

HONG KONG / JUDGMENT

NPYJ v. SMRC

[2026] HKCA 18

COURT

Court of Appeal

DECIDED

9 January 2026

CASE / FILE NUMBER

CAMP310/2023

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CAMP 309/2023 & CAMP 310/2023, [2026] HKCA 18

On Appeal From [2023] HKFC 120,122,174 & 175

(Heard together)

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NOS. 309 & 310 OF 2023

(ON AN INTENDED APPEAL FROM FCMC NO. 9098 OF 2018)

BETWEEN

NPYJ

Petitioner

and

SMRC

Respondent

Before : Hon Kwan VP and Anthony Chan JA in Court

Dates of Written Submissions: 21 March and 22 August 2025

Date of Judgment : 9 January 2026

JUDGMENT

Hon Anthony Chan JA (giving the Judgment of the Court) :

Applications

By a Judgment dated 30 June 2023, HHJ KK Pang (“Judge”) made an Order in relation to the custody, care and control of children in FCMC 9098/2018 (“Care Arrangements Judgment”) ([2023] HKFC 120).

By a Decision dated 30 June 2023, the Judge made no order as to Father’s (Respondent) application by Summons filed on 12 October 2021 that S, the younger of the two daughters of the family, be assessed by Dr Ronnie Pao (“Dr Pao”) and the Mother (Petitioner) be compelled to deliver S for appointment(s) with Dr Pao for assessment (“ADHD Decision”) ([2023] HKFC 122).

The Father applied for leave to appeal against the Care Arrangements Judgment and the ADHD Decision. By two Decisions both dated 4 September 2023, the Judge dismissed the leave applications ([2023] HKFC 174 and [2023] HKFC 175).

There are now before this Court the following applications :

(1)

By a Summons filed on 15 September 2023 (CAMP 309/2023), the Father applies to this Court for leave to appeal against the Care Arrangements Judgment.

(2)

By a Summons filed on 15 September 2023 (CAMP 310/2023), the Father applies to this Court for leave to appeal against the ADHD Decision and a stay of execution of the same.

(3)

By a Summons filed on 18 June 2025 (CAMP 309/2023), the Father applies for leave to amend the Summons filed on 15 September 2023 (“309 Amendment Summons”).

(4)

By a Summons filed on 18 June 2025 (CAMP 310/2023), the Father applies for leave to amend the Summons filed on 15 September 2023 (“310 Amendment Summons”).

(5)

By a Summons filed on 18 June 2025, the Father applies to adduce new evidence in support of his renewed applications for leave to appeal against the Care Arrangements Judgment and the ADHD Decision (“New Evidence Summons”).

Background

The material background facts (based on the Care Arrangements Judgment) can be briefly stated. The Mother and the Father were married in 2008. They have two children, A and S, born in September 2009 and January 2011 respectively. The couple physically separated in September 2016 resulting from a major domestic dispute. The Mother petitioned for divorce in May 2017 and the Father cross-petitioned. A petition on separation was issued in July 2018 with the Court's leave.

The Mother obtained an interim care and control order in May 2017, with the Father being granted supervised access to the Children. The Decree Nisi was issued on 22 November 2018.

The parties reached agreement regarding custody of the Children in July 2019. By a consent order dated 4 July 2019 ("FCO"), joint custody was granted to the parties, and care and control was granted to the Mother with reasonable access to the Father.

The Father encountered difficulty in relation to access after the FCO. He took out "a great number of applications" for, inter alia, leave to remove the children outside Hong Kong, variation of care and control as well as access. As recorded in the Care Arrangements Judgment [19], there were a large numbers of applications by the Father which were set down for trial. As a result of delay by the general adjournment period caused by the COVID-19 pandemic, the trial was heard on 17 October 2022. It took 15 days to complete (the trial was originally fixed for 10 days).

By yet another Summons filed on 12 October 2021, the Father applied for S (the younger daughter) to be assessed by Dr Pao and for the Mother to be compelled to deliver S for appointment(s) with Dr Pao for assessment ("ADHD Summons"). By an Order dated 17 March 2023, the ADHD Summons was directed to be dealt with on paper.

ADHD Decision

The Judge considered the affirmations filed by the parties and the psychological/psychiatry expert evidence adduced pursuant to the Court's Order dated 20 May 2022, being Dr Kwan Ka Lik ("Dr Kwan") for the Mother and Dr Pao for the Father. The Judge rendered the ADHD Decision on 30 June 2023.

It should be emphasized that the determination of the ADHD Summons was considerably delayed by numerous applications which followed it, including a Summons filed on 11 January 2023 by the Father for, inter alia, cross-examination of Dr Kwan and the Mother and to call Dr Pao to testify ("Oral Evidence Summons").

As recorded in the ADHD Decision, [6], by an Order dated 9 September 2022, the Judge ordered the Mother to bring S to Dr Pao for assessment for the purpose of preparation of expert report. On 22 September 2022, Dr Pao saw S with the Mother and the assessment was carried out.

According to Dr Kwan's Report, he considered that S's clinical features were compatible with clinical diagnosis of ADHD (attention deficit hyperactivity disorder) predominantly inattention subtype, and that S should have medication treatment for inattention symptoms.

According to Dr Pao's Report, he did not identify any ADHD. Instead, he identified potential munchausen (factitious disorder imposed on self) by proxy in which a condition (ADHD in this case) was imposed on S. He raised several concerns from his assessment, including inconsistent account of symptoms of ADHD as described by S and her mother compared to the accounts of the domestic helper and the school; and a possible persecutory state, or even psychosis of the Mother.

The Judge considered (at [19]) that there was no need for oral evidence :

"... Whether or not to give leave to the Father to cross-examine Dr Kwan is a case management decision. I take the view that there are no factual disputes that need to be resolved by way of the oral testimony of Dr Kwan. In the circumstance, there is no need to compel his attendance as factual witness. In case of experts' disagreement, the court's concern is that the experts explain their competing views. It becomes part of the court's consideration in determining which expert's opinion is to be preferred. It is not unusual that a trial court takes into consideration of expert opinions without calling the maker, insofar as the respective experts have had been given sufficient opportunity to present their cases and to reply to conflicting views, as in the present case. Having considered the nature of the application and issues raised, the papers and all the circumstances, I consider that it is appropriate that the matter be determined on paper without an oral hearing."

The Judge then set out his view on Dr Pao's reports and Dr Kwan's reports (at [20]). He disagreed with Dr Pao's conjecture that S might have suffered from behavioural problems or emotional abuse as a result of parental alienation. He preferred Dr Kwan's opinion that S did not suffer from other psychiatric diagnosis such as mood disorder or emotional distress secondary from psychological abuse or traumatic experiences that affected her in terms of difficulty in concentration, easily distracted and slowness in performing tasks. He accepted Dr Kwan's opinion that there was no ground for the psychiatric diagnosis that the Mother might have suffered from having a possible persecutory state or even psychosis. The Judge concluded that he preferred Dr Kwan's assessment, recommendations on management and treatment to that of Dr Pao's ([21]).

The Judge commented that it was remarkable that the Father's application had already been substantially dealt with by the Order dated 9 September 2022 ([22]), and the Mother had taken S to Dr Pao for assessment on 22 September 2022. Despite the Mother's refusal of Dr Pao's request for further interview with S, Dr Pao's assessment reports were completed.

By Order dated 30 June 2025 ("ADHD Order"), the Judge made no order on para 1 of the ADHD Summons.

Care Arrangements Judgment

By the Care Arrangements Judgment, the Judge dealt with a multitude of applications, including, inter alia, the Father's Summons for defined access, transfer of care and control and relocation of the Children to England.

At paras 82 to 139, the Judge considered the issue of whether the Mother had deliberately alienated the Children, coached and/or unduly influenced and/or pressured the Children against their father. That issue appears to be an important, if not the central, complaint of the Father at the trial.

The Judge considered the evidence of the Father, the Mother and other witnesses called by the Father, the evidence of clinical psychologist, Ms Delphine Yau ("Ms Yau"), and the social investigation reports of Social Welfare Officer, Mr Paul Lau ("Mr Lau"). In particular, the Judge considered in detail the report of Ms Yau dated 5 October 2022 ([138]).

The Judge concluded at [139] that :

"Notwithstanding that, after having heard the Father's side of evidence of how the Mother's behaviours do not help with contact, Ms Yau accepted that the Mother's behaviours were more serious than she thought and they raise more concern on her part, taking an overview of all evidence and having carefully taken into consideration Ms Yau's thoroughly convincing analysis and opinion, I prefer Ms Yau's analysis that, while there are some signs of alienating behaviours, the evidence does not show that the children have been heavily alienated in the sense of having been indoctrinated or brainwashed by the Mother to hate the Father and there are a multitude of factors including both individual factors such as the parents' personality and parenting behaviours, system factors such as the conflicts in the couple which got manifested in the children's matters, the parental system in which there is a high level of mistrust and lack of and ineffective communication, and the involvement of different professionals and many third party persons who supposedly are to help the family but lack the systematic understanding of the complicated dynamics at play adding to the conflicts and polarization in the parental system, fueled by the prolonged adversarial legal litigations that lasted for years, the family dynamics and the child factor all contributing to the children's resistance to access."

We note that in the course of the trial the Father continued to burden the Court with applications after applications. There can be no serious doubt that the applications had a delaying effect on the trial.

By an Order dated 30 June 2023 ("Care Arrangements Order"), the Court issued directions, including directions for the appointment of family reunification therapist; that the parties shall continue to have joint custody of children, with care and control to the Mother; and continued indirect access for the Father. In particular, the Judge ordered :

(1)

The parties shall continue to have joint custody of the children, with care and control to the Mother (Order, [2]);

(2)

The access arrangements in the order dated 4 July 2019 (the FCO) are suspended until further order of the Court ([5]);

(3)

The social welfare officer shall follow-up the interim access until further order of the Court ([6]);

(4)

An up-dated social investigation report on access shall be available on or before 3 October 2023 ([7]); and

(5)

Various applications of the Father by summonses or paragraphs of summonses are dismissed ([12]).

Proposed Appeals

By two Summonses both filed on 15 September 2023, the Father renews his leave applications before this Court to appeal against the ADHD Order and the Care Arrangements Order, and for stay of execution of the ADHD Order.

The 309 and 310 Amendment Summonses were filed to streamline the Grounds of Appeal. The Mother has not responded to those Summonses despite the directions of the Court to do so. We grant leave to amend the Summonses for leave to appeal as sought in the Amendment Summonses, save that we make no order as to costs. Henceforth, the amended Summonses for leave to appeal will be referred to respectively as “309 Leave Summons” and “310 Leave Summons”.

Grounds of appeal against the ADHD Order (CAMP 310/2023)

In relation to the appeal against the ADHD Order, the Father seeks an order that: (i) para 1 of the Order be set aside; (ii) S be further assessed by Dr Pao and the Mother be compelled to deliver S for the appointments with Dr Pao.

The Father relies on the following Grounds of Appeal as set out in the draft Notice of Appeal :

(1)

The Judge erred in law in rejecting the Father’s application for further assessment of S where Dr Pao clearly asked to see S again to complete his instruction as expert in the proceedings (Ground 1);

(2)

The Judge erred in arriving at conclusions in relation to Dr Kwan and Dr Pao without permitting oral evidence from either of them and thus fell into procedural irregularity and unfairness (Ground 2):

(3)

The Judge's refusal to direct further assessment by Dr Pao and endorsement of Dr Kwan's report meant that the Judge accepted the diagnosis of ADHD of S. The Judge ought not to have allowed the administering of treatment and medication for ADHD which would be positively harmful to S if she does not suffer from such condition (Ground 3).

Grounds of appeal against the Care Arrangements Order (CAMP 309/2023)

In the appeal against the Care Arrangements Order, the Father seeks to have, inter alia: (i) paragraphs 2, 5, 6, 7 and 12 of the Order set aside; and (ii) a "retrial of all issues or any such issues as the Court of Appeal may specify" before a different judge.

It appears from the draft Grounds of Appeal and the submissions of Ms Chiang, who appears for the Father, that the central challenge in this appeal concerns [139] of the Judgment, ie, the Judge's finding that the Mother had not deliberately or heavily alienated the Children from their father. The main Grounds of Appeal are :

(1)

The Father was not cross-examined on the matters in relation to the Judge's findings in paras 130-137 of the Judgment thereby rendering such findings unfair and procedurally improper (Ground 2);

(2)

The Judge erred in failing to take into account or place sufficient weight on the favourable evidence of Ms Yau, RW1, RW4 and RW5 (Grounds 4 and 5);

(3)

The Judge erred in his balancing exercise by placing insufficient weight on the authorities on parental alienation and placing too much weight on the expressed wishes and feelings of the Children (Ground 6).

New Evidence Summons

By Summons filed on 18 June 2025, the Father applies to adduce the following new evidence in support of his renewed leave applications :

(1)

Disciplinary Reports by Hong Kong Psychological Society ("HKPS") in relation to Ms Lora Lee ("Ms Lee") dated 19 March 2023 ("Disciplinary Reports"); and

(2)

Report of Court appointed Reunification Expert, Mrs Patricia Barry-Relph dated 16 December 2024, together with the Addendum dated 16 January 2025 (“RE Report”).

The Disciplinary Reports concern Ms Lee’s breaches of Code of Professional Conduct of HKPS whilst being a Registered Psychologist in relation to cases conducted in 2021 and 2022. The HKPS published the results in the Disciplinary Reports in 2023. The breaches included, inter alia, failing to interpret assessment results with due consideration to the various test, situational and personal factors which might compromise the accuracy of information; and failing to base opinions expressed in reports, statements and recommendations on substantiating findings.

The RE Report was prepared by Mrs Barry-Relph as the Court appointed reunification expert and parental coordinator. It appears that the appointment was made pursuant to the Care Arrangements Order. Mrs Barry-Relph observed that the Mother appeared to feel unable to make the Children available for reunification with the Father. She made recommendations for uninterrupted “managed holiday” with their Father, supported by residential therapists. She further recommended that there be penal notice given to the Mother in relation to any failure to comply with any temporary protective placement. The Addendum listed out the logistics of the reunification therapy sessions in the UK.

The Mother’s position

The Mother has not filed any submissions in relation to the Father’s Leave Applications. Also, she has not filed any affirmations or submissions in relation to the New Evidence Summons.

However, we do not accept the submission of Ms Chiang that the absence of any affirmation of opposition of the Mother can be taken as not opposing the New Evidence Summons. First, it is a matter for this Court to decide the merits of the application. Second, it may be that the Mother has been worn down by the endless applications made by the Father. In the Care Arrangements Judgment, it was said, inter alia, that: (a) “... the Father bombarded the Mother with a great number of applications ...” and (b) ... the Father continued to unleash a barrage of court applications ...”.

Discussion

Despite the request for an oral hearing by the Father, we take the view that it is appropriate to determine these applications without a hearing and on the basis of written submissions only pursuant to Order 59, rule 2A(5) and rule 14A(1) of the Rules of the High Court, Cap 4A (“RHC”).

New Evidence Summons

We deal firstly with the New Evidence Summons.

It is trite that 3 conditions must be satisfied before fresh evidence can be received in an appeal under the Ladd v Marshall rule: (1) it must be shown that the evidence could not have been obtained with reasonable diligence for use in the trial (“Condition 1”); (2) the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive (“Condition 2”); and (3) the evidence must be such as is presumably to be believed, or, in other words, it must be apparently credible, though it need not be incontrovertible (“Condition 3”).

As to the Condition 2, fresh evidence which merely relates to credit will only be admitted if it is conclusive in the appellant’s favour or comes so close to being conclusive that justice would require a new trial to be ordered: *A Solicitor v The Law Society of Hong Kong* [1996] 1 HKLR 260 (CA) at 264B.

The Ladd v Marshall principles are not applicable to evidence that occurred after the date of the trial or hearing. Under Order 59, rule 10(2) of the RHC, the Court of Appeal has power to receive further evidence relating to matters which have occurred after the date of the trial or hearing, and special grounds are not required.

In *Cheung Wing Kuen Samuel v Ip Chui Sum* [2022] 3 HKLRD 709, [43], the applicable principles on admission of evidence as to matters which have occurred after the date of the trial or hearing under O 59, r 10(2) were summarized as follows:

(1)

The Court of Appeal has a wide discretion in relation to admitting such fresh evidence but it should always be exercised sparingly with due regard to the need for finality in litigation.

(2)

It is impossible to produce an exhaustive list of considerations relevant to the exercise of that discretion, but the following factors will always be material:

The extent to which the fresh evidence may affect the award of damages: the greater the extent, the more likely and ready the Court of Appeal should be to admit the evidence;

The time element: it is not necessary that the fresh evidence should emerge before the case would ordinarily reach the Court of Appeal, but the closer to the date of trial the more likely it is that the evidence will be admitted; and

The conduct of the parties: any inequitable conduct on the part of a litigant will plainly be relevant, and other conduct may also be relevant.

(3)

The evidence should be admitted in all cases where it would be an affront to one’s sense of fairness not to admit it. In applying that test the court takes into account all the circumstances, before, during and after trial: *Hughes v Singh*, *The Times*, 21 April 1989.

(4)

The new evidence must substantially affect a basic assumption made at the trial: the matter is one of degree.

Disciplinary Reports

It appears from both the Father's supporting affidavit dated 14 May 2025 ([18] and [28]) and Ms Chiang's submissions that both pieces of new evidence relate solely to the leave application in respect of the Care Arrangements Order.

Ms Chiang submits that the 3 Conditions under *Ladd v Marshall* are met. Condition 1 is met as the Reports came into existence after the trial. Condition 3 is also satisfied as the Reports are published online by HKPS after full investigation of their Discipline Board.

As to Condition 2, Ms Chiang submits that the evidence goes to credibility of Ms Lee. The new evidence would at least have affected the decision of whether the Father would be allowed to call Ms Lee for cross-examination; and that the timing of the matters for which Ms Lee was investigated is relevant as they occurred in 2021 and/or 2022 which was close to the trial.

First of all, Ms Lee was the Single Joint Expert appointed by the parties to prepare psychological assessment report (Care Arrangements Judgment, [92]). It appears that 3 reports were produced by Ms Lee and they were taken into consideration by the Judge. Importantly, the parties had decided not to call Ms Lee to give evidence despite the leave of the court to do so ([36]). These facts are at odds with Ms Chiang's submissions.

Second, the Disciplinary Reports go to the credit of Ms Lee. It has not been suggested by Ms Chiang, let alone demonstrated, that this piece of evidence would have affected the Father's case in a conclusive manner.

Third, we do not consider that the Disciplinary Reports satisfy Condition 2. Ms Chiang submits that in the Father's intended appeal against the Care Arrangements Order he seeks to challenge the "central finding" made by the Court at [139] of the Judgment that the Mother had not deliberately or heavily alienated the Children from their father. However, it has not demonstrated how Ms Lee's reports would have an important influence on the Judge's findings in [139]. Nor how Ms Lee's reports are relevant to the Grounds of Appeal against the Care Arrangements Order.

In the circumstances, we do not consider that the Disciplinary Reports would have an important influence on the outcome of the trial. With Condition 2 unsatisfied, it is unnecessary to consider Conditions 1 and 3.

Ms Chiang makes no submission that the Disciplinary Reports are "evidence as to matters which have occurred after the date of the trial or hearing" under O 59, rule 10(2). However, for the same reasons stated above, we do not consider that the evidence substantially affects any basic assumption made at the trial, or that it would be an affront to one's sense of fairness not to admit such evidence.

In the premises, the Disciplinary Reports are not to be admitted as fresh evidence.

RE Report

Ms Chiang submits that all the *Ladd v Marshall* requirements are satisfied in relation to the RE Report. Condition 1 is met as the RE Report came into existence after the trial. Condition 3 is satisfied as the Report is prepared by a Court Appointed Expert.

As to Condition 2, Ms Chiang submits that the RE Report would have an important influence on the result of the intended appeal as it supports the Father's complaint of the Mother's deliberate alienation. Again, no further reference is made to the Judgment or the Grounds of Appeals.

We do not consider that the *Ladd v Marshall* rule applies in relation to the RE Report, as it was produced after the Care Arrangements Judgment. It falls under the category of "evidence or matters which have occurred after the date of the trial or hearing".

With the principles set out in *Cheung Wing Kuen* in mind, we do not consider that the RE Report should be admitted. The focus of the Report was on the reunification efforts of the parties. Although adverse comments were made in the Report about the Mother's alienating behaviours, it is evident from [139] of the Judgment that the Judge was alive to signs of alienating behaviours on the part of the Mother. It is clear that the Judge considered the evidence before the Court holistically with considerable care. Those behaviours did not sway the Judge from the conclusions he reached. In particular, the Judge took that view that "the evidence does not show that the children have been heavily alienated in the sense of having been indoctrinated or brainwashed by the Mother to hate the Father and there are multitude of factors including both individual factors such as the parents' personality ...".

Neither the Father's supporting affidavit nor Ms Chiang has dealt with how the RE Report would impact on the appeal. We do not consider that to refuse such evidence would be an affront to one's sense of fairness, or that the new evidence substantially affects a basic assumption made at the trial.

We therefore also decline to admit the RE Report as new evidence.

Leave Applications: applicable principles

It is trite that leave to appeal shall not be granted unless the Court is satisfied that the intended appeal has a reasonable prospect of success or there is some other reason in the interest of justice why the appeal should be heard. A reasonable prospect of success means an appeal with prospects that are more than fanciful without having to be probable: *SMSE v KL* [2009] 4 HKLRD 125 at [17].

The function of the appeal court is one of review. It will not disturb the judge's exercise of discretion unless he had misdirected himself with regard to the principles or the evidence or had misunderstood the law or evidence in accordance with which his discretion had to be exercised, or had wrongly taken into account irrelevant matters or failed to take into account relevant

matters, or that his exercise of discretion was plainly wrong. It is only if and after the appeal court has reached the conclusion that the judge's exercise of discretion must be set aside for one or more of these reasons that it would exercise an original discretion of its own: *SFC v Wong Wai Kong David* [2021] HKCA 897 at [26].

The principles upon which an appellant court can overturn findings of fact in the court below were summarized by Woo VP in *A Solicitor v The Law Society of Hong Kong*, CACV 302/2002, 18 February 2004, at [19] as follows :

(1)

If the Court of Appeal is to reverse the trial judge's decision on the facts, it "must not merely entertain doubt whether the decision below is right, but be convinced it is wrong".

(2)

The Court of Appeal will certainly not disturb findings of primary fact where they are based on the credibility of witnesses or the preference of the evidence of one witness over that of another because the judge enjoyed the advantages of receiving the evidence in its living state at first-hand.

(3)

In order to disturb a finding of primary fact, the Court of Appeal has to be satisfied that the judge's conclusion is plainly wrong in the sense that either (1) there is no evidence to support it; or (2) it is contrary to documentary or other incontrovertible evidence that the judge overlooked. It is not enough to show that there is little evidence to support the judge's finding, or that it was "contrary to the weight of the evidence". The weight of the evidence is a matter for the trial judge. It does not matter how many witnesses say one thing, and how few say the contrary. The judge is perfectly entitled to prefer the evidence of the few to that of the many.

Where a decision is one of case management, it is pre-eminently within the province of the trial judge, and the appellant court will only interfere in very exceptional circumstances. The appellant faces a high hurdle in showing that the first instance judge had gone clearly wrong and made orders which clearly involved an injustice or an inability for the trial court to carry out its task or had erred in principle or that his order was irrational: *NPYJ v SMRC* [2020] HKCA 832 at [23].

Leave Application in relation to the ADHD Order (CAMP 310/2023)

Ms Chiang focused her submissions on Ground 2 of the Grounds of Appeal, ie, the Judge erred procedurally or in law in refusing oral examination of the experts, Dr Kwan and Dr Pao.

Ms Chiang relies on the English case of *Griffiths v TUI (UK) Ltd* [2023] 3 WLR 1204, UKSC, at 1228G-1229D, where Lord Hodge DPSC summarized the rule in *Browne v Dunn* (1893) 6 R 67 and other related cases regarding the cross-examination of witnesses in a number of propositions. However, it should be noted that the rule, which is “not an inflexible rule”, “should not be applied rigidly” (1229C).

Further, it should be borne in mind that in this case the application for cross-examination was made in the context of an interlocutory application. In such applications, cross-examination is not the norm.

Ms Chiang submits that whilst the Judge acknowledged that the diagnosis and recommendations on management and treatment by the experts were in conflict, the Judge erred in (a) taking the view that no factual disputes needed to be resolved by oral testimony; (b) proceeding to consider the respective expert’s observations and presentations of facts without cross-examination; and (c) preferring the evidence of Dr Kwan to that of Dr Pao.

In relation to Grounds 1 and 3, Ms Chiang argues that the Judge erred in law in failing to direct a further assessment of S by Dr Pao.

In our view, there is no inflexible rule that the experts should be orally examined when their views were in conflict. We agree with the Judge that it was a case management decision. A case management decision has to be made in light of the material circumstances of the case and with the view to arriving at the just resolution of the application in question.

The reasons for disallowing the Oral Evidence Summons were set out in the ADHD Decision, [19] (see para 15 above). It has not been demonstrated how or why any of the reasons was flawed. For instance, it has not been identified what factual disputes, which were material to the decision of the Judge, had to be resolved. Ground 2 is not reasonably arguable.

In relation to Grounds 1 and 3, we do not believe that they add much to the Father’s case. Ultimately, the acceptance and weight to be placed on expert evidence were matters for the Judge. We are not satisfied that the Judge had erred. These Grounds are not reasonably arguable.

We see no other reason in the interest of justice why this appeal should be heard. In the premises, we decline to grant leave for the Father to appeal against the ADHD Order.

Leave Application in relation to the Care Arrangements Order (CAMP 309/2023)

For this application, we will focus on the Grounds addressed in Ms Chiang’s submissions. However, for a proper understanding of the Care Arrangements Judgment, it must be borne in mind that the trial was to determine the best care arrangements for the Children. It was their interest which was of prime importance.

Ground 2

Ms Chiang submits that the Judge made findings in relation to the Father's conduct which included serious allegations of physical assault (Judgment, [130]-[131]), and findings as to why the Children had become resistant to contact with their father (Judgment [132]-[137]). The Father was however not challenged or questioned about any of these matters by way of cross-examination or did not have opportunities to respond to these allegations at trial.

In support, Ms Chiang referred to extracts of transcripts of hearings on 28 October 2022 and 8 November 2022. However, she did not identify which parts of the evidence in the transcript this Court should focus on.

Paras 130-137 of the Judgment were part of the treatment on whether the Mother had deliberately alienated the Children. The treatment started at [82]. Apparently, it was an important, if not the most important, part of the Father's case. It is clear from reading those paragraphs that the Judge was careful and comprehensive in dealing with the evidence before the Court. He was assisted by the evidence of psychology experts, namely, Ms Yau, Ms Lee and Dr Sonya Law, as well as the evidence of the social welfare officer, Mr Lau. The Judge did not overlook the evidence of the Father. The Judge's analysis of the evidence was balanced, taking into account inherent probabilities where appropriate.

The rule on cross-examination is neither inflexible nor to be applied rigidly. The trial had taken 12 days and its purpose was to ascertain the best care arrangements for the Children. We are not satisfied that the Judge had committed any error which would falsify his findings, or otherwise justify the interference of this Court. We do not consider that this Ground has any reasonable prospects of success.

Grounds 4 and 5

Ms Chiang submits that the Judge erred in rejecting the evidence of RW1, RW4 and RW5. The findings made by the Judge required him to strain the evidence and in overall terms were against the weight of the totality of evidence before the Court.

Ms Chiang also submits that the Judge failed to take into account the oral evidence of Ms Yau, in particular those aspects that were favourable to the Father's case on alienation.

It is plain from the Judgment that the Judge had taken into account the evidence of RW1, RW4 and RW5: see Judgment, [59], [62], [63], [66]-[74] and [75]-[80]. The weight of the evidence was a matter for the Judge. The Judge was entitled to prefer the evidence of some witnesses to that of others. We do not consider that Ground 4 has any reasonable prospect of success.

The evidence of Ms Yau was given extensive consideration by the Judge (Judgment, [138]). Similarly, we do not consider that the Judge had failed to take proper account of Ms Yau's evidence. We do not consider that Ground 5 has any reasonable prospect of success.

Ground 6

Ms Chiang argues that the Judge failed to consider or place sufficient weight on the authorities submitted to the Court on the issue of parental alienation, citing *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568 and *C v S (Custody, care and control, access)* [2021] HKFLR 25 at 27. She submits that the Judge erred in law by placing too much weight on the expressed wishes and feelings of the Children, and that it was wholly unsafe to do so in light of the fact that there was a positive finding of alienating behaviour and of the Mother's behaviour not helping with contact (Judgment, [139]).

With respect, these were matters for the Judge to put into the balance in arriving at the best care arrangements for the Children. The Judge clearly was aware of the task he had and had considered the matters with due care. We are unable to see any real substance in the criticisms. We do not consider that this Ground is reasonably arguable.

As to the other Grounds of Appeal which were not developed in Ms Chiang's submissions. We see no substance in them.

We see no other reason in the interest of justice why this appeal should be heard. We decline to grant leave to appeal.

Stay of Execution of the ADHD Order

In order to justify a stay of execution, the appellant must show that good reasons exist: *Star Play Development Ltd v Bess Fashion Management Co Ltd* [2007] 5 HKC 84 at [6]-[10], per Ma J (as he then was).

Given this Court's view that there is no reasonably arguably appeal against the ADHD Order, this application fails in limine.

Disposition

For the above reasons, we make an order in terms of both the 309 and 310 Amendment Summons with no order as to costs. We dismiss: (1) the New Evidence Summons; (2) both the 309 and 310 Leave Summonses; and (3) the application for stay of execution of the ADHD Order.

We make no order as to costs.

We also make an Order under Order 59, rule 2A(8) that no party may request these matters be reconsidered at an oral hearing *inter partes*.

Unreasonable litigants and Case Management

This Judgment cannot be concluded without a few words on litigants who fail to exercise any reasonable restraint and overwhelm the Court and the other side with endless applications. Regrettably, this case illustrates the problems faced by the Court with such a litigant. As revealed in the Care Arrangements Judgment, the Father had filed over 140 affidavits in this case (at the time of the Judgment).

Apart from being disproportionate and unhelpful (in this case, it was unhelpful to the situation of the Children or the Father's own case), such behaviour is wholly unfair to other court users. It is the duty of the Court to ensure that its finite resources are shared fairly by court users.

It is imperative for the Court to exercise its extensive case management power to ensure that proper litigation discipline is observed. To mention a few examples, deadline for filing interlocutory applications can be imposed; page limitation may be prescribed for affidavits whilst strictly enforcing the rule against expressions of opinion or arguments in such documents; and for exhibits in the form of bundles of documents, directions can be made for the identification of relevance and the relevant pages related to each relevant topic.

The exercise of firm case management would serve the interest of the parties in terms of resolving their differences more swiftly, with less legal costs and in a proportionate manner.

(Susan Kwan)

(Anthony Chan)

Vice President

Justice of Appeal

The Petitioner acting in person

Ms Melinda Chiang, instructed by HY Leung & Co. LLP, for the Respondent

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