

HONG KONG / JUDGMENT

LPYY v. FWHF**[2020] HKFC 98****COURT**

Family Court

DECIDED

8 May 2020

CASE / FILE NUMBER

FCMP89/2016

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bjbj FCMP 89/2016

[2020] HKFC 98 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO 89 OF 2016 IN THE MATTER OF the child of the Applicant and the Respondent, a minor IN THE MATTER OF the application under Section 10 of the Guardianship Minors Ordinance, Cap. 13 BETWEEN LPYY Applicant and FWHF Respondent Before: Deputy District Judge R So in Chambers (Not open to public) Dates of Hearing: 16 to 18 April 2019 Date of closing submissions of the Applicant: 9 May 2019 Date of closing submissions of the Respondent: 10 May 2019 Date of supplemental closing submissions of the Applicant: 23 May 2019 Date of supplemental closing submissions of the Respondent: 19 June 2019 Date of Judgment: 8 May 2020 J U D G M E N T This is the Respondent father (Father s application for variation of maintenance payable for the child of the parties (Child), who was born out of the wedlock, from \$32,500 to \$14,000 per month. The Father subsequently offered to vary to \$17,000 per month, together with the undertaking to make some payments direct (details referred to in paragraph 33 below). The Applicant mother (Mother) opposed to the application. The main reason for the Father s application is that his employment had been terminated by his then employer and he no longer earns \$177,219 in average per month (with reference to his income as stated in his Form E, the basic salary is \$144,219, with \$33,000 being the bonus). The Mother is of the view that even if the Father s employment had been terminated, he still has much financial resources and high earning capacity to pay for the same amount of periodical maintenance for the Child, and therefore the application to variation downwards should be dismissed. Background and salient facts of the case The Father was born in 1975. At the time of the trial, he was 43 years old. He had a previous marriage and had an elder daughter (Elder Daughter) who was born in May 2010. The Father formally divorced with his ex-wife in about early 2012. The Mother was born in 1978. At the time of the trial, she was 41 years old. The Mother had a previous marriage, with no child born in the previous marriage. She finalised the divorce with her ex-husband in about 2012. The parties met and entered into a relationship in about March to

April 2011. The Mother ceased working as an accounting clerk since about mid 2011. By the Order dated 15 June 2012, it was ordered, inter alia, that the Father do pay his Elder Daughter from his previous marriage periodical maintenance of \$45,000 per month. In July 2012, the Father rented a place at a monthly rental of \$18,500 and the parties started to cohabit, with the monthly rental paid by the Father. In August 2013, the Child was born. At the time of the trial, she was almost 6 years old and attending kindergarten at K3 level, expecting to study Primary One in September 2019 at a local government school. A few months before the Child was born, the parties relationship had turned sour. The parties went on-and-off since then until about early to mid 2016. The relationship between the parties had become so sour that there were different grave allegations made against each other, which were denied. What cannot be denied is that access of the Child had not been going smooth. In April 2016, the Mother filed an Originating Summons, seeking custody, care and control of the Child, and also seeking periodical maintenance for the Child. In June 2016, the Mother had rented another place (Flat H) at a monthly rental of \$13,500, which was expected to increase to \$15,500, and she and the Child have been living there since then. The Father had been paying for the monthly rental of Flat H since about June 2016. Since March 2018, the Mother and the Child moved to another place nearby with monthly rental of HK\$15,000. In early July 2016, the Mother took out application for interim maintenance for the Child. In mid July 2016, when the Father was still employed by the bank, which was his then employer, he purchased a flat as his principal place of residence, with zero down-payment and full mortgage of \$7,366,000 (Property). The Father spent \$900,000 to renovate his Property. By consent and with both the parties represented by their then respective solicitors, it was ordered on 17 October 2016, inter alia, that the Mother and the Father have joint custody of the Child, with care and control be to the Mother and the Father with defined access. Further, it was included in paragraph B(4) of the Order by way of undertaking by the Father to the Court and to the Mother that the Father do pay directly for the school fees and medical expenses of the Child . Regarding the application for maintenance for the Child, by consent, by the Order also dated 17 October 2016, it was ordered that the Father do pay the Mother periodical payment of \$32,500 per month until the Child reaches the age of 18 or completes her full time education, whichever is later (Maintenance Order). The Father was also ordered to pay the Mother the sum of HK\$75,000 as contribution towards her legal costs. On 31 August 2017, the Father s employment was terminated by his then employer. On 19 October 2017, by consent, it was ordered, inter alia, that the periodical maintenance the Father do pay his Elder Daughter from his previous marriage be varied from \$45,000 to \$15,000 per month. It was also ordered that the payment be suspended after 12 January 2018 until such time when the Father finds another job. The Father s ex-wife had agreed to waive the shortfall of maintenance (for May 2017 to October 2017) in the total amount of \$124,000. The Father s ex-wife had re-married, and she and the Elder Daughter had moved to live in Australia. According to the Father, there were 2 trips to Australia, visiting his Elder Daughter, one in November 2017 and one in May 2018. On 20 November 2017, the Father applied for variation of the care and control of the Child. He applied for shared

care and control of the Child. On the same day, the Father also applied for variation of the maintenance for the Child. Regarding the application for variation of care and control, parties have settled during the Children Dispute Resolution. By consent, it was ordered on 12 September 2018 that only the access arrangement of the Child be varied. There is no variation regarding care and control arrangement of the Child. Parties could not agree on the disputed issues of variation of maintenance for the Child and the Father's application was adjourned for trial. The Father has unilaterally reduced the Child's maintenance to \$18,000 per month or less since about December 2017. A judgment summons was also taken out by the Mother and has been adjourned pending the outcome of this trial.

Witnesses and evidence The Father's case The Father gave evidence and did not call any other witness. He relied on his Form E filed on 11 August 2016 (Form E) and his updated Form E filed on 9 March 2018 (Updated Form E), his Answer to the Mother's Questionnaire filed on 29 January 2019 (Answer), and also the following affirmations as his evidence in chief. He relied mainly on his 3rd Affirmation, 5th Affirmation and 7th Affirmation for this application. He also relied on other affirmations filed, which have been included in the trial bundle. The Father was 43 years old at the time of the trial. He studied secondary school and obtained his Bachelor degree in law in Australia. After graduation, he worked in a bank in Australia and had been assigned to come to work in Hong Kong for a couple of years. He then changed to work in a bank, ie. his previous employer, for about 10 odd years until his employment was terminated in 2017. Before he was terminated, he had been promoted to be a Director and Regional Head. When his former employer terminated his employment, the Father was paid 3-month salary in lieu of notice and ORSO in the sum of about \$1.8 million. After the termination of employment, the Father has not secured another job. According to his evidence, he had explored the possibility of starting a business with some partners in the field of financial consulting, which some preparation work for his business had started, but as at the trial date, he had not managed to secure his first client and no income has been generated yet. In other words, no income has been earned since August 2017. The Father used to live with his parents at their private property in Yuen Long. After his previous marriage, since about 2012, the Father had been renting a flat to live in. Since he had purchased the Property, he has been residing at the Property. According to the Father, his girlfriend, who has stable relationship with him for a few years, also lives there for some nights. The Mother suggests that his girlfriend and the Father is co-habiting at the Property, which is denied by the Father. It is the Father's case that as his employment was terminated suddenly on 31 August 2017, with the last date of employment being 15 September 2017, there is material change of circumstances of his finance, which justifies his application for variation downwards of the maintenance for the Child. The Father further explained that he has been unemployed since his employment being terminated and he has no confidence that he could find a new job with relatively the same monthly income and benefits shortly. He foresaw that there would be a long period of time of unemployment and may need to decide on a job that would only give him a much lower salary. For his business, it will still take some time before income can be generated, but there is no

guarantee. According to the Father, he has always been willing to pay and has always paid reasonable sum for the maintenance of the Child. But because he is now facing financial crisis, he asks for reduction in maintenance. It is the Father's open offer as follows :- That the periodical maintenance of the Child be varied to \$17,000 per month. That subparagraph (a) above is applicable until such time as the Father finds another job or he embarks on a new venture which is income producing. By way of undertaking, the Father do inform the Mother and the Court in the event that he becomes gainfully employed on either a full or part time basis or he becomes involved in a venture that is income producing within 4 weeks of commencing such a position. By way of undertaking, the Father do pay directly for the Child's school fees (if any), school bus (if any), extra-curricular activities and any major medical and dental procedures that are outside her medical insurance coverage. There be no order as to costs in respect of this application.

The Mother's case The Mother gave evidence and did not call any other witness. She relied on her Form E filed on 11 August 2016 (Form E), and also the following affirmations filed as her evidence in chief. She relied mainly on her 5th Affirmation and 8th Affirmation. She also relied on other affirmations filed, which has been included in the trial bundle. The Mother was 41 years old at the time of the trial. Before her previous marriage, the Mother had given birth to a son when she was about 20 years old. The son has always been residing with his father, and they are now residing in Singapore. The Mother does not ask for custody, care and control of the son, and there is no order for the Mother to pay maintenance to the son. Before her previous marriage, she used to live with her father and her brother in a public housing in Yau Tong. Since about July 2012, when the parties started co-habitation, the Mother has been living in a rented flat, with rental paid by the Father. The Mother used to do accounting work at her father's company, earning a monthly salary of about \$9,000 per month. She later changed her job and worked as an accounting clerk in another company, earning a monthly salary of about \$15,000 per month. She worked for about 2.5 years and she ceased working in about mid 2011. The Mother explained that she had tumour at her thyroid in 2008 and after seeing Chinese doctor, she had been advised to rest more and to avoid pressure in daily life. Since mid 2011, the Mother has not been working and she is the main carer for the Child. The Mother's case is that she does not agree that there is material change of circumstances, even given that the Father's previous employment, with monthly income of \$177,219 in average per month, was terminated. The Mother is of the view that even if the Court rules that it is a material change of circumstances, given the background of the case, the Father's financial resources and his high earning capacity, the monthly maintenance for the Child should not be reduced, as the Father has sufficient means and ability to pay for the same amount of maintenance. The Mother is of the view that the amount of maintenance for the Child is reasonable and should not be reduced. The Mother also explained that she has not been working since about mid 2011. As she is the main carer of the Child, she has not been working and does not earn any income, any reduction in the Child's maintenance from the Father would affect the Child's welfare gravely. The Mother also made an open offer, which was not accepted by the Father. She offered that the

maintenance in the monthly sum of \$32,500 be varied to as follows :- \$28,500 for 6 months from December 2017 to May 2018; \$29,500 for 3 months from June 2018 to August 2018; \$30,500 for 3 months from September 2018 to November 2018; and \$32,500 from December 2018 until the Child reaches 18 years old or completes full time education, whichever is later. She also asked for costs of and incidental to the Father's application be paid by the Father. The legal principles The powers of the court to make orders for a parent to make various financial provisions for a minor and to vary such orders are set out in section 10(2) of Guardianship of Minors Ordinance, Cap. 13 () as follows :-

- (2) The court may as regards a minor, on the application of a person with whom, whether by virtue of an order under subsection (1) or otherwise, custody of the minor lies at law, make in respect of the minor any one or more of the following orders
- (b) an order requiring payment to the applicant by such parent or either of such parents of such periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent; ... Section 10(4) of GMO also empowers the court to vary some of the orders made under section 10(2) above as follows :- An order under subsection (1) or an order under subsection (2) (other than an order for a lump sum payment in one amount, for a lump sum to be paid in instalments where all such instalments have been paid or for the transfer of property) may be varied, discharged, suspended or revived after being so suspended, by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under this Ordinance, or (before or after the death of either parent) on the application of any other person having the custody of the minor by virtue of an order under subsection (1). The approach the Court should take in relation to variation of maintenance orders are well established, which I summarised below :- Once an application to vary is before the Court, it is fully entitled to make an order considering all the circumstances afresh, paying such regard to the old order as may be thought appropriate. (HCTT v TYYC [2008] HKFLR 286) The traditional approach to variation was not to re-fix afresh the amount of maintenance but to consider the amount of change in the actual means of the parties so that the new order should merely be increased or decreased roughly in proportion to the change in the means. The modern approach is for the Court to consider all the circumstances of the cases. The Court is not required to proceed from the starting point of the original order but look at the matter afresh. (AEM v VFM [2008] HKFLR 106) In relation to financial provisions for a child born out of wedlock, I have also reminded myself, as rightly pointed out by B. Chu J. in paragraph 51 of the HMSE v JJS (FCMP 70/2008, date of judgment: 29 April 2009), that the Court in Hong Kong have been guided by the principles and guidelines set out in the English cases, particularly *Re P*, in considering what financial orders are reasonable for the benefit of a child born out of wedlock. The legal principles as cited in *Re P (Child: Financial Provision)* [2003] 2 FLR 865, as adopted in the Hong Kong cases including *WGL v ASB* [2013] HKFLR 391, have been considered. In *WGL v ASB*, B. Chu J. had succinctly summarised the legal principles in paragraphs 55 to 57 :-

55. In *Re P*, a summary of the relevant considerations was set out by Bodey J, as follows: The welfare of the child while a minor, although not paramount, is naturally a very relevant consideration as one of ...all the circumstances of the case. Considerations as to the length and nature of the parents' relationship and whether or not the child was planned are generally of little if any relevance, since the child's needs and dependency are the same regardless: *J v C* (child: financial provision) [1998] 3 FCR 79 at 81. One of the 'financial needs of the child' (to which by para 4(1)(c) the court must pay regard) is for him or her to be cared for by a mother who is in a position, both financially and generally, to provide that caring. So it is well established that a child's need for a carer enables account to be taken of the caring parent's needs: *Haroutunian v Jennings* [1980] FLR 62 at 66; and *A v A* (financial provision for child) [1995] 1 FCR 309 at 317. By paras 4(1)(a) and (b) of Sch 1, the respective incomes, earning capacities, property and other financial resources of each of the parents must be taken into account, together with their respective financial needs, obligations and responsibilities. So 'the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living: *J v C* (child: financial provision) [1998] 3 FCR 79 at 87 per Hale J. However, as this latter concept lends itself to demands going potentially far wider than those reasonably necessary to enable the mother properly to support the child, 'one has to guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child: *J v C* (child: financial provision) [1998] 3 FCR 79 at 87. In cases where the father's resources permit and the mother lacks significant resources of her own, she will generally need suitable accommodation for herself and the child, settled for the duration of the child's minority with reversion to the father; a capital allowance for setting up the home and for a car; and income provision (with the expense of the child's education being taken care of, generally, by the father direct with the school). Such income provision is reviewable from time to time, according to the changing circumstances of the parties and of the child. The overall result achieved by orders under Sch 1 should be fair, just and reasonable taking into account all the circumstances.
56. Bodey J then went on to say in *Re P* that from the experience of that case, he would propose three further considerations:
- (i) In considering the mother's budget, at least in bigger money cases, the court should paint with a broad brush, not getting bogged down in detailed analyses and categorisations of specific items making up opposing budgetary presentations. Rather, the court should do its best to achieve a fair and realistic outcome by the application of broad common sense to the overall circumstances of the particular case. (ii) Comparisons with the commercial cost of providing professional care are unlikely to be of great assistance and may only serve to distract. (iii) When setting up a budget for the sort of lifestyle a child should be enabled to have, the court should not generally attach weight to the risk that the father may reduce or withdraw his support when the child comes of age (or ceases education or training) thereby obliging the child to adapt to a lower lifestyle at that time.

57. In Hong Kong, this court's jurisdiction is discretionary. No factors having been set out in legislation, the only criteria in s
- (2) of our GMO is what the court deems reasonable having regard to the means of the parent to whom the application is directed, which in the present case is the Father. In exercising discretion, this court will have regard to all the circumstances of the case, and in my view, these should include those matters as provided in the English legislation. Issues in dispute After consideration of the evidence and submissions, I am of the view that the issues in dispute are as follows :- Whether the termination of employment of the Father is a material change of circumstances The financial resources and earning capacity of the Father The financial resources and earning capacity of the Mother Reasonable expenses of the Child Analysis of evidence Whether the termination of employment of the Father is a material change of circumstances Mr. Tam, Counsel for the Mother, submitted that it is an issue in dispute for the Court's determination of whether the Father's termination of employment is a material change of circumstances. However, upon request for clarification from the Court and in view of the applicable legal principles, Mr. Tam clarified that even if the Court is to rule that it is a material change of circumstances, it is the Mother's case that the Father still has sufficient financial resources and high earning capacity, and the maintenance for the Child should not be varied downwards. Mr. Tam drew the Court's attention that the termination of employment of the Father is not unforeseeable or unexpected, as the Father has always had in his mind the high risk of redundancy and loss of income (as explained by the Father in section 5.5 of his Form E), before he consented to pay \$32,500 per month. Mr. Tam further emphasised that it is the Father's evidence that the high risk of redundancy existed ever since the day he began being employed by the bank. The Father explained that with the nature of the industry and the type of his work, he did have the awareness that such risks exist. I accept that even if the Father has been aware of the high risk of redundancy and the possibility of loss of income, given the nature of his work and the industry he is in, it is not unreasonable to have come across one's mind of the risk of losing his job. With the background and circumstances of the case, especially the job of the Father, previously employed by the bank as a Director and Regional Head, earning a monthly salary of \$177,219 in average per month, I am of the view that the termination of employment of the Father is a material change of circumstances. The more important question is, with this material change of circumstances, whether the Father still has the ability to pay for the same amount of maintenance for the Child, or whether there should be a reduction in amount. The financial resources and earning capacity of the Father I repeat paragraphs 26 to 32 above regarding the background of the Father. With reference to the Father's Updated Form E dated 9 March 2018, the Property is the only landed property that he owns. He had bank balance of a total of \$1,311,850, stocks of a total sum of \$34,000, car in the estimated value of \$25,000 and some mandatory provident fund. The estimated value of the Property as at the date the Updated Form E in 2018 was \$8.5 million. Taking into account the outstanding mortgage of \$6.635 million, the estimated net value of the Property is \$1.865 million. The Father further explained his updated finance when giving evidence that his

total bank balance has been reduced to only about \$10,000 in his saving account. He explained that he had used up the amounts in his premium account, current account and AUD premium account. He clarified that there is another bank account in Australia that he has not been using, with a balance of about AUD20,000. Regarding the liabilities, the Father explained that the only liability is the debt owed to his parents. Other than that, the credit card debt is only for normal use and he has no other debts. Regarding his general expenses, the Father explained during examination in chief that there is no change from what had been stated in section 4.1 of his Updated Form E, ie. in the total sum of \$60,734, comprising of mortgage instalments of \$44,834, utilities of \$3,000, management fees of \$1,650, food of \$4,000, household expenses of \$1,500, car expenses of \$4,650, insurance premia of \$600 and other expenses of \$500. Regarding his personal expenses, the Father explained that there are some updates and cut down on his personal expenses, for example, he no longer spends \$500 on holiday, there is no tax expenses of \$9,162 as he does not earn any income, the interim maintenance has been reduced from \$32,500 to \$15,000, there is no contribution to his parents, there is no dependent family members expenses of \$47,141, as his ex-wife had agreed to suspend the maintenance to be paid to his Elder Daughter and there is no MPF payment of \$1,200. During cross-examination, when being asked why he had to spend \$3,000 on transport, \$1,000 on clothing / shoes and \$1,000 on personal grooming when he is unemployed, the Father agreed that he does not have to spend that much now and each of these items can be reduced by 30%, ie. being \$2,000 for transport, \$666 for clothing / shoes and \$666 for personal grooming. In other words, his personal expenses are summarised as follows :-

Items	Amount in Updated Form E (HK\$)	Amount updated in evidence (HK\$)
Meals out of home	4,000	4,000
Transport	3,000	2,000
Clothing / shoes	1,000	1,000
Personal grooming	1,000	1,000
Entertainment / presents	1,000	1,000
Holiday Medical / Dental	9,162	9,162
Insurance premia	600	600
Interim maintenance	32,500	15,000
Contribution to parents	7,000	7,000
Dependent family	47,141	47,141
Others (MPF)	1,200	1,200
Total	108,103	23,932

To sum up, it is the Father's case that he now needs to spend about \$23,932 in total for his personal expenses (in which \$15,000 is the maintenance for the Child) and \$60,734 for his general expenses, ie. a total sum of \$84,666 per month. Under this section, there are different relevant sub-issues I have to consider, as follows :- Whether the Property should be considered as the Father's financial resources The liability of the Father Whether the financial difficulties alleged by the Father is self-induced The earning capacity of the Father

- (a) Whether the Property should be considered as the Father's financial resources The main dispute is whether the Property of the Father should be regarded as his financial resources or not. According to the Father, the Property should not be regarded and considered as his financial resources. Mr. Tam submitted that there is no reason why the Property, which is of value, should not be regarded as financial resources of the Father. Mr. Tam further submitted that the Father had deliberately spent much money on the Property and Mr. Tam drew the Court's attention especially to the following :- The monthly mortgage payment for the Property had been increased from \$33,600 to \$44,834, which Mr. Tam suggested was a deliberate act by the Father to increase his monthly expenses. The act of purchasing the

Property shortly after the Mother had taken out the application for interim maintenance for the Child was in fact a calculated act by the Father to lock up a big sum each month to be spent on mortgage repayment. The act of purchasing the Property, even though the Father has all along been well aware of the high risk of redundancy and loss of income, was an act in disregard of the welfare of the Child. The Father had spent \$900,000 on renovation of the Property, which was a deliberate and extravagant act to spend money. The Father disagreed with Mr. Tam's allegations. He justified the reasons of buying the Property and explained the following :- The Property was purchased for his residential use, not for investment purpose. The Property was bought at a time when the property price was relatively lower, and with the purchase of the Property, the Father could save money and secure for his children's future educational purpose. A room in the Property was decorated for the Child to live in during staying access, with the room decorated with the cartoon the Child likes. The previous place the Father was living at was too small, almost like a partitioned flat, and was not appropriate for staying access with the Child. The Father is of the view that the purchasing of the Property benefits the Child as well. The monthly mortgage repayment had been increased because when the employment of the Father was terminated, he no longer enjoyed the low interest rate. With the consideration of re-financing and re-mortgage, it is inevitable that the interest rate and the mortgage repayment being adjusted by the bank to the increased amount of \$44,838 per month. The Father also criticises that it is inhumane for the Mother to suggest that the Father could sell the Property, which would deprive him of the place he now resides. Mr. Tam explained that the Mother does not insist on the Father selling the Property. Selling the Property is only one of the ways out. Mr. Tam further explained that in view of the financial difficulties allegedly faced by the Father, as the monthly mortgage repayment sum is \$44,834 per month, there are in fact 3 options open to the Father :- First, the Father could move back to live with his parents at their home in Yuen Long so that the Property could be rented out to earn rental income. Second, the Father could let the Mother and the Child move in to live at the Property, so as to save some rental expenses. Third, the Father could sell the Property, so as to save the monthly mortgage repayment of \$44,834. Regarding Mr. Tam's submissions suggesting the options opened to the Father, I have reservation of the practicability, especially in view of option (2), suggesting that the Father could let the Mother and the Child move in to live at the Property. The Father has to continue paying the monthly mortgage repayment of \$44,834 regardless of who is living at the Property. Besides, the Father has to spend money in renting another place, unless he could move back and live at this parent's home rent free, but that depends on the views of his parents. According to the Father, selling of the Property would not improve much of his liquidity, as he will need to start incurring rent which adds to my expenses without any contribution to my long-term asset value, not to mention costs relating to moving and furnishing a new place of different size and layout and temporary storage for my personal belongings should the new place be unable to fit all my belongings. Adding to the complication, without a job and an income, it would be very difficult for me to rent a place without offering, say, a few additional months of rent as upfront rent payments. The father further drew the Court's attention to the following amounts either previously

incurred or will incur as a result of a proposed sale of the Property, including :- The Special Stamp Duty that will apply at 10% of the selling price if the proposed sell is within 3 years of the date of purchase, ie. if sold on or before July 2019 The stamp duty the Father paid at the date of purchase of about \$266,000. The renovation costs spent in the estimated amount of \$900,000. The legal (conveyancing) fees of \$20,000. The time value that was incurred during the 10-month renovation work (even if only include the additional rent needed to incur whilst waiting for the renovation work to complete, the total rent was at approximately \$100,000) . The Father was of the view that it is unrealistic, unreasonable and inconsiderate to the best interest of the Child s bonding with the Father and her long-term financial needs for the Mother to suggest that the father should sell his principle place of residence. Further, as stated in his Closing Submissions, the Father submitted that even if the market value of the Property had gone up since he purchased in July 2016, he estimated that the net gain would only be \$1,911,700 if the Property is sold, having taken into account the money wasted as a result of the sale, assuming that Special Stamp Duty will apply and assuming that the Property could be sold at the price estimated by the 2 banks. In view of the Father s analysis, I have to point out that it is not one of the issues to be determined by the Court how much the net gain is if the Property is sold. The Court should focus on the issues to be determined, ie. whether the Property should be regarded as financial resources of the Father. Having considered the Father s view and submissions, I can understand the importance of residing at a self-owned flat. The benefits to the Child when she has her own room, decorated to her liking, for staying access cannot be denied. However, the overall circumstances and financial resources have to be considered. Living in a self-owned flat is not a must. What I have to consider and determine is what the financial resources of the Father are. With the facts available before the Court and having considered parties evidence and submissions, I accept that the Property is valuable and I cannot see why the Property should not be included as financial resources of the Father. But at the same time, I am aware of the fact that the Property is the only landed property and the most valuable asset of the Father.

- (b) The liability of the Father Regarding the liability of the Father, as explained in his Form E, he has debt owed to his parents in the sum of \$1.9 million. According to him, that is the loan borrowed from his parents when he purchased a property for his first marriage about 12 years ago. There was no repayment to his parents. I notice that no interest has been charged for the debt, his parents have not asked for repayment and there is no discussion of repayment terms. While I understand from the Father s evidence that he is of the view that his parents are entitled to ask for repayment, considering the evidence as a whole, I accept that this can be regarded as soft loan, or better described as financial assistance from his parents. Further, Mr. Tam submitted that before the Father moving into the Property, when he was renting a much smaller flat, 95% of the staying access with the Child was conducted at the home of his parents, which is located in Yuen Long, owned by his parents, being a private property. As it is a private property owned by his parents, the Mother suggested that it could also be possible accommodation for the Father. The Father disagreed, but under cross-examination, he admitted that he did not ask his parents whether he could move back

and live at their home.

- (c) Whether the financial difficulties alleged by the Father are self-induced Mr. Tam submitted that the financial difficulties as alleged by the Father is self-induced. In other words, the Mother is of the view that the Father had been painting a picture that he has genuine financial difficulties, which is not true. That would go to the consideration of credibility of the Father. Mr. Tam's basis of the allegation that the Father's alleged financial difficulties are self-induced could be summarised as follows :- The Father had dissipated assets. The Father had lavish spending. The inability of the Father to secure another job or get any income at all since September 2017 is unreasonable. The Mother is of the view that the Father had dissipated assets. Mr. Tam submitted that the Father had dissipation of assets by (a) spending money in purchasing and renovating the Property; (b) transferring his vehicle to his younger brother; and (c) unjustifiably reducing balance or withdrawing money from his account as early as in 2016, and the total amount inexplicable amounts to \$3,491,152. In relation to the allegation of dissipation of assets by spending money in purchasing and renovating the Property, I am not convinced by Mr. Tam. As I have analysed above, I am of the view that the Property is financial resources of the Father. The purchase of the Property cannot be dissipation of assets. Regarding the money spent in renovation, though I have reservation of the need to spend \$900,000 spent on renovation, I do not regard the money spent on renovation being dissipated, as money spent on decoration may add value to the property. Whether it is lavish or extravagant spending of about \$900,000 on renovation is another matter to consider. In relation to the allegation of dissipation of money in transferring the Father's vehicle to his younger brother (), the Mother criticised that the Father had never provided any documentary proof and the alleged transfer timing is suspicious, which is shortly after the Father took out the present application to vary downwards the maintenance. I have considered the Father's evidence, in particular his Answers to Question 11 of the Questionnaire This car has always been used and maintained by my younger brother, ever since 2007. My brother and I decided not to effect the transfer at the time because we do not wish to show another change of ownership in the registration document and incur a transfer fee and would affect the selling price should he decides to sell. The current market value of this car is around \$2,000 and we have decided to effect the transfer in December 2017 because he has been using it for many years and is effectively the owner of it. Also, having a value of only \$2,000 means that adding another ownership change to the registration document is hardly going to affect the selling price later I have also considered that in the Father's Form E dated 29 August 2016, which was way before the transfer, it was stated therein that the purchase price of the Car is only \$50,000, with estimated current value being \$2,000. The Father also explained in his 5th Affirmation that the Car had always been maintained and driven by his brother. Considering the evidence as a whole, I accept the Father's explanation is reasonable and I do not view the transferring of the Car to the Father's younger brother as dissipation of assets. In relation to the allegation of dissipation of assets through unjustifiable reduction or withdrawals from the Father's accounts as early as in 2016, Mr. Tam relied on a table summarised by him, and Mr. Tam

submitted that the total amount inexplicable amounts to \$3,491,152 (which Mr. Tam had provided a detailed breakdown table (Table B), which was marked as exhibit). The Father denied the allegation. He explained that Table B merely shows changes in my total HKD Deposits in my bank accounts combined during the 13-month period from 31 December 2016 to 3 February 2018 (the Applicable Period). It is my submission that such presentation of my financials is an overly simplified way of presenting them without proper regards to my income and expenses at the time . The Father further explained that Table B is a failed attempt to summarise my financials during the Applicable Period. It contains numbers plugged from different times, bank or credit card statements, bank accounts, resulting in double counting by adding bank balance decreases with credit card debts (which were all auto-debited from my savings accounts) . I have considered Table B, the evidence, the documents and parties submissions, I do have reservation as to the large sums of withdrawals. However, considering the evidence as a whole, I do not accept the analysis of Mr. Tam in relation to Table B. The Father had correctly pointed out that as the amounts were taken at different periods of time and taken from different sources (bank accounts of Hong Kong Dollars and foreign currencies, and credit card statements) and added together, I accept there could be double counting and the total figures do not add up as alleged. I am of the view that the Table is over-simplified. The Father also explained that a few one-off major items of expenses, including renovation of the Property in the total sum of \$900,000, legal fees for the divorce case of his first marriage in the total sum of \$150,000 and travelling twice to Australia to visit his Elder Daughter in the total sum of \$100,000. Further, from the documents provided by the Father, there was a net shortfall of \$33,941 per month by deducting the expenses of \$178,160 from his income of \$144,219 (which was disagreed by the Mother). I am of the view that the evidence has to be viewed in context. The Father s employment was terminated in August 2017. Table B covers both the period before and after the termination of employment. Before his employment was terminated, he was earning a comfortable income. Spending relatively comfortably is not unreasonable. Having considered the evidence as a whole, I am not convinced that Table B supports the Mother s allegations that the Father had dissipation over \$3 million as alleged. However, at the same time, I have concern about the spending style of the Father and where exactly had the money spent on, especially in view of the period of time after his employment had been terminated. In relation to the Mother s allegation that the Father s alleged financial difficulties are self-induced with the Father s lavish spending, with the analysis above, I do have concern of how and where money had been spent. I have considered carefully parties evidence and submissions, and in particular, the Questionnaire and Answers in relation to these transactions, Questions 42 to 52. Questions and Answers 42 to 45 are about items of expenses before termination. There were various large sums withdrawn from bank account, with some items the Father explained how he spent (in which some amounts were spent to settle part of the renovation costs for the Property) and with some items the Father did not explain how he spent but explained that the transaction was conducted before he was terminated by his employer. Although as I explained above, before termination of employment, the Father could and may have spent more comfortably, with large sums of

expenses unexplained only a few months before termination of employment because of performance do raise suspicion. In particular, in this case, where the Mother had made it clear that she suspects there has been dissipation of money and the application to vary is a calculated act, it is essential for the Father to fully and frankly disclose his financial situations. In relation to Questions and Answers 46 to 52, they were over a period from September 2017 to March 2018, the amounts involved are summarised below :- For September 2017, total sum of \$39,045, JPY150,000 and SGD3,000 For November 2017, JPY93,000 For December 2017, total sum of \$221,192 For January 2018, total sum of \$189,234.72 For February 2018, total sum of \$177,192.72 For March 2018, total sum of \$166,924.44 The Father made explanations in his Answers, which I am not repeating here. I accept that some amounts had been used for general expenses including mortgage repayments and utilities etc. However, the Father further explained that some amounts were used to settle the costs of renovation and furniture for the Property, which was purchased in July 2016 and according to the Father, had been renovated for about 10 months. On balance of probabilities, it is hard to believe that large sums are still spent on renovation and furniture long after the Property was purchased. In relation to the allegation that the Father's alleged financial difficulties are self-induced, it is the Mother's case that the Father's failure to secure new employment or income-generating business ventures despite his high earning capacity since September 2017 is unreasonable. The Father denied the allegation and explained that he had been experiencing extreme difficulties post-termination, when he tried to seek employment. He had summarised his evidence in his Closing submissions, which I summarised into the following points :- The Father had phone calls with various recruitment agents he used to work with. All of them gave him the same response, ie. with his employment history and area of expertise, it will be difficult for him to find anything that is equivalent or similar to his prior position. His area of expertise is very narrow and only very large global banks may have one such position in the Asia Pacific region. There are some opportunities available at a lower level, but unfortunately, not many employers / line managers will consider the Father, as they may fear that the Father may not stay in that position for long or he may be a threat to their own positions. It was a fact that the Father was sacked by his previous employer. Given the narrowness of the industry, any potential employers could easily discover the fact which made his job search even harder. In other words, it is the Father's case that he had used his best effort, but still could not find a job or engage into income generating ventures. Mr. Tam had summarised the basis of this allegation in his Closing submissions, which I quote :- It is abundantly clear from cross-examination that, since termination of his employment by [ex-employer], all he had done was contacting several of his friends who are recruitment agents, over the phone, asking for equivalent or similar position to his previous employment. In the 19 months from termination of this employment up to trial :- he conducted no interviews with potential employer(s); he did not ask his recruitment agents friends to look also for part-time jobs; he did not apply himself (not via recruitment agencies) any jobs, whether full-time or part-time; within his previous field or employment, ie. legal documentation, he did not apply for positions lower than the position of Regional Head, despite having admitted that there is

usually 1 subordinate to a regional head in major global banks; outside the field of legal documentation, he did not apply for any jobs, despite having admitted that he has, eg. some working knowledge in know-your-client (KYC) and anti-money laundering (AML) matters, those usually handled by a compliance department. The Court will recall that his evidence was these two fall within one of the areas of service in his newly set-up consulting business; and outside the field of legal documentation, he did not even explore any other business ventures or provide paid services where his skills, knowledge or expertise can be utilized for the time being, eg. private tutoring. Mr Tam further submitted that the Father has not used his best effort to secure employment. Mr. Tam also drew the Court's attention that the Father admitted that it was his decision not to partake in jobs or business ventures, outside his field and may be of lower salary, which he is qualified and can generate income / salary to finance his expenses. I have carefully considered the evidence and submissions. According to the Father, his financial difficulties is so grave that he only has liquidity of about \$10,000 when he gave evidence in Court. However, in his open offer, he offered to reduce to \$17,000 per month for the Child. If the Father has reached the verge of his financial crisis and if he has presented the true and accurate financial circumstances, he would not be able to pay what he now offers. If the Father has truly presented the whole picture of his financial situations, he would not be able to pay even the coming month's monthly mortgage repayment in the sum of \$44,834. The Father submitted that he will need to borrow money from friends at the initial stage before looking into borrowing from financial or credit institutions should his financial crisis persist. I have considered all the evidence at a whole, on balance of probabilities, it is hard to believe that the Father had used his best effort to look for a job or to get some income, given his age, educational background and work experience. It could be true that he may not be able to secure a job with the same high level of income, or it could be true that with his business still developing, he may not be earning high income or profit to start with. However, as presented by the Father, he has been earning zero income since August 2017. If that is the case, it is hard to believe that the Father had maintained the level of expenses as shown in his Updated Form E and is still spending the level of expenses, as he updated when giving evidence in Court (with detailed analysis of expenses referred to in paragraphs 58 to 61 above). Yet, at the same time, the Father is insisting to keep his Property, with monthly mortgage payment of \$44,834 per month and proposing to offer a sum of \$17,000 as monthly maintenance for the Child. The explanation, evidence and submissions of the Father is not credible at all on balance of probabilities. I do not accept that the Father is telling the whole truth of his financial situation. I am of the view that there is no full and frank disclosure of his financial situation and therefore I will draw adverse inference. The possible explanations could be one of the following :- (a) the Father has salary or income non-disclosed; (b) the Father has readily available financial resources and assistance from his parents or his girlfriend to support him; (c) the Father can get a job or income-generating venture anytime without problem, and that it was a deliberate act of not getting a job or income-generating business venture before the trial ends. In any one of these scenarios, I will draw the inference that the Father has the ability to continue paying reasonable maintenance for the Child and to finance his

own expenses. With the analysis above and with the reasons aforesaid, I am not of the view that the Father has such financial difficulties as he alleged. I am of the view that he has much financial resources and he does not genuinely face the financial difficulties as alleged.

- (d) The earning capacity of the Father About the earning capacity of the Father, it is not in dispute that the Father has a much higher earning capacity than the Mother. With the evidence before the Court, especially in view of the age, education, background and previous work experience of the Father, I am of the view that the Father still has high earning capacity. The financial resources and earning capacity of the Mother I repeat paragraphs 34 to 40 above regarding the background of the Mother. Regarding the financial resources of the Mother, it is not in dispute that she has no landed property. She has always lived at a rented flat with the Child. She has no work and income since about mid 2011. With reference to her Form E, the Mother had bank balance in the total sum of \$452,776, stock in the total sum of \$140,083, some valuable personal items in the estimated total sum of \$25,000 and some mandatory provident fund. As explained in her 8th Affirmation and to provide further updates of her finance during examination in chief, the Mother explained that her total bank balance was reduced to \$281,156 (when she filed her Form J on 28 March 2018 and explained about her assets in section 5.1 therein), which had further reduced to about \$200,000 as at the date of trial. The Mother further explained that she had no liabilities when she filed her Form E. However, as the Father had unilaterally reduced the amount of maintenance, she had borrowed from her families and good friend to make up the shortfall, in the total sum of about \$300,000 and a further sum of about \$140,000 for legal fees from her Aunt. The Father alleged in his Closing Submissions that the Mother has sufficient financial resources and /or source of income to facilitate the Child's reasonable needs, despite the unilateral reduction of maintenance from the Father. It seems that the father is suggesting the Mother has hidden assets or hidden sources of income from work. However, these allegations or suggestions are not put to the Mother during cross-examination. On the contrary, during trial, the Father agreed that while the Mother is now taking care of the Child full-time, she does not have earning capacity at the moment. The Mother explained that since the Father had unilaterally reduced the monthly maintenance for the Child, she has cut down her personal expenses, used up some of her own savings and she has also borrowed money from her family and friend to make up the difference. Having considered the Mother's evidence as a whole, the documents presented before the Court and all the circumstances of the case, the explanation from the Mother is reasonable. On balance of probabilities, I accept her evidence in this regard. The Father suggested that adverse inference should be drawn against the Mother, as she has failed to voluntarily disclose any bank statements or other supporting documentation, but rely on a mere say-so during examination-in-chief and cross-examination to support her version of financial position and her claimed financial difficulties. I have to point out that before the case was adjourned for trial, upon the inquiry from the Court, the Father had consented to the Mother not filing an updated Form E. The Father also confirmed no further discovery application or asking for disclosure of documents through questionnaires. As discovery was complete, the Court was

satisfied that the case was ready for trial. There was no order for the Mother to make disclosure and no adverse inference will be drawn against the Mother as alleged by the Father. But at the same time, I notice that when the Mother is in financial needs, she could get financial assistance from her family and friends. It is the Mother's case that the amount of \$32,500 as ordered by the Court is the maintenance for the Child, not for herself. With reference to the Mother's Form E, it is shown that she has her own personal expenses in the total sum of \$11,184 per month, which, according to her, had not been financially supported by the Father. In her Form E, the total general expenses are \$23,961, the total expenses for the Child are \$16,248 and the total personal expenses are \$11,184, which comprise of meals out of home at \$3,500, transport at \$1,240, Clothing / shoes at \$500, personal grooming at \$600, entertainment / presents at \$1,000, holiday at \$1,000, medical / dental at \$500, insurance premia at \$844 and contribution to parents at \$2,000. The Mother explained when giving evidence at trial that her expenses are more or less the same, except that she now no longer pays any contribution to her parents and she has cut some of her expenses to ensure the effect of reduced maintenance on the Child from the Father be minimised. The Mother has not been working for a number of years, so she must be using her own saving and possibly getting financial assistance from her family and friends to support her when she asks for help. Without providing further details or supporting documents for the loans of the Mother, I accept that they could be soft loans from her family and friend when she asks for help. Considering the evidence as a whole, background of the case and submissions of the parties, I accept that the Mother has always been the main carer of the Child. In view of the Child's young age of 6 years old, it is reasonable for the Mother to be a full-time mother, taking care of the Child, which is not disputed by the Father. I accept that the Mother has limited financial resources and no earning capacity at the moment. When the Child grows older, the Mother could re-enter the labour force and resume working either full time or part time, but if that is the case, more personal expenses and expenses in hiring a maid to take care of the Child will be incurred. The Father had suggested that the Mother can take the Child to live at the public housing of the Mother's father (ie. the Child's maternal grandfather) in Yau Tong in order to cut down the expenses. The Mother disagreed. She explained that it was a public housing of her father, which the Mother's name has been registered and she could stay there, but the Child's name is not registered and the Child is not entitled to live there. Besides, it was a place now lived by the Mother's father and her brother, who are smokers, and the Child has not been living with them in the past. I accept that it is not a viable option of accommodation for the Child. Reasonable monthly expenses of the Child Mr. Tam, acting for the Mother, asked the Court to take a broad brush approach and to accept that \$32,500 is a reasonable sum of expenses for the Child. Mr. Tam further submitted that if the Court takes the broad brush approach, the mother does not claim a separate item of carer's or mother's allowance, as it would have been included in the total amount of \$32,500. The Father opposed and submitted that as this is not a big money case, a broad brush approach is not appropriate. The legal principles as stated above are not in dispute. I have to point out that even if the Court has the welfare of the Child in mind as one of the relevant, if not paramount, consideration, the carer's or mother's allowance is not

necessarily awarded in each and every case. As this is not a big money case, having considered the background of the case, I will look at the individual items of the Child, instead of taking a broad brush approach, to rule on the reasonable expenses. Mr. Tam had summarised the Mother's evidence of the reasonable expenses for the Child in a table (Table A), which had been marked as exhibit . From Table A, the total expenses for the Child has exceeded \$32,500, but Mr. Tam conceded that the Mother only asked to maintain maintenance of \$32,500 for the Child. For general expenses, the Mother asked for \$15,000 for rent and \$1,404 for utilities. After viewing the tenancy agreement provided by the Mother, the Father does not dispute the amounts of these 2 items. I accept that the reasonable expenses for rent is \$13,500 and for utilities is \$1,404. The Father had submitted that he is of the view that he should only be obliged to pay half of the general expenses, which I will consider in subsequent paragraphs. In relation to expenses for the Child, the Father confirmed that the following items and amounts are agreed, namely uniform of \$250, insurance of \$300 and daily necessities of \$510. The following items are disputed, including (i) clothing and shoes, (ii) books and stationary, (iii) transportation, (iv) gifts, (v) meals, food and drinks, (vi) holiday and entertainment, (vii) toys and teaching aids, (viii) extra-curricular activities, and (ix) medical expenses. Before going into each of the disputed items, there are a few points that I have to make clear. First, in the Maintenance Order, the parties have consented to the monthly sum of \$32,500, without going through trial, and therefore there is no breakdown of individual items expressly analysed before. Second, having in mind the legal principles of he who alleges must prove and for the Father's application of variation of maintenance, the burden is on him, on balance of probabilities, to prove his case, the criticism of the Father not having provided supporting documents in relation to his version of the reasonable expenses for the Child has to be viewed with caution. While it is true that with supporting documents, the Court will be provided with the basis of the amount alleged, the provision of supporting documents of expenses in the matrimonial context has to be considered in a practical and reasonable manner. I have to make it clear that even with the provision of supporting documents, it is for the Court's determination to consider the reasonableness of the expenses. In circumstances where no or insufficient supporting documents are provided, the Court still has the discretion to consider and rule accordingly what is reasonable and fair in the circumstances. Clothing and shoes For clothing and shoes, the Mother asks for \$1,000. The Father disagrees and he is of the view that \$800 is reasonable. I notice that in the earlier affirmation filed by the Mother asking for Interim Maintenance in 2016, the amount she asked for under this head is \$800. Considering the age and need of the Child, I rule that \$900 is reasonable. Books and stationary For books and stationary, the Mother asks for \$650. The Father disagrees and he is of the view that \$400 is reasonable. The Mother explains that this item includes books and stationary for school, as well as textbook for ballet, drawing and piano lessons, drawing colour pens and sketch books. Considering the breakdown of this item, I rule that \$650 is reasonable. Transportation For transportation, the Mother asks for \$450, while the Father is of the view that \$350 is reasonable. The Father explains that as the Child lives near her school, she does not need to travel to school or travel to attend the extra-curricular activities currently

enrolled, and therefore \$350 is sufficient. The Mother explains that the Child needs to travel to co-parenting organisations for access. Besides, sometimes the Child may feel tired and there is the need to take a taxi instead of public transportation. While understanding that sometimes the taking of a taxi may be necessary, it is not a must. Considering the evidence, I rule that \$400 is reasonable. Gifts For gifts, the Mother asks for \$1,000, while the Father says that it is excessive and he is of the view that \$300 is sufficient. The Mother explains that this item includes gifts and other incidental expenses for birthday parties and holiday party. The Father explains that for gifts to others, instead of buying expensive gifts, they could be hand-made. Considering the evidence, I am of the view that \$1,000 per month is excessive, and I rule that \$500 is reasonable. Meals, food and drinks For meals, food and drinks, the Mother asks for \$7,000, while the Father is of the view that \$5,000 is reasonable. I notice that in the earlier affirmation filed by the Mother asking for Interim Maintenance in 2016, the amount she asked for under the head of food is \$4,178. Having considered the age and need of the Child, I rule that \$5,000 is reasonable. Holiday and entertainment Toys and teaching aids I will consider these 2 heads together. It is the Father's view that none should be included under these 2 heads, as both parties should bear his or her own expenses under these heads when each of them spends time with the Child. I could understand the rationale of the Father. While each of the parents are spending time with the Child, there would be expenses spent on holiday and entertainment, toys and teaching aids. Having considered the background of this case, especially in view of my analysis of the financial resources of the parties above, and also in view of the Mother having care and control of the Child, with defined access to the Father, I am of the view that the Father should be paying for these items. Considering the age and need of the Child, for toys and teaching aids, I accept that \$470 is reasonable. For holiday and entertainment, I am of the view that the amount of \$2,500 per month the Mother asks for is excessive. I rule that \$1,000 is reasonable. Extra-curricular activities For extra-curricular activities, the Mother asks for \$3,000. She explains that these expenses include ballet, drawing and piano lessons. The Father agrees that the Child took these lessons, but he disagrees to pay to the Mother. Instead, he offers to provide an undertaking that he shall pay for these expenses direct. Having considered the background of the case and the relationship of the parties, I am of the view that these are regular expenses that has to be paid usually on a monthly basis. However, as the Child grows, there could be adjustment of these lessons, in terms of which class to attend, under private or group class, and the frequency of the lessons. As the Mother has care and control, I am of the view that it is practicable to have the amounts given to the Mother for her handling, instead of the Father paying direct. Having considered the background of the case and the age of the Child, I agree that \$3,000 is reasonable under this head. Medical expenses For medical expenses, the Mother asks for \$2,000 per month, as the Child no longer enjoys the medical insurance coverage after the Father's employment is terminated. The Father disagrees. He undertakes that he shall pay for medical and dental procedures that are outside her medical insurance coverage. I also notice that in the Order dated 17 October 2016, it was included therein the undertaking by the Father to pay directly for the medical expenses of the Child. I am of the view that the same practice should continue and no

amount will be included under this head. To sum up, the total expenses for the Child, including the agreed items are \$12,980 ((i) \$900 + (ii) \$650 + (iii) \$400 + (iv) \$500 + (v) \$5,000 + (vi) \$1,000 + (vii) \$470 + (viii) \$3,000 + agreed items of uniform \$250 + insurance of \$300 + daily necessities of \$510). The next question is whether the Father should pay the entirety of the general expenses. The Father is of the view that for the general expenses, the Mother should be paying half, ie, the Father should only be obliged to pay \$8,202 (ie. half of \$16,404), which the Mother disagrees. I have considered parties evidence and submissions, and also background of the case. Although no breakdown has been provided for the agreed sum of monthly maintenance of \$32,500 in the Maintenance Order, given the background of the case and considering evidence of the parties, I am of the view that with the sum of \$32,500, the entirety of the rent has been included for consideration therein. With the background of the case, the Mother has ceased working since about mid 2011, and the Father has always been paying for the rental of the place the Mother and the Child reside. Also in view of my analysis in relation to parties financial resources and earning capacity, and the items and amounts claimed under general expenses (only for rent and utilities), I am of the view that the Father should be paying general expenses of \$16,404. To sum up, the total expenses of the Child is \$29,384 (general expenses of \$16,404 + Child s expenses of \$12,980), which I round up to HK\$29,500.

Conclusion

With the reasons aforesaid, I have considered the financial resources and earning capacity of the parties, and I have ruled that the Father has a much higher earning capacity, with much financial resources. I have also ruled that I do not believe the Father has been disclosing fully and frankly the true picture of his financial situations. Having considered the means and financial resources of the Father, I am of the view that he is able to pay for the reasonable expenses of the Child that I have ruled. I allow variation downwards of the maintenance to \$29,500. Further, as the fact of the termination of employment of the Father is not disputed, which meant the Father is no longer earning a monthly salary since 1 September 2017, I am of the view that it is fair to have the order for variation of maintenance be backdated to 20 November 2017, the date the Father took out the application.

Orders

It is ordered that :- The periodical payment of \$32,500 as stated in the Order dated 17 October 2016 be varied to the effect that the Father shall pay the Mother periodical payment for the benefit of the Child, a sum of \$29,500 each month commencing on 1 December 2017 and thereafter on the 1st day of each month until the Child reaches 18 years of age or until the Child finishes her full-time education, whichever is later. Liberty to apply for the implementation of the orders. Costs Generally, costs should follow the event. In this case, the Father is successful in varying downwards the maintenance. However, the Father is getting far from what he asked for. As the award of cost is in the discretion of the Court and in view of the result of the judgment, and the conduct and background of the parties, I am of the view that it is fair to order no order as

to costs, including all costs reserved. This is at costs order nisi, which shall be made absolute within 14 days. (Rita So) Deputy District Judge Mr Tasman Tam, counsel, instructed by Messrs. Henry Wan & Yeung, for the Applicant The Respondent acted in person 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 rgYgNg hmWg hc(> hc(> h^V6 hc(> hc(> hc(> gd!Mw gd!Mw gd!Mw hc(> h!Mw hc(> hc(> hLq hc(> hc(> h!Mw rbrW h^s+ h!Mw hc(> hgX{ hLq h?}\ hc(> hc(> hc(> taVKC hmWg h?}\ hLq gdum gdum gdlN~ ynf^VH@5 ~s~s~h~ hLq hkgh h?}\ h3) h?}\ h3) gd3) gd3) gdum gdum hmWg hLq hgX{ hLq hgX{ h^V6 hLq h?}\ h3) h3) h3) h3) hmWg h?}\ h3) gd 1 gd 1 gd ` gdum gd3) hgX{ h3) h3) h3) h3) h3) ymamaSDa h?}\ gdzb gdQ%= gd 1 hQ%= hQ%= hgX{ hQ%= hQ%= hmWg hQ%= hgX{ hmWg hQ%= hQ%= h?}\ hQ%= hQ%= hQ%= hQ%= h?}\ hQ%= hQ%= hQ%= hQ%= hgX{ hQ%= {k^k{SH{ hbVi h^V6 gd!3 gd!3 gdU ~rfr hmWg h?}\ hmWg gdbVi gdU gdbVi gdD1 gd!3 qfqV h^V6 hgX{ h^V6 h?}\ qf[O? h^V6 hbVi hbVi gdD1 gdbVi h^V6 h^V6 gdA* gdU h^V6 laVF9a hB(? h^V6 h^V6 XJXJX h^V6 gd+L gdU gdU h^V6 h^V6 h^V6 gdU gdEw gdEw }oao hmWg h^V6 h?}\ h^V6 gdeQ gd[i gdQp gdQp }o}o}od h]Bg h?}\ h]Bg h?}\ h9\$q h/_ h?}\ h]Bg gdU gd ` gdU gdU ytU ynynynyn h?}\ h]Bg h/_ gdU gdU ytU gdU gdU ytU gdU ytU gdU gdU ytU gdU gdU ytU gdU gdU ytU gdU gdU ytU gdU kdK ytU gd/_ ytU gdU gdU h?}\ h^V6 hOuG gdU gdU gdU gdU h'J h?}\ zozozoz hq E h?}\ h^V6 h^V6 h)Q4 h?}\ h'J h^V6 gdPl gdPl gd)Q4 gdU hOuG h)Q4 h^V6 hq E h?}\ gdOuG gdh(gdh(gdh(gdh(gdOuG vk`U`U`k` h(D` hOuG h(D` h(D` hOuG hMhE hOuG h Ar h Ar h Ar h Ar hL)m h(D` h?}\ h|!" h|!" gd|!" gd(D` gdU gdU gdU gdmZ\$ gd Ar hmZ\$ hmZ\$ hmZ\$ h?}\ h(D` h9[v hmZ\$ h?}\ h(D` hmZ\$ hZe2 hL)m gdHC gdU gdHC gdU gdU h?}\ hZe2 gdh( h?}\ yky[y]LA h(D` hOuG gd/:3 gdQp gdQp gdAH gdh(gdh(gdh(h/:3 h?}\ h^V6 h?}\ h/:3 gdq3* gd9\$q hq3* hBx# h?}\ h9\$q h^V6 hq3* hq3* gd|0 gddB h^V6 h?}\ h?}\ gdU h?}\ h^V6 h?}\ gdU h?}\ gdU h?}\ hS`N gdU gdpY |q|f|[PEI h?}\ h?}\ aQDQD hc(> hc(> hc(> hc(> h^V6 &`#\$ gdQ= gdzW gdQ= gdQ= gdQ= }j[jGj hgX{ hgX{ hgX{ hgX{ hgX{ hgX{ hQi- hQi- hc(> &`#\$ hgX{ hgX{ hQi- hgX{ hgX{ hgX{ hgX{ hgX{ gdQ= 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU 2 #v \$:V ytU [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- qqI@ 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"/> .Pp l&* 7BL# K KZ VzXK@b _CXRF[`l 7BL# _CXRVzxK ^+~B;P W ;P W <3d^+~B DCCJ643/2003 setup Normal.dotm Windows User Microsoft Office Word _)5\$ Judiciary Hong Kong SAR DCCJ643/2003 Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources xmlns:b="http:// schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http:// schemas.openxmlformats.org/officeDocument/2006/bibliography" SelectedStyle="\APASixthEditionOfficeOnline.xsl" StyleName="APA" Version="6"></b:Sources> <?

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Prepared on 26 October 2026 · Esheria