

HONG KONG / JUDGMENT

JTMW v. NAV**[2020] HKFC 244****COURT**

Family Court

DECIDED

3 December 2020

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bjbj FCMC 8504/2017

**[2020] HKFC 244 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 8504 OF 2017**

BETWEEN JTMW Petitioner and NAV Respondent

Coram: His Honour Judge I Wong in Chambers (Not Open to Public) Dates of Hearing: 5, 10, 11 & 12 December 2019 and 18 September 2020 Date of the Petitioner s Closing Submissions: 30 September 2020 Date of the Official Solicitor s Closing Submissions: 30 September 2020 Date of the Respondent s Closing Submissions: 5 October 2020 Date of Judgment: 3 December 2020

J U D G M E N T (Relocation)

Introduction

AUTONUMOUT This is the petitioner s second application for relocation in these marathon matrimonial proceedings. AUTONUMOUT In this judgment I shall, for ease of reference, refer to the petitioner and the respondent as the father and the mother . I will continue to refer to the boys as and . L is now 13 years old and B is nearly 11. AUTONUMOUT I say these are marathon proceedings because the parties started their divorce proceedings back in 2012 (under FCMC 4191/2012) and so far, regrettably, only two achievements are made: the first is that, after a 5-day trial, the custody, care and control of L and B were granted to the father on 23 February 2017; and the second is that the decree nisi was granted on 20 November 2017. The judgment of 23 February 2017 on the custody of the boys is referred to as the Custody Judgment . AUTONUMOUT As

regards the financial matter, it has never been seriously dealt with; the reason being that this matter was hijacked not once but twice by the father's applications for relocation. The first was on 17 July 2017 when he made his first application for relocation of the boys back to Denmark, his home-country (the 1st Application for Relocation). There was a hearing long-fixed to be heard on 18 July 2017 to deal with the financial matters but because of this application, that hearing and subsequently, all the attention of the parties was drawn to the 1st Application for Relocation. AUTONUMOUT The father's case in that application, in a nutshell, was that he had secured a position with a budget airline in Europe which enabled him to return to Denmark and his domestic helper V had become his partner. V had agreed to emigrate to Denmark with him as a family and therefore, the boys could continue to be taken care of by him and V. AUTONUMOUT In the parties usual fashion, it was after a bitter trial that by a Judgment dated 16 April 2018 (the 1st Relocation Judgment), the father's 1st application for relocation was rejected by this court. It is unnecessary for me to set out the reasons for refusal in any detail here. Suffice to say is that I was not satisfied with the veracity of the alleged husband-and-wife relationship between the father and V: see [78]. On that basis, the father's very foundation of his childcare plan vanished: see [89]. AUTONUMOUT The father application for leave to appeal against the 1st Relocation Judgment was refused by this court in JRMV v NAV [2018] HKFC 140 (date of Judgment: 21 August 2018) and by the Court of Appeal in JRMV v NAV [2018] HKCA 883 (date of judgment: 23 November 2018). AUTONUMOUT This is against the above background that the father on 24 April 2019 took out this 2nd application for relocation. When the father took out this application, the court had already scheduled the trial of the ancillary relief matter to take place in September 2019 but once again the ancillary relief matter gave way to this relocation application. AUTONUMOUT Before I turn to the next part, it has to be mentioned that shortly before the trial, on 26 November 2019 the mother took out an inter-parte summons for, inter alia, a joint custody order and for a framework and timeline to be provided by the court for restoration of her relationship with the boys with the assistance of the Social Welfare Department. AUTONUMOUT As I indicated at the trial, the mother's summons would be dealt with together with the father's present application. AUTONUMOUT The final day of trial was originally scheduled for 15 April 2020 but unfortunately it had to be adjourned to 10 June 2020 and further re-fixed to 18 September 2020 due to the Covid-19 pandemic. AUTONUMOUT On 15 September 2020 the mother took out an application (and on 16 September 2020 an amended application) to have the father's application dismissed due to the rapidly developing situation occasioned by the pandemic, the post-Brexit as from 31 December 2020, the impending restructuring of the father's employer and the changes in immigration requirements of Denmark. Alternatively, she sought leave for the parties to update the court about their situation. AUTONUMOUT Both Mr Clough, who appeared for the father and Mr Lee of the Official Solicitor were not supportive of the mother's application. In particular, Mr Lee made the observation that if the mother's path was followed, nothing could be done and in the meantime the boys would continue to be trapped in Hong Kong against their wishes. AUTONUMOUT As I said in my oral ruling of 18 September 2020, this is a reality that family cases are dynamic. Family members situation especially that of the children would change as they grow. Another reality is that the world is now facing the COVID 19 pandemic. The pandemic is moving, and moving rapidly in some of the days, but it does not mean that the court should wait

until the end of it or when the post-Brexit situation is clear. What the court should do is to consider the father's application on the facts and materials before it now and come to a decision the best it can. The mother's application for dismissal was therefore rejected. Nevertheless, I allowed the father to update his situation which he had already done so by way of an affirmation, and I allowed the mother to further cross-examine him. The Parties

Background

AUTONUMOUT As the background of the parties have been set out in the Custody Judgment and the 1st Relocation Judgment, it is unnecessary for me to repeat them here. In brief, their background is as follows. AUTONUMOUT The father is Danish and the mother Australian. AUTONUMOUT The parties met in Sweden when the mother was travelling there. According to the mother, they soon started cohabitation and were married in Sweden in February 2008. They soon gave birth to L in Sweden in 2007. AUTONUMOUT The father is a professional pilot. In June 2008 he secured a job as a pilot in Hong Kong and so the whole family moved here. B was born in Hong Kong. AUTONUMOUT Sadly, the relationship did not last long. In March 2012, the mother petitioned for divorce on the ground of the father's unreasonable behaviour under FCMC 4191/2012. What followed was a series of litigations seeking non-removal orders, non-molestation orders, temporary removal orders, maintenance pending suit, directions on expert reports and other less important orders and finally, culminating in a trial on the custody, care and control of the boys as a result of which the Custody Judgment referred to in [3] above was given. AUTONUMOUT The mother was given access by way of emails, limited to 2 emails per week, to the boys. This has been so arranged because of the boys estrangement due to the mother's conducts. She was accused of hitting the boys and was charged with and convicted of ill treatment or neglect of L under section 27(1) of the Offences Against the Person Ordinance (Cap 212). Supervised face-to-face and FaceTime access were proved to be futile as a result of which email access has been implemented upon the recommendation of the Official Solicitor and the social investigation officer. AUTONUMOUT Plainly, in dealing with the present application the chequered history of these proceedings and how they have evolved to the present stage have to be borne in mind. The Parties Present Situation AUTONUMOUT There have not been much changes since the 1st Relocation Judgment. The father has been taking care of the boys with the assistance of V since 2014. AUTONUMOUT According to the father, he has since the 1st Relocation Judgment informed the boys of his relationship with V. He is now living with the boys and V in a 1,900 ft² leased apartment in Lantau. This apartment is not the one that the father and the boys were staying at the time of the 1st Relocation Judgment and is assessed by Ms Cheng, the social investigation officer, to be much better, neatly kept and spacious. The father and V are sharing a bedroom with a double bed while L and B have their own bedroom. AUTONUMOUT L is attending Form 3 in a secondary school in Lantau and B is attending Primary 6 at an international school on the Island. AUTONUMOUT It seems it is not in dispute that L has had a hard time in his school. He used to have some issues with his English teacher, has been bullied by non-Caucasian students and has not been able to make friends. The situation has improved somewhat after the father's intervention. AUTONUMOUT B is clearly in a much better shape. It is reported by Ms

Cheng that B was assessed to be able to manage his subjects comfortably and was competent on various subjects. He was commented to be a lively and popular student in class and have had improvement in keeping more stable social interactions with peers. AUTONUMOUT As far as the email access is concerned, there has not been much change since the 1st Relocation Judgment. According to Mr Lee and Ms Cheng, L has not read the mother's emails while B has read some. The Mother AUTONUMOUT The mother broke up with her cohabitant, the French gentleman referred to in [14] of the 1st Relocation Judgment, in April 2019. She continues to live in the same leased apartment in another district of Lantau. She is working as a part-time English tutor for young children. AUTONUMOUT Ms Cheng reported that the mother attended a session with Dr Poon, a clinical psychologist of the Social Welfare Department. It was assessed by Dr Poon that no further psychological follow-up was required as there was no sign of emotional disorders. The Father's Proposed Plan AUTONUMOUT Same as in the 1st Relocation Application, the father wants to start a new life with the boys and therefore is determined to return to his home country. AUTONUMOUT There are, he said, two reasons for the application. AUTONUMOUT The first is in relation to his career. The father is still serving his employer. However, he has obtained approval from his employer to transfer to their base in London. This would enable him to live in Denmark while reporting duty at Heathrow, London. In order for him to report duty from Denmark, he would be flying from City B or City C Airport to Heathrow. He said this plan is both workable and allowed by his employer. He is expected to start this new position as soon as leave from the court is given for the relocation of the boys and the Covid-19 furlough in UK ends. AUTONUMOUT The father sees this an opportunity he cannot afford to miss. This is important in terms of his long-term future. It would give him the opportunity to return to Scandinavia as he has always planned to without changing his employment and losing his hard-earned seniority. He would also be able to move back to passenger fleet and leave the inferior cargo fleet, which is very disruptive to his roster stability and care ability for the boys. There would be more job satisfaction too since he would be flying a modern jet (Airbus 350 or Boeing 777) rather than the old Boeing 747 in the cargo fleet. He will be based in London, but mainly operating out of one of the European destinations and fly directly to Hong Kong and back again. This will offer much better roster stability and more days off together with the boys. He has completed the required training. AUTONUMOUT The second reason relates to the upbringing of the boys, in particular L who has had some adjustment problems in the school. As mentioned above, L has been subject to bully and has not been able to adopt to the school's culture. The current school is simply unsuitable for L and does not fit his character. The father said L feels very disillusioned with the situation but due to financial constraints he has not been able to afford changing to an international school. AUTONUMOUT The father plans to return to City H, the hometown where he grew up, where his divorced parents, their respective partners, his younger brother, step-sister and friends are and where the boys are also familiar with. He will rent a house of about 2,000 ft² upon arrival and then start looking for a house near to the boys school to purchase. AUTONUMOUT He and V will continue to be the caregivers of the boys with the assistance of his parents who live close by. V has agreed to move to Denmark and they plan to get married once the decree absolute is granted. AUTONUMOUT In the event V should fail to obtain the necessary residency visa, the father said the paternal grandfather and his partner are willing to provide childcare assistance to him when

he has to be absent from work. The boys have a good relationship with their grandparents and their partners. Lastly, hiring a nanny or an Au Pair (similar to a domestic helper in Hong Kong) could also be an option. AUTONUMOUT He has also identified 2 suitable schools for the boys; both are close to their intended neighbourhood. The Mother s Stance AUTONUMOUT The mother said the boys have never lived in Denmark. L was born in Sweden and was living there before coming to Hong Kong and B was born here. Denmark is not, and never has been, the boys home. AUTONUMOUT As recorded by Ms Cheng in her report, the mother accepted that although there are flaws in the father s plan, the current one is a better plan. However, the mother is fearful that if the father s application is granted, this would signify the end of any chance for her to reconnect with the boys. She therefore strenuously opposes to the application. It is emphasized by the mother that the father has once again hijacked the proceedings and tried to create a fait accompli designed to pressure the court to submit to his demands; and this is an abuse of the process. The facts presented by the father are substantive mistruths and so his application should meet with a refusal. AUTONUMOUT The mother proposes that if the removal application is refused, the court should immediately put in place steps to be taken for her to reconnect with the boys with the assistance of the Social Welfare Department. The court should as a start restore her access to B and, depending on the progress, followed by her access to L. AUTONUMOUT If the removal application is allowed, the mother submits that nevertheless the boys departure must be delayed until there is strong evidence that face to face and electronic communication between the boys and her have been solidly re-established. She has a timeframe of 24 months in mind but concedes that the period may be reduced to as little as 6 months if good progress is shown. AUTONUMOUT The father does not find this proposal workable. The Social Investigation Reports AUTONUMOUT Ms Cheng is the newly assigned handling officer for this family. She has been involved in the matter since April 2018. She has prepared 2 reports. The first is one dated 23 January 2019 on the progress of access and the second one, a 21-page report dated 4 September 2019, is on the father s application. AUTONUMOUT Ms Cheng is supportive of the father s application. She considers that the father s application is genuine in the sense that it is not motivated by some selfish desire to exclude the mother from the boys lives. She also considers that the father s application realistic and is founded on practical proposals both well researched and investigated. The Official Solicitor s Report AUTONUMOUT Mr Lee is supportive of the father s application too. This conclusion is arrived at after having interviewed the boys and after having the matter considered with reference to the approach set out in *Payne v Payne* [2001] Fam 473 and with the best interests of the boys as the first and paramount consideration in mind. The Official Solicitor s stance remains unchanged after the conclusion of trial. Where necessary, I shall return to the Official Solicitor s view in relation to *Payne v Payne* in later part of this Judgment. AUTONUMOUT Same as in the 1st Relocation Application, the court has not been assisted by any International Social Investigation Report due to the absence of such service. AUTONUMOUT At trial, in addition to the father and the mother, the following persons gave evidence in court: Ms Cheng, the social investigation officer; Mr G, the paternal grandfather; Ms W, Mr G s partner; and Ms V, the father s partner. The Legal Principles AUTONUMOUT Section 3(1) of the Guardianship of Minors Ordinance (Cap 13) () provides:

- (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 best interests of the minor as the first and paramount consideration and in having such regard shall give due consideration to- (A) the views 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; and (ii) shall not take into consideration whether, from any other point of view, the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father; (b) , a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other; AUTONUMOUT On relocation cases, the Court of Appeal, in SMM v. TWM (Child: Relocation) [2010] 4 HKLRD 37, followed the approach enunciated by Thorpe LJ in the English Court of Appeal case of Payne v Payne [2001] EWCA Civ 166, [2001] 1 FLR 1052. Cheung JA said the following: The principles
- 19. The parties agreed that the applicable principles governing relocation application are based on the Payne v. Payne [2001] Fam 473 line of cases. They are English Court of Appeal cases. There is no House of Lords decision on this issue. These principles have been applied in Hong Kong, for example, in M v. B (Removal of children from the Jurisdiction) [2009] HKFLR 349, by Judge Bruno Chan although there has not been any Hong Kong Court of Appeal decision on relocation applications.
- 20. Payne is based on the earlier decision of Poel v. Poel [1970] 1 WLR 1469. In Re G. (Leave to remove) [2008] 1 FLR 1587 the English Court of Appeal reaffirmed the principles in Payne.
- 21. The principles in Payne can be summarised as follows :
 - (a) The distinct features of a relocation application are first, the applicant is invariably the mother and the primary carer; second, generally the motivation for the move arises out of her remarriage or her urge to return home; and third, the father s opposition is commonly founded on a resultant reduction in contact and influence. (per Thorpe LJ at paragraph 27)
 - (b) The two propositions that have been consistently applied by the Courts are, first, the welfare of the child is the paramount consideration; and second, refusing the primary carer s reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the Court concludes that it is incompatible with the welfare of the children. (per Thorpe LJ at paragraph 26)

- (c) The application should be approached as follows :
- (i) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask, is the mother's application realistic, i.e. founded on practical proposals both well researched and investigated? If the application fails either of these tests, refusal will inevitably follow. (ii) If, however, the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland? (iii) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal? (iv) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist in so far as appropriate. (per Thorpe LJ at paragraph 40)
- (d) In short, the relevant factors are :
- (i) The welfare of the child is always paramount. (ii) There is no presumption created by section 13(1)(b) of the English Children Act 1989 in favour of the applicant parent. (iii) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight. (iv) Consequently the proposals have to be scrutinised with care and the Court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.
- (v) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important. (vi) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important. (vii) The opportunity for continuing contact between the child and the parent left behind may be very significant. (per Butler-Sloss P at paragraph 85) AUTONUMOUT There were some debates in the UK on whether the guidance set out by Thorpe LJ in para 40 of *Payne v Payne* applies only to cases where the applicant is the primary carer or whether there is a covert presumption in favour of the primary carer. In *Re TC and JC (Children: Relocation)* [2013] EWHC 292 (Fam), [2013] 2 FLR 484, Mostyn J said the following:
10. The foundation of the jurisprudence in this field is the well-known case of *Poel v Poel* [1970] 1 WLR 1469. Although there were many other subsequent decisions of the Court of Appeal the next major milestone was the case of *Payne v Payne* [HYPERLINK "http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html"](http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html) \o "Link to BAILII version"
- [2001] EWCA Civ 166 [HYPERLINK "http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html"](http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html) \o "Link to BAILII version"

- [2001] Fam 473 HYPERLINK "<http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/2001/166.html>" \o "Link to BAILII version"
- [2001] 1 FLR 1052, where Thorpe LJ set out his memorable "discipline" in para 40. That decision was controversial, at least in some quarters, for arguably perpetuating a covert presumption in favour of location, at least where the application was made by the child's primary carer. It was reconsidered in 2011 in the case of *K v K* (Children: Permanent Removal from Jurisdiction) HYPERLINK "<http://www.bailii.org/ew/cases/EWCA/Civ/2011/793.html>" \o "Link to BAILII version"
- [2011] EWCA Civ 793 HYPERLINK "<http://www.bailii.org/ew/cases/EWCA/Civ/2011/793.html>" \o "Link to BAILII version"
- [2012] Fam 134 AUTONUMOUT Recently, in *ZJ v XWN* (Leave to Appeal: Child Relocation) [2018] 3 HKLRD 644, [2018] HKCA 436, CAMP 67/2018, the Court of Appeal, after having reviewed *K v K* (Children: Permanent Removal from Jurisdiction) [2011] EWCA Civ 793, [2012] Fam 134 and *Re C* (A Child) (Internal Relocation) [2016] Fam 253, confirmed that the only principle of law enunciated in *Payne* is that the best interests of the child is paramount and the rests is guidance and that Cheung JA's comments in *SMM v TWM* should be read in that light: at [18] and [23]. The *Payne* guidance should not be regarded as a prescriptive blueprint: at [22]. AUTONUMOUT The Court of Appeal endorsed what Vos LJ said in *Re C* (A Child) (Internal Relocation) at [82] and [83],
82. I add a few words in an attempt to summarise the position that has now been reached. As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional.
83. One of the most difficult aspects of this case has been to establish in the light of previous authority what use, if any, should be made in the process we have just described of the 4 disciplines identified by Thorpe LJ at paragraph 40 of his judgment in HYPERLINK "<https://login.westlawasia.com/maf/app/document?src=doc&maintain-toc-node=true&linktype=ref&&context=&crumb-action=replace&docguid=I1ADE6C20E42811DA8FC2A0F0355337E9>" *Payne v. Payne* ([2001] EWCA Civ 166, [2001] 1 FLR 1052) (the *Payne* factors). In my judgment, one of the valid concerns about the *Payne* factors is that they do not adequately reflect the gender-neutral approach to these problems that the court will now adopt in every case. Whilst the *Payne* factors may still be of some utility in some cases, they are no part of the applicable test or

the applicable principles. In some circumstances, the judge may find them useful. In others, the judge may not. If the judge finds them a useful guide to some of the factors that he should consider, he will be doing so only as part of the multi-factorial balancing exercise that is required. (emphasis added) AUTONUMOUT The Court of Appeal also dealt with the use of the welfare checklist in the balancing exercise. The welfare checklist is only an aide-memoire. A judge is not required to mechanically list every factor to demonstrate that he has considered the same. AUTONUMOUT The Court of Appeal emphasized that the guidance in *Payne* or *SMM v TWM* or the welfare checklist are simply tools to assist a Family Judge in making the multifactorial assessment to reach a result which is in the best interest of the child after taking account of the potential impact on the parents: at [30]. See also *B, A v B, L (Child Relocation)*, [2019] 4 HKLRD 23, [2019] HKCA 822. AUTONUMOUT Therefore, I would have to conduct a holistic balancing exercise and in doing so, I would make use of the *Payne* approach and the welfare checklist as an aide-memoire tools. Is the father's application genuine in the sense that it is not motivated by some selfish desire to exclude the mother from the boys' lives? AUTONUMOUT The family came to Hong Kong to enable the father to pursue his flying career. I am sure this was the main, if not the only, purpose of coming to Hong Kong. As said, he was assigned to fly the old Boeing cargo plane; an arrangement that the father was not happy about. I accept the move to the London base would allow him to fly a modern jet which, on that view, is a career advancement for the father. AUTONUMOUT Another undisputed fact is that the father and the boys (and in recent years V as well) have been returning to Denmark for summer breaks since at least 2015 and according to the mother, the father has been keeping a BMW car for his use there. I accept the father has a genuine intention to return to his hometown where his extended family and friends are. The father sees that relocation would allow him to obtain timely support from his family and for the boys to stay away from all the unpleasant experience and disturbances to their normal living in Hong Kong. AUTONUMOUT The mother sees the father's relocation is a means to further alienate her from the boys. However, the mother is currently having indirect access to the boys by way of emails only. As I said in the 1st Relocation Judgment, it was the mother, who by her own conduct, excluded herself from the boy's lives. There is simply no need for the father to exclude her. AUTONUMOUT I accept the father's application is genuine; this is also the view taken by Mr Lee and Ms Cheng. Is the father's application realistic, ie founded on practical proposals both well researched and investigate? AUTONUMOUT As I said in *VE (nee KE) v VRJ (Relocation, Custody, Care and Control and Access)*, FCMC 7676/2011 (date of judgment: 4 June 2015) at [156], Same for any relocation case, there are bound to be uncertainties in what lies before the parties. Indeed, this happens not just to relocation cases. It is the reality that, to a greater or lesser extent, one has to face. Thus, the question is not one of uncertainty; the question is whether the relocation is well planned and considered so that the major adverse uncertainties are foreseen, avoided or eradicated as much as possible. AUTONUMOUT The father's plan that he is going to work and live in two different countries has been subject to scrutiny. There are two concerns. The first is one of feasibility: whether his employer would allow the father to live in Denmark while at the same time he has to report duty in Heathrow, UK. The second is

whether the father could work in the UK in light of the post-Brexit. Whether the Father's Employer would allow him to take Heathrow as his base if he is to live in Denmark

AUTONUMOUT At trial, the father was subject to examination on this issue. According to Paragraph 9 of his employer's Policy, When normal Travelling Time from home to the departure airport is in excess of one and a half (1.5) hours, the Officer will make arrangements for alternative accommodation nearer to the departure airport. In such case, the maximum permissible Travelling Time from home to the departure airport under normal circumstances becomes four (4) hours. An Officer must make optimum use of the opportunities and facilities for rest, both at home and at the alternative accommodation. In accordance with the AFTLS, the responsibility for being sufficiently rested before undertaking a flying Duty remains entirely with the Officer. AUTONUMOUT A plain reading of this paragraph would mean that literally an officer would be required to arrange his alternative accommodation if his travelling time from home to the departure airport is more than 1 hours and under no circumstances his travelling time should exceed 4 hours.

AUTONUMOUT It is common ground that the best possible travelling time from his proposed home in Denmark to Heathrow by way of direct flight from City B, the airport nearest to his home, to Heathrow, is 3 hours 20 minutes. As such, literally according to the said paragraph 9, the father would be required to make arrangement for alternative accommodation. The father admitted that if he is assigned to fly the first flight that departs at 11:00 am from Heathrow back to Hong Kong, he would have to leave home the night before and stay at one of Heathrow's airport hotels for the night so as make himself available for duty the next morning, but he said he would not have to leave the day before if he is assigned to fly, for instance, a flight that departs in the afternoon. He could just leave home in the morning. He explained the paragraph is intended to ensure that an officer would have adequate rest within 12 hours before the duty and as long as he is able to demonstrate that he would be able to report duty within 4 hours, he would be legible for the roster to which this paragraph 9 applies. What he meant is that he does not have to make alternative accommodation in each and every case. I must confess I have some difficulty in understanding the father's interpretation of this paragraph. As I said, a plain reading of this paragraph is that the father is required to arrange alternative accommodation. That said, the father conceded that if my reading of this paragraph is correct, he is willing to make the arrangement. As I see it, the key is whether his employer is aware of his situation and approves of his plan. The father's evidence is that he has to inform his employer that he lives in Denmark and he has to present his employer a plan showing that he is able to comply with the requirement. I accept what the father said. The alternative accommodation could easily be arranged at an airport hotel. There is nothing for me to doubt the father would not be able to do so. AUTONUMOUT The father gave an update on the final day of trial that in early September 2020 his employer extended the job retention programme on the London base until the end of 2020; this indicated confidence in the Heathrow base. It appears that the father was not affected by the recent retrenchment of his employer that was announced a few weeks ago. Whether the father could work in the UK in light of the Post-Brexit? AUTONUMOUT The UK left the European Union on 31 January 2020. Following this is

a transition period when trade, travel and freedom of movement remain largely unchanged but it will end on 31 December 2020. As to what would the arrangement be after 31 December 2020, negotiations between the UK government and the EU are still going on. AUTONUMOUT The mother raised her concern regarding whether the father is able to work in UK after the transition period. At the present moment, EU citizens enjoy the rights to enter and remain in UK freely. For the reasons that the father has not taken up his London base yet and that due to the Covid-19 furlough in UK until 31 December 2020, there are doubts as to whether he is entitled to this grandfather rights . The transition period will expire before the father is able to take up the posting. Further, the mother raised the concern whether the father will be paying Danish tax and not UK tax in order to make himself legible as a Danish resident. AUTONUMOUT In response, the father maintained that he is entitled to take the benefit of the grandfather rights as he will report duty as soon as leave is given by the court. Further, according to the current arrangement, he will be legible to become a Danish resident. AUTONUMOUT In my view, the outcome of the post-Brexit negotiations is anyone s guess. What I should do is to deal with the matter to the best of the court s ability according to the evidence before it. I would take the current position that the father, as a Danish and EU citizen, is entitled to work in UK. This allows him to take up the new posting. AUTONUMOUT Other issues raised at trial are (1) whether V could join the father in Denmark and (2) whether the grandparents are available to assist in the care of the boys. Whether V could join the father in Denmark? AUTONUMOUT The evidence is that the father s relationship with V has now been made known to his family members in Denmark. It is reported by Ms Cheng that the mother believes the father and V are in a relationship. Yet it is purely developed out of the special family circumstances. It is therefore significant to note that the mother did not launch her challenge on the ground that the father and V are not a couple now and no questions were put to the father and V as regards their relationship when the mother was cross-examining them. I accept there is nothing to suggest they are not a couple. AUTONUMOUT At the time of trial in December 2019, V was holding a Multiple Entry Schengen Visa as the father s partner. Due the lapse of time, this visa expired in May 2020. V s application for a Family Reunification Visa () back in November 2018 was declined. The father said they have lodged an appeal and the result is pending. I take it that in any event a fresh application may be made. AUTONUMOUT The mother criticised V for not being able to speak any Danish nor has she ever taken any course on that. She doubted whether V would be able to obtain the FRV because she would not be able to pass the stringent language proficiency requirement and the requirement for having an understanding of the Danish community and that, since the father would not be paying tax in Denmark, he could not be an ordinary resident in Denmark. Significantly, it is to be noted that the mother did not say V would not be able to obtain the FRV because she is not the partner or spouse of the father. AUTONUMOUT The mother also raised the point that due to the Covid-19 pandemic, V, an Indonesian passport holder, has to apply for a business visa 6 months in advance for gaining entry into Denmark; so it is virtually impossible for V to get there. AUTONUMOUT The mother stressed that if the father s application is allowed, it would mean the boys would be mostly living with their grandparents, their father would be

outside of Denmark 20 days per month and V may at best be allowed to be in Denmark of a maximum of 180 days per year, or at the other end of the spectrum, barred from entry into the EU. AUTONUMOUT The father did not agree that a business visa is required; V could obtain another Multiple Entry Schengen Visa as his partner before the granting of FRV. He could be a Danish resident even if he works in London. AUTONUMOUT There is not a crystal ball before me. Whether or not V would be able to obtain any visa for entry into Denmark is entirely a matter for the Danish government. Despite the mother's criticism on V over her ability or lack of general competence (which I do not think this has been made out), the reality is as of now, and in the past when the father was at work, V is the only person available in Hong Kong for taking care of the boys. In my assessment, V is an intelligent person. She speaks English well, an ability that she has required during her work in Hong Kong and I was told she speaks Cantonese, too. Again, this ability must have been acquired through work. Given that V is the father's spouse or partner, on balance I should consider the father's application on the basis that sooner or later V should be able to join the family in Denmark. Whether the grandparents are available for the care of the boys AUTONUMOUT G, now 69 years old, divorced his wife (the father's mother) in 2003 and married W. AUTONUMOUT G and W are running a small builder business from their home in City H. Their evidence is that their working hours are flexible enough to take care of the boys and to take them for activities when needed. The boys would have their own bedrooms if they are to stay. AUTONUMOUT G acknowledged that he is now aware of the relationship of the father with V and he gladly welcomed V into the family. AUTONUMOUT E (ie the father's mother), now aged 66, also expressed to Ms Cheng that if needed she and her partner are able to offer assistance in caring the boys. AUTONUMOUT The mother said the father's extended paternal family is terribly dysfunctional. G virtually has had no communication with E and his brother (ie the father's uncle). The father's younger brother is severely mentally handicapped and there is simply no chance for him to have any meaningful relationship with the boys. In short, in the eyes of the mother, the father's extended family is trashy. AUTONUMOUT The mother tried to undermine the integrity of G and W by suggesting that they had an affair during G's marriage with E and this led to E's depression and alcoholism. E has been receiving disability partial pension due to ill health and hence, E and her partner, who is much older than her, would not be able to assist. AUTONUMOUT The mother laid much emphasis on G's past fidelity issues, all kinds of shortcomings in the family to say that they might not be able to provide the best quality of nurturing to the boys; specifically, G is not a person of good character, morals and ethics and a poor role model for the boys. Lastly, G has no idea how to care for the boys. AUTONUMOUT It has to be remembered that we are not living in a perfect world. At times, there are broken relationship within a family. The cruel reality is that broken families and torn relationships are a commonplace. This is the reality that one has to face in modern times. The present case where the mother's relationship with the boys has completely broken down is a stark example. AUTONUMOUT The present case must be seen in its context. After having heard G, it is clear that he does not have a good relationship with E and his brother. G conceded that he only communicates with E when it is necessary. I consider this is rather normal for a

divorced couple. The objective evidence is that while the boys were in Denmark, they were spending their times with G and E alternately, so it suggests that at that level there are workable communications between them. Right now the boys have not one extended family member in Hong Kong. On that view, any change occasioned by their move to Denmark would seemingly have no adverse consequence to the boys. AUTONUMOUT The undisputed evidence is that the father frequently returned to Denmark with the boys and in recent years with V as well. The boys were also frequent visitors to their grandparents when they were in Denmark. Meanwhile, G and W visited the father and the boys in Hong Kong at least once before the present application. All the reports produced by the social welfare officers pointed to the positive relationship between the boys and G and W. AUTONUMOUT I have seen and heard G and W in evidence. They, having travelled all their way to Hong Kong in order to give evidence, are apparently in good health. G is adamant that he and his wife are willing and able to take care of the boys. W, in evidence, even went so far as to say that she is willing to come to Hong Kong to assist. AUTONUMOUT Taking all the evidence in the round, I am satisfied that G and W are ready, willing and able to take care of the boys if for whatever reason V is not allowed to stay in Denmark or even when V is in Denmark, in times of contingency, though I do not think W really meant it when she said she is willing to come to Hong Kong. AUTONUMOUT On whether an applicant's plan is realistic or practical, it was commented by Thorpe LJ in *Re F and H (Children: Relocation)* [2007] EWCA Civ 692, [2008] 2 FLR 1667 that the bar as to practicalities varies widely depending on the facts and circumstances of the case. At [9] His Lordship said, the bar as to practicalities that must be jumped by the relocation applicant is set at a wide variety of heights depending on the facts and circumstances of the case. In this commonplace category of cross-border family creation, where the primary carer is returning to a completely familiar environment, the bar is obviously set considerably lower than in the case of an applicant who, in pursuit of some dream or ambition, is proposing to take the children to an unknown and untried environment. The bar is set particularly low where the primary carer is returning to the completely familiar home life after such a brief absence. In this instance the mother had only been in this country for 6 years in total. AUTONUMOUT In that case, the father was English and the mother Texan. When their marriage broke down the mother sought to return to Texas, the United States together with 2 children, the younger one being born by her and the father. Despite the fact that there was no clear information about the younger child's school, about the home the children would be going to, or about the mother's employment or earning capacity, leave was granted for the mother. AUTONUMOUT On appeal, the father's complaint that the trial judge was plainly wrong to accept the adequacy of the mother's practical proposals was rejected. The English Court of Appeal held that the trial judge was entitled to have found the mother was resourceful and she put the children first and she would ensure that there is a proper home with proper schooling and that she would provide finances for them and for herself: at [10]. AUTONUMOUT Similarly, in *SMM v TWM (Child: Relocation)* [2010] 4 HKLRD 37, a Hong Kong case, both the father and the mother are Americans. When their marriage broke down, the mother sought leave to return to the United States with their son. Her application was refused at the first instance. One of

the reasons for refusal was that the trial judge was not satisfied with the plan proposed by the mother. The mother was criticised for being uncertain and lacking in detail of her plan regarding her training in veterinary medicine and accommodation. The Court of Appeal disagreed, and emphasized it is necessary to bear in mind that, The mother is not taking the child to an entirely new environment but is returning to her home country where she has family members and where the father also has family members. The mother wishes to be with her extended family with whom she is close. If the child is allowed to return, he will be able to see more of his extended family rather than simply be with his parents friends and his friends which is the typical lifestyle of an expatriate family in Hong Kong : [32(a)]

AUTONUMOUT On whether the mother s plan in that case was simply too uncertain and therefore unsatisfactory, Hartmann JA (as he then was) took the view that because the mother was still in Hong Kong the plan was bound to contain uncertainties. The learned judge said,

82. For my part, the need for a set of rational relocation proposals is to ensure that the parent is not simply seeking to flee without concern for practicalities and thereby putting the interests of the child at risk. In the present case, when matters are considered in the round, it is apparent, I believe, that the mother is not simply seeking to flee without heed of practicality. She is seeking to relocate to that part of the United States from which both she and her husband originate, where both have families, where both grew up. In that respect, she is seeking to return home , to the shelter and care of both her extended family and, in so far as may be necessary in the interests of the child, to the shelter and care of the father s extended family. There is no suggestion that she will be without funds. In respect of capital, that is not yet available to her for the purposes of buying a home, not until court proceedings are finalised. But the mother does have a plan to stay with her own mother, initially at least while she is looking for employment. There are schools in the area which are able to take the child even if the child has not yet been booked into one of them. They are educational institutions of different complexions but there is no suggestion that the mother, in consultation with the father, will not be able to choose one that is appropriate. In this regard it is to be remembered that both parents are highly qualified and clearly understand the importance of education. If the mother finds a job at some distance it may be necessary to move the child but that of itself is not critical. There is nothing to suggest that the child is not an average robustness and will not adjust.
83. The mother s relocation proposals, it seems to me, are entirely acceptable. She will be returning home in the sense that I have described. Initially, while she seeks employment, she will be staying with family. During that time, the child will have schooling available as well as the benefit of spending time with extended family. When the mother has found employment, if it is necessary to move to a new place, there is no reason to think that she will not do so in an entirely rational and planned manner, making sure that the child s best interests are secured. There is nothing in the mother s history to suggest that she acts with blatant irresponsibility in respect of the child.

84. In respect of relocation applications generally, there will, of course, be many occasions when the court is obliged to look carefully to the specific details of a plan to relocate and a lack of specific detail will be fatal. Each case is unique, each must be determined according to its own circumstances. In the present case, however, looking to all matters in the round, including the proven character of the mother as a responsible parent, I believe that the judge regrettably fell into error in looking too much to the lack of detail and too little to the broader imperatives which show the plan to be entirely understandable, rational and one that will protect the interests of the child. (emphasis added) AUTONUMOUT Although it is axiomatic that the facts of every case are different, with the above observations in mind, the father's plan in the present case is no doubt a well thought-out one and is practical. The father is clearly very resourceful in seeking assistance from his family members. He is not only seeking to return to his home country, but is seeking to return to his hometown as well where his extended family members and friends are. Denmark is not an alien land for the boys. Likewise, G, W and E are no strangers. The boys have been spending their summer breaks there and meeting these extended family members in the past years. Is the mother's opposition motivated by genuine concern for the future of the boys' welfare or is it driven by some ulterior motive? AUTONUMOUT Both Mr Clough and Mr Lee agreed that the mother's opposition is motivated by her genuine concern for the future of the boys. The mother wants to re-establish her relationship with the boys before they depart for Denmark. This is the main reason for her objection. She fears that if the boys are to leave Hong Kong without any solid basis on which their relationship could be built upon, she would lose the boys forever. What would be the extent of the detriment to the mother and her future relationship with the boys were the application granted? AUTONUMOUT The mother repeatedly complained that the current email access is simply not a viable method to rebuild the relationship. She continued to run the theme that the boys are victims of parental alienation engineered by the father. The only materials she relied upon are just some literature attached to her affirmations to say that the boys have Parental Alienation Syndrome. I must say this assertion is never supported by any expert evidence. Quite to the contrary, it has been the views of all the professionals involved in helping this family that the boys were estranged by their mother's own conducts. AUTONUMOUT The mother relied upon Dr Poon's report to say that she has had significant improvement in her emotion, that there are no signs of psychological or emotional disturbance and that she does not need any service. I accept that according to Dr Poon, the mother currently does not have any emotional and psychological problem but as Ms Cheng rightly pointed out in court, what the mother needs are more on how she reflects as a parent and how she could improve herself as a parent. AUTONUMOUT The mother further relied upon the training that she received, specifically the Thomas Gordon Parenting Effectiveness Techniques and her past employment history to say she has adequate knowledge and skill in communications. She is well commented by the parents of children that she teaches. She is ready and able to meet the boys again. AUTONUMOUT All these may be true. The mother may have excellent skills in relating to and communication with children. However, I agree with Ms Cheng that what we are dealing with are the mother's own children - not the children that she works with in her job. I do not think it is helpful if

the boys are forced by a court order to see their mother. I agree with Ms Cheng that the key is how to make the boys to be willing to see their mother. It is important to let the boys know their mother listens to them and are supportive of the things they want. When the boys see such changes they may be willing to see their mother. By then, she would have the opportunity to use the skill that she has acquired. AUTONUMOUT Ms Cheng took the view there is a chance for the boys to reconnect with their mother if she supports the application. The boys would see that the mother understand and respect what they want. The boys need reassurance from her so that they can trust their mother and they need an indication from their mother that she has changed. AUTONUMOUT It is reported by Ms Cheng that B agreed to meet his mother yearly and maintain contacts with her if she would agree to the relocation. As opined by Ms Cheng, if trust with B is rebuilt and L could also witness it, there could be possibilities for increased contact and relationship could be changed.

AUTONUMOUT It is also reported that at one stage L agreed to meet his mother for 2 to 3 hours if she supported the application. At another stage, L would only agree to see his mother if she was willing to apologise for what she did. Ms Cheng conceded that it would not be sufficient for healing the relationship but it could be a start. AUTONUMOUT Regrettably, the mother did not take up the offers. She saw these offers as conditions being imposed upon her by the boys. The mother continued to insist things to happen in the way she dictated. Instead of accepting the offers, the mother proposed to allow the boys relocation on the condition that this is to take place 24 months the latest, if the boys agree to weekly face-to-face supervised access. When a more solid relationship foundation is established, ie when more natural interaction and free communication can be achieved, a more detailed exit plan and access plan upon relocation should be agreed and the relocation could then be effective anytime. AUTONUMOUT I agree with Ms Cheng that it is because of the boys feelings and past experiences with their mother but not physical distance that the boys reject to have any contact with her and that the key to improving the relationship between the mother and the boys would be for the mother to take a step backward to listen to the boys and allow them to go to Denmark. But sadly, the mother never did. The mother failed to listen to the boys that their past experience with their mother had been very hurtful. She failed to reflect upon her own relationship with the boys and how what she did in the past have influenced that relationship. For instance, notwithstanding the mother repeatedly said she takes full responsibility and decisions in the past, she did not apologise to the boys. The mother continued to maintain that she was wrongly convicted of the ill-treatment offence because of the father's evidence. And the way in which L gave his evidence was influenced by his father. She continued to accuse it was the father's lies that had caused her to unfairly be burdened with a record of a crime she had not committed. She gave the excuse that she was intensely stressful at that time, that she was only shouty but not abusive. There was no direct answer from the mother when she was asked by Mr Clough on whether she regretted any of her conduct towards the boys. AUTONUMOUT Thus, it does not come as a surprise to me when Ms Cheng in her report of 4 September 2019 said the resentment of the boys towards their mother has increased over time, particularly on the part of L. AUTONUMOUT L is reported to have mentioned to Mr Lee that he thinks his mother does not care about

their feelings; she just drags things on as long as possible and makes life difficult. He even takes the view that the present email arrangement should discontinue. B apparently takes a less drastic view but he is reported to have said that if he is to talk to the mother he would just tell her that he hates her as she does not agree to the relocation. AUTONUMOUT I agree with Mr Lee that the mother-children relationship could not become worse if relocation is allowed. On the contrary, there may be a chance for improvement in their relationship if the boys could relocate because it is hopeful with the passage of time there would be less resentment towards the mother. The boys are willing to meet their maternal aunts and have done so in the past, though it would appear that currently the boys have some reluctance to see their maternal grandmother, who is living in Australia. With all these behind their backs, it is hopeful that starting from meeting their maternal aunts, then their maternal grandmother, in times, they would be able to re-connect with their mother. I recognise there is no guarantee that this would happen. In the event that this does not, I would quote what Mr Lee said in his closing submission,

54. If the relationship between the mother and (the boys) shall unfortunately become unrepairable, it is indeed the consequence which all the professionals have forewarned the mother. It is regrettable that the mother is the author of her own misfortune. To what extent would that detriment be offset by an extension of the boys relationships with the paternal family and homeland? AUTONUMOUT The boys have no extended family from either the paternal or maternal side in Hong Kong. As said, Denmark is not an alien land and the boys are familiar with the people there. If they move to Denmark, their paternal grandparents would be around and close by to give them love and care. What would be the impact on the father of a refusal of his realistic proposal? AUTONUMOUT Decided authorities have consistently attached importance to the emotional and psychological wellbeing of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this factor: *Payne v Payne*, supra, [41]. AUTONUMOUT The father would be based in Heathrow in any event. This would mean a reduction in his monthly salary and the termination of his expatriate package with housing and education allowances. If the boys are to continue to stay in Hong Kong and the father is to work from London, practically speaking, it would mean less time for the father to be with the boys and on the financial side, it would mean less take-home income (which the mother also accepted) and lower standard of living. As for the boys, they, especially L, would continue to suffer at schools. I agree with Mr Lee that if this second application is refused it would be a heavy blow to both the father and the boys. Overall what would be in the best interests of the boys? AUTONUMOUT I am required to conduct a holistic balancing exercise in the determination of the father's application. Apart from the above considerations, the following considerations are also pertinent, viz, (1) the views of the boys; (2) their relationship with V; (3) the Covid-19 pandemic and (4) education opportunities. The Boys Views AUTONUMOUT Same as before, the boys have consistently expressed to Mr Lee and Ms Cheng their strong desire to relocate to Denmark. The Official Solicitor's Report AUTONUMOUT In his report dated 3 September 2019, Mr Lee said the boys continued to

maintain their clear and strong desire to relocate to Denmark. Mr Lee considered there is no evidence to suggest the boys have been coached or indoctrinated to give their answers. The Social Investigation Report AUTONUMOUT L informed Ms Cheng that he wanted to live in Denmark because he wanted to be with his family. By this, he was referring to his grandfather and grandmother. He described Denmark as his homeland. AUTONUMOUT B, in the same vein, informed Ms Cheng that he always wanted to go to Denmark because he wanted to be with his family. AUTONUMOUT Both L and B said they enjoyed spending time with friends and family members there. AUTONUMOUT On the part of the mother she agreed the boys wish to settle in Denmark but their wish is being influenced by their father. AUTONUMOUT However, both Mr Lee and Ms Cheng found the boys responded spontaneously and freely and their views were genuine. As the docket judge who has been overseeing this case for the last 8 years, these observations about the boys are consistent with the previous observations made by other professionals involved. AUTONUMOUT AS v CPW [2020] 4 WLR 127 is an English case concerning whether a boy, aged 14 years old, ought to be ordered to return to the UK from Sierra Leone upon the application of his father. The son categorically wished to remain at Sierra Leone until the conclusion of his GCSE education. Mostyn J found the boy's wishes were not objectively foolish or unreasonable and he refused the father's application. In coming to his decision, Mostyn J stated that the wishes of a Gillick-competent child (see: *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, HK (E)) on a particular issue, where they are not objectively foolish or unreasonable, should normally be given effect: at [22]. AUTONUMOUT My assessment is that the boys' views are not objectively foolish or unreasonable. Whilst I am conscious that they are not quite as old as the boy in *AS v CPW*, supra, they are old enough to speak their minds on which weight should be given. The decision of course rests with the court. Relationship between the boys and V AUTONUMOUT The boys were observed by Ms Cheng to have had lots of interactions with V during the home visit. L told Ms Cheng that he had good relationship with V and he would love her to join them in Denmark as a family. AUTONUMOUT Ms Cheng also reported that according to L's English teacher and Art teacher, L had mentioned to them that V was like his mother and he loved her very much. AUTONUMOUT At trial, these observations have not been subject to challenge. I accept V mingles well with the family and she is not in the role of a domestic helper; there is a loving relationship between the boys and V. The Covid-19 Pandemic AUTONUMOUT The mother worried that Denmark is a dangerous place to go; it has been having far more Covid-19 cases than Hong Kong. She even raised the point that the father, who travelled extensively, and the boys are more likely to be carriers of the disease. The grandparents and their partners are older persons; as such, they could be easily infected and are more susceptible to death if contracting the virus. AUTONUMOUT Denmark and Hong Kong, and for that matter, the world, have been facing the challenge posed by Covid-19 pandemic. In different countries and at different times there have been waves of surges of cases. At some of the time Hong Kong has met with success and the same can be said for other countries. Things should not be mired in stalemate simply because of the pandemic. I am sure what I have in mind should be the long term best interest of the boys and attention should not be focused on the

infection rates alone. Education Opportunities AUTONUMOUT Speaking of the long term interest of the boys brings me to the education opportunities open for them, which is one of the considerations raised by the father. I accept this is a valid consideration, in particular in respect of L, who feels marginalized at school and has become withdrawn from his peers. Other Points AUTONUMOUT Before I come to the final decision, it is necessary to dispose of some of the points raised by the mother. AUTONUMOUT The mother complained that the father secured the change in base before obtaining the approval of the court, as such, he engineered a *fait accompli*, putting the cart before the horse . AUTONUMOUT In my view, the difference between creating a *fait accompli* and making a realistic and practical proposal is a fine one. If an applicant has secured some assurances before his application, he would be accused of putting the cart before the horse but if there is nothing in place, he would be accused of failing to have a realistic plan and is venturing into uncertainties. AUTONUMOUT When I said in the 1st Relocation Judgment that the father was jumping the gun, trying to create a *fait accompli*, I was particularly referring to the fact that at that time the boys were already in Denmark and the father sought leave for them to stay and commence schooling there. On that occasion leave had been given by this court for the boys to go to Denmark for holiday only and was not meant for the purpose of permanent removal. I therefore ordered the father to return the boys to Hong Kong and that they were not to be removed from Hong Kong unless with the leave of the Court: see [9]. AUTONUMOUT In the present case, given the time constraint within which the father had to make his application for the transfer, I think it is quite justified for him to make his application and secure the transfer pending the outcome of this application. AUTONUMOUT The mother raised the issue as to when the parties started cohabitation. She adduced her travel records as shown on her passports and the permanent resident papers issued by the Swedish authorities to show that she started to cohabit with the father since 2002. The mother tried to rely upon the father's denial to demonstrate that his evidence should not be believed. AUTONUMOUT The father accepted that they met in Sweden in 2002 but it was not until 2006 that they started cohabitation. Yet he admitted he applied for residency permit in Sweden for the mother on the basis that they were in a relationship and that from 2002 to 2006 the mother was staying at his house and was able to work there because of his sponsorship for the residency permit. AUTONUMOUT In my view, given that this happened years ago wherever the truth lies is of marginal relevance. AUTONUMOUT The mother also referred the fact that City H is an isolated small town in Denmark and the father and the boys are blind to the beauty and opportunities in Hong Kong. In so saying, she seemed to have forgotten that the father was from the very same City that he now wants to return. The fact that the father was being brought up in an isolated city, as so described by the mother, did not prevent him from establishing a flying career or from coming to Hong Kong.

Conclusion

AUTONUMOUT The father chose to come to Hong Kong to pursue a flying career (and the mother, as his wife then, followed suit). I accept he has not had any plan of making Hong Kong his permanent home. Now 12 years down the road the father wishes to return to his home country. AUTONUMOUT The fact is V has been taking care of the boys while the father is on duty for a number of years now. The bleak reality is that V is the only person that the father can count on in his absence. Relocation allows the father to obtain timely support from his family and for the boys to stay away from all the unpleasant experience and disturbances to their normal living in Hong Kong. It is optimistic that the boys could have a normal family life surrounded by extended family members while at the same time they would be brought up in their own culture. This would be a much better situation for the boys when compared to the current one.

AUTONUMOUT Hong Kong, and for that matter, the world, have been experiencing financial hardships due to the Covid-19 pandemic. There is no guarantee that things would change for the better in the near future. If the father's application is refused, in the event that the father loses his job due to any further entrenchment, it is highly doubtful how the father would be able to sustain his living in Hong Kong. AUTONUMOUT The conclusion is that, on the above analysis, it is to the best interest of the boys for them to be relocated to Denmark. The father's application therefore ought to be granted. Access AUTONUMOUT According to Ms Cheng, L remained firm in rejecting making contact with his mother. AUTONUMOUT The father agrees to facilitate access of the maternal family to the boys. He is also willing to facilitate the mother's access if the boys agree to it. He has no objection that the current email access be continued. The mother may send the boys gifts as long as the boys are not obliged to respond. AUTONUMOUT I have already set out the current situation about the email access above; it is unnecessary to repeat here. It is quite clear that due to the mother's opposition to the relocation application, there have been setbacks in mending the relationship between the boys and their mother. I am sure access should continue for the sake of the boys long term interest, although I must say the options we have in this case are very limited. I agree with Mr Lee that FaceTime session is plainly unrealistic and untenable, as the evidence clearly shows the boys are not ready to have any communication with the mother yet. I accept Mr Lee's proposal in his 9th Report (on Permanent Relocation) that the current email access should continue. I see no reason why the father should not continue to provide the boys school hand-books, notices and reports to the mother on a monthly basis. The mother is urged to continue with her efforts which hopefully would turn fruition in time. At the same time, the father is encouraged to continue to give proper guidance to the boys with a view to re-connect with their mother. I shall be very pleased to see the boys could forgive and forget and their mother return to be a positive figure in their life-journey.

Orders

AUTONUMOUT For these reasons, the existing custody, care and control and access arrangement should continue. As the current order was made under the previous case FCMC 4191/2012, for the sake of convenience for the parties, the same set of orders are re-granted under the present proceedings. I make the following orders: Sole custody, care and control of the boys be granted to

the father; Leave for the father to remove the boys from the jurisdiction of Hong Kong to Denmark for the purpose of relocation; The mother is granted access to the boys by way of emails, limited to 2 emails per week from her. The mother may also send an electronic card during Christmas and on the occasion of the boys birthdays. The boys are not obliged to give a reply; and The father is to provide the boys school hand-books, notices and reports, if any, on monthly basis. Costs AUTONUMOUT This is a children proceeding; I will adopt the usual approach of no order as to costs. I make an order nisi that there be no order as to costs both between the parties and between the parties and the Official Solicitor (including all costs reserved), with counsel certificate. Financial Matters AUTONUMOUT There should be closure of these divorce proceedings as soon as possible. Parties should approach the Listing Clerk for fixing a First Appointment hearing. AUTONUMOUT Finally, I would like to thank Mr Clough and Mr Lee for their assistance. (I. Wong) District Judge Mr Neal Clough, instructed by Ho & Ip, Solicitors, appeared for Mr JTMW, the petitioner Ms NAV, the respondent, appeared in person Mr Lee Tak-lei, Ted, solicitor, appeared for the Official Solicitor - PAGE 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 h f N < h y W h F d # g d w h g d l 2 g d l 2 h j q ! g d \ N h f N < g d 3 p g d t H ^ h l g Z h \$ =] h v S ; h v S ; h v S ; h v S ; h v S ; h v S ; g d t H ^ g d t H ^ g d t H ^ g d t H ^ g d t H ^ g d l 2 g d l 2 g d l 2 h v S ; h v S ; h v S ; h v S ; h v S ; h v S ; g d l 2 y t ; 6 t ` t ` t g d ; 6 g d ; 6 h \$ =] h \$ =] g d \$ =] h \$ =] h { X g d 3 p h l E 4 h w > h ; e V h . H 0 h W ' C h W ' C g d 3 p g d 3 p g d 3 p ~ w ~ m g m g ~ g b ~ & ` # \$ g d w F & ` # \$ g d l 2 & ` # \$ g d l 2 : p ; 6 y t ; 6 [ Content\_Types .xml \_rels / .rels theme / theme / themeManager.xml K Y , s Q } # theme / theme / theme1.xml \$ O } ) X p 9 0 + P H I | P P y u 9 x u 5 f s + W V F 7 H q = . 8 } d - q y I @ j ! Q \_ j y V ` | P Z + T " " p < 4 V O & x \$ A 8 > v ; E U C n 8 r * ~ P (5 . } x E , / E E \ } theme / theme / _rels / themeManager.xml .rels 5 6 ? \$ Q K (M & \$ R (. 1 [Content_Types .xml P K _rels / .rels P K theme / theme / themeManager.xml P K theme / theme / theme1.xml P K theme / theme / _rels / themeManager.xml .rels P K < ? xml version = " 1 . 0 " encoding = " UTF - 8 " standalone = " yes " ? > < a : c l r M a p x m l n s : a = " http : // schemas . openxmlformats . org / drawingml / 2006 / main " b g 1 = " l t 1 " t x 1 = " d k 1 " b g 2 = " l t 2 " t x 2 = " d k 2 " a c c e n t 1 = " a c c e n t 1 " a c c e n t 2 = " a c c e n t 2 " a c c e n t 3 = " a c c e n t 3 " a c c e n t 4 = " a c c e n t 4 " a c c e n t 5 = " a c c e n t 5 " a c c e n t 6 = " a c c e n t 6 " h l i n k = " h l i n k " f o l H l i n k = " f o l H l i n k " / > L R L j i \$ & ` G H ; < E H < h : 2 j : J 2 j : J L a i w i n g W o n g N o r m a l . d o t m p u i h o n c h e u n g M i c r o s o f t O f f i c e W o r d T i t l e _ P I D _ H L I N K S < ? xml version = " 1 . 0 " encoding = " UTF - 8 " standalone = " no " ? > < b : S o u r c e s x m l n s : b = " http : // schemas . openxmlformats . org / officeDocument / 2006 / bibliography " x m l n s = " http : // schemas . openxmlformats . org / officeDocument / 2006 / bibliography " S e l e c t e d S t y l e = " \ A P A S i x t h E d i t i o n O f f i c e O n l i n e . x s l " S t y l e N a m e = " A P A " V e r s i o n = " 6 " > < / b : S o u r c e s > < ? xml version = " 1 . 0 " encoding = " UTF - 8 " standalone = " no " ? > < d s : d a t a s t o r e I t e m d s : i t e m I D = " { 7 9 C A F 7 E 6 - 5 E 7 3 - 4 0 E 9 - B 0 B 0 - F F 4 F 0 B 6 6 C C 8 3 } " x m l n s : d s = " http : // schemas . openxmlformats . org / officeDocument / 2006 / customXml " > < d s : s c h e m a R e f s > < d s : s c h e m a R e f d s : u r i = " http : // schemas . openxmlformats . org / officeDocument / 2006 / bibliography " / > < / d s : s c h e m a R e f s > < / d s : d a t a s t o r e I t e m > M i c r o s o f t W o r d 9 7 - 2 0 0 3 D o c u m e n t M S W o r d D o c W o r d . D o c u m e n t . 8

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