong in this coming September. AUTONUMOUT Mr Chiu, acting on behalf of the Official Solicitor, confirmed that the Official Solicitor is aware of what the petitioner said in his grounds of appeal when the Note was prepared. He agreed that, from what the petitioner said, there is a risk of flight but, for the reasons set out in the Note, the Official Solicitor's stance remains unchanged. I take what he means is that after having considered the grounds of appeal together with all the matters before him, the Official Solicitor still has come to a conclusion that the risk of flight is remote and he has no objection to the application. AUTONUMOUT I must say whether or not to allow the children to have their summer vacation out of Hong Kong is not an easy decision to make. Ultimately, the question is to be resolved in accordance with the principles set out in section 3 of the Guardianship of Minors Ordinance (Cap 13). In short, the law enjoins the court shall regard the best interests of the child as the first and paramount consideration. I believe the petitioner was very upset and emotional when he prepared his grounds of appeal. In the present case, the risk of flight is certainly one of the factors, or even a significant one, that the court needs to consider in the balancing exercise. In my view, on the one hand, the risk is certainly not so remote (as the Official Solicitor has put it) that the court may disregard it entirely but on the other, it is not as high as the respondent might have wish to put it. In coming to this conclusion, I have taken into consideration the facts that there are still

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Prepared on 26 October 2026 · Esheria