

HONG KONG / JUDGMENT

LEUNG v. SHENG

COURT

Family Court

DECIDED

28 March 2007

CASE / FILE NUMBER

FCMC13188/2006

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bjbj FCMC 13188 / 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 13188 OF 2006

BETWEEN LEUNG Petitioner and SHENG Respondent

Coram : Deputy District Judge T Chan in Chambers (Not Open to Public) Date of Hearing : 26
March 2007 Date of Handing Down of Judgment : 28 March 2007

REASONS FOR DECISION

1. This is the husband Respondent s application for interim access to the two children of the family. The Respondent shall be referred to as and the Petitioner herein for easy reference.
Background and History
2. The parties were married in November 2001. They have two children, namely A who is now 5 years old and U now two and a half (the Child).
3. On 20th October 2006 W petitioned for a divorce saying that their marriage had broken down irretrievably as H had behaved in such a way that W could not reasonably be expected to live with H. The gist of her compliant is that during the marriage H was a drunkard and had administered violence against her. As H is going to defend the Petition, no decree nisi of divorce has been granted. H s Application for Interim Access

4. W left the matrimonial home in March 2006 with the two children and H has not met them since. H took out a summons on 10th January 2007 seeking an order for interim defined access to the children. By the summons, H asked to have staying access of the children every weekend. Parties filed their respective affirmations in this regard and a social investigation report was called for.
5. The recommendation of the Social Welfare Officer is that there be monthly day access to the children by H. Whilst it is suggested that there be a supervision order for 6 months, supervised access has not been suggested although it is mentioned that social welfare officer's assistance in the access arrangement might be helpful. The reasons for his recommendation include that day access would be suitable to facilitate the father to build up a constructive relationship with his daughters and that A is not quite ready to see her father.
6. At the hearing parties have no dispute on the legal principles on access. W does not oppose to the recommendation of the Social Welfare Officer but asks that the access be limited to half a day in the morning of Saturdays or in the afternoon of Sundays. Reasons being that A is still holding negative feelings towards her father and that the two children are still young and would need a nap in the afternoon. W suggests that access be carried out in the presence of a social welfare officer. H argues that the wishes and feeling of A should not be an overriding factor to be considered. H further submits that supervised access is not necessary as there is no allegation of violence or abuse towards the children.
7. The question to be decided by me is the frequency and duration of interim access. I read all documents before me and heard submissions made on parties behalf. I considered the wishes of A. I note that she has previously told her teacher that she is afraid of seeing her father. As a result, counselling has been provided to A by the teachers. I believe the counselling would do her help although she still mentioned of being scared of her father when interviewed by the Social Welfare Officer. I am of the view that her fear for the father would not subside if there is no opportunity for her to get to know H. I believe that through meaningful contacts between father and child their relationship could be built up and hopefully a good relationship between the two could eventually resolve the problem of fear. What A needs now is assurance from parties and the Social Welfare Officer that access is in her best interest. My order
8. After considering all the circumstances in this case, including the attitude of A, the age of the children, that the children have not seen H for about a year, that parties situation is tense, I find it still in the interest of the two children to rebuild their relationship with H. I find that short but constant sessions for access would be easier for the children to settle in and to get used to the company of H. I find that supervision from the Social Welfare Officer necessary at least for a period of 3 month.

9. For reasons aforementioned, I order that H do have interim access to the children twice a month on alternate Sundays from 4 : 00 p.m. to 6 : 00 p.m. and the first session is to take place on 8th April 2007; there be a supervision order for 3 months; the access should be arranged and supervised by the Social Welfare Officer; a progress report be prepared for review in 3 months time.
10. I heard parties submissions on costs. I do not see any special circumstances in the present case for me to depart from the usual practice that no order for costs be made in children cases. I therefore make no order for costs for this application save the Petitioner s own costs be taxed in accordance with the Legal Aid Regulations. (Tracy Chan) Deputy District Judge
Petitioner : Mr T M Lui of Messrs Tsui & Co Respondent : Mr Franky Ng of Messrs Chainé, Chow and Barbara Hung
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