

HONG KONG / JUDGMENT

NPYJ v. SMRC

[2022] HKCA 1193**COURT**

Court of Appeal

DECIDED

19 August 2022

CASE / FILE NUMBER

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bjbj CAMP 117/2022

[2022] HKCA 1193 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO 117 OF 2022 (ON AN INTENDED APPEAL FROM FCMC NO 9098 OF 2018) IN THE MATTER OF an application pursuant to RHC Order 59, rule 2A and 2B for leave to appeal and IN THE MATTER OF an intended appeal from FCMC 9098/2018 BETWEEN NPYJ Petitioner SMRC Respondent
Before: Hon G Lam and Chow JJA in Court Date of Written Submissions: 27 June 2022 Date of Judgment: 19 August 2022

JUDGMENT

Hon Chow JA (giving the Judgment of the Court):

INTRODUCTION

The following applications are before the Court: the Respondent (s application by summons dated 19 April 2022 seeking (i) leave to appeal against the order of His Honour Judge K K Pang (the Judge) dated 7 January 2022 (the Order) dismissing various applications of H more particularly described in 9 below, and (ii) a stay of the proceedings in FCMC 9098/2018 pending the determination of the intended appeal; and H s application by summons dated 25 July 2022 seeking leave to file and serve his 2nd Affidavit dated 24 July 2022 (the July Affidavit) in support of the application for leave to appeal. H has requested for an oral hearing of the application for leave to appeal. Having considered the documents filed by H and the documents in the court file, we are of the view that it is appropriate to determine both applications on paper without an oral hearing pursuant to Order 59, rules 2A(5) and 14A of the Rules of the High Court, Cap 4A. BASIC FACTS H and the Petitioner (), formerly husband and wife, were married in Hong Kong on 31 August 2008. They have two daughters (the Children) who were born in 2008 and 2011 respectively. W also has a daughter (now an adult) from a previous marriage. The relationship between the parties began to deteriorate in about 2013, and went from bad to worse in 2016, with frequent quarrels and confrontations between them and alleged assaults and physical

altercations from time to time. W has not returned to live in the former matrimonial home on a long term basis since September 2016. On 16 May 2017, W petitioned for divorce on the ground of H's behaviour in FCMC 6134/2017. The present case number (FCMC 9098/2018) was allotted following an agreement of the parties to amend the ground of divorce in respect of the main suit based on 1-year separation. The major dispute between the parties concerned the arrangements regarding the Children. During the course of a 10-day custody trial before Her Honour Judge A N Ching Tse, the parties reached agreement, and a consent order dated 4 July 2019 (the Consent Order) was made, whereby the parties were given joint custody of the Children, with care and control to W and reasonable access to H to be implemented progressively, with a progress report on the first access session to be prepared by a social welfare officer. The first access session took place on 8 July 2019. Only the elder daughter attended while the younger daughter refused to meet her father. The second access session took place on 19 July 2019 and the younger daughter continued to refuse to meet her father. No further access session could be arranged due to the unwillingness of the Children to meet their father. The Consent Order failed to put to an end the parties' acrimony over the Children. H complained that he had great difficulty in seeing the Children due to the alienation of W. W, on the other hand, said that the Children simply refused to see H because they were not happy with various matters which it is not necessary to set out in this judgment. H has, since the making of the Consent Order, made numerous applications, including:

- (1) a summons filed on 28 November 2019 for, inter alia, variation of the Consent Order to seek more extensive access to the Children;
- (2) a summons filed on 13 May 2020 to allow him to have the care and control of the children, and to permanently relocate the children to the UK;
- (3) a summons filed on 13 May 2020 for enforcement of the Consent Order;
- (4) a summons filed on 4 June 2020 for extended access pending trial; and
- (5) a summons filed on 27 October 2020 for, inter alia, urgent enforcement of the Consent Order and variation of the appointment of parental co-ordinator (collectively the Trial Summonses). In connection with the Trial Summonses, H also made various other applications (the Applications), including: a summons filed on 27 October 2020 (the 1st Application) for leave to adduce the expert evidence of Dr Monica Borschel (clinical psychologist), whom H has consulted over a period of more than 4 years since July 2017, on the issue of his mental condition and therapeutic intervention; a summons filed on 19 October 2021 (the 2nd Application) seeking - leave to appoint Dr Janine Braier or Dr Jadis Blurton/Dr Kristie Craigen as expert to conduct a psychological assessment of the Children, and to opine on the issues of parental alienation, transfer of care and control, relocation, defined access, etc raised by H in the Trial Summonses; an order to expunge or strike out from the court file and declare inadmissible the following reports - Ms Lora Lee dated 17 April 2018; Dr Jim Bierman dated 3 January 2018; Dr Barry Connell dated 18 April 2018; Dr Sonya Law dated 4 May 2021; 10 Social Welfare Officer (s reports dated between 30 June 2017

and 23 April 2021; Official Solicitor's report dated 15 October 2021; and the appointment of a new SWO. The Judge dealt with the Applications on paper. By his written Judgment (Expert Evidence) dated 7 January 2022, the Judge dismissed the Applications. H's further application by summons dated 19 January 2022 for leave to appeal against the Order was dismissed by the Judge by his written Judgment (Application for Leave to Appeal) dated 18 February 2022. THE PRESENT APPLICATIONS FOR (1) LEAVE TO APPEAL AND (2) ADMISSION OF NEW EVIDENCE By summons dated 19 April 2022, H renewed his application for leave to appeal against the Order to the Court of Appeal. Attached to that summons is a draft notice of appeal (the draft Notice of Appeal) containing 2 intended grounds of appeal:

1. The decision to refuse the application of the Respondent to instruct Dr. Monica Borschel to provide expert evidence in respect of allegations made by the Petitioner as to his mental state and to appoint Dr Kristie Craigen as an expert in respect of the issue of parental alienation is plainly wrong and unjust given that the issue is central to the court's consideration of the matters concerning the children.
2. The Respondent has additional evidence, subject to leave to introduce the same being granted, which calls into question the veracity and reliability of the previous reports prepared by Lora Lee (17th April 2018), Dr. Jim Bierman (3rd January 2018), Dr. Barry Connell (18th April 2018), Dr. Sonya Law (4th May 2021), the Official Solicitor (15th October 2021) and the SWO (30th June 2017, 15th August 2017, 6th April 2018, 13th April 2018, 18th June 2019, 10th July 2019, 20th September 2019, 6th February 2020, 24th December 2020 and 23 April 2021), such that they should be struck out. Although H's application in the summons of 19 April 2022 is for leave to appeal against the Order dated 7 January 2022, in his draft Notice of Appeal, it is stated that the (intended) appeal is from the judgment or order of the Judge given on 18 February 2022 (ie the order refusing to grant leave to appeal). Following the approach in *Tang Chai On v Tang Sing Ki* [2016] 5 HKLRD 104 at 3-8, the present application should be treated as a renewed application for leave to appeal against the Order of 7 January 2022, instead of the Judge's subsequent order of 18 February 2022. By a further summons dated 25 July 2022, H applied for leave to file and serve the July Affidavit in support of the application for leave to appeal. According to H, the July Affidavit serves 2 purposes, namely, to explain (i) the short delay in the filing of his application for leave to appeal, and (ii) the new evidence intended to be relied upon. The new evidence is identified at 10 of the July Affidavit, namely, Exhibits MRCS 114-18 to MRCS 114-27 to his 114th Affidavit filed on 22 April 2022 in the proceedings below. At 9 of the July Affidavit, H sought to explain why the proposed new evidence was not adduced before the Judge: Whilst R accepts that he had some evidence that was available (in the case of Dr. Borschel only), there was also additional evidence relevant to the appeal which R was unable to adduce as his Summons for time/variation was determined after the Judgment was handed down. R has now adduced that evidence latterly but it was after the Judgment was handed down. The court should have considered that there was no prejudice to the other parties or the court in that evidence being adduced, and further that when dealing with the issue of welfare of children,

the court should have the best possible evidence available, including contrary or controversial evidence. DISCUSSION

- (i) Applicable principles Under s 63A(2) of the District Court Ordinance, Cap 336, leave to appeal shall not be granted unless the judge, the master or the Court of Appeal hearing the application for leave is satisfied that - (a) the appeal has a reasonable prospect of success; or (b) there is some other reason in the interests of justice why the appeal should be heard. For this purpose, a reasonable prospect of success involves the notion that the prospect of success must be more than fanciful, without having to be probable (SMSE v. KL [2009] 4 HKLRD 125). H's intended appeal is against a case management decision of the Judge concerning the admission of expert and other evidence at the hearing of the Trial Summonses. Case management decisions are subject to appeal only in rare circumstances. The appellant faces a very high hurdle and must show that the judge has gone clearly wrong and made orders which will clearly involve an injustice or an inability for the trial court to carry out its task, or has erred in principle or the order was irrational having regard to the issues that had to be resolved. Generally, an appellate court will not interfere with a judge's exercise of discretion unless the judge misunderstood the law or the evidence or the exercise of his discretion was plainly wrong, ie it was outside the generous ambit within which a reasonable disagreement was possible (Wong Kar Gee Mimi v Severn Villa Ltd [2012] 1 HKLRD 887 at 31). H's application for leave to appeal was refused by the Judge on 18 February 2022. Under Order 58, Rule 2(4A) of the Rules of the District Court, Cap 336H, if a judge of the District Court refuses an application for leave to appeal, a further application for leave may be made to the Court of Appeal within 14 days from the date of refusal. The summons to the Court of Appeal renewing his application for leave to appeal was issued by H on 19 April 2022. Even taking into account the general adjournment of proceedings (GAP) during the period from 7 March and 11 April 2022 announced by the Judiciary on 4 March 2022 due to public health considerations in Hong Kong, it is clear that H was late in issuing the said summons. The considerations relevant to the court's exercise of its discretion whether to extend time to an applicant to apply for leave to appeal are well-established. The court will take into consideration, amongst other matters, (i) the length of the delay, (ii) the reason(s) for the delay, (iii) the merits of the intended appeal, and (iv) the prejudice to the other party arising from an order granting an extension of time. In the present case, the period of delay is a relatively short one. H has suggested that the delay was the result of some misunderstanding in his communication with the Appeals Registry of the High Court. It is not necessary to get to the bottom of the alleged misunderstanding in the communication between H and the Appeals Registry. For the purpose of considering H's application for leave to appeal, we shall focus on the merits of his intended appeal. (ii) 1st Intended Ground of Appeal Under the 1st Intended Ground of Appeal, H alleges that the Judge's decision to reject (i) the 1st Application for leave to adduce the expert evidence of Dr Borschel, and (ii) the 2nd Application concerning the appointment of Dr Craigen as expert on the issue of parental alienation, is plainly wrong and unjust. H's basis for his application for leave to adduce the expert evidence of Dr Borschel (his treating psychologist) was that W

had repeatedly made serious allegations against him concerning his mental state, such as he was a narcissist. H argued that his mental state was relevant to the issue of the best interests of the Children when considering his applications in respect of the care, custody, access, etc, of or to the Children, and Dr Borschel's evidence should be admitted because it would refute W's allegations in their entirety. The Judge did not accept H's argument for the following reasons: W was not an expert in psychology or psychiatry, and her allegations on H's personality disorder would probably not be admissible evidence. Thus, there was no need to adduce expert evidence from Dr Borschel to rebut her allegations. The court already had received psychological (Dr Bierman) and psychiatric (Dr Connell) reports on both parents, and Dr Bierman opined that both H and W were fit to parent the Children, while Dr Connell opined that although H had difficulties to see matters from any perspective apart from his own and appeared to be stuck in blaming W and had little insight into his own problem, such difficulties were not due to his alleged psychiatric conditions (ADHD and OCD), but were symptomatic of his maladaptive traits. W in her submissions accepted that H's mental condition was not in issue in the forthcoming trial. As regards H's further argument that Dr Borschel's evidence would be relevant to the court's assessment of the best interests of the Children by reference to the list of factors contained in the Children's Proceedings (Parental Responsibility) Bill, the Judge was of the view that the court already had received social investigation reports, psychiatric report and psychological reports in relation to the Children which took into consideration the factors in the welfare checklist, and there was no need for H to adduce additional evidence from Dr Borschel for the purpose of having another consideration of those factors. In respect of H's application for the appointment of Dr Craigen (clinical psychologist) as expert on the issue of parental alienation, the Judge rejected the application essentially for the reason that Her Honour Judge Grace Chan had already made an order appointing Dr Sonya Law (clinical psychologist of the Social Welfare Department) on 28 October 2020 to prepare a psychological report on (inter alia) the issue of parental alienation, and a report had been prepared by Dr Law on 4

2021. The circumstances under which Her Honour Judge Grace Chan came to make the appointment of Dr Law have been set out by the Judge at 22 of the Judgment (Expert Evidence), which it is not necessary to repeat in this judgment. It is of note that Her Honour Judge Grace Chan decided to appoint Dr Law to replace a previous expert (Ms Lora Lee, who apparently had decided that she would not take on the case anymore) after having considered alternative competing candidates put forward by W (Dr Andrew Adler) and H (Ms Karen Woodall and Dr Craigen). The Judge did not see that further expert opinion from Dr Craigen (or Dr Braier or Dr Blurton) on the issue of parental alienation was required. In his Written Submissions dated 27 June 2022 (the Written Submissions) filed in support of the application for leave to appeal, H raised a number of complaints concerning the Judge's decisions refusing to grant leave to H to adduce expert evidence from Dr Borschel and Dr Craigen: At 4 of the Written Submissions, H complains that the Judge decided to deal with his applications on paper without oral evidence, and no reason was given for the decision. H argues that preventing him from presenting his case orally placed him at a disadvantage,

as he was not given an opportunity to expand upon or clarify matters in his application. This complaint has no substance. Taking into account the underlying objectives of the CJR (including to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court, to ensure that a case is dealt with as expeditiously as is reasonably practicable, to promote a sense of reasonable proportion and procedural economy, and to ensure that the resources of the Court are distributed fairly), there was nothing exceptional or unreasonable for the Judge to determine H's applications concerning admission of expert evidence on paper without an oral hearing. We do not see that specific reasons were required to be given by the Judge for deciding to deal with the applications on paper. Directions were given by the Judge for the parties to file and serve comprehensive affidavits and written submissions, and H was given the benefit of the last word. Bearing in mind that H was formerly a practising barrister in Hong Kong while W was acting in person, it is breathtaking, to say the least, for H to suggest that he was placed at a disadvantage because he was not given an opportunity to expand upon or clarify matters. H's further argument that the Judge ought to have received oral evidence for the purpose of determining the application is dealt with in (2) below. At 5 of the Written Submissions, H argues that the Judge should have heard directly from Dr Borschel as to the allegations made by W. H says that by deciding to deal with the applications on paper, the Judge fell into error in his conclusion at 10 of the Judgment (Expert Evidence), namely, that since W is not an expert in psychology or psychiatry, her allegations about H's personality disorders would probably not be admissible evidence and thus it was not necessary for Dr Borschel to be called to give expert evidence to disprove or rebut W's allegation. According to H, this conclusion is erroneous because the present case is about alienation by W in respect of the Children, and her erroneously held views about H have been communicated both directly and indirectly to the Children. Hence, in the absence of expert evidence making it clear that her views are not only false but proven to be so by an expert, W can (and does) continue to assert this position and influence the Children. H also says that there is the question of W's credibility when it comes to supporting and promoting the relationship between the Children and H, and her capacity (or lack of capacity) to do so. H's argument is untenable, because these points can clearly be made without Dr Borschel being called to give oral evidence at the hearing of the application to determine whether her evidence ought to be received at the trial. We are also not impressed by the suggestion that an expert should be called to give evidence for the purpose of challenging the credibility of W. Such an exercise would be unnecessary and disproportional in terms of time and costs, contrary to the underlying objectives of the CJR. At 6 of the Written Submissions, H argues that the Judge should not have accepted W's position that she would not be taking a point about H's mental health, because the court would not know that to be true until the final hearing and W may change her view which would leave H at a disadvantage with no expert evidence. H's fear that W may go back on her position is based on his conjecture. The position adopted by W is recorded by the Judge in the Judgment (Expert Evidence). The Judge, who will also be presiding over the forthcoming trial, can reasonably be expected to take proper and sufficient steps to ensure that no prejudice or

unfairness would be caused to H should W attempt to change her position at the trial. At 7 of the Written Submissions, H argues that the Judge neglected to consider that Dr Borschel's evidence would address the capacity of a parent (ie H) to meet the welfare needs of a child where there has been a four-year therapeutic relationship with the patient. However, as pointed out by the Judge, the court already had before it the reports of Dr Bierman and Dr Connell on the psychological and psychiatric conditions of both parents. Dr Bierman's report also included a parenting evaluation of the parents. It was well within the Judge's discretion not to allow further expert evidence on the same issue(s). At 8 of the Written Submissions, H complains that the Judge was wrong to state, at 12, that the information provided to Dr Blurton/Dr Craigen was solely from H's side, because they had, in fact, sight of previous expert reports including reports prepared by jointly instructed experts (Ms Lora Lee, Dr Bierman and Dr Connell). This criticism has no merit. As a matter of fact, the Judge did not say at 12 of the Judgment (Expert Evidence) that the information provided to Dr Blurton/Dr Craigen was solely from H's side. It was Her Honour Judge Grace Chan who said, at 12 of her judgment dated 9 December 2020 in relation to H's previous summons dated 12 March 2020 for adducing the expert evidence of Dr Blurton and Dr Craigen, the following: I note that the expert report was prepared without any interview with the children and/or the wife. All information to the experts come unilaterally from the husband's side (recited by the Judge at 22 of the Judgment (Expert Evidence)). In any event, H's criticism has no substance. It is clear that Her Honour Judge Grace Chan was not saying that Dr Blurton and Dr Craigen had received absolutely no information other than from H for the purpose of preparing their expert report dated 11 February 2020. Indeed, at 11 of her judgment, Her Honour Judge Grace Chan expressly noted that Dr Blurton and Dr Craigen had recorded in their expert report that they had had sight of, inter alia, the reports of Ms Lora Lee, Dr Bierman and Dr Connell, and commented on the fact that H had not obtained prior leave of the court to disclose those reports used in matrimonial proceedings concerning children to a third party, including his intended expert(s). Properly read and understood, the point made by Her Honour Judge Grace Chan was simply that the report of Dr Blurton and Dr Craigen was prepared without any interview with the Children or W, a fact not disputed by H. At 8 and 9 of the Written Submissions, H also complains that no proper reason was given by the Judge as to why Dr Craigen (or indeed W's choice of expert) was rejected and a direction substituted that a government clinical psychologist (Dr Sonya Law) should be appointed. H argues that the Judge should have considered the matter afresh and given his own reasons and not simply adopt what was said by Her Honour Judge Grace Chan. In our view, H is seeking, impermissibly, to re-open a matter already decided by Her Honour Judge Grace Chan back in 9 December 2020. The time for H to challenge her order has long expired. The Judge was not required to consider the matter afresh as contended by H. At 10 of the Written Submissions, H complains that the judge failed to give any or any cogent reasons for his refusal to expunge previous reports and allocate a new social worker, and at 11 of the Written Submissions, he argues that the Judge was incorrect to hold that the court had no place to intervene in the appointment of a social worker. These complaints are outside the scope of the 1st Intended Ground of Appeal. We

do not consider that H is entitled to raise them without having first applied to amend his summons of 19 April 2022 incorporating the draft Notice of Appeal. Even if such an application is made, we would refuse the application because of the lack of merits of H's argument. H has failed to put forth any good or sufficient reason(s) why the reports referred to in 9(3)(b) above should be struck out or expunged or deemed inadmissible, or a new social welfare officer be appointed. The Judge was correct to take the view that the said reports were admissible, and should be admitted, as evidence subject to arguments as to the weight that should be given to them at the trial. In all, H's complaint under the 1st Intended Ground of Appeal (namely, that the Judge's decision to refuse his applications for leave to adduce the expert evidence of Dr Borschel and Dr Craigen is plainly wrong and unjust) is not reasonably arguable, and has no reasonable prospect of success. (iii) 2nd Intended Ground of Appeal H's 2nd Intended Ground of Appeal is premised upon his application for admission of new evidence. Before new evidence may be admitted in the Court of Appeal, generally 3 conditions (the Ladd v Marshall conditions) have to be satisfied: the further evidence could not have been obtained with reasonable diligence for use at the hearing below; the further evidence is such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and the evidence is such as is presumably to be believed. As mentioned at 13 above, the new evidence proposed to be adduced by H in support of his intended appeal comprises Exhibits MRCS 114-18 to MRCS 114-27 to his 114th Affidavit filed on 22 April 2022. Those exhibits relate to: MRCS 114-18

- correspondence with Ms Lora Lee dated between July 2017 and May 2018; MRCS 114-19
- extracts from Ms Lora Lee's report dated 11 August 2017; MRCS 114-20
- correspondence with Ms Lora Lee dated between June and November 2019; MRCS 114-21
- extracts from Ms Lora Lee's 3rd report dated 17 April 2018; MRCS 114-22
- emails exchanged between H and Ms Lora Lee dated between April and May 2018; MRCS 114-23
- W's SMS/WhatsApp messages to Helen Hannah dated 18 April 2018; MRCS 114-24
- email from Ms Lora Lee to W and H on 2 June 2018 in relation to her 4th report dated 2 June 2018; MRCS 114-25
- email from Ms Lora Lee to H dated 6 June 2018; MRCS 114-26
- emails exchanged between H and Dr Bierman/Anita Cheng of Central Health Medical Practice dated between October 2019 and May 2021; MRCS 114-27
- emails exchanged between H and Central Health Medical Practice dated 4 November 2020. It is apparent that all these documents were in existence prior to the directions given by the Judge, by way of an order nisi, on 21 October 2021 (the Directions Nisi), inter alia, that: (i) the Applications be dealt with on paper, and (ii) leave be granted to H and W each to file a

comprehensive affidavit regarding the Applications on or before 4 November 2021 and 18 November 2021 respectively . It is also clear, from a brief examination of the contents of the documents, that H had possession of all, or virtually all of them, for a long time. Plainly, he could have deployed them before the Judge in support of the Applications had he wished to do so. In the July Affidavit, at 9, H argues that he was unable to adduce the proposed new evidence because his summons for time/variation filed on 3 November 2021 (the Time/Variation Summons) was determined on 24 January 2022, after the Judgment (Expert Evidence) was handed down on 7 January 2022. The Time/Variation Summons covered a large number of matters, including an application to vary the Directions Nisi such that, inter alia: (i) there be an oral hearing via VCF of the Applications, (ii) the time for H to file evidence be extended to 18 November 2021 or within 3 weeks of the order to be made, and (iii) H be given leave to file evidence in reply by 23 December 2021 after W had filed evidence in opposition by 9 December 2021. H had, prior to taking out the Time/Variation Summons on 3 November 2021, sought to apply by letter dated 25 October 2021 to vary the Directions Nisi. By a letter in reply dated 27 October 2021, the court directed that H s application to vary the Directions Nisi should be made by summons, and further directed that subject to further direction/order of the court, parties do comply with the timetable as set out in the order nisi dated 21 October 2021 so as to properly prepare for the PTR dated 24 January 2022 and the trial commencing on 21 March 2022 . As a barrister himself, H must, or ought to, have appreciated that unless and until the court made an order to vary the Directions Nisi, those directions should be observed. In any event, the court s letter of 27 October 2021 made it abundantly clear to H that the timetable set out in the Directions Nisi had to be complied with unless it was varied by a further direction or order of the court. H was at liberty to file whatever evidence that he wished to rely upon in support of the Applications in accordance with the Directions Nisi. He failed to do so. In the circumstances, his contention that he was unable to adduce the proposed evidence before the Judge in support of the Applications cannot be accepted. The 1st Ladd v Marshall Condition is not satisfied in the present case. It is unnecessary to consider the 2nd or 3rd Ladd v Marshall Conditions. Where the Ladd v Marshall Conditions are not satisfied, the Court of Appeal still has a residual discretion to permit new evidence to be adduced in exceptional circumstances. We do not see, however, any good reason in the present case to exercise the court s residual discretion to permit H to adduce the proposed new evidence. Accordingly, the 2nd Intended Ground of Appeal has no reasonable prospect of success. We do not see any reason in the interests of justice why H s intended appeal against a case management decision of the Judge should be heard. The present application is yet another instance where H seeks to appeal against case management decisions of the Family Court. The Court of Appeal has previously noted with concern the considerable number of applications taken out by H in the Family Court, and reminded him that applications which were unfocused, repetitive, and/or unnecessary would not only take up (and had in fact taken up) an extraordinary and unnecessary amount of the court s time and public resources, but would also cause delay which was not in the interests of the parties. The Court of Appeal also warned H that he should desist from making applications that were repetitive and unnecessary, failing which the court might

consider making a restricted application order against him to stop him from abusing the process of the court (see [2021] HKCA 183, at 42). We understand that the question of whether a restricted proceedings order or restricted application order should be made against H is currently under active consideration by the Family Court (see [2021] HKFC 178, at 98-99). We shall therefore refrain from making any further comment on this matter here.

DISPOSITION

H s summonses dated 19 April and 25 July 2022 are dismissed with costs to W, to be taxed if not agreed. H s application for leave to appeal is totally without merit. We therefore make an order that no party may request the present determination refusing leave to appeal to be reconsidered at an oral hearing inter parties pursuant to Order 59, rule 2A(8) of the Rules of the High Court. Lastly, H has also filed a summons dated 27 June 2022 seeking leave to adduce various documents referred to in his Affidavit sworn on 27 June 2022 in support of the intended appeal. On 4 July 2022, the Registrar of Civil Appeals directed that since H s application for leave to appeal was pending determination by the Court of Appeal, the said summons would only be considered if leave to appeal was granted. Now that H s application for leave to appeal has been dismissed, his summons of 27 June 2022 is also dismissed with costs to W, to be taxed if not agreed. (Godfrey Lam) (Anderson Chow) Justice of Appeal Justice of Appeal The Petitioner, acting in person The Respondent, acting in person See H s Affidavit filed on 16 May 2022 in CAMP 117/2022. See 10 of the Judgment (Expert Evidence). See 11-14 of the Judgment (Expert Evidence). See 14 of the Judgment (Expert Evidence). See 15 of the Judgment (Expert Evidence). Dr Braier and Dr Blurton were also put forward in H s summons filed on 19 October 2021. See 23 of the Judgment (Expert Evidence). By the Judge s order dated 24 January 2022, the Trial Summonses were fixed to be heard commencing on 21 March 2022 (with 10 days reserved). Subsequently, due to GAP, the trial has been re-fixed to be heard between 17 and 28 October 2022 before the Judge. See 11 of the Judgment (Expert Evidence). See 6 of the Judgment (Expert Evidence). The date of the directions was mistakenly stated as 12 October 2021 . The correct date should be 21 October 2021 (see 4(xvii) of the Judgment (Application for Leave to Appeal)). See 4(xxi) and 5 of the Judgment (Application for Leave to Appeal). No PAGE - PAGE * MERGEFORMAT - 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 vjaUjLjHC hW4~ h\$~< gdf^ gdf^ gd[gd\$~< }uqm h]gR h sl ytf^ gd0V gdf^ gdf^ xrlf h\$~< h\$~< h6/# h\$~< h\$~< h\$~< h\$ot gd\$~< gd\$~< gd\$~< ytf^ h\$~< h\$~< hJ8z hZ(U hJ8z hJ8z hJ8z hJ8z hJ8z hJ8z hJ8z hJ8z hJ8z hJ8z gdJ8z gdJ8z gdJ8z gdJ8z lbWbl hJ8z hJ8z hJ8z hJ8z hmG; h3_0 hmG; h3_0 gdmG; gdmG; gdmG; h%[x h3_0 h3_0 h%[x h:jU h:jU h~,c h~,c h:jU h:jU h\$~< h:p1 h:p1 gd%[x gdmG; gdN# gdzN h]ht h]h]ht hmG; hmG; hmG; h\$~< h\$~< vrg`O h%[x h%[x h%[x h%[x &`#\$ gdGO hOA, hOA, h"Gc h%[x gdOA, &`#\$ h"Gc hOA, gdN# ytf^ ytf^ &#\$ &#\$ &#\$ &#\$ [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- qyI@ j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .jx 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"

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Prepared on 27 October 2026 · Esheria