

HONG KONG / JUDGMENT

M M v. R S

COURT

Family Court

DECIDED

8 April 2011

CASE / FILE NUMBER

FCMC14226/2009

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FCMC 14226 / 2009 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 14226 OF 2009

BETWEEN M M Petitioner and R S Respondent

Coram: Deputy District Judge S. Lo in Chambers (Not Open to Public) Dates of Hearing: 1 4 and 8
March 2011 Date of written closing submissions: 9 March 2011 Date of oral closings submissions:
9 March 2011 Date of Judgment: 8 April 2011

J U D G M E N T (Relocation)

AUTONUMOUT There are 2 applications before the Court. The first one is the Mother's application for: the permanent removal of the two children, a girl ("Daughter") and a boy ("Son") from Hong Kong to Seattle, Washington, the United States of America ("USA"); and there be joint custody of the two children, with sole care and control to the Mother and access to the Father. The second application is the Father's application for: Joint custody of the two children. In the event the Mother relocates to live outside Hong Kong, the Father be granted sole care and control, with access to the Mother. In the event the Mother continues to reside in Hong Kong, care and control of the two children be shared equally between the Father and Mother.

BACKGROUND

The Mother is the Petitioner now 36 years old and the Father is the Respondent 39 years old. The parties met around July 2000 and were married in the United Kingdom () on 23rd June 2001, 10 months after their initial meeting. They separated and have lived apart since July 2008. A decree nisi was granted on 22nd September 2009. A declaration under section 18(1) (c) of the Matrimonial Proceedings and Property Ordinance Cap192 was granted by me on 1st March 2011.

There are two children of the family: the Daughter, who was born on XX August 20XX in the UK and the Son, who was born on XX November 20XX in Hong Kong. The Mother was born in India and came to Hong Kong in 1991 when aged 16 years with her parents. She attended the Island School and then went on to a famous University in Hong Kong to study mathematics and business studies and obtained a Bachelor's Degree. The Father was born in the UK and graduated from a famous University there in 1992 with a Degree in Mathematics and Physics. After qualifying as a Chartered Accountant, he obtained a position with a Bank (CSFB) in London and was subsequently transferred to Hong Kong. In 2004 the parties moved to England so that the Father could be nearer to his family as his father's health was not so good. The Father was transferred to the UK with CSFB and the Mother, who was working for HSBC at that time, was able to transfer and rejoin her former boss in the UK. At that time she was 5 months pregnant with the Daughter. After the birth of the Daughter in the UK in August 2004, the Mother's parents travelled from India to the UK to give support and stayed on to give assistance. The Mother's father died on 3rd April 2006. After his death, the Mother's mother (Grandmother) moved to the UK to live with the Mother, the Father and the Daughter. The Father relocated back to Hong Kong in August 2006, obtaining a position with another bank. He later moved to his present employer. The Mother, the Grandmother and the Daughter followed the Father back to Hong Kong some 6 weeks later. The Mother was transferred by her employer from the UK back to Hong Kong, with the same team having been promoted to a position heading up the global advertising team. She had a good salary, a level of independence in making and executing decisions at work and flexible working hours. Throughout the duration of the marriage, the family was divided their time both in the UK and in Hong Kong summarised as follows: June 2001 2004 Hong Kong May 2004 August 2006 U.K. August 2006 to date Hong Kong THE LAW The most authoritative guide on how cases of relocation should be approached comes from the judgment of *SMM v TWM* , in which the guidelines laid down by Butler Sloss P and Thorpe LJ in the case of *Payne v Payne* are applied. Hon. Cheung JA said in the judgment of *SMM v TWM* as follows:

19. The parties agreed that the applicable principles governing relocation application are based on the *Payne v. Payne* [2001] Fam 473 line of cases. They are English Court of Appeal cases. There is no House of Lords decision on this issue. These principles have been applied in Hong Kong, for example, in *M v. B (Removal of children from the Jurisdiction)* [2009] HKFLR 349, by H H Judge Bruno Chan although there has not been any Hong Kong Court of Appeal decision on relocation applications.
20. *Payne* is based on the earlier decision of *Poel v. Poel* [1970] 1 WLR 1469. In *Re G. (Leave to remove)* [2008] 1 FLR 1587 the English Court of Appeal reaffirmed the principles in *Payne*.
21. The principles in *Payne* can be summarised as follows:
 - 1) The distinct features of a relocation application are first, the applicant is invariably the mother and the primary carer; second, generally the motivation for the move arises out of her remarriage or her urge to return home; and third, the father's opposition is commonly founded on a resultant reduction in contact and influence. (per Thorpe LJ at paragraph 27)

- 2) The two propositions that have been consistently applied by the Courts are, first, the welfare of the child is the paramount consideration; and second, refusing the primary carer's reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the Court concludes that it is incompatible with the welfare of the children. (per Thorpe LJ at paragraph 26)
- 3) The application should be approached as follows:
 - (1) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask, is the mother's application realistic, i.e. founded on practical proposals both well researched and investigated? If the application fails either of these tests, refusal will inevitably follow.
 - (2) If, however, the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?
 - (3) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?
 - (4) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist in so far as appropriate. (per Thorpe LJ at paragraph 40)
- 4) In short, the relevant factors are :
 - (1) The welfare of the child is always paramount.
 - (2) There is no presumption created by section 13(1)(b) of the English Children Act 1989 in favour of the applicant parent.
 - (3) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.
 - (4) Consequently the proposals have to be scrutinised with care and the Court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.
 - (5) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.
 - (6) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.

- (7) The opportunity for continuing contact between the child and the parent left behind may be very significant. (per Butler-Sloss P at paragraph 85) It is noteworthy that the respective applications by the respondent father in *SMM v TWM* for leave to appeal to the Court of Final Appeal were both refused by the Court of Appeal and the Court of Final Appeal. Mr. Clough also draws my attention to the International Judicial Conference On Cross Border Family Relocation held in Washington, D.C., the USA in March 2010. More than 50 judges and experts from different countries participated in the conference and made the Washington Declaration On International Family Relocation which lists out the following relevant factors: the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest; the views of the child having regard to the child's age and maturity; the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment; where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation; any history of family violence or abuse, whether physical or psychological; the history of the family and particularly the continuity and quality of past and current care and contact arrangements; pre-existing custody and access determinations; the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties; *stic*, having particular regard to the cost to the family and the burden to the child; the enforceability of contact provisions ordered as a condition of relocation in the State of destination; issues of mobility for family members; and any other circumstances deemed to be relevant by the judge. Mr. Clough rightly submitted that the Declaration is not law in Hong Kong. Each case has its own facts. I must say that some but not all factors in the checklist are helpful to the court for determination of the relocation application and I will not deal with these factors one by one below unless I consider necessary.
- THE MOTHER'S CASE** Since the birth of each child the Mother said that she has been the primary carer. Both children were breast fed, the Daughter for 8 months and the Son for 6 months. The Mother said that the Father often worked long hours and that she was assisted by the Grandmother, who has primarily looked after the children bathing, massaging, playing and maintaining the daily routine, evening meals, bedtime routine and overnight care for both children. As the Father spent most of his time at work or studied for professional examinations, the Mother spent a lot of time on her own, waiting for the Father to come home or watching TV whilst he studied and after the Daughter was born then caring for her. In May 2010 the Mother was made redundant and since that time has been able to devote her time to the needs of the children. MK MK, is an American citizen, who is an internationally recognised photographer and artist based in Seattle, the USA. The Mother's plan to move to Seattle is motivated by her desire to set up a new family with MK. They first met in May 2006 in India when he was commissioned by HSBC as part of an advertising campaign. The advertising campaign continued for 3 years and during that time the two of them worked and travelled together and became good friends. Over the years MK also became a friend of the extended family meeting the Father, the Grandmother, sister, brother-in-law and niece. At the parties' joint request in 2007, MK

became the Godfather to the Daughter. When the marriage broke down in 2008, the relationship between the Mother and MK became deeper. They said that they will get married very soon as the Decree Absolute will be pronounced upon the granting of section 18 declaration by me on 1st March 2011. It is their wish that after they are married, she will be able to move the children to Seattle where MK lives and has his business. MK said that he understood his sole, as stepfather as providing security, stability and protection and guidance. He will be the sole income earner and will assume financial responsibility for the family. He believes it is important for him and the Father to have a trusting and amicable relationship and believes it is vital that the children maintain their relationship with the Father. The Father has no family in Hong Kong but in the UK. The Mother considers that the Father is a professional working man with a high degree of responsibility and the inevitable demands that this makes upon his time, both at work and during his leisure hours. The Mother who will not be working can look after the children 24 hours a day if necessary. Accommodation MK has a substantial house in Seattle in a good neighbourhood. He indicated that the plans for his extension were already in the pipeline by January 2009 but were modified to provide the possibility of 2 further bedrooms in anticipation that the Mother and the children may wish to come to live with him. The house is about 2,315 sq. ft. with 5 bedrooms, 4 bathrooms, 2 decks and a roof deck, front and back fenced gardens and car park. The children will each have their own rooms. He explained how his business was based on the West Coast of the USA. His right hand man Mark had moved to Portland to be close to him for ease of working. MK had seriously investigated the possibility of moving to Hong Kong but he had not found it to be a realistic or feasible proposition. Apart from the problems and cost of finding suitable accommodation and work space in Hong Kong, when he already had it all set up in Seattle, there was the insurmountable problem of locating and obtaining the necessary materials and processes required for his work. Schooling The Mother said that schooling is not yet finalized, although enquiries have been made of a number of schools. The children have had school interviews at the UCD School, Seattle ("UCDS") just few months ago. Both parties recognise the need for each to be consulted and agreement reached between them before a final decision is taken. There are several schools which may be suitable if the children are not accepted into the primary choice of the UCDS. Family Support The Grandmother who has provided great support and emotional security to the children in Hong Kong will also move to Seattle. She will spend her time between the Mother's new home and that of the sister S who lives with her husband and daughter in R, about 20 minutes drive from Seattle. The Grandmother will be able to provide physical as well as emotional support and continuity to both the children and the Mother in the new environment. Further, the Mother said that she is familiar with Seattle since her sister is living in R and will also be on hand to provide support and help her and the children to settle down. The Mother's brother T and sister-in-law are living in New York. The Mother sets out a list of her extended family located in the USA in paragraph 62 of her affidavit filed 19 April 2010. She said that the whole extended family meets once or twice a year for a reunion within the USA. Finance MK will support the family providing accommodation, food and all necessities. He is financially "well off" and has a substantial income. The

Mother needs not to work if she so wishes and she will be at least for the first year to help the children and herself to settle in Seattle. After which she may consider part-time studying or working at home while the children are at school. The Mother expects that the Father will offer financial support in respect of the two children. Access Proposal The Mother fully recognises the need for the children to maintain their relationship with the Father and will do her best to facilitate this relationship. She proposes to keep the children in regular contact with the Father by using daily telephone and Skype access and the children would visit the Father on each school breaks, Christmas and summer holidays. Father's Parenting Style Problems arose between the parties because of their different parenting styles. At times the Father has sought to enforce a strict routine and record keeping in respect of the children's eating, sleeping and toilet matters. This is not the type of parenting the Mother agrees with and she believes one needs to be sensitive to each child's particular needs at the time, rather than a rigid formula. THE FATHER'S CASE AND OPPOSITION The Father considers that Hong Kong is now his home. He works in his present employer bank and is promoted as Regional Head of New Business Asia Pacific with increase of salary (more than \$140,000 per month). He is well regarded by his present employer who allows him to work from home so he can plan his days with reference to the children's routine. He has lived in Hong Kong permanently since 2006 and has recently had his visa extended to 2013 at which time he will apply for permanent residency. The Father does not accept the Mother as being the primary carer. He points out that the Mother has been on business trips since 2006 and is away some 31-60 days a year. The Father maintains that he has always been a very "hands on father". The period when he had to work long hours was for one year due to an unexpected departure of a colleague and it was only be 4 days a month when he could not be home or put the Daughter to bed. He said this pattern of putting the Daughter to bed has continued since the separation in 2008, on the 4 evenings a week that he sees the Daughter. The Father engaged the domestic helper, who has been one of the carers of the children since the family relocated in Hong Kong in 2006. The helper will stay on with the children if either parent wishes. The children have a positive relationship with her and the parents like her. He said that he has flexibility at work so he could spend more time with the children. He can work from home and work in the evening. He takes time off to see the Son during the working day on Tuesdays and Thursdays and every school day from 4:15 pm to be with both kids. Since the separation he has organised his life to be able to spend as much time with his children as possible, taking part in school activities and organizing outings. He considers himself a sociable man and committed parent fully involved in every aspect of the children's lives. He goes to parent / teacher interviews, makes play dates and has arranged two sleepovers for the Daughter at his home. He loves both children equally and does not favour the Daughter over the Son, as is suggested by the Mother. The Father opposes the Mother's application since it is contrary to the first and paramount consideration which is the best interests of the children. The children are happy and settled here. They are both doing well at school. The Daughter is at a famous International School here and the Son will start there in September. They have adapted to their parent's separation. They enjoy the stability of the shared parenting arrangements. The Mother's proposals will take them from the security of

the present to a new country in a different time zone more than 15 hours flying time (20 hours + door to door) from Hong Kong. They sever their present relationship with their ever-present father who becomes a holiday dad . Skype contact may be fun on holiday but will become a chore and routine over the next 10 to 15 years. The children are likely to lose what they value dearly now their close father / daughter, father / son relationship. The Mother recognised this when she repeated that she could never leave the children Views of the Welfare Officer There are 2 Social Welfare Reports, all prepared by Mr Li Nai Fu, Sam. He was told that the Father has access to the children as follows: Every Monday, Wednesday and Friday from 5pm to 7pm for both children; Every Tuesday and Thursday from 12 noon to 2:30pm for the Son; Staying access for both children at the Father s place from 7pm Friday till 7pm Saturday every week. Mr Li said in the first report that both children were observed to have close bondage with their parents and they had spontaneous interactions and intimacy with their parents. The recommendation from the first report was:

39. In view of the above, subject to Your Honour s approval, I would like to recommend joint custody as well as care and control of the children-in-question granted to the Petitioner mother and the Respondent father who have already jointly taken care of the children with the assistance from the domestic helper and the maternal grandmother. For the removal plan, it needs to have further information furnished by the Petitioner mother and a referral to the ISS to be made, I would like to suggest the case be adjourned until the investigation report of ISS is available. As suggested by Mr. Li, an ISS report was obtained from Seattle. The parties agreed that the relevant part of the ISS report was in the redacted version. An order of the court was made on 27th October 2010 to that effect. Dr. English said in the ISS report that she could not make final recommendations concerning if the Mother should relocate or not, however, there were no significant issues found in the Mother s intentions, motives, home environment, relationship with MK and desire to be closer to her family. The second report from Mr Li states that the parties were able to follow the access arrangement mentioned in the first report. Mr. Li had the opportunity of interviewing MK himself and seeing him with the children, noting the Son s obvious excitement when MK arrived and the natural and spontaneous interaction he had with both children. Paragraph 9 thereof reads as follows: When the Son heard someone pressed the door bell, he yelled MK to whom he used to refer as Mikey , with excitement. The Mother arranged him to play with the Son in the sitting room, they were observed to have spontaneous interaction with each other Despite Mr. Li said in paragraph 23 thereof that the Father is also one of the sole child carers who had strong bonding with the children and that both parents love and concern about the children, Mr. Li finally recommended in this report that the Mother shall be allowed to remove to the USA with the two children and that she be given custody, care and control of the children. DISCUSSION As submitted by Mr. Poll, Counsel for the Mother, which I agree, re-location cases generate a great deal of emotion and are very upsetting for the parties involved, this case is no exception. Fortunately, the parties have at least agreed joint custody of the two children. Primary carer of the children Quite a lot of undisputed evidence showing that the Father has actively participated in many aspects in taking care of the

children. I am satisfied that he is one of the carers of the children and that he loves and concerns about the children and he has strong bonding with them. On the other hand, I also consider that the Mother has played and is still playing a very important role in the daily care of the children with the help of the Grandmother. Their close relationship and the caring of the Mother can be evidenced by the fact that both children were breast fed by the Mother after birth. Furthermore, since the separation in July 2010 up to now, as the children are residing with the Mother in the same house and the Mother was recently laid off by her employer, she is almost 24 hours looking after them with the assistance of the Grandmother. Although the Father said that the present situation is shared parenting, I am of the view that the Mother is the primary carer of the children. In my view, without relying on any presumption in favour of the primary carer (which presumption was expressly disavowed by the Judges in Payne), one would have thought that the Mother, subject to the issues I will address below, has established an overwhelming ground work in her application for permission to relocate the children. Is the Mother's application genuine? I am of the firm view that the Mother and MK have real intention to marry. As they will get married very soon, it is entirely normal and natural for the Mother to move to Seattle where MK is settled and has his business. I am also satisfied from her testimony that the move is not motivated by a selfish desire to exclude the Father from the children's lives. As stated in paragraph 79 of the affidavit of the Mother filed 19 April 2010, the Mother has put forward suggestions for telephone access, daily Skype between the Father and the children and made sensible proposals for the school holidays access so that the children and the Father are able to maximise their time. It supports her application being genuine. Indeed, nowhere in the submission of Mr. Clough, Counsel for the Father to challenge the genuineness of the Mother's application. I conclude that the Mother's application is genuine. Is the Mother's application realistic? I accept the submission of Mr. Poll that the Mother has taken time and care to check that the children can adapt and be comfortable with their changing circumstances and her new partner. It is not in dispute that MK has a decent house and sufficient financial resources to maintain his new family in comfort. The Mother and children will have the support of MK and further emotional security of the Grandmother, her sister's family and the other relatives in the USA. Although the particular school the children will attend is not yet settled, I consider that proper schooling is available to the children in Seattle. Indeed, according to the letter dated 14th January 2011 from the Father's solicitors, it states that: Our client (the Father) accepts that, if the children are living in Seattle, there will be suitable schools available for both children and it will not be part of his opposition to the application that schooling arrangements are not in place. He will however be relying upon the fact that the children are well settled in good schools in Hong Kong and that it will not be in their best interests to move schools. Based on Mr. Li's observation as stated in paragraph 54 above, I consider that the children have accepted MK as a significant figure in their lives and are affectionate toward him. I cannot find any reason not to accept the factual observation and finding of Dr. English in the ISS report as mentioned in paragraph 53 above, which further supports that the Mother's application is realistic. Hence, I am satisfied with the proposed arrangements of the accommodation, finance and

schooling by the Mother and I have no difficulty to come to the conclusion that the Mother's application is realistic too. The Father's opposition I have equally no doubt that the Father's opposition is motivated by his genuine concern for the future of the children's welfare. There is no question of the Father's close relationship with the children. I also accept that he has no ulterior motive save as to his genuine desire to be with them in Hong Kong for as long as possible. Having said that, although it is always natural and normal for children not wishing to leave either of their parents, it cannot by itself be the determining factor to refuse the application, otherwise there would be no or very few successful relocation applications. With the Mother's proposed access and contact arrangements together with the support of the Mother's extended family in the USA, I am convinced that they will be able to maintain their close relationship with the Father without difficulty given their strong bonding with each other. I cannot accept that there will be any denial of contact of the children with the Father by the Mother. I shall also consider to what extent any possible detriment would be offset by extension of the children's relationships with the Mother's extended family. I have no doubt that the children will benefit from having a closer relationship with those members of the Mother's extended family in the USA with whom they already have a relationship. In the present case, the fact remains that the marriage is ended and that both parties are entitled to forge new and independent lives. There is nothing that can be criticised in the Mother's desire to leave Hong Kong due to her marriage with MK. In my view, with the Father being employed by an international organisation, whatever his present intentions or the arrangements by his present employer, there is nothing to suggest that Hong Kong is a permanent home for him, especially his family members are not here but in the UK or somewhere else. The Father has a senior position with his employer and a demanding job. Whilst his employer are presently inclined to give him the flexibility to leave work, there is no firm guarantee that this flexibility would survive a change of management, particularly as the banking industry is under scrutiny and undergoing change. Further, the Father has no family ties or links to Hong Kong apart from his job and some friends. Even with the flexible hours the Father will be heavily reliant upon his domestic helper to look after the children in his absence.

Impact of Refusal on the Mother In this case, the children are 6 and 3 years old respectively. Generally speaking, the court is more ready to accept the importance of the mother when the children are in young age. In *R v Y*, Hon. Rogers VP said in paragraph 10 of the judgment: This court was reminded of a large number of decisions which have stressed the importance of the mother in the life of a young child. In this respect I would simply refer to the case of *Brixey v Lynas* [1996] 2 FLR 499. It is unnecessary to cite from the speech of Lord Jauncey; it is sufficient to say that what he said there was clearly based on practical experience and the realities of life and is not a matter of prejudice or discrimination. During the course of the Mother's evidence, I noticed that she became very emotional especially when she broke down in tears during cross-examination by Mr. Clough, Counsel for the Father. She said that it was almost impossible for her to contemplate not being allowed to relocate with the children. I have no doubt about her entire commitment to them and her undeniable love for MK. I would like to quote the relevant part of the judgment of Thorp LJ in *Payne* as follows: 30. . In a broad sense the

health and well-being of a child depends upon the emotional and psychological stability and security. Both security and stability come from the child's emotional and psychological dependency upon the primary carer. The extent of that dependency will depend upon many factors including its duration and the extent to which it is tempered by or shared with other dependencies. For instance is the absent parent an important figure in the child's life? What is the child's relationship with siblings and/or grandparents and/or a step-parent? In most relocation cases the judge will need to make some evaluation of these factors.

31. Logically and as a matter of experience the child cannot draw emotional and psychological security and stability from the dependency unless the primary carer herself is emotionally and psychologically stable and secure. The parent cannot give what she herself lacks. Although fathers as well as mothers provide primary care I have never myself encountered a relocation application brought by a father and for the purposes of this judgment I assume that relocation applications are only brought by maternal primary carers. The disintegration of a family unit is invariably emotionally and psychologically turbulent. The mother who emerges with the responsibility of making the home for the children may recover her sense of well-being simply by coping over a passage of time. But often the mother may be in need of external support, whether financial, emotional or social. Such support may be provided by a new partner who becomes stepfather to the child. The creation of a new family obviously draws the child into its quest for material and other fulfilment. Such cases have given rise to the strongest statements of the guidelines. Alternatively the disintegration of the family unit may leave the mother in a society to which she was carried by the impetus of family life before its failure. Commonly in that event she may feel isolated and driven to seek the support she lacks by returning to her homeland, her family and her friends. In the remarriage cases the motivation for relocation may well be to meet the stepfather's career needs or opportunities. In those cases refusal is likely to destabilise the new family emotionally as well as to penalise it financially. In the case of the isolated mother, to deny her the support of her family and a return to her roots may have an even greater psychological detriment and she may have no one who might share her distress or alleviate her depression .(emphasis added)
32. Thus in most relocation cases the most crucial assessment and finding for the judge is likely to be the effect of the refusal of the application on the mother's future psychological and emotional stability. I accept the evidence of MK that he is genuinely not able to move his photograph business from Seattle to Hong Kong. If I refuse the relocation application, it is likely to destabilise the new family emotionally as well as to penalise it financially. I am certain that the Mother's frustration and unhappiness due to the refusal of her application would inevitably impact on the children negatively. If she is forced to stay here to look after the children, it would psychologically be inimical to the welfare of the children. As submitted by Mr. Poll, it is likely that the children will know, later if not now, that the Mother has stayed for them and sacrificed her own plans on their behalf. He further submitted that the child's perception that I stood between my mother and her happiness, she sacrificed herself for me is a heavy psychological burden for the children to bear. I

totally agree. I remind myself that the welfare of the child is always paramount in spite of no presumption in favour of the applicant parent. I recognise that it would be hard for the children to be so far away from the Father. Nevertheless, their best interests lay in the Mother being allowed to relocate. It is a very difficult decision but I am firmly of the view the welfare of the children which is of the paramount consideration lies in them being able to go to the USA with the Mother. They are at a tender age and may easily overcome adjustment problems in a new environment.

Conclusion

For all these reasons, I would grant joint custody of the children of the family with sole care and control to the Mother and leave to the Mother to remove the children permanently out of the jurisdiction of Hong Kong to go to Seattle, Washington, the USA. The Father shall have reasonable access and the defined access as follows: The Father shall have daily telephone and Skype access to the children; The Christmas school holidays are to be shared on an alternating year basis with the children to spend Christmas 2011 with the Father and each odd year thereafter and the Father may choose where he wants to spend the holiday with the children; In 2012 and each even year thereafter the children are to spend the holiday with the Mother in Seattle or where she wants; For the February mid-Winter break, the Father's access is to take place in the USA or Canada; For the Spring break, in the event the break is longer than 10 days, the Mother shall travel with the children to Hong Kong or the UK as may be decided by the Father every year but in the event the break is less than 10 days, the Father may travel to the USA to visit the children; The Summer school holiday be shared 1/3rd to the Mother and 2/3rd to the Father and the parties may choose where to spend the holiday with the children; During any period, other than the above school holidays, when the Father is visiting Seattle, the U.S.A., he shall have reasonable access to the children upon giving the Mother 72 hours notice and the Mother shall not refuse reasonable request for access by the Father. I would further order this Order which incorporates the contact arrangement be registered as a mirror order in the court with matrimonial jurisdiction nearest to Seattle. This order is granted upon the Mother's undertaking to register this Order within three months of her arrival in the USA. Consequently, save as to the joint custody, the Father's application for care and control is refused as it would clearly not be appropriate or practical to do so with the children living in Seattle, the USA. On the question of costs, I will not make any order against any party given the nature of the application involving the welfare of 2 small children. This is an order nisi to be made absolute at the expiration of 14 days. Last but not least, I would like to express my gratitude to counsel for both parties for conducting the trial effectively and efficiently. (Simon Lo) Deputy District Judge Mr. Michael Poll, Counsel instructed by Messrs Hampton Winter & Glynn for Petitioner Mr. Neal Clough, Counsel instructed by Messrs Erving Brettell for the Respondent CACV 209 of 2009 dated 9 June 2010

[2001] 1 FRL 1053 CACV 209 of 2009 dated 20 July 2010 FAMV 21/2010 dated 27 August 2010 CACV 193/2010, Date of Judgment 11 July 2010. The Court found in favour of the Mother's application for joint custody of the children. The Court also found in favour of the Mother's application for sole care and control of the children. The Court also found in favour of the Mother's application for the children to relocate to the USA with the Mother. The Court also found in favour of the Mother's application for the children to spend Christmas 2011 with the Father and each odd year thereafter and the Father may choose where he wants to spend the holiday with the children; In 2012 and each even year thereafter the children are to spend the holiday with the Mother in Seattle or where she wants; For the February mid-Winter break, the Father's access is to take place in the USA or Canada; For the Spring break, in the event the break is longer than 10 days, the Mother shall travel with the children to Hong Kong or the UK as may be decided by the Father every year but in the event the break is less than 10 days, the Father may travel to the USA to visit the children; The Summer school holiday be shared 1/3rd to the Mother and 2/3rd to the Father and the parties may choose where to spend the holiday with the children; During any period, other than the above school holidays, when the Father is visiting Seattle, the U.S.A., he shall have reasonable access to the children upon giving the Mother 72 hours notice and the Mother shall not refuse reasonable request for access by the Father. I would further order this Order which incorporates the contact arrangement be registered as a mirror order in the court with matrimonial jurisdiction nearest to Seattle. This order is granted upon the Mother's undertaking to register this Order within three months of her arrival in the USA. Consequently, save as to the joint custody, the Father's application for care and control is refused as it would clearly not be appropriate or practical to do so with the children living in Seattle, the USA. On the question of costs, I will not make any order against any party given the nature of the application involving the welfare of 2 small children. This is an order nisi to be made absolute at the expiration of 14 days. Last but not least, I would like to express my gratitude to counsel for both parties for conducting the trial effectively and efficiently. (Simon Lo) Deputy District Judge Mr. Michael Poll, Counsel instructed by Messrs Hampton Winter & Glynn for Petitioner Mr. Neal Clough, Counsel instructed by Messrs Erving Brettell for the Respondent CACV 209 of 2009 dated 9 June 2010

gd(%6 gd+L gd:0 gd+^ }kW}kW}E h45* h/?u hu`` hu`` hu`` hu`` ha`g hu`` hu`` h\$Xg h\$Xg
gdimq gdimq oVoA AoVo hp\D |d|d|d|d|O> himq hp\D h>`{ gd=l gd>`{ vaI.
h>`{ h>`{ Pe7e7e7e7 |eM8M rV8V& |`|`G. {bFb*b{ h7Ro h#4U h#4U hJ]F hJ]F hJ]F rVrA hJ]F
hB*& hB*& ydK2 ~IT<' gd=l hq< hq< hq< gdV2, gdV2, gdV2, h^ZB }u}h}_ &`#\$ 1udk V :p?!f
[Content_Types].xml Iw}, \$yi} _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/
theme/theme1.xml w toc'v)I`n 3Vq%#q x}r :TZaG I u3 L+M2 e\O* \$*c?)6-r IqbJ#x ,AGm
T[XF64 E)`# R>QD =(K& =al- 4vfa 0%M0 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"/> j]%N6 !=.1 1_<! &
6" CACV Judiciary English.dot setup Microsoft Office Word |N|@ |N|@ Judiciary CACV
CACV Title PuEr@ Microsoft Office Word 97-2003 Document MSWordDoc
Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=76277

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/m-m-v-r-s-2011>

Prepared on 29 October 2026 · Esheria