

HONG KONG / JUDGMENT

LC v. PCW

[2025] HKFC 67

COURT

Family Court

DECIDED

11 February 2025

CASE / FILE NUMBER

FCMP45/2017

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bjbj FCMP 45 / 2017

[2025] HKFC 67 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION FAMILY COURT MISCELLANEOUS PROCEEDINGS NUMBER 45 OF 2017

IN THE MATTER OF Section 10 of the Guardianship of Minors Ordinance, Cap 13 and IN THE
MATTER OF PNT, a minor

BETWEEN LC Applicant and PCW Respondent

Coram : Her Honour Judge Grace Chan in Chambers (Not Open to Public) Date of Hearing: 10
January 2025 Date of Judgement : 11 February 2025

JUDGMENT

(Variation of orders concerning a minor)

(This judgment is delivered to the parties orally in English with interpretation service provided
by a court interpreter)

Introduction

This is the application concerning a girl born on 20 August 2007. She will turn 18 this coming
August. The applicant, Madam L, is her natural mother. The respondent, Mr P, is her natural
father. The parents had a romantic relationship in the past but they never got married. The

mother is a PRC citizen and does not have the right of abode in Hong Kong. The father is a Hong Kong citizen who has his own family and children. This judgment concerns the mother's application taken out on 20 February 2024 for various children matters. Upon further oral clarification by me with the mother in the last hearing of 10 January 2025, I gathered that her application boils down to the variation of the order made by Master June Cheung on 14 December 2023, including variation of custody, care and control of the daughter to her, and variation of access in that the staying access of once a week should be reinstated. According to the order made by Master June Cheung on 14 December 2023, custody, care and control of the daughter is granted to the father, and the mother would have day access. The master also cancelled the staying access arrangement. Now, notably, the mother's application was made very shortly after Master June Cheung's order. The time gap in between was about 1.5 months.

Background and the case history This case began with the mother's originating summons filed in 2014 [sic.] for custody and maintenance for the daughter. At that time, the daughter was about 10 years old. Since then the court gave a number of interim care and control and interim access orders which need not be detailed in this oral decision. Two children's dispute resolutions were held before me way back in 2017 and 2018. It was during the 2nd children's dispute resolution hearing that the court was informed that the mother was admitted into the psychiatric ward of the Eastern Hospital since December 2017. Since the mother was hospitalised, the daughter was sent to a child home (Po Leung Kuk) in December 2017 and she has been staying there ever since then until now. She has been in Po Leung Kuk for more than 7 years. Due to the mother's mental situation, the 2nd children's dispute resolution was thus adjourned for the Official Solicitor to consider if he should act as the guardian ad litem for the mother. The Official Solicitor's report dated 2 August 2018 was provided to the court, in which a psychiatric report prepared by the Eastern Hospital was enclosed. The psychiatric report revealed that the mother had crying spells and unstable emotion, and refused to eat and bathe. The psychiatric report also revealed that the mother had fleeting suicidal ideas and she was hospitalised for a psychiatric condition since December 2017 to April 2018. The diagnosis is delusional disorder. She was advised to continue with psychiatric treatment in China upon discharge from hospital, because she did not have the right of abode in Hong Kong. On 16 March 2018, the Family Court made an order pursuant to section 3(1)(d) of Cap 13, granting the father all the rights of a father as if the daughter was born a legitimate child. On 11 July 2018, interim custody, care and control was granted to the father with interim access to the mother. I then ceased to handle this case, as I was deployed out of the Family Court. For reasons which are no longer important, the court only made various interim custody and access orders about the daughter since I ceased to handle this case. The father continued to have interim custody, care and control of the daughter, while the mother had interim access of different arrangements, including day access and sometimes with staying access. A number of social welfare reports were prepared, altogether 10 of them. Of relevancy to this application are these two reports, a social welfare report dated 6 March 2023 and another social welfare report dated 5 July 2024. On 14 December 2023, Master June Cheung made a final order and granted custody, care and control of the daughter to the father, with day access of 4 hours on alternate Sundays to the mother. The master discharged the interim staying arrangement. The court file shows that the master made this order in the absence of the mother.

But after reading the social welfare report dated 6 March 2023, I note that the order made by the Master actually followed the advice and recommendation of the social welfare officer in that report. Two months later, on 20 February 2024, the mother took out this summons on variation. Her summons was originally handled by the Masters but was transferred to this court by the order dated 21 August 2024 made by HHJ Ivan Wong. A social welfare report was prepared after the mother took out her summons. The report was the one that I have mentioned, ie dated 5 July 2024. Applicable law It is settled law that the guiding principle for children matters are the best interests of the child . The court needs to take into account section 3 of Cap 13 and the Children s Checklist that have been set out in a number of the decisions concerning children by this court which I do not think I should repeat here. The mother s application is about a variation of a previous order and thus she has to show to the court that there is a material change of circumstances. Mother s grounds In view of the case history and in line with the principle of Order 1A and Order 1B of the Rules of the District Court, I have decided to deal with the mother s summons without calling for oral evidence. But I have given chances for both parties to make submission in the last hearing of 10 January 2025 and also today. I have duly considered their submission. Since the mother is a litigant in person, I have explained to her about the legal principle of material change of circumstances which has not been provided in her supporting affirmation. I heard from her orally of her case on material change of circumstances and the ground or grounds for variation. She repeated herself often and complained about matters which had happened many years ago, which I think are not relevant to this application. Doing the best I can, I summarise her grounds or argument as follows: The daughter is an illegitimate child and she is her mother. They depended on each other in the past since the father refused to take up any father s responsibility. The father is a bad and evil guy. He keeps the identity card of the daughter, as a result of which the mother is not able to take the daughter back to China for holidays;

- (2) The daughter is getting some allowances and assistance from the government. If the custody, care and control is granted to the father, the mother is unable to get the daughter s benefits and assistance from the government. The mother is in dire need for assistance because she has no money and no right of abode in Hong Kong. The mother says that her rights as the mother of the daughter is disregarded; The mother complains that the father alienates the daughter from her. This makes the mother sad and cry, as a result of which her left eye has become blind. It is likely that her right eye will be blind too. Thus, the mother says she needs the daughter to be around her to take care of her;
- (4) The mother says that the order of Master June Cheung was made without her knowledge and in her absence, and thus this is wrong. Absence of the mother before the Master It is true that, according to the record, the order of Master June Cheung made on 14 December 2023 was made in the absence of the mother. In the last hearing, I gave the mother the chance to explain her absence. The mother said that she had headaches and was hospitalised. When asked if she had medical proof for her hospitalisation, the mother changed to say that she did not go to see the doctor but just slept for a few days and recovered. She confirmed that she did not have any medical proof to show that she was sick

and thus could not come to the court on 14 December 2023. Hence, her purported reasons for absence cannot be accepted by this court. Material change of circumstances As I have explained, the order of the Master was made in December 2023. The mother made her application for variation about 1.5 months later. Despite that I have asked the mother for more than 3 or 4 times in the last hearing to explain if there is any material change of circumstances, she was unable to provide any or any acceptable grounds that constitute a material change of circumstances. Social welfare reports & wishes of the daughter Under section 10 of Cap 13, the court shall and must consider the recommendation of social welfare officer and the wishes of the child. The aforesaid most two recent social welfare reports, that is the one dated 6 March 2023 and the one dated 5 July 2024, reveal the following: The daughter is very accustomed to the child home, that is Po Leung Kuk. In fact, she likes staying there because it provides a structured life to her so that she can concentrate on her study. It is not disputed by the mother that the daughter will take part in DSE in coming April to June. This is vital to decide if she can enter university; During recent staying access, the mother suddenly lost control of her temper and hit the daughter. The daughter was afraid. She feared that similar incident might happen during staying access, so the daughter does not prefer staying access; Her study has become more and more intense and she needs more time for study. So, the daughter prefers to see the mother on alternate weeks. Now, in her oral submission made in the last hearing, the mother complained that the social welfare officer(s) have not seen the whole picture and have not appreciated the bitterness suffered by the mother. The mother said that the social welfare officer(s) only believe and help the father. I think the mother told me that I should not accept the advice of the social welfare officer. It is always said that a social welfare officer or the social investigation officer is the eye and ear of the court. The social welfare officer does not know either party of this case. There is no reason for the social welfare officer to help out and give preference to any party, including the father. I do not accept the mother's accusation made to the social welfare officer. I found the social welfare officer's investigation and recommendation helpful and thus the court would heavily rely on them. As to the wishes of the daughter, the daughter will be 18 within a few months. She is matured enough to express her views and she really has expressed her view as aforesaid. I find her explanation of seeing the mother on alternate weeks acceptable and reasonable. Frankly, what she needs now is to concentrate on preparing for the DSE. So I will give great weight and respect to wishes of the daughter. Rights of the mother The mother repeatedly stressed her right as the mother. I appreciate that she does not have a right of abode in Hong Kong and thus cannot work. It is said that she now relies on assistance from churches or from the church. I know she is in need of money. However, the assistance given by the government to the daughter, if any, is not for the benefit of the mother. I regret to say that the mother's eyeing on the daughter's government assistance and thus insist to have her custody is something which should not be commended. If custody is granted to the mother, I have grave doubt that she may use the daughter's money or assistance for her own benefit.

[illegible]

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