

HONG KONG / JUDGMENT

M v. M

COURT

Court of Appeal

DECIDED

2 August 2007

CASE / FILE NUMBER

CACV85/2007

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bjbj cacv 85/2007 in the high court of the hong kong special administrative region court of appeal civil appeal no. 85 of 2007 (on appeal from HCMP NO. 118 of 2007) IN THE MATTER of K, male, a child born on 3 October 2004 and IN THE MATTER of the Child Abduction and Custody Ordinance, Cap. 512, Laws of Hong Kong and IN THE MATTER of the Hague Convention on the Civil Aspects of International Child Abduction BETWEEN M Plaintiff Defendant Before: Hon Rogers VP, Le Pichon JA and Sakhrani J in Court Date of Hearing: 2 August 2007 Date of Judgment: 2 August 2007 J U D G M E N T Hon Rogers VP: This is an application to vary a costs order nisi which was made following the judgment of this Court which was given in this matter on 21 May of this year. The costs order on the appeal was that the losing party, namely, the father, should pay the costs. We are not disposed to vary that order. I would say at the outset that what we say applies to this case and is not intended to lay down any general principle or rule. It has been stressed very strongly that, in child custody cases, the normal rule is that there is no order as to costs. That is understandable because the issues before the court are what are in the best interests of the child. That is very much a matter of delicate judgment and, very often, the cases are very difficult. This case was not such a case. This case was an application under the Child Abduction and Custody Ordinance, Cap.

512. Essentially, the father was saying that the child should be taken to Canada and any custody proceedings should be consequentially carried on there. What he was trying to do was to obtain a jurisdictional advantage, and he was trying to do it on the factual basis that the habitual residence of the child was in Canada. The Court of First Instance, Saw J, held against him. He decided the matter as a matter of fact, that the habitual residence of the child was not Canada. That was the issue before this Court and that was the only issue. It was not a question of this Court deciding what was in the best interests of the child. It was a very simple question as to where the child's habitual residence was. The father chose to appeal that but, in my view, the order for costs in this case is the correct order. The only benefit that could be obtained by challenging that question of fact, would be that the custody proceedings were then taken in Canada rather than in Hong Kong, it seems to me that the father must bear the costs of this appeal. In those circumstances, we would not be prepared to vary the costs order that was made nisi. (Anthony Rogers) Vice-President (Doreen Le Pichon) Justice

of Appeal (Arjan H Sakhrani) Judge of the Court of First Instance Ms Anita Yip, instructed by Messrs Boase, Cohen & Collins, for the Plaintiff/Appellant Mr Enzo W H Chow, instructed by Messrs Hampton, Winter & Glynn, for the Defendant/Respondent PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk 2QX[2QX[2QX[H; < jFen & 6" ABC-Final (fair)1.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria