

HONG KONG / JUDGMENT

L v. T

COURT

Family Court

DECIDED

28 July 2007

CASE / FILE NUMBER

FCMC12911/2005

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bjbj FCMC 12911 / 2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 12911 OF 2005

BETWEEN L Petitioner and T Respondent

Coram : Deputy District Judge T Chan in Chambers (Not Open to Public) Date of Hearing : 7-11
May 2007 (5 days) Date of Final Submissions by Parties : 26 June 2007 Date of Handing Down of
Judgment : 28 July 2007

J U D G M E N T

Introduction

1. The Respondent husband () makes an application for joint custody of their 4 year old daughter (the Child) in these divorce proceedings although he agrees that care and control of the same be to the Petitioner () with reasonable access to him. W opposes to H s application. The frequency of access by H is also in dispute. The matter on ancillary relief is to be heard at the same hearing as my finding on custody would have no impact on ancillary relief. Brief Background
2. H is now 43 years of age. He met W who was then working in the same corporation with him. They started courtship in 1991 and got married in 1997. There was a brief period of cohabitation before the marriage. W is now 37. The Child was only born to them in April 2003, some 6 years after the marriage.

3. The parties first separated in or about May 2004, there were efforts made on reconciliation and parties lived together again. Unfortunately there was another separation in September 2004 with W's petition under FCMC 12926/2004 issued in November 2004 alleging unreasonable behaviour of H causing the irretrievable breakdown of the marriage. Fresh petition was issued in the present proceedings on 12 November 2005 on the fact that parties had separated for 1 year and H consented to the resolution of the marriage. Decree Nisi was pronounced on 6th February 2006. Whether Joint Custody in the best interest of the Child
4. There is no dispute that under s. 3 (1) (a) (i) of the Guardianship of Minors Ordinance that in relation to the custody and upbringing of a minor the court shall regard the welfare of the minor as the first and paramount consideration and in having such regard shall give due consideration to (A) the wishes of the minor, if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and (B) any material information including any report of the Director of Social Welfare available to the court at the hearing; and .
5. The reasons H asks for joint custody are as follows : It is his wish to :
 - a. to be responsible for the growing up of the Child,
 - b. to prove to the Child that he can fight for her best interest,
 - c. to take part in the important decisions as to education and academic result regarding the Child,
 - d. to be able to give his opinion if the Child suffered injury,
 - e. be able to make decisions as when necessary in case of emergency,
 - f. obtain information from the Child's school.
6. The reasons held by W in her opposition to H's application is that there has been no communication between the parties for a very long time. If there is joint custody that would only create tension between them.
7. Miss Chan of the Director of Social Welfare prepared a report in this regard and attended court to give evidence. She was questioned by parties. She did not recommend joint custody. Legal Principles gauged from authorities
8. There is discussion on 3 cases. *Jussa v Jussa* [1972] 2 ALL ER 600, *Caffell v Caffell* [1980] FLR 169 and *Hurst v Hurst* [1984] FLR 867. Mr. Hon appearing for H relies also on *L v F (Custody Application)* [2007] HKFLR 104.
9. Both parties agree that these authorities are fact sensitive. *Caffell* and *Caffell* was referred to in the judgment of *L v F*. In both cases, joint custody was granted irrespective of the fact that the court did not find parents in the respective cases therein to be reasonably contemplated as capable of co-operating sensibly nor it was unlikely that they would let it lead to conflict.

10. In the present case, I have no doubt to say that both parents have genuine love, care and concern over the Child despite the fact that both might have done something not in the best interest of the other in the course of dealing with the aftermath of their separation. It is not in dispute that there has been no communication since the episode on the removal of the computer by W. W was shocked by H's report to police for theft as in her view H should have known well that it was her who took the computer away and in her mind, she had the right to take the computer away. She believed that H framed her up deliberately and as a result she was involved in the investigation by police and was put to the risk of standing criminal prosecution. The situation was aggravated by the fact that she found H taping their conversation on another occasion. According to her, she did not feel safe to speak to him.
11. H's explanation on the incident of reporting to police was that he had to protect himself from being reprimanded by his employer because the computer contained some confidential information he should not have removed from the office premises. He said that was the reason why he did not tell the police that it was W who took the computer. He said that he did not make a report of theft but an item missing.
12. I accept his explanation but I would not say that W is wrong in holding a view that H was doing something so drastic that her interest and feelings were totally ignored or neglected. That was her genuine feelings. I do not find that W fabricated that as an excuse for not speaking to H. I could not criticise her for holding such a view even after a lapse of time for over 1 year as there have been continuous disputes between parties over different matters. I find that her loss of trust in H is not without a cause. Trust by another party must be earned and could not be imposed by a court order. It is quite obvious that until the fear and mistrust inside of W against H is removed, there could not be genuine communication between them. Inevitably the mistrust of W on H would also have undermined the reliability of H's opinion even if given.
13. Further, one of the reasons of the lack of communication was that W find H domineering. It is submitted on behalf of H that he is not a domineering person as said by W and many of the requests made by W had been acceded to. I notice however that from evidence before me W had to take pain in persuading H of her requests and most of the time it took a long process for H to finally agree to her request. I accept that this could be frustrating to W too.
14. It is also submitted on behalf of H that he is confident in restoring communication with W. When giving evidence, H drew an analogy of the relationship between husband and wife with team building in an office setting. I could not agree with his analogy. First, this is not an office setting and secondly, his team members do not hold the view that he had done something to harm their interest as in the case of W. Moreover, as observed by Miss Chan, the Social Welfare Officer, there was no conversation endeavoured by him when he took the Child over from W on occasions of access. There was not even eye contact between parties. Although Mr. Hon submits on behalf of H that that was the only incident seen by Miss Chan, it is not disputed that there was no communication between parties ever since the computer incident.

15. I have considered the reasons given by H in support of his application. I am not convinced that they are good reasons to support his application. Most of the objectives could be achieved by his efforts in maintaining an intimate relationship with the Child through contacts during access or otherwise. Love, care and concern are as important as making decision for and on behalf of the Child. Further, I find the reasons given by H for joint custody work to the effect of avoiding communication with W. For example, he could get information from school even if W refuses to let him have the same, and he could make sole decision without resorting to W in case of emergency. I find that the reasons put forward by H stem from mistrust of H on W. In these circumstances, I do not find that it is a case where an order for joint custody would encourage communications between parties.
16. For reasons set out in above, I find that it is not an appropriate case for joint custody and I order sole custody of the Child be to W. Access
17. H asks that the existing access duration to be extended as follows :
 - (i) staying access be increased from bi-weekly to weekly with alternate Friday night to Saturday, and Saturday night to Sunday; (ii) weekday access on every Tuesday be extended to 3 hours in the evening and that the evening visit per week be increased to include one more evening either on Monday or Wednesday; (iii) public holiday access be brought forward to the evening before holiday commences, in other word to change from day visit on public holiday to staying access; (iv) during Christmas, Easter, Chinese New Year, the staying access for 4 - day holiday be extended by bringing forward to the evening on the 2nd day of the holiday instead of the morning of the 3rd day;
 - (v) during summer holiday, 14 days in one row and not to be interrupted. Conclusion on Access
18. I have considered the proposal of H. I agree to some of them concerning staying access. I shall deal with them one by one.
 - (i) I do not agree that weekday evening access should be increased. I find that it is not in the best interest of the Child if she has to stay out for an extra hour to see H. I can see that she has a rather busy schedule after school. She would have interest classes in the evening, in fact in late evenings after school. I am not saying that to attend interest class is more important than seeing H or for her to be seen by H, but there is already one evening H is to see her during the week. The weekday visit shall remain the same. (ii) I agree that weekend staying shall be extended to once every week. It would be better if such staying visits be staggered between Fridays / Saturday and Saturday / Sunday on alternate weekends. I agree that this would give the Child more time to develop a bond with H and that she does not have to travel long hours on one single day between parents places which is quite far apart. (iii) I also agree that day visit on one day public holiday (alternate holiday) be extended to staying access for same reasons given in paragraph (ii) above. (iv) For same reasons, staying access be extended over Christmas, Easter and Chinese New Year holidays but only for 4-day holidays. The access shall start in the evening of the 2nd day of the holidays. The Child shall be picked up by H at 8:00 pm on the 2nd day and be returned by 5:30pm on the 4th day. For 3-

day holidays, Child shall be picked up by H at 2:30pm on the 2nd day and return the same by 8:00pm on the 3rd day.

- (v) The 14 days staying access in summer should be broken into 2 visits of 7 days each. This would balance the advantage of H having a meaning length of time with the Child, and the disadvantage of the Child staying away from W for too long a period at her tender age. The pickup time for such access be at 11:00am on the first day of access and the Child be returned at 8:30pm on the last day of access. Ancillary Relief
- 19. W applies for ancillary relief for herself and for the Child. For herself she mainly asks for a lump sum to buy a flat and nominal maintenance. For the Child, she asks for \$10,000 as periodical payments until she attains the age of 18 or finishes full time education. She also asks for return of some shares and a video camera held by H.
- 20. On 10 June 2005, there was an interim maintenance order made under the old proceedings by which H was to pay HK\$6,000 per month for the Child and it was increased to \$7,500 by another Order by Consent dated 8 July 2006 under the present proceeding.
- 21. H has been and still is working for a multinational corporation in the rank of middle management earning slightly over \$40,000 a month including year-end bonus. In fact he has spent the last 18 years with the same employer. W has been working in different corporations since she started to work. She is now earning slightly over \$20,000 a month.
- 22. The former matrimonial home situated at Tierra Verde in Tsing Yi was purchased in 1998 in the joint names of the parties (the Property) at the value of \$3.363m. The agreed net value of the Property at present is approximately \$1.5m. W concedes that in terms of monetary contribution, she contributed to about 21% whilst H contributed 79% of the purchase price and mortgage payments.
- 23. There is another property situated at Broadview Gardens in Tsing Yi (Broadview) over the ownership of which parties hold different views. This property was purchased in December 1990 in the name of the mother and sister of H, prior to parties getting married in 1997. H took possession of the unit with parents and sister in 1992. H's case is that he has no interest whatsoever in Broadview. W holds the view that although the property is not registered in the name of H, he is the real beneficial owner. Orders Proposed by the Parties
- 24. Although both parties agree to sell the Property, there is no agreement as to the division of the net sale proceeds. H says each should receive 50% of the net sale proceeds. W's proposal is that she needs a sum sufficient for paying part of the purchase price for a flat to accommodate her and the Child. The sum should be enough to pay off part of the purchase price to keep the balance of mortgage within the limit she could afford with her income, i.e. around \$11,000 per month. For the Child, she asks for \$10,000 from H per month. The Law

25. In considering the applications for ancillary relief, I will need to have regard to the matters set out in s. 7 (1) and 7 (2) of the Matrimonial Proceedings and Property Ordinance (MPPO), which I set out as follows :
7. Matters to which court is to have regard in deciding what orders to make under sections 4, 5 and 6
- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say -
- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
 - (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
- (2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 5, 6 or 6A in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say -
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (e) the manner in which he was being and in which the parties to the marriage expected him to be educated; and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties

had properly discharged his or her financial obligations and responsibilities towards him .
Main Issues for Trial

26. The major issues in this hearing on ancillary relief are : -
 - (a) the resources of the parties;
 - (b) the apportionment of the proceeds from the sale of the Property between the parties; and
 - (c) the reasonable requirement of the Child and H s share in such expenses.
27. All of the above issues are within the ambit of s.7 and I shall deal with them together with other factors. Conduct
28. W alleges that the marriage broke down due to H's unreasonable behaviour and in particular his lack of love and concern to the Child. This is denied by H. It is trite law that unless the conduct is gross and obvious, otherwise it would not be taken into account when considering ancillary relief matters. I do not find conduct of H as alleged gross and obvious . I find that H might have some adjustment problem with the Child born to the family. As in many cases, a new-born baby might upset all routines and exhaust the energy of parents. I also accept H s saying that at the time they had the Child, there was tremendous pressure in his office. Even if H had done what was alleged by W, the conduct would not carry weight in my decision on the distribution of family assets.
29. H alleges that W s conduct in the computer incident had prejudiced him in his career. His case is that since W chose to return the hard disk containing information he retrieved from office to the management and not his lawyers, the company was very much concerned that some confidential information had been leaked to an outsider. For this reason he was reprimanded by the company. From evidence before me, I find this allegation not substantiated. There is no proof as to the extent of prejudice and the repercussion of the incident to his career advancement in future. I am of the view that in any event he could not blame W for causing that. In my view, if the information is classified, he should not have removed the information from the office premises in the first place. I find no weight in his allegation. Other S. 7 Matters
30. I now turn to consider the other s. 7 (1) and (2) matters set out in the Matrimonial Proceedings and Property Ordinance (MPPO) Income, Earning Capacity, Property and other financial resources which each party has or is likely to have in the foreseeable future
H s Income / Earning capacity
31. As said above, H is now 43, making on average \$42,000 a month. H also receives medical benefits and is required to make contribution towards the provident fund. He would receive a pension at the time of his retirement. H s Property and Financial Resources
32. Apart from his interest in the Property, he claims he has the following assets :

- (i) Cash at the 2 sole name accounts with Hong Kong Bank Account (Nov / 2006) HK\$50,000 (ii) Life insurance policies :
 - (a) Prudential Better Life US\$60,000 (sum insured)
 - (b) Prudential Convertible Terms US\$50,000 (sum insured)
 - (c) Manulife Estate Protector HK\$128,564.51 (current value) (iii) Stocks, bonds and investments HK\$110,000 (iv) Pension HK\$808,159.72
- 33. Although W has mentioned a sum of \$240,000 held by H in 1999 be part of H s resources, that allegation has not been put through with much force nor with evidence. W s real challenge under this head is that H is the real beneficial owner of Broadview although it is registered in the name of H s mother and sister. The crux of the issue here is whether H has any beneficial interest in Broadview.
- 34. Broadview was purchased in December 1990 in the names of H s mother and his sister. Initially H lived there with parents and sister after taking possession of the same in 1992. Sister moved out in about 1995 when she got married. Parties lived in Broadview for 4 years after getting married in 1997. Parents moved out in 1999 to stay with sister. The parties moved out when the Property was ready for occupation in 2000. H was adamant in his affirmations and his evidence in Court that he had no beneficial interest in Broadview. He denied having had told W that he was the real owner and that the present arrangement was made only to preserve him the right to apply for a government loan to buy his first property as he would not have been so qualified if he had already had a property.
- 35. W relies on the records made by H retrieved by her from the computer once used by H. H does not contend the authenticity of the records. It is submitted on behalf of W that from the records, it is apparent that H was paying the mortgage of Broadview by payments via his sister from at least January 1999 until April 2003, 3 years after the parties had moved out. It is submitted further that there had been standing instructions to the bank to pay off the management fees from H s sole account; as shown in his own correspondence he has absolute discretion as to how Broadview could be used and by whom. Further, H gave his mother his year-end bonus for 2004-2005 in July 2005, after the payment redeeming Broadview from the mortgagee was made in May 2003. It is pointed out on behalf of W that the sum of the bonus was very close to the amount of the final payment and it is submitted that such payment was made to H s mother for the purpose of reimbursing her on the final payment to redeem Broadview
- 36. W s position is that Broadview is a financial resource of H that the court should take into account or at the least, it is an accommodation resource for H when the Property is sold.
- 37. H s explanation on payment in relation to Broadview by him is that when he was sharing flat there with parents and sister he had to pay his share of expenses, and when the parties were the only ones staying there, it was only natural if he paid the expenses, and after they moved out, such payments were made in return for the hospitality of his sister for treating them

dinner frequently and regularly. As to the year-end bonus given to his mother as a gift, H said that he had never paid any such payment to his mother before. He said that since the divorce proceedings had commenced, he was worried that he could no longer have so much spare cash to give to his mother as pocket money, so he gave her one lump sum for the purpose. I do not accept such saying, it was just against logic and common sense. I find that the payment this was to reimburse mother's payment to redeem Broadview.

38. After hearing parties evidence and viewing all relevant document, I could not accept what H said about payments made in relation to Broadview. His evidence was either inherently improbable or was contradicted by documents. It is unbelievable that he would have exchanged hospitality by paying the mortgage instead of paying his sister a sum reflecting expenses for meals. In my view, a sum of \$3,500 to \$3,950 per month in exchange of 12-16 home-made dinners for two is on the high side by their living standard. One could find no traces of connection between the payments and the dinner except for the assertion of H. In fact in the entries in relation to payments to H's sister for the months of July, August and September 2000, the sum was odd, i.e. \$3,620.50. Such amount had been adjusted in October probably due to an increase in the mortgage payment (from \$3,620.50 to \$3,667.50). Not only that the payment was adjusted in October 2000, those payments already made in the past 3 months were adjusted at the same time by an additional payment to reflect the difference. If the sum paid to the sister was not for mortgage, I see no reason for the payment to be remarked as Mortgage repayment of Broadview Garden and not dinner. Further, he had been paying mother some money like \$7,500 a month at the same time although they are not living together, in my view, this could have covered the expenses for their dinners at the sister's place where parents of H also stayed.
39. Mr. Egerton has helpfully pointed out that as shown in C201 - 228, H had contributed about \$234,558.22 (being total of \$136,000 (40 months x \$3,400 per month on average) and \$98,558.22 for final payment) which is slightly below 50% of the purchase price of \$503,000. Apart from mortgage repayments there had been payment made for management fees, rates, fire insurance etc. I also accept W's evidence that H had told her that he was a beneficial owner of Broadview and the arrangement was to preserve his right to get a loan from the government for another property. From the evidence before me, I am satisfied that he has beneficial interest in Broadview on balance of probabilities. I find that he is one of the three beneficial owners of Broadview, the other two are H's mother and sister.
40. The reasons for my such finding is that the evidence of H's payments amount to less just under 50% of the purchase price does not reflect his holding of 50% as there should have been other expenses including but not limited to interest. Secondly, the role of H's mother is important in the acquisition of Broadview as she was a tenant in a public housing unit and by giving up that unit, the family had the right of buy a unit in Broadview which is a development under the Home Ownership Scheme. The units would not be put up for sale in open market. The mother's contribution could not easily be compensated by repayments of initial payments made by her, if any. Thirdly, the sister might also have contributed to the

purchase as H was fresh from school and doing some part-time study at the time of purchase. Although I do not find H the sole beneficial owner of Broadview, from the way Broadview had been used in the past, I find that it is at the disposal of H and there would not be a problem if he chooses to live there. This is not denied by H. His saying is that it would need a sum of \$100,000 to renovate the unit before he could move in. This on the one hand reinforces my view that H is one of the beneficial owners and on the other hand, it shows that the unit is an accommodation resource for H.

41. Mr Hon submits that H is willing to account for the \$98,558.22 as a gift given to his mother. I find it not appropriate in the light of my finding on his beneficial interest in Broadview. I take that this is his contribution to the purchase price of Broadview. W Property / Financial Resources
42. W has worked throughout the marriage and remains employed after the marriage broke down. She is earning \$20,922 a month with a year - end bonus of \$1,743 per month, her total monthly income at present is therefore about \$22,665.00.
43. Apart from her interest in the Property, W's assets were, at the date of her 2nd Affirmation dated November 2006 and as later updated, approximately :
 - (i) Cash at bank under sole name or joint name with Child \$21,015.53 (ii) Life Insurance \$29,942.80 (iii) Shares \$18,600.00 (iv) Shares to be returned by H \$32,360
 - (v) Fund \$87,165.60 (vi) Pension \$69,383.32 Total: \$258,467.25
44. H alleges that W had received some form of compensation from her previous employer but the sum could not be found in any statement of her bank account. Under cross-examination, W admitted that she had received a sum of about \$100,000 in around first quarter of 2000 as severance pay. She said that such sum had been spent in various leisure trips she had with H and her family. Her saying is denied by H.
45. At the trial W was cross-examined on 6 bank transactions, all took place in February and March 2004. The amount involved was about \$54,800. H relies on this to say that the 6 bank transaction revealed that W had some hidden investment. Such allegation was denied by W saying that she had only one investment account which was closed in 2004 or 2005. But after close of case, W sought to submit further document to show that 4 of the 6 were transactions in relation to investment. She was criticised by H for not disclosing accurate information in good time and her explanation still failed to explain the transaction of \$5,700 each in February and March 2004.
46. H also challenges the value of W's current value of her retirement scheme. H asks me to take the value at \$136,651.10 by end of 2007 as it continues to grow with the year of service of W.
47. Upon hearing evidence and submissions and viewing relevant documents, I find W truthful to the Court about the \$100,000 compensation she received in 2000. At that time there was no sign that the marriage would break down, I do not see a reason for W to hide this amount

from H. She had always been making contribution to the family financially. I also find that the allegation about the 6 bank entries not substantiated. In any event these transactions involved amount not significant to affect my decision on the distribution of the family assets. Further having the benefit of observing the demeanour of W in the witness box, I do not find W evasive on this point. In relation to the challenge on the value of pension, again it would have no significant effect on the distribution of family assets as they could not be realised at the wish of W but W has to wait until it matures subject to some uncertainties in the passage of time. Mr Hon's calculation of the pension is based on W's attaining 10 years service by end 2007 which is still some 5 months away. I prefer the figure provided by W in this regard, i.e. \$69,383.32. In any event this sum is not immediately available. Further, I do not agree with Mr Hon on his submission on the value of H's pension scheme. Financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future

48. W says that she has accommodation needs. She would like to buy a flat for herself and the Child in the area near Tai Koo Shing which is close to her mother who helps in looking after the Child. She sets out her monthly expenses at a total of \$36,547 with breakdowns in her Form E : -
- (i) General Expenses Item Amount Rent 11,000 Utilities (electricity, gas 2,200 rates, water & telephone) Food (home) 3,000 Household expenses 800 Domestic helper 4,000 Sub-total: 21,000 (ii) Personal Meals out of home 2,500 Transport 1,000 Clothing & shoes 1,000 Personal grooming 300 Entertainment/presents 300 Dental & Medical 400 Tax 600 Insurance premia 800 Sub-total: 6,900 (iii) The Child Amount suggested by H School fees 1,787 787 Books and stationary, toys 150 150 Extra Tuitions fees including extra-curricula activities 1,200 600 Transport to school including school bus 510 510 Medical / dental 200 200 Entertainment / present 500 500 Clothing / shoes 600 600 Food 1,500 750 Other Transport 200 200 Uniform 200 200 Necessities for the Child 800 0 Education Fund for the Child 1,000 0 Sub-Total: 8,647 4497 Total monthly expenses: 36,547
49. On the other hand, H has and will have the following monthly expenses:
- (i) General Expenses Item Amount Amount (before adjustment) (after adjustment) Mortgage 20,000 10,000 Utilities (electricity, gas, 1,278 1,278 rates, water & telephone) Management fees 1,189 - Food (home) and household expenses 1,000 1,000 Sub-Total: 23,467 12,278 (ii) Personal Meals out of home 2,000 2,000 Transport 2,000 2,000 Clothing & shoes 300 300 Entertainment/presents 1,000 1,000 Medical 100 100 Holidays 1,000 1,000 Credit card repayments 3,755.53 3,755.53 Tax 4,933.58 - Tax loan - 6,019 Insurance premia 2,453.45 2,886.45 Contribution to parents 500 500 Father's expenses 8,000 4,250 Miscellaneous 200 200 Sub-Total: 26,242.56 24,010.98 (iii) The Child Interim Maintenance 7,500 7,500 Clothing 100 100 Sub-Total: 7,600 7,600 Total monthly expenses : 57,309.58 43,888.98

50. H challenges W's expenses. First, it is submitted that under the new policy recently launched, the Child will receive \$1,000 per month as subsidies to her school fees and therefore \$1,000 should be deducted. H's takes the position that there has been exaggeration on Extra Tuition Fees, food and necessities for the Child. It is further submitted that the Education Fund should not be put under the schedule of expenses and should be treated as savings and be paid by W if she desires such saving plan for the Child. A schedule is drawn up by Mr Hon to show the amount under the proposed adjustment. The content of the schedule has been incorporated in the table in paragraph 48 above.
51. It is further submitted on behalf of H that a contribution of \$7,331 should be sufficient to cater for the reasonable needs of the Child and adequately reflected a fair share of this reasonable expenses of the Child. This figure is reached by adding up \$4,497 (direct expenses on the Child) to \$4,000 (expenses on the maid) and \$2,500 (expenses on accommodation) to be multiplied by 2 / 3 (H says that he should contribute to two-thirds of the total expenses in relation to the Child).
52. Having considered the evidence and submissions before me I am of the view that a reasonable direct expenses for the Child is about \$4,797. I quite agree with Mr Hon on his analysis in this regard except that I would grant \$300 per month to cater for the necessities for the Child. I agree W should hire a maid to assist in taking care of the Child. I am of the view that the share of the Child on the General Expenses should be one-third.
53. As to accommodation needs, obviously both parties would have their basic needs for accommodation. H's needs could be satisfied by Broadview as I find that he has beneficial interest and in any event Broadview has been at his disposal all along. As to W, I do not quite agree with her that she is looking for a flat around the size of 700 sq ft with 3 bedrooms at the worth of \$2.7m. According to some records of transaction produced by W at C3 299-307, I note that there are flats at the size of around 500 sq. ft for around \$2m. or slightly over. That should be a more affordable option for W at the present moment. I note that with their joint efforts, parties had been able to live a comfortable standard of living. Unfortunately, concerted effort is no longer possible and with their income, both would have to compromise in their standard of living. W has to realise this reality. Allowing a monthly mortgage payment of around \$11,000, the reasonable living expenses for the Child should be about HK\$11,800 (being \$4,797 + \$7,000 [one-third of general expenses of W]) . Liabilities of W
54. W has stated in her 2nd Affirmation that she has liabilities amounted to \$117,477.00 excluding legal costs. From this \$117,477.00, \$101,000 was owed to her mother. This is not challenged by Mr Hon in his final submission [pp 6 - 7]. He only challenges the \$16,000 allegedly being owed to W's mother by her which was first raised when she gave evidence. I find it difficult to understand the position of Mr Hon. The nature of the loans, if any, from W's mother would have been the same, i.e. to pay for the expenses for the Child including extra tuition fees, entertainment / present, clothing / shoes and lunches / breakfast / dinner. If the loan incurred before could be accepted I do not see why those incurred at a later stage closer

to trail dates could not be accepted. Further, it is H's case that the expenses on the Child has been exaggerated and I have already accepted his view to some extent. If adjustment is to be made to those items subsidised by mother of W, the loan from mother that the court would consider to be a liability reasonably incurred for and on behalf of the Child, such loan should be reduced by \$1,350 per month (\$600 on extra tuition fees + \$750 on food), so the debt owed to mother should be reduced by 35% approximately. I find that the debt owed to the mother should be \$76,050 (\$101,000 + 16,000 x 65%) and the liabilities in total excluding the legal costs be about \$92,527.

55. As to the repayment of debt to W's sister by W in the sum of \$65,428, I do not find the evidence before me convincing. I would add the sum to the pool of the resources of W.
56. Summary of my findings on parties assets and liabilities. Assets W H Bank Accounts \$21,015.53 \$50,695.11 Fund \$87,165 -- Insurance policy \$29,942.80 \$201,923.43 Retirement Scheme \$136,651 \$1,008,933.96 Interest in Broadview --- \$420,000[1.6m-0.34m divided by 3] Money paid to sister by W \$65,428 -- Shares \$18,600 \$114,924.55 Shares (from H) \$32,360 ----- Sub-total: \$325,735 \$1,799,965.55 Liabilities \$92,527 \$180,000 Net assets (excluding \$233,208 \$1,619,965.55 the Property)
57. W has no dispute on the expenses of H but points out that \$20,000 for mortgage payment could be deducted if H moves back to live in Broadview. I agree with this. I have read his Form E and affirmations. I also consider his evidence. I do not agree that \$10,000 should be provided for his accommodation. For reasons stated above, there is an option, which is a reasonable one in my view, open for him, that is to move back to Broadview. If he is for some reason not moving back there, the rental value of Broadview would be accounted for. Say, if Broadview is rented out for \$4,500, he could at least have \$1,500 and I would allow a further \$6,000 as his expenses on accommodation, a sum of \$4,000 be deducted from his schedule. Further if he is living by himself, I would say \$678 for utilities is about right. For these reasons, I deduct a total sum of \$4,600 from his expenditure and they now become \$39,288.98.
58. Summary of my findings on parties income and expenditure. W H Income \$22,665 \$42,546 Expenditure \$32,697 \$39,288.98(inclusive of \$7,500 interim maintenance) Standard of living enjoyed by the family before the breakdown of the marriage
59. Both H and W were working throughout the marriage. Upon their joint effort, they had enjoyed a comfortable standard of living The matrimonial home is a flat of the size about 700 sq ft built by private developers. They could afford to go on holidays; and made some investment from time to time. I however do not believe that this could continue. Age of the parties and duration of the marriage
60. H is now 43, and W is 37, and their marital relationship lasted about 7 years at the time of first separation. This is a marriage of medium length. Any physical or mental disability of either of the parties

61. Neither party asks the court to consider their health condition. Contributions made by each party to the welfare of the family, including any contribution made by looking after the home or caring for the family
62. As mentioned earlier, both H and W had worked throughout their marriage. It is submitted on behalf of H that he has made greater financial contribution to the family. In reply, it is submitted by W that although H has made apparently greater contribution it was because he earned more. Further W had done the best she could towards the welfare of the family. I find that they made similar contribution to the family. Other claims by W
63. W asks for the return of shares, this was conceded by H. W also asks for the return of a video camera which H refused by saying that there was no sufficient evidence to identify the video camera and that the only video camera H knows of was purchased with his own money.

CONCLUSION

64. To sum up, W asks for a lump sum of \$884,000 for the part-payment of a flat, a sum of \$133,477 to pay off her current liabilities, \$550,000 to cover her costs; nominal maintenance for herself and \$10,000 for the Child; return of shares and a video camera.
65. From the above, I find that both have accommodation needs but H could move back to Broadview and that would be a reasonable option in the financial circumstances of parties. I agree that it is in the benefit of W if she could buy a flat and thus she would save at the same time while paying mortgage instead of paying rent which is an expenditure with no return. I however find that a property at the worth of around \$2m. would be realistic in the circumstances of the present case. After considering all factors listed above, including the fact that H is making more than W in his monthly salary, he has accommodation resource from Broadview and financial resource at the time it could be realised, he would receive a substantial pension fund at the time of retirement, both parties have more or less the same expenditure, that the parties had been married for 7 years, I find it fair to award 3 quarters (75%) of the net proceeds from the sale of the matrimonial home to W. That would be close to \$1.125m. This should be sufficient for W to pay the part-payment for a small flat at the worth of around \$2m. and keep the mortgage at the level of about \$11,000 and to pay off part of the liabilities she has incurred. I do not agree that legal costs be included in the lump sum payment as that would be asking H to pay W's costs in any event but this is the liabilities of W that I have to consider. And of course same liabilities of H have been taken into account when making the distribution.
66. For the Child, I have mentioned that I find the reasonable requirement of the Child be \$11,800. I find that H should contribute to 3 quarters of the expenses. I round it off to \$9,000 per month.

67. I agree with Mr Hon that clean break is in the interest of both parties. Given the fact that both are educated with a steady job, but W is expected to have a longer period to stay in employment due to her younger age, I make no award for nominal maintenance. Her claim for ancillary relief is therefore dismissed save and except the lump sum payment made consequential upon the distribution of the sale proceeds of the Property.
68. I accept H s saying that he paid for the video camera and I make no order for the same to be handed-over to W. Order
69. The effect of my order is as follows: A. On custody and access: Sole custody of the Child be to W with defined access to H. Access to the Child by H is defined as:
- (a) weekday access shall remain at the level of once a week, on Tuesday evening from 8:00pm to 9:30pm.
 - (b) weekend staying access shall be extended to once every week, such staying visits be staggered between Fridays / Saturday and Saturday / Sunday on alternate weekends. Pickup time at 8:00pm and the Child be returned by 5:30pm the following day.
 - (c) for one day public holiday, H has access on alternate public holidays. Such access be extended to staying access to start at 8:00pm the evening before and the Child be brought returned by 5:30pm the following day. (iv) during Christmas, Easter and Chinese New Year holidays, W has the first half and H has the second half. For 3-day holiday, such access by H shall start at 2:30pm on the 2nd day and the Child be returned at 8:00pm on the 3rd day. For 4-day holiday, such access by H shall start in the evening on the 2nd day of the holidays. Pickup time at 8:00pm and the Child be returned by 5:30pm on the last day of staying access.
 - (v) The 14 days staying access in summer be broken into 2 visits of 7 days each. Pickup time at 11:00am on the first day of access and the Child be returned at 8:30pm on the last day of access. B. On ancillary relief The Property shall be sold within 3 months upon Decree Absolute of divorce. H shall have the conduct of the sale, and W shall sign all necessary documents to effect such sale. Out of the net sale proceeds, after deducting necessary payments and reasonable costs of and arising from such sale, a lump sum representing 75% of the net proceeds shall be paid to W in full and final settlement of all her claims for ancillary relief against H which claims shall stand dismissed. H do pay to W \$9,000 per month for the benefit of the Child until she attains the age of 18 or ceases full-time education, whichever is later. 1st payment be on or before 1 August 2007 and on or before the 1st day of each succeeding month thereafter. There be liberty to apply in relation to the implementation of the terms of the above order. The interim maintenance order shall continue until 1st payment mentioned in (iii) hereinabove. Costs

70. On the matter of custody, I make no order as to costs. As to the matter of ancillary relief, neither party can be said to have succeeded with their proposals, I make an order nisi that each is to be responsible for his / her own costs. W s own costs in relation to these two applications be taxed in accordance with Legal Aid Regulations. This order shall be made absolute and final within 21 days. Other Matters
71. I hereby make the declaration under s.18 Cap 192 that I am satisfied that the arrangements made in respect of the Child of the family are satisfactory. (Tracy Chan) Deputy District Judge Mr R Egerton, instructed by Yuen & Partners for the Petitioner Mr. Wayne Hon instructed by Chaine Chow & Barbara Hung for the Respondent PAGE - PAGE - a[a]a[a]a[a]yryryryryry &`#\$~!P]j% Td #-p 6<z% ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$\$ vRs&r 1 #' : 'L- E{k' XW(\$ s ` ()H/0 -3*\$ 43*\$ c7*+ :p . {^2\ (\$p2\$ 4g3\$ 4QQ4 4lp4 0b50p M|;\$ wzO?p= H#@ \$ 3i@\$ nSDH lEFE 5)GTd HHZbr kxL\$ /eNH S\$O\$ y<0O vuWOTd c;R\$ Y CR G%9UT Zk_UR z` Uf RW! W C:~W x% X\$ x8Y\$ L}YH (Yq[*n\T #b2^\$ Q^f""T_ Y6xc\$ e>tD ?Dep= ZJg\$ hx;r N)/h vCip= T{sk %i?l TCn\ ZorB "hsTd gsTu\$ r7Fv, 4xv\$ 2wx^ x4ah xDs\ *y\$ Yay~_ __z4w {6=P# | >\$> C? } R\$ ~\$ f!\$- C:~W N)/h E{k' 4QQ4 lEFE C? } wzO? gsTu x% X (\$p2 0kJ\$ #b2^ Y6xc R\$ ~ he~" G%9U (Yq[:p . s ` (vuWO c7*+ Y CR T{sk 1 #' RW!W %i?l r7Fv Zk_U vRs& y<0O #-p ""T_ 6}H @\ \Hc-oa-ws-656\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \ \Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 24 October 2026 · Esheria