

HONG KONG / JUDGMENT

KHH v. PKH**[2023] HKFC 145****COURT**

Family Court

DECIDED

28 July 2023

CASE / FILE NUMBER

FCMC8332/2017

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bjbj FCMC 8332 / 2017

**[2023] HKFC 145 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 8332 OF 2017**

BETWEEN KHH Petitioner and PKH Respondent

Coram : Deputy District Judge S. Allison in Chambers (Not Open to Public) Dates of Hearing: 22
25 May and 29 May 2023 Date of Written Closing Submissions: 20 June 2023 Date of Judgment: 28
July 2023**RULING**

(Fact Finding Hearing)

Introduction

This was a fact finding hearing in respect of the only child of the family, a girl, born on xxOctober 2015 (the Daughter). The Daughter was 7 years old at the time of the fact finding hearing. There were three distinct and separate incidents which the Respondent mother alleged took place when the Daughter was in the father s care. On the mother s case, each of these three incidents, amount to abuse of the Daughter. I refer to these incidents as the closet incident hair removal incident and indecent assault , respectively. I will consider these incidents in turn and make a finding on each of them. It is important to place these allegations in the context of the context of the parties marriage and litigation history, as it is evident that there is a high level of conflict and the parties were unable to communicate reasonably with each other, even when the Daughter s

welfare was at stake.

Background

The parties married on 15 February 2013, and separated in or around January 2016. Both parties are of Indian descent, with strong ties to Hong Kong. The father spent most of his childhood in Bangkok, but returned to Hong Kong to work in an investment business after completing his studies overseas. The mother was born and grew up in Hong Kong. She obtained a diploma in law, and worked as a legal executive before establishing her own legal recruitment business, which closed down in October 2018. Since then, the mother has worked outside the home for a few months between September 2022 until March 2023. The Daughter was born shortly before the parties separated. The father issued a divorce petition on 29 June 2017 and the decree nisi was granted on 8 January 2019. Since then, the parties have been litigating in the family court almost constantly which is reflected in the number of contested applications and judgments handed down by the court in these proceedings. Focusing solely on the care arrangements Orders; the first court Order was made on 15 December 2017. The Order granted joint custody of the Daughter to both parents, interim care and control to the mother and interim defined access to the father. Following that Order, the father made two applications, the first one on 8 January 2019 seeking sole care and control and the second application in 17 June 2019, seeking shared care and control of the Daughter. In March 2020, the mother issued her application to relocate to Singapore with the Daughter. On 10 November 2020, the mother was granted leave at first instance to relocate to Singapore and an interim access Order was made pending relocation (Relocation & Interim Access Order). However, the father appealed against the Relocation Order which was subsequently overturned by the Court of Appeal on 24 May 2021. The Interim Access Order, provided that weekend access was to be alternated between the parents from Friday, 5:00 pm until Sunday, 5:00 pm. In addition, the Daughter would be in the care of the father during the week for one night following his weekend access, and two nights of those weekends he did not have access. In week one, midweek access was to take place from Wednesday after school until Thursday morning when the father would drop the Daughter at school. In the second week, the two-night access commenced from after school on Tuesday until Thursday morning. The father was to bring the Daughter to her scheduled weekend activities when she was in his care including religious classes held on Saturday morning. This arrangement was to continue while the Daughter remained in Hong Kong before moving to Singapore. Following the Court of Appeal s decision of May 2021, the father issued a summons on 28 June 2021 to address the long term care and control arrangements. On 10 August 2021, the Court of Appeal refused the mother leave to appeal, and by 15 November 2021 the mother filed her application to vary the Interim Access Order. Most recently, on 17 March 2023, the mother applied for the pronouncement of the decree absolute which was refused by HHJ, T. Kwan on 9 May 2023 pending the determination of the Daughter s care arrangements. During the fact finding hearing, the mother expressed her continuing intention to relocate to Singapore with the Daughter when the decree absolute is pronounced. Relevant dates The court has approached the mother s allegations in a linear fashion to make sense of the manner each incident was raised. Each allegation and incident is

independent of the others. The rejection of one allegation does not justify or follow that the court will move onto rejecting all the allegations. However, at the same time, the court is permitted to draw upon its assessment of one allegation and the parties behaviour surrounding each incident, to an extent when considering the others. In order to provide a sensible account of analysis the chronology of the relevant incidents and surrounding facts are set out here as follows:

10 September 2021 The mother raised the closet incident for the first time in her letter to the court

15 Nov 2021 The mother s Summons to vary the father s access downwards. 24 Nov 2021 There was a directions hearing. The court did not permit any changes to be made to the father s access and a Children s Dispute Resolution hearing was fixed on April 2022. 26 Dec 2021 3 Jan 2022 The Daughter enjoyed Christmas access with the father, during which time the hair removal incidents took place on 28 December and 31 December 2021. 3 Jan 2022 The Daughter returned to the mother s care. The mother noticed that the Daughter had no hair on arms and legs. 4 Jan 2022 The Daughter returned to school after the Christmas break. The mother filed a complaint against the father with the Social Welfare department regarding the hair removal incident. The Social welfare officer called the father to investigate whether he had used a pumice stone or magic cream / bleach or chemicals on the Daughter to remove the hair on her arms and legs. The father denied using magic cream/ bleach or chemicals on the Daughter. 5 Jan 2022 The Daughter had staying access with the father after attending school. 7 Jan 2022 The mother brought the Daughter to the paediatrician regarding the hair removal incident. Daughter was absent from school. The mother canceled the father s access. 8 Jan 2022 The mother filed police report against the father s helper regarding the hair removal incident. 9 Jan 2022 The mother was allegedly told by the Daughter that the father indecently assaulted her. On the mother s case, this is the second time she was informed of this by the Daughter, the first time being in or around 1 March 2020. 13 Jan 2022 The mother filed an injunction against the father, his family, servants etc restraining them from seeing the Daughter. The mother s affirmation in support only mentioned the hair removal incident. 19 Jan 2022 The injunction was not granted by the court following the father undertaking not to use a pumice stone or magic cream on the Daughter. 20 Jan 2022 The mother reported indecent assault incident to the Child Protection Services. 21 March 2022 A multi-disciplinary case conference (MDCC) is held regarding the hair removal incident. The MDCC concluded that the use of the pumice stone and magic cream was not a maltreatment case. 23 March 2022 The mother writes ex parte letter to the court regarding alleged indecent assault. 12 April 2022 The mother filed a police report regarding the indecent assault incident. 20 April 2022 The mother filed her affirmation regarding all three incidents, including the indecent assault for the first time. 21 April 2022 Children s Dispute Resolution hearing 28 April 2022 The Daughter has a recorded video interview with the police regarding the indecent assault incident. 6 June 2022 A MDCC is held regarding the indecent assault incident. The MDCC report concluded that there was inconclusive evidence and found that this was not a case of child abuse. 28 June 2022 The Official Solicitor was appointed From 6 January 2022 the father had no in-person access with the Daughter. The father s access only resumed after several months following the Order dated 7 July 2022, on a supervised basis with gradual increments of time with the Daughter. The father s access was supervised at centres provided by the Social Welfare Department and the Hong Kong Family Welfare Society (the Centres) or if access was outside the Centres, it was under the

supervision of Rent-A-Mum. There was a further revised access order on 29 September 2022 that the father could have Thursday dinner access supervised by his sister or brother-in-law, Tuesday access at the Centres and for 2 hours on Saturday with Rent-A-Mum. The next Order of 5 December 2022 permitted a change of locations where access could take place at the father's sister's house and the people who could supervise access was expanded. This was the access Order in place at the time of the fact finding trial. Evidence at trial Both parents gave evidence at trial. Both parties maintained their evidence in the face of cross examination and stood by their account. I have had regard for the broader interest each party has as to the outcome of this hearing, particularly the mother. There was also evidence given by one of the Social Welfare Officers involved in the case, Ms Chen and the Clinical Psychologist, Ms Wu (). The father's sister also attended trial on the last day to give evidence. I found the father to be a credible witness. It is clear that he is trying his best to maintain a healthy father-daughter relationship despite the difficulty he has faced to have access. I accept that the Daughter genuinely loves and enjoys the time she has with the father and his extended family and I would encourage the mother to support this relationship fully. On the other hand, I found the mother had a tendency to exaggerate and to place an irrational overreliance that the Daughter should be completely believed and that the Daughter is not capable of being untruthful. The father's sister was a credible witness although her evidence had little probative value since she was not present during any of the incidents. What is clear from the paternal aunt's evidence is that the father has a supportive extended family who clearly loves the Daughter very much. Expert Evidence and their reports Due to the length of time the parties have been in conflict regarding the care arrangements of the Daughter, there have been a total of five Social Investigation Reports. Three reports were prepared between November 2017 and June 2020 before the case was taken up by Ms Chen who prepared two updated Social Investigation Reports and one memo until her departure from the Social Welfare Department in February 2023. I am grateful for Ms Chen for attending trial to give evidence even though she was no longer working at the Social Welfare Department. I found her to be an impartial and steady witness. In particular, she remained unshaken in her observation that the Daughter behaved differently when she was with the mother and when she was with her father. The CP was appointed by Order of 5 December 2022 and she prepared a report on 16 March 2022. At the time of making the report, the police were still investigating the hair removal incident and the alleged indecent assault. Hence, the CP did not explore the details of these incidents in her assessment and declined to make any finding on whether the Daughter was subject to parental alienation on the basis that the concept was controversial. The CP preferred instead view the child's experience and relationship with each parent through a multi-factor model. The CP presented her evidence well at trial. I agree with the CP that the Daughter is caught in a loyalty conflict between her parents. I also accept the CP conclusion at paragraph 38(a) of her updated report that the Daughter's stress is a result of the incessant parental disputes. Despite the mother's denials, I find that the daughter is aware of these proceedings. The CP reported that the Daughter was cross with the father because he had made her mother upset and the parents are the key to freeing the Daughter from conflict. The mother's affirmation evidence in September 2021 was that the Daughter had displayed symptoms of anxiety in the preceding weeks and she had been sharing about being locked in the father's

closet. The mother questioned both the Ms Chen and CP as to the possible cause of the Daughter's anxious behaviour. The mother attempted to link the Daughter's anxious behaviour to the Daughter's reluctance or anxiety to meet with the father. This hypothesis was rejected by Ms Chen on the basis that the Daughter could be anxious for a variety of reasons. The CP gave similar evidence regarding the various causes of the Daughter's anxiety. I accept both their evidence on this. Additional expert reports In addition to these SIR and the clinical psychologist, there were reports prepared by two single joint experts for the purposes of the relocation trial. Both these experts were not called to give evidence at the fact finding hearing, nor were they involved in the investigation of the three incidents. I have, therefore, placed no weight on the reports of the single joint experts. One of the single joint experts was Ms Lee who had prepared 2 reports and an addendum in relation to the mother's relocation application (collectively referred to as Lee Reports). On 30 May 2022, the mother applied to have the Lee Reports expunged from the court files, the court system as well as the records held by Social Welfare Department. HHJ T. Kwan provided on 29 September 2022 her extempore decision refusing the mother's application. However, on the second day of the trial, the mother sought to renew her application regarding the expurgation of the Lee Reports which was refused on the grounds it was improper to seek to reopen a matter that had already been decided. I note that there has been a finding made by the Hong Kong Psychological Society (HKPS) of gross negligence and biased reporting on the Child Custody Evaluation in relation to Ms Lee. The finding was reached following an investigation by the discipline board appointed by the council of the HKPS. In light of this finding, I have not relied on or taken into account the Lee Reports in reaching my decision. The law in Hong Kong The purpose of a fact finding hearing is set out at PDSL 10.1 8, that the Court shall, wherever practicable, make findings of fact as to the nature and degree of the domestic violence if any and its effect on the child, the parties and any other relevant third parties. In addition, the fact finding hearing is to assess whether on the balance of probabilities, if there is a real possibility of future risk to the child, as this impacts the manner in which the court should exercise its discretion in making care arrangements for the protection of the child (see PDSL 10.1 10). The mother in this case bears the burden of proving that the three incidents happened as she has alleged and she has to provide compelling evidence in support of her case. In *LACHY v YC* (unreported, FCJA 2057/2016, 21 November 2017), HHJ Melloy addressed the standard of proof which is to be met in a fact finding hearing relating to allegations of child abuse: The law

8. In the judgment of FCMC 12118 of 2010, *Specific Issues*, dated the 7 March 2014 I set out the law relating to matters such as this in some detail. I have therefore taken the liberty of repeating the relevant sections as set out below:
13. The Family Court does of course follow the civil standard of proof when determining issues of this nature. Thus the court has to decide on the balance of probabilities whether it is more likely than not that these incidences took place.
14. Counsel for the wife has very helpfully set out the up to date position on the law in his closing submission as follows: The Burden and Standard of Proof of the Allegation 3 It is trite in our legal system that he who alleges bears the burden of proving his allegation.

There is no exception in the present proceedings although family proceedings are regarded as quasi-inquisitorial. Therefore, it is accepted that W [the wife] bears the burden of proving the Allegation. [The same applies in this case]. 4 The majority in the United Kingdom House of Lords in *Re H & Other (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 held that the civil standard requiring proof on a balance of probabilities continues to apply where, in civil proceedings, an allegation is made of criminal (or similarly serious) misconduct, but explained that such standard is to be applied flexibly, factoring in the inherently greater improbability of serious misconduct as compared with lesser forms of misconduct, therefore requiring the person bearing the burden of proving the allegation to prove it with evidence of a commensurate cogency. 5 This approach was adopted by the Hong Kong Court of Final Appeal in *Nina Kung v Wong Din Shin* (2005) 8 HKCFAR 387 (see para. 181 of the judgment). Nevertheless, after all, the civil standard shall still apply while this Court has to bear in mind the seriousness of the misconduct alleged, recognizing that it carries an inherent degree of improbability. (Court's emphasis added)

9. In addition, the solicitors for the father provided further case law and analysis in their opening submission, which went to the general point concerning the standard of proof required in a case where serious allegations of misconduct are made in the context of civil proceedings as here. They said *inter alia* as follows:
4. The law regarding the requisite standard of proof for serious criminal allegation alleged in civil cases was set out in the following cases. In *HKSAR v Lee Ming Tee*, FACC 1 of 2003, Sir Anthony Mason NPJ cited at paragraph 71: In *re H (Minors)* [1996] AC 563 where Lord Nicholls of Birkenhead (with whom Lord Goff of Chieveley and Lord Mustill concurred) said (at 586E) When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.
5. In *Ming Shiu Chung v Ming Shiu Sum*, FACV 25 of 2005, Ribeiro PJ which was by cited Sir Anthony Mason NPJ in *HKSAR v Lee Ming Tee*, FACC 1 of 2003, that inferences of fraud or serious misconduct are not to be reached by conjecture nor ... on a mere balance of probabilities. They are to be plainly established as a matter of inference from proved facts
6. In *Nina Kung v Wang Din Shin*, FACV 12 of 2004, Mr. Justice Chan stated that paragraph 185 that: the court is invited to reach a conclusion of forgery as an inference to be drawn on the basis of circumstantial evidence, any such inference must be properly grounded in the primary facts found. The court guards against indulging in conjecture under the guise of drawing an inference where the primary evidence does not logically and reasonably justify the particular inference in question.
10. With respect I agree. It is then accepted that the burden of proof lies with the mother and that given the seriousness of the allegations made, she has to prove to a very high standard indeed that what she alleges is in fact correct. In other words, she has to provide compelling

evidence to support her case. The closet incident It was the mother s case that the Daughter told her the father had put her in a closet, locked the door and turned out the lights. The reason given by the Daughter for being placed in the closet was that she had told the father she missed her mother and wanted to go home to her mother. As a result, the father punished the Daughter by placing her in the closet. The mother was unaware of how frequent the Daughter was placed in the closet or how long the Daughter was in the closet for. According to the mother, the Daughter started sharing this story, over the summer of 2021 which made the mother believe that the Daughter was scared and traumatised. The Daughter continued to share this story with several other people. It is not in dispute that at no time, when the mother first heard this story from the Daughter did the mother call or text the father to find out more information regarding the incident. It was the father s evidence that he had used the walk-in wardrobe as a time-out or naughty corner for the Daughter, however, he denied having locked the door or turning off the light. The father also denied having placed the Daughter in the walk-in wardrobe when she expressed her feelings about missing her mother. The father s case was that the Daughter was not as traumatised about the walk-in wardrobe, as the mother was making it out to be, since the Daughter would frequently choose to play inside the wardrobe with her dolls. The closet is mentioned in Ms Chen s report dated 7 April 2022. Ms Chen confirmed with the Daughter that the incident happened when the Daughter was four years old, although the Daughter only shared this information with the mother two years after the event. The Daughter similarly shared with the police that the closet incident happened 2 years prior. Ms Chen confirmed at trial that she had investigated the closet in the father s home and found it to be a walk-in wardrobe, with doors. The lock did not align and the walk-in wardrobe was not capable of being locked. Ms Chen s comment on the closet incident was that she did not think that the Daughter was scared of the closet but it was unclear if there was a specific incident which caused the Daughter to be frightened. The CP s evidence that the Daughter was likely to have been upset about the punishment rather than the closet itself. I accept the father s evidence that he had previously placed the Daughter in the walk-in wardrobe as what he had believed to be an age appropriate punishment. Having heard the advice from the Social Welfare Officer and the CP, he is now aware that this was not considered appropriate for a four year old. In light of all of the evidence, I accept that the Daughter was likely to have been placed in the walk-in wardrobe on one occasion. It is important that the father, having heard advice from the professionals has changed his behaviour and I accept his undertaking to not place the Daughter in the wardrobe as a form of punishment going forward. I note that this incident is not of a serious nature which warranted being an issue for a fact finding hearing and it is my observation that the mother s conduct regarding the closet incident to be unreasonable for four reasons: The mother s suggestion that the Daughter was placed in the walk-in wardrobe on more than one occasion is made without any supporting evidence. In the Daughter s interview with the CP she claimed to have only been placed in the walk-in wardrobe on only one occasion. The mother continued to exaggerate the Daughter s initial claims about being locked in a closet even after been presented with photographs of the walk-in wardrobe exhibited in the father s affirmation, and after Ms. Chen had investigated the father s home

in person. There is no evidence in support that the closet incident happened recently or frequently. In fact, the Daughter told Ms Chen and the police that the closet incident happened two years ago and only once. The mother has not provided any evidence that the Daughter was placed in any danger by being placed in a walk-in wardrobe or that she was being abused.

Hair Removal Incident This incident was said to have taken place during the time the Daughter had staying access with the father over Christmas access in December 2021, on 28 December and 31 December. The mother's evidence was that she learned about the hair removal when the Daughter returned to her care on 4 January 2022. She then contacted Ms Chen on the same day and brought the Daughter to see the paediatrician on 7 January 2022. The paediatrician's letter records that there was hair loss on the Daughter's arms and legs, some new hair growth on the bald areas and four eczema patches over both legs. The paediatrician's letter does not mention that the child was in pain at the time of the appointment. The letter also does not record that the daughter had open sores or scabs which was the mother's evidence at trial. The mother explained in her 20th Affirmation that I did not bring this incident regarding the hair removal up with [the father] since I had limited information at that time about the stress it was causing [the Daughter] and did not want to get into a confrontation without fully assessing the situation. When the mother was cross-examined on why she did not bring to the father's attention her concerns about the Daughter's skin or the hair removal before speaking with the Social Welfare Officer or the paediatrician, the mother's answer was that she wanted to ensure that she was following the correct procedure. I do not accept that this is a reasonable reaction nor does it explain the delay of three days before the mother brought the Daughter to see the doctor if the Daughter was in fact, suffering from pain as the mother claimed. I do not accept that a reasonable person would have called the Social Welfare Officer before seeking medical attention for a child in pain, particularly when the child is known to have sensitive skin. I find that the mother has exaggerated the pain suffered by the Daughter arising from the hair removal. Both parents accept that the Daughter is a child with a predisposition to be hairy. The mother accepted in cross examination evidence that she had previously hired a baby masseuse for the Daughter in an attempt to remove excess hair when the Daughter was just an infant. Although the father did not deny that the pumice stone was used to remove the Daughter's body hair, his evidence regarding the hair removal incident was to try and blame the mother, claiming that it was the mother who first instructed him to use the pumice stone to remove the Daughter's hair. The mother denied ever using the pumice stone or giving instructions to the father to use such a device to remove the Daughter's body hair. The father claimed that the Daughter's use of the pumice stone was always supervised by the helper or his mother via videocall or the Daughter used the pumice stone herself. The father's evidence was that he did not know that the Daughter's hair on her arms had been removed nor did he know how many days the pumice stone was used on the Daughter. He only came to know about the hair removal incident when he received the call from the Social Welfare Officer and when he had spoken with his helper regarding the incident. It is not acceptable for the father to try and shift the blame onto the mother, if fact, that is what she has instructed him to do. I do not accept this as a reasonable excuse for the father's behaviour. It

was the responsibility of the father to decide whether or not the use of the pumice stone was appropriate on the skin of a six year old, and whether it was likely to cause her pain or to inflame her skin bearing in mind that the Daughter had sensitive skin. As for the magic cream neither the mother nor the father knew what the Daughter was referring to. However, the mother persisted in her claim that magic cream was used solely on the Daughter's say so. No evidence was provided by the mother as to possible creams which the Daughter could have been referring to. I, therefore, reject that any magic cream or any cream was used to remove the Daughter's hair on her arms. The father has not denied that the Daughter's hair was removed when she was in his care during Christmas access in 2021, although it is likely to have been the helper who was responsible for this action. Based on his own admission I find that the Daughter's hair was removed in December 2021 but again, I find that it does not amount to abuse of the Daughter. In any event, the father has provided an undertaking to not use the pumice stone again on the daughter and I accept that he will be more vigilant going forward. Indecent assault incident This is the most serious of all three allegations. I am mindful that notwithstanding this is a serious allegation, the standard of proof is unchanged and the burden is on the mother to provide compelling evidence in support of her case. The mother's evidence as set out in her 20th Affirmation is that:

45. On Sunday, 9th January 2022, in the evening at bedtime while [the Daughter] was lying down she had her hands inside her pyjamas, inside her underwear in the front. I asked her why she was doing this and she told me that her father does that to her. I asked her what she means and she said He puts his hand inside my underwear and touches my bum when we are lying down. After [the Daughter] shared this information with me I immediately informed my mother and domestic helper as I was in utter shock and disbelief. I asked [the Daughter] to repeat what she had told me and managed to record the conversation. There is now produced and shown to me marked a USB with the video recording of the conversation on 10th January 2022 at 12:18 AM. This was the second time I had heard of such an incident, the first was almost two years earlier. [The Daughter] had told me about such an incident on 1st March 2020. At that time I spoke with Dr. H on the telephone on 3rd March 2020 and asked her whether I could bring [the Daughter] in for an examination regarding the incident she shared with me. Dr. H recommended I contact the Child Protective Services or get specialised psychological advice and sent me the hotline number to contact for assistance. On 16th March 2020 at 9:50PM, [the Daughter] brought this matter up with me again while we were in bed. She passed urine while she was still awake and wet the bed. I was concerned as she had also wet her underwear two days prior, on 14th March 2020 in the afternoon. I messaged Dr. H to ask if it could be because of the medication she was on at the time for her cold or whether this could relate to the incident I had discussed with her 2 weeks prior, but Dr. H responded informing me medication should not cause incontinence The next day, on 17th March 2020 I proceed to contact the hotline for the Child Protective Services and shared the incident with an officer called Ms. Wincy who said that she would speak with her supervisor and called me back to let me know that I should take [the Daughter] to the government hospital for check up. [The Daughter] was 4 years old at the time and it was the

only time she had mentioned anything like this to me. I wasn't sure if it was an accident. I was asked to take her to the government hospital for a full body examination and Covid-19 had just started. I did not want her to have exposure to the virus as she was also unwell at the time. Furthermore, I was also apprehensive for [the Daughter's] private body parts to be examined. I mentioned the incident to my lawyers at the time and they warned me that bringing up an incident like this, particularly when the father was already alleging parental alienation would significantly complicate the proceedings. [The Daughter] did not mention this incident to me since then in 2020 until our conversation on 9th January 2022.

46. On 14th January 2022, at around 2:30PM while [the Daughter] was playing with her dolls she spoke to me again about her father putting his hands in her underwear and touching her bum. She said it was ouchy and itchy. I have carefully considered the mother's allegations relating to the indecent assault incident(s) and I do not find them proven. In my assessment, the evidence falls significantly short of establishing this allegation. I have regarding this conclusion having regard to the following: Inherent improbability of the March 2020 incident having taken place. The Daughter told the mother for the first time in March 2020 that her bottom hurt immediately after having access with the father. It was not in dispute that the Daughter suffered from chronic constipation from time to time. At trial, the mother provided background information for the first time as to how she found out about the Daughter's bottom in March 2020. According to the mother, the Daughter was returning home from access with the father. The mother and her extended family were celebrating the maternal grandmother's birthday. Prior to returning home, the Daughter had gone to the toilet. Although the Daughter told the mother that the helper had cleaned her bum, she claimed that her bum hurt because of the father. Although the mother was shocked with the revelation, she did not speak with the father or the Social Welfare Officer immediately at the time about it. The mother's inaction in March 2020 is the best indication that she did not consider that the father had indecently assaulted the Daughter then, and the Daughter's existing constipation to be a perfectly reasonable explanation for the pain in the Daughter's bottom in March 2020. The mother's evidence in court regarding what the Daughter told her on 1 March 2020 is starkly different and contradicts her affirmation evidence. At trial the mother's evidence was that the Daughter's bum hurt and this was caused by the father. This is very different from the mother's affirmation which claimed that on 1 March 2020 the Daughter shared with her of the father placing her hand inside her underwear. Furthermore, although the mother was given advice by the paediatrician on 3 March 2020 to speak with the Social Welfare Officer and a psychologist. The mother only contacted the Children's Protection Services on 17 March 2020. The mother's reasons for not investigating the matter further was Covid, the Daughter not feeling well and the lawyer's advice. The mother also shared with Ms Chen that she wanted to protect the Daughter from the small Indian community who would have gossiped. Given the gravity of the possible abuse against the Daughter, these reasons led me to conclude that the mother did not take the Daughter's comments in March 2020 seriously. Subsequent to March 2020, as part of her relocation application, the mother agreed that the father could have general access to the Daughter

when he came to Singapore, including access. This proposal from the mother is clear indication that she did not believe that the father had acted inappropriately then. The Daughter also continued to have staying access with the father until the mother's unilateral cessation of access on 6 January 2022. There is similarly an inherent improbability of an indecent assault taking place more recently. Firstly, the Daughter's was unable to identify the time or occasions when it happened. Secondly, I prefer the evidence of the father and his sister regarding their sleeping arrangements, at the father's house that the Daughter would choose to sleep with either the father or the aunt even if she had been placed in her own bed. Thirdly, the Daughter recalled very specific details for the first time during the VRI, despite being unable to recall any details on the previous occasions when the Social Welfare Officer spoke with the Daughter. These details are denied by the father. I have placed no weight on the recording made by the mother on 10 January 2022. It is self-serving material, although I am most concerned that the mother thought it is appropriate to have an important and intimate discussion with the six year old at midnight. From the transcript of the recording, the Daughter is tired and wishes to go to bed but the mother continued speaking with the Daughter about the alleged incident in the presence of the maternal grandmother. All in all, the obvious difficulty for the mother is that she has presented no corroborating evidence in support of her serious allegation. In fact, the MDCC report of 6 June 2022 regarding the hair removal stated the case nature was inconclusive while the risk of re-occurrence of child maltreatment was considered as low. I accept the mother's evidence that she was having cold feet about reporting the matter of the indecent assault immediately after 9 January 2022. Nevertheless, it is unfortunate that the mother did not bring this to the attention of the court at the hearing on 19 January 2022 when she was seeking an injunction against the father. However, I do not accept that she wished to speak with the father on 23 March 2022 before taking matters forward. The mother demonstrated that she could not text the father over minor concerns such as the closet incident and the hair removal incident. On balance it is highly unlikely, that for such a serious allegation, that the mother would then take steps to speak with the father. Consequently, it is not difficult to see why the father claims that the mother brought the indecent assault allegation only after she could not obtain an injunction against him. Discussion There is no doubt that both parents love the Daughter. I accept there are high levels of distrust, especially from the mother towards the father. I appreciate that the mother has said that both parents do not speak on the telephone but that does not excuse her behaviour or explain why she did not send the father a text message when she was concerned about what she had heard and seen. The mother seems to have little insight into the effect of the present conflict was having on the Daughter. As mentioned above, the mother was aware that the Daughter was feeling anxious before September 2021. Pursuant to the Order dated 10 November 2020, the Daughter was to be sent to the play therapist. The father's evidence that he had tried to arrange with the mother play therapist sessions for the Daughter on several occasions, but this was ignored by the mother. I was particularly concerned despite the Court Order, the father's request and her own observation that the mother did not bring the Daughter to seek any play therapy or counselling earlier. The mother finally arranged for the Daughter to see

the school counsellor in early September 2022. The mother's reason that she did not obtain therapy for the Daughter because the Daughter's anxiety was due to the parents disagreement, is not logical or reasonable. It would have been far better for the Daughter to obtain therapeutic treatment as soon as possible about matters troubling her regardless of the cause. In fact, the high parental conflict should have been a good enough reason for prioritising therapy for the Daughter. I am of the view that if the mother genuinely wanted to address the Daughter's anxiety, she would have taken steps to have the Daughter obtain treatment as soon as possible. Instead, the mother's delay in arranging the appropriate treatment of the Daughter is very concerning to me. I accept that the father has not abused the Daughter nor does he pose a risk to the Daughter's welfare going forward. I find that the closest incident and the hair removal incident to have occurred, but that these incidents are not of a serious nature to warrant a suspension of the Daughter's access with the father or for access to be supervised. I am satisfied with the undertaking given by the father regarding these two incidents. The indecent assault is clearly the most serious allegation, and for the reasons set out above, I find that on the balance of probabilities it had not occurred. Although I accept that some of these concerns are genuinely held by the mother, she continues to believe them as 100% true, notwithstanding the fact that there is little, if any corroborating evidence to support what the Daughter has said in regard to the most serious allegation. This seems to me a remarkable lack of insight or perspective. In my experience, children do not always tell the truth or they make up stories for a variety of reasons. One example given by the father on Daughter's ability of to be less than truthful or to have her own version of events, which are not founded in reality, related to how the Daughter ended on the school bus in October 2021. The mother's version was that the Daughter had snuck onto the school bus because the Daughter did not want to go to the father's house. According to the mother, this was the reason that the Daughter had shared with the mother as to why she was on the school bus. In reality, the school had a miscommunication and the staff had mistakenly placed the Daughter on the school bus. This was confirmed in an email from the school explaining to the father why the Daughter ended up on the school bus. The mother also confirmed in cross-examination that the school had called her the day after to explain the situation. However, at the fact finding hearing despite having read the email from the school and being told the reason by the school, the mother still accepted the Daughter's version of sneaking onto the school bus instead of the mix up having arisen by the school's mistake. The father complained that instead of correcting the Daughter's false impression, the mother continues to reinforce it by leaving the Daughter notes to not sneak off onto the school bus. The father has expressed his concerns about the mother's parental alienating behaviour with the Daughter. The mother's unilateral cessation of access and variation of the father's access is at prima facie odds with her claim that she wishes for the father to continue in the Daughter's life or that she has not engaged in alienating behaviour. I mention this only in passing because this fact finding hearing is confined to the three incidents raised by the mother. Any findings relating to whether the mother has alienated the Daughter from the father is outside the purview of this ruling. I, therefore, make no comments on the same. It seems to me that if there is to be any improvement in the

situation between the parents which has a direct impact on their parenting of the Daughter, both parties need to have some form of ongoing therapy in addition to co-parenting counselling/ therapy. I will direct that both parties avail themselves of such therapy and counselling and to report back to the court with respect to that on the next occasion. Interim access order In line with my findings above, there is no justification for supervised access to continue or that access only takes place in a public setting. Furthermore, it is unreasonable for that access to the father be only once one mid-week dinner access and one weekend access limited to 3 hours, subject to the child's schedule and activities, as the mother has proposed. Accordingly, the father's access to the Daughter is to be resumed immediately without any supervision. I have taken into account the evidence from the parties, Ms Chen, the CP as to the difficulties of Tuesday night access. Although Ms Chen supports the resumption of access per the interim order of 10 November 2020, that order was made a long time ago when the Daughter was four years old and intended to be in place for a short period of time. In coming up with the following interim access schedule, I have borne in mind the benefits of a consistent routine, the fact that Daughter is attending full time school, and has various extra-curricular activities. These factors are balanced against the importance of the Daughter maintaining a relationship with her father, and ensures that both parents have at least one full day on the weekend with the Daughter plus time during the school week in order to be involved with the Daughter's homework and school life. The schedule also cuts down the time the Daughter needs to switch between her two homes. I, therefore, propose that there shall be alternating weekly access for the father as follows: Week 1 Thursday after school until Saturday, 5:00pm. Week 2 Saturday, 5:00pm until Monday morning before school. Dinner access on Wednesday night In addition, the father is to arrange the pick-up and drop off of the Daughter at school respectively, as well as to bring the Daughter to any extra-curricular classes on Saturday morning including religious classes. This arrangement allows the mother to organise weekly activities for the Daughter on those days when the father does not have access. The mother is not to arrange any other activities on the weekend, when the Daughter is meant to be with the father, without the father's prior written agreement. All other holiday access as per the order of 10 November 2020 to remain in place until further order. An updated SIR on the issue of access will be called for in three months time, as well as an updated CP report on the question of how the Daughter is coping with access. It will take some time for both parents and the Daughter to adjust to the interim arrangements, before deciding if it is necessary to come back to court. Directions going forward Pursuant to PDSL10.1 paragraph 9, I have to consider whether or not this matter should proceed to a CDR hearing or whether this matter should proceed straight to trial. Given my Order that the parties attend co-parenting counselling, and personal therapy, the parties are expected to use the CDR hearing to agree on the long term care arrangements relating to the Daughter. The Daughter clearly understands that missing access has the consequence of there being make up access. I, therefore, am of the view that this arrangement should continue because at this age, the Daughter should not be given the choice of whether or not she is to attend access. It is common sense that giving the seven year old child a choice of whether she should attend access, places her in the middle of the

conflict and her wish to not disappoint either parent. I hope both parents can explain to the Daughter that missing access will cause more inconvenience and disturb her schedule and that of her parents. I hereby make the following Orders: All previous orders regarding interim access shall be varied to the effect that interim access to the father commencing on 3 August 2023, shall be as follows: Week 1 Thursday after school until Saturday, 5:00 pm. Week 2 Saturday, 5:00 pm until Monday morning before school. Dinner access on Wednesday night Both parents to attend co-parenting course as well as personal counselling or therapy. Certificate or proof of attendance to be provided by each party at the next hearing. The Daughter do continue counselling with the school counsellor until otherwise recommended or further order of the court. The issue of access only shall be adjourned to a CDR hearing fixed on 7 December 2023 at 9:30 am (with 3 hours reserved). Both parties do personally attend the CDR hearing. Both parties shall file an updated Form J in relation to access only, 28 days prior to the CDR hearing. No further affirmations to be filed without leave of the court. Both parties shall file short statement of proposal in relation to access only, 7 days before the CDR hearing. An updated SIR on the issue of access only to be prepared and filed in English, 21 days before the CDR hearing. The Official Solicitor do file and serve a short updated report on the issue of access only, 14 days before the CDR hearing. The Official Solicitor do attend the CDR hearing. Costs Given that neither party has indicated that they wish to seek their costs, and since it is a children s matter, I make a no costs order nisi to be made absolute in 14 days. (Sasha ALLISON) Deputy District Judge The Petitioner (father) acting in person The Respondent (mother) acting in person Ms Melody Chui for the Official Solicitor s Office 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 og`~ogog hTX} h"un h"un hXt4 hXt4 gd"un gd"un gd"un gd"un gd"un gd"un gd"un h"un h"un h"un h"un hXt4 hTX} h"un h"un vlcZQZcZH h96b hXt4 h"un h"un h"un gd'LN gd ! gd ! h jM h[+t h96b hXt4 h96b huUS h jM h jM h96b huUS gd ! gd'LN gd ! gd'LN h96b huUS hdr_ h[+t hdr_ hY [h8_F kd@ h:s< hY: h[+t h:s< gd>{ gd>{ gd>{ gd>{ gd>{ gd>{ gd>{ h[+t gd &8 h9cO vmdmdm h+J& hW7# hW7# h9cO h9cO h)+? h3'@ hOhN h3'@ h)+? gd<k hE B hzh! hE B hE B hzh! hzh! gd<k gd<k }v}o ht*, hTX} hOhN h~` hOhN hOhN h3'@ hTX} gd &8 gd<k kdt h-1# gdgP h-1# gdgP gdgP ytgP gdgP gdgP gdgP [t]l l[d] hTX} &`#\$ ytgP [Content_Types].xml _rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .)x E /EE} theme/ theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> #]:y| %282+ hZK" @6g & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title <?xml version="1.0" encoding="UTF-8" standalone="no"?> <b:Sources xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/

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