

HONG KONG / JUDGMENT

RM (aka RH) v. SRM

[2019] HKFC 324

COURT

Family Court

DECIDED

18 December 2019

CASE / FILE NUMBER

FCMC7451/2016

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bjbj FCMC 7451/2016

[2019] HKFC 324 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 7451 OF 2016

BETWEEN RM (aka RH) Petitioner and SRM Respondent

Coram: His Honour Judge I Wong in Chambers (Not open to Public) Dates of Hearing: 9, 10, 15,
16,17, 22 and 23 May 2019 Date of Closing Submission: 14 June 2019 Date of the Petitioner s
Supplementary Note: 20 June 2019 Date of Judgment: 18 December 2019

JUDGMENT

(Relocation and Schooling)

Introduction

AUTONUMOUT There are two summonses before me. AUTONUMOUT The first is an application taken out by the petitioner mother for the relocation of the parties younger son to Japan, her home-country. The second one, taken out by the respondent father, is for leave for the younger son to attend an English international school instead of a Japanese school in Hong Kong. AUTONUMOUT In this judgment I shall continue to refer to the petitioner and the respondent as the mother and the father . I shall refer to the elder boy as and the younger one as . G was born in March 2004 and is now aged 15 . L is 7 years old. AUTONUMOUT Prior to these applications, the parties have already had a skirmish when the father sought security for costs of \$750,000 to be paid by the mother in respect of her application for relocation. By a judgment dated 8 April 2019,

the father's application was refused. This is the background against which the trial has taken place. I shall refer to the judgment of 8 April 2019 as the Security for Costs Judgment.

AUTONUMOUT It has to be mentioned that the present application for relocation is already the mother's second application. Her earlier application, which was under FCMC 8500/2014 and was heard not long ago before Deputy Judge Susan Wong, was rejected after a 11-day trial. I shall refer to Deputy Judge Susan Wong's judgment of 7 September 2016 as the 2016 Relocation Judgment).

The History AUTONUMOUT I have already set out the history of this matter at some length in the Security for Costs Judgment; the following background is extracted from that Judgment.

AUTONUMOUT The mother is Japanese and the father British. They met in Germany in 1999 when the mother was working and the father was on a business trip there. They soon started a relationship. In 2004 the mother moved to join the father in the UK where they were married in March 2004. A week later, G was born. AUTONUMOUT In 2007, the father was offered a job in Hong Kong and the whole family moved to settle here. Subsequently, L, the younger son, was born in August 2012 in Hong Kong. AUTONUMOUT Sadly, the marriage did not last long. In the summer of 2013 the mother, taking the boys with her, moved out of the former matrimonial home and stayed at her boy-friend's apartment. I shall refer to the boy-friend as Mr Y. Mr Y is Japanese and at that time was working in a bank in Hong Kong. AUTONUMOUT The mother petitioned for divorce on 27 June 2014 (under FCMC 8500/2014) on the ground of the father's unreasonable behaviour. The father defended and cross-petitioned on the ground of the mother's adultery. AUTONUMOUT On 23 January 2015 the mother took out an application to have the boys relocated to Japan. This was her first relocation application that led to the 2016 Relocation Judgment. At that time, her claimed intention was to re-settle in Japan and she wanted the boys to go with her. She claimed she would live with her parents in the Kisarazu City of Chiba and the grandparents would be available to assist both financially and physically in taking care of the boys. AUTONUMOUT As referred to above, this first relocation application went through a 11-day trial and was refused by Deputy Judge Susan Wong on 7 September 2016 who at the same time granted the joint custody of the boys to the parties with care and control to the father and reasonable access to the mother. AUTONUMOUT The parties subsequently came to an agreement that the divorce main suit be started afresh and proceeded on the ground of 2 years separation. Consequently, a new petition (under the present case reference) was taken out by the mother on 16 June 2016. AUTONUMOUT The parties had further been able to come to a settlement over the financial matters which was endorsed by way of a consent order on 31 May 2017. In brief, the parties agreed to have their property in London sold with the sale proceeds to be shared equally. The capital split was \$1.75 million each. AUTONUMOUT Decree nisi was granted on 9 January 2017 and it was made absolute on 16 June 2017. About 4 months later, the mother took out the present relocation application. AUTONUMOUT At the very beginning, the mother's application covered both of the boys, as was the case in her 1st relocation application. The Social Investigation Report (the SIR) and the International Social Service Report (the ISSR) were duly obtained. Ms Lo, the social investigation officer, was not supportive of the mother's application. She was of the view that it is to the best interests of the boys that they are to remain in Hong Kong under the care of their father. AUTONUMOUT At the Children Dispute Resolution Hearing of 25 May 2018 the mother dropped her application in respect of G but continued to pursue her

application in respect of L. AUTONUMOUT What followed were the father's application for security for costs as referred to in [4] above and the resultant Security for Costs Judgment. The Present Situation of the Parties The Father and the Boys AUTONUMOUT The father is living with the boys in the former matrimonial home in Shatin. This is a leased apartment with an area of about 1402 m. Together with them are the father's girl-friend Ms K and a domestic helper Ms S. Ms K is Japanese with whom the father started a relationship in 2015 and was introduced to the boys in the summer of 2016. As Ms K does not have any right to reside in Hong Kong, she has been travelling between Hong Kong and Japan and has been staying with the family on an interval of about 3 months each. Ms K had attended an international school in Japan before she received university education in Seattle and Hawaii. She has a bachelor and a master's degree and is a qualified nurse practitioner. She used to work for a clinical research company in Tokyo but has resigned for the purpose of securing an employment in Hong Kong. AUTONUMOUT There has not been any change in the father's employment since the 2016 Relocation Judgment save that he has since been promoted to the position of Key Account Director. AUTONUMOUT G is currently attending an English international school which I shall refer to as the A School. He used to study in a Japanese school in Hong Kong. That was the situation till the summer of 2018 when he finished his primary school and changed to the A School. L has finished kindergarten since the Security for Costs Judgment. As from April 2019, he too has been attending the A School. That was arranged by the father despite the objection from the mother. The Mother AUTONUMOUT The mother returned to Japan for good on 28 September 2016, just 3 weeks after the handing down of the 2016 Relocation Judgment and way before the decree nisi was granted and any settlement over the financial matters was reached. The undisputed evidence is that she was not joining her parents. In fact, she was joining Mr Y who probably had returned to Japan earlier and has since been living with him. Initially she stayed in a rented apartment with her boy-friend and later purchased a house in Yokohama in May 2017 with a down payment of JPY2,000,000 (about \$140,000) and a mortgaged finance. The house is a two-storey 4-bedroom house with a total floor area of about 1002 m. AUTONUMOUT She is currently working full-time as an assistant manager for a large motors corporation in Tokyo. She plans to marry with Mr Y after the latter's divorce is finalized. Access AUTONUMOUT The mother is having access to the boys on every other weekend in Hong Kong. Normally, she would arrive in Hong Kong on Saturday and leave on Sunday and the boys would stay with her in a hotel close to the former matrimonial home. On a couple of occasions Mr Y came along. On the top of that, there is access by electronic means and she is sharing the boys long holidays with the father on equal basis. The boys have also on the 3 occasions joined the mother in Japan during long holidays, viz, from 13 August 2018 to 26 August 2018, from 31 December 2018 to 6 January 2019; and from 10 March 2019 to 30 March 2019. AUTONUMOUT By and large, apart from some hiccups at the start, access has been carried out smoothly. The Mother's Case AUTONUMOUT The mother has now resettled in Yokohama with a secure job and a stable relationship. She has purchased her own house which provides L with satisfactory living environment; specifically, L will have his own room. There is a local primary school nearby where a school place is guaranteed. AUTONUMOUT As regards the taking care of L, the mother's employer allows her to work from home for 80 hours a month and there is also a policy which allows her to work 4 to 7 hours a day for any period from 8:45 am to

5:45 pm. This would give her the flexibility she needs to take L to school or return home. There would also be childcare assistance from her parents and Mr Y. Her parents are committed to coming to her home on weekdays for taking care of L. Thus, she is in a position to take good care of L. AUTONUMOUT In her affirmations, the mother complained about the inadequacy of the father's care given to the boys since her departure. Indeed, she went so far as to say in her affirmation of 21 October 2017 that the father has been unable to take good care of the boys. The long list of her complaints includes the father's frequent overseas trips for business and with his girlfriend Ms K, leaving the boys to stay with the domestic helper. There are also complaints that the father and Ms K consumed excessive alcohol and smoked at home. There are instances where the boys were left unattended at home and L's health and dental care were neglected. The father was disinterested in the boys' activities, even if they were school-related and G's academic performance had been in the decline. The Father's Case AUTONUMOUT The father objects to the application. He regards the application as the mother's appeal against the 2016 Relocation Judgment through the back-door. Given that there was no appeal and that the present application was issued 13 months after the 2016 Relocation Judgment only, the mother is trying to have a second bite of the cherry. She is just fighting this costly litigation out of her own selfish interest. The mother currently contributes nothing to the financial upkeep of the children. By this litigation, she is draining the father's finances. The father is a working family man of limited finance and he has been financing this litigation with the proceeds of sale of the London property. This money could have been better used for the benefit of the boys. AUTONUMOUT Except on one occasion when the boys were left at home unattended for a few hours on a Sunday when the domestic helper was on leave, the father essentially denied all accusations against him. He is vehement that with the assistance of Ms K and the domestic helper Ms S, he has been giving adequate and proper care to the boys. The boys have been in a settled and stable environment with the father since the departure of their mother. The boys are doing well and so their lives should not be disturbed. Most importantly, the relocation of L to Japan would mean separating the boys who have developed a very close bonding with each other. It is simply not to their interests that they are to separate from each other. Issues to be Determined AUTONUMOUT At trial, whether L should join the mother in Japan has become the only major issue before the court. AUTONUMOUT Another issue is, in the event that the mother's application in respect of L fails, whether L should continue to stay in the same English international school where G is currently attending. There is an issue raised by the father by way of his summons dated 12 July 2018. The mother maintains that L should attend a Japanese school in Hong Kong until he finishes primary school. AUTONUMOUT There is also an issue that came up at trial. This is whether the requirement of the mother's consent for the children to leave Hong Kong temporarily should be removed. The Witnesses AUTONUMOUT Apart from the parties, the following persons gave evidence in court: Ms Lo, the social investigation officer; Mr Y, the mother's boyfriend; Mr OH, the principal of L's kindergarten; the mother's father (the grandfather); Ms K, the father's girlfriend; and Ms S, the father's domestic helper. The Legal Principles AUTONUMOUT Section 3(1) of the Guardianship of Minors Ordinance (Cap 13) () provides:

- (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of the income of any such property-
 - (a) in any proceedings before any court (whether or not a court as defined in section 2) the court-
 - (i) shall regard the best interests of the minor as the first and paramount consideration and in having such regard shall give due consideration to- (A) the views of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and (B) any material information including any report of the Director of Social Welfare available to the court at the hearing; and (ii) shall not take into consideration whether, from any other point of view, the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father; (b) , a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other; AUTONUMOUT On relocation cases, the Court of Appeal, in *SMM v. TWM (Child: Relocation)* [2010] 4 HKLRD 37, followed the approach enunciated by Thorpe LJ in the English Court of Appeal case of *Payne v Payne* [2001] EWCA Civ 166, [2001] 1 FLR 1052. Cheung JA said the following: The principles
- 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 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 :
 - (a) 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)
 - (b) 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)

- (c) The application should be approached as follows :
- (i) 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. (ii) 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? (iii) 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? (iv) 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)
 - (d) In short, the relevant factors are :
 - (i) The welfare of the child is always paramount. (ii) There is no presumption created by section 13(1)(b) of the English Children Act 1989 in favour of the applicant parent. (iii) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight. (iv) 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.
 - (v) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important. (vi) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important. (vii) The opportunity for continuing contact between the child and the parent left behind may be very significant. (per Butler-Sloss P at paragraph 85) AUTONUMOUT There were some debates in the UK on whether the guidance set out by Thorpe LJ in para 40 of *Payne v Payne* applies only to cases where the applicant is the primary carer or whether there is a covert presumption in favour of the primary carer. In *Re TC and JC (Children: Relocation)* [2013] EWHC 292 (Fam), [2013] 2 FLR 484, Mostyn J said the following:
 - 10. The foundation of the jurisprudence in this field is the well-known case of *Poel v Poel* [1970] 1 WLR 1469. Although there were many other subsequent decisions of the Court of Appeal the next major milestone was the case of *Payne v Payne* [HYPERLINK "http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html"](http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html) \o "Link to BAILII version"
 - [2001] EWCA Civ 166 [HYPERLINK "http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html"](http://www.bailii.org/ew/cases/EWCA/Civ/2001/166.html) \o "Link to BAILII version"

- [2001] Fam 473 HYPERLINK "<http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/2001/166.html>" \o "Link to BAILII version"
- [2001] 1 FLR 1052, where Thorpe LJ set out his memorable "discipline" in para 40. That decision was controversial, at least in some quarters, for arguably perpetuating a covert presumption in favour of location, at least where the application was made by the child's primary carer. It was reconsidered in 2011 in the case of *K v K* (Children: Permanent Removal from Jurisdiction) HYPERLINK "<http://www.bailii.org/ew/cases/EWCA/Civ/2011/793.html>" \o "Link to BAILII version"
- [2011] EWCA Civ 793 HYPERLINK "<http://www.bailii.org/ew/cases/EWCA/Civ/2011/793.html>" \o "Link to BAILII version"
- [2012] Fam 134 AUTONUMOUT Recently, in *ZJ v XWN* (Leave to Appeal: Child Relocation) [2018] 3 HKLRD 644, [2018] HKCA 436, CAMP 67/2018, the Court of Appeal, after having reviewed *K v K* (Children: Permanent Removal from Jurisdiction) [2011] EWCA Civ 793, [2012] Fam 134 and *Re C* (A Child) (Internal Relocation) [2016] Fam 253, confirmed that the only principle of law enunciated in *Payne* is that the best interests of the child is paramount and the rests is guidance and that Cheung JA's comments in *SMM v TWM* should be read in that light: at [18] and [23]. The *Payne* guidance should not be regarded as a prescriptive blueprint: at [22]. AUTONUMOUT The Court of Appeal endorsed what Vos LJ said in *Re C* (A Child) (Internal Relocation) at [82] and [83],
82. I add a few words in an attempt to summarise the position that has now been reached. As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional.
83. One of the most difficult aspects of this case has been to establish in the light of previous authority what use, if any, should be made in the process we have just described of the 4 disciplines identified by Thorpe LJ at paragraph 40 of his judgment in HYPERLINK "<https://login.westlawasia.com/maf/app/document?src=doc&maintain-toc-node=true&linktype=ref&&context=&crumb-action=replace&docguid=I1ADE6C20E42811DA8FC2A0F0355337E9>" *Payne v. Payne* ([2001] EWCA Civ 166, [2001] 1 FLR 1052) (the *Payne* factors). In my judgment, one of the valid concerns about the *Payne* factors is that they do not adequately reflect the gender-neutral approach to these problems that the court will now adopt in every case. Whilst the *Payne* factors may still be of some utility in some cases, they are no part of the applicable test or

the applicable principles. In some circumstances, the judge may find them useful. In others, the judge may not. If the judge finds them a useful guide to some of the factors that he should consider, he will be doing so only as part of the multi-factorial balancing exercise that is required. (emphasis added) AUTONUMOUT The Court of Appeal also dealt with the use of the welfare checklist in the balancing exercise. The welfare checklist is only an aide-memoire. A judge is not required to mechanically list every factor to demonstrate that he has considered the same. AUTONUMOUT The Court of Appeal emphasized that the guidance in *Payne* or *SMM v TWM* or the welfare checklist are simply tools to assist a Family Judge in making the multifactorial assessment to reach a result which is in the best interest of the child after taking account of the potential impact on the parents: at [30]. See also *B, A v B, L (Child Relocation)*, [2019] 4 HKLRD 23, [2019] HKCA 822. AUTONUMOUT Therefore, I would have to conduct a holistic balancing exercise and in doing so, I would make use of the *Payne* approach and the welfare checklist as an aide-memoire tools. Parties Allegations AUTONUMOUT As in any high-conflict children proceedings, this litigation has inevitably turned to be a fault-picking exercise. Both parties are pointing their fingers against each other and try to have the other side's conduct or absence of conduct to be examined microscopically. These allegations are nothing but clear signs of their acrimony against each other. It has to be pointed out at this early stage that it is unnecessary for the court to come to definite findings on each and every of these allegations. What is required is for the court to come to findings on allegations that are relevant to the issues in dispute only but not further. To do otherwise would only add fuel to the already tormented relationship between the parties. Should permission be given for L to leave Hong Kong in order to relocate to Yokohama of Japan with the mother?

- (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 boy's life? AUTONUMOUT When being asked in the witness box by her counsel Mr Egerton on why she wanted to have L relocated to Japan, her answer was that given his tender age, L should be with her mother and that he should be immersed in Japanese language culture. AUTONUMOUT If relocation is allowed, the mother said she would encourage L to maintain communication with G and the father and the paternal grandmother via electronic means. The father and his relatives may stay with the mother in Japan for access during weekends and L and G can spend the majority of their holidays together with the father. If G would like to visit L in Japan, the mother would arrange for G's flight tickets. AUTONUMOUT I accept what the mother said. I believe the mother's application is genuine and is not motivated by her desire to exclude the father from L's life.
- (2) Is the mother's application realistic, i.e. founded on practical proposals both well researched and investigated? AUTONUMOUT The mother and Mr Y are living in Yokohama and her parents (the grandparents) are living in the Kisarazu City of Chiba which, according to the ISSR, is about an hour away. She has a younger brother who lives in Tokyo with his family. AUTONUMOUT The mother's regular working hours is from 8:45 am to 5:45 pm. She normally has to be away from home for work from 7:15 am to 7:30 pm every Monday to

Friday. She said her employer has a work from home policy that would allow her to work from home for up to 80 hours a month, which can be split over 10 days. Additionally, her employer also has a policy that would allow her some flexibility in working hours. Her minimum of work is 4 hours per day, whether at home or in office or a combination of both. There are 5 extra annual leaves for her to take care of L if he falls ill in addition to 20 days annual leave. AUTONUMOUT Part of the mother's childcare plan is that her parents are readily available for taking care of L while she is at work. Her plan is that her parents would look after L during weekdays. AUTONUMOUT Both grandparents are retired civil servants and pensioners. The grandfather is aged 72 while the grandmother is 71 and both are on medication for their diabetes. The grandmother is not working but the grandfather has since his retirement working in a cleansing company, earning some extra income of JPY 1,529,300 per annum on the top of the annual pensions in the sum of JPY 2,441,903. The grandfather testified that if the relocation is allowed, he would quit his job so that he and his wife could take care of L, especially when the mother is out for work. AUTONUMOUT In response, Mr Pickavant doubted very much whether the grandfather could do so because the reality is that the grandfather needs the income. This can be seen from the fact that the grandfather has been tirelessly working 6 days a week with a day-off on Tuesday only. The grandparents need this money for their living because, as the grandfather has admitted in the witness box, the lump sum that he had received upon retirement was long depleted. AUTONUMOUT The mother said Mr Y would also be available for taking care of L. In evidence, Mr Y said he was promoted to the position of senior deputy manager of his bank's headquarters last October. His employer has a similar policy that allows him flexible and shorter working hours. He testified that he took leave from work in January this year for taking the boys to an aquarium. AUTONUMOUT An ISSR of 30 March 2018 was obtained for the purpose of the mother application. According to the report, the newly purchased house in which the mother and Mr Y are now living is considered to be appropriate and adequate for L if he is allowed to be relocated to Japan. As I read it, the report, which was an outcome of home visit and interviews with the mother, her parents and Mr Y, is of the view that the mother's childcare plan is workable. Discussion AUTONUMOUT From the medical records produced by the grandfather, I accept that his blood sugar level and blood pressure have been well managed. He is apparently a healthy person as is evident from the fact that he has all along been working on full-time basis. I accept that physically speaking, the grandfather is capable of taking care of L. AUTONUMOUT Though the grandmother, now aged 71, has not given evidence at the present trial, she did so in the 2016 Relocation Application. Deputy Judge Susan Wong doubted the veracity of the mother's case that she had the physical support of her parents in the care of the boys for the reason that the grandmother had health issues: [19] & [82]. The judge also agreed with the father that the grandmother's mental and physical conditions were not good and she was also unstable, senile and erratic: [90]. This finding has not been overturned. At trial, there is evidence suggesting that the grandmother has not been keeping her diabetes well under control. I should therefore be mindful that in future the grandfather may have to take care of his wife as well. AUTONUMOUT The reality is, on monetary terms, if the grandfather has to quit his job, this

would mean roughly at least a one-third drop of his household's monthly receipts. Given that his capital has long been depleted, the drop would undoubtedly cause a significant impact on his finances. He would have to rely entirely on his and his wife's pensions. I have some reservation as to whether the grandfather would quit his job entirely. AUTONUMOUT It has been reported by Ms Lo that according to the mother, the grandparents planned to take turns to attend to the mother's home on weekdays for taking care of L. However, the case being put forward by the mother at trial, especially on the evidence of the grandfather, seems not to be the case. If it is the case that the grandparents are to take turns, given the findings of Deputy Judge Susan Wong regarding the grandmother's mental and physical conditions, naturally there would be concerns as to whether the grandmother would be readily available for the benefit of L. Further, if the grandparents are to take turns, a corollary is that there would not be any need for the grandfather to quit his job entirely. Yet, no question was put to the grandfather as to whether he plans or could work on part-time basis. AUTONUMOUT The mother had access to L for 3 weeks during March this year but during each workday L was merely placed in her employer's nursery whilst the mother worked whole day. Apart from L, there was only one other child much younger than L in the nursery and nobody there spoke English. G was also left alone unaccompanied during his 12 days stay in Japan in January 2019. Mr Pickavant criticized that these occasions would have been an ideal opportunity for the mother to prove that she could make use of her employer's policies to establish work at home routine or even set up some flexible working time but she did not do so. Mr Pickavant added that given the mother's position is one similar to an administrative assistant, even if she is eligible for the work at home scheme she would require detailed approval and it is doubtful whether she would get one. There is simply no proof from the mother that she would obtain approval for the court's consideration. In fact, the mother leaves home early in the morning and returns late at night. She also works overtime. AUTONUMOUT There is some force in Mr Pickavant's submission that the mother could have armed with her the approval from her employer to court in order to buttress her case. That said, the authenticity or the truthfulness of the policies has not been subject to challenge. According to the policies produced by the mother, she is legible for the scheme. On evidence, at the very least, the scheme would be available to her on some of the days when the grandfather is not available. AUTONUMOUT Mr Pickavant also relied upon Ms K's own account of her difficulties of applying for work at home and her views that in Japanese culture, such policy is more apparent than real. In my assessment, what she said is at most her own experience and cannot be any generalized statement about the actual situation in Japan. In any event, I agree with Mr Egerton that Ms K's own work at home pattern in her previous employment is obviously inconsistent with what she said about Japanese culture. AUTONUMOUT Mr Y occupies a senior position in his bank. On the evidence before me, even if Mr Y would be available his assistance would at most be marginal. I find that Mr Y could be a helping hand on an ad hoc basis only. AUTONUMOUT The mother has located a public primary school in her neighbourhood. She has made contacts with the school. It is a requirement of the law in Japan that once L becomes a resident he would be given a place there. Strikingly, it appears that the mother knew very little about the school's suitability for

L. AUTONUMOUT The mother is prepared to enrol L in Kumon and the Yokohama International Country and Athletic Club for him to develop his English academically and socially. I accept what the mother said. AUTONUMOUT The living condition, which has not been subject to any challenge from the father, is not in issue. The mother's house is 2 storeyed with 4 bedrooms one of which will be L

- s. The living condition has been found to be adequate and satisfactory. AUTONUMOUT Same for any relocation case, there are bound to be uncertainties in what lies before the parties. Indeed, this happens not just to relocation cases. It is a reality that, to a greater or lesser extent, one has to face. Whilst I consider that there are uncertainties surrounding the grandfather's financial situation which may have an adverse impact on his availability when the mother is at work, after having heard his evidence, I accept that not only the grandfather is capable of giving care to L, he is also willing to do so. AUTONUMOUT With the caveats that I have made above and subject to what I am going to say when I come to the overall assessment, I am prepared to hold that the mother's plan is a realistic one.
- (3) Is the father's opposition motivated by genuine concern for the future of the children's welfare or is it driven by some ulterior motive? AUTONUMOUT The father's case has always been a straightforward one: the existing care and control arrangement should continue. For the best interest of both G and L, they should be given a stable living in Hong Kong where they are familiar with. The father sees that the boys have flourished and have been living happily with him since their mother's departure in September 2016. There is no reason why the status quo needs to be upset. I accept that the father's opposition is motivated by his genuine concern for the boy's welfare.
- (4) What would be the extent of the detriment to the father and his future relationship with L were the application granted? AUTONUMOUT The father has been the primary carer of the boys since September 2016; I am sure he will be very unhappy if L is to go to Japan. However, the father's relationship with L could be maintained by generous contacts, and in this regard, the mother has agreed that the father and his relatives, for instance, the paternal grandmother, may stay with the mother when they visit Japan for access to L during weekends in accordance with the father's schedule. If G would like to visit L during his school holidays or weekends, the mother will arrange for G's flight tickets. Further, during school holidays, L and G can enjoy their time together by spending a majority of their holiday with the father. AUTONUMOUT Apart from face to face access, there are, among others, Skype, Face Time and texted messages available for keeping the relationship. AUTONUMOUT Whilst the relationship between the father and L could still be maintained, practically speaking, it would mean the daunting exercise of commuting between Hong Kong and Yokohama would have to be carried out by the father instead of by the mother as is the present situation. If G would like to see L on a more frequent basis, probably he would also have to join his father in the daunting exercise. How this could be carried out and whether this could be carried out in reality is a matter to be seen.

- (5) To what extent would that detriment be offset by extension of the L s relationships with the maternal family and homeland? AUTONUMOUT L was born in Hong Kong and has been spending his whole life here. He is a Japanese citizen by descent from his mother and it is to be seen in that context that Japan is regarded as his homeland; meanwhile, it has to be born in mind that the UK is also his homeland. The boys have no extended family from either the paternal or maternal side in Hong Kong. The maternal grandparents live in a city that is about an hour away. The mother s brother, who is married with a young daughter and lives in Tokyo, is also about an hour away. I accept that if L moves to Japan the extension of L s relationship with these extended family members may to a small extent compensate for the detriment to the father-children relationship.
- (6) What would be the impact on the mother of a refusal of her realistic proposal? AUTONUMOUT The mother has been seeing the boys regularly since her return to Japan in September 2016. As referred to above, she is having access to the boys on roughly bi-weekly basis and the boys would spend time with her in Japan during holidays. G was in Japan for about 12 days in January this year and L was there for 3 weeks this March. It is apparent that even on her own terms she has been able to maintain a close relationship with the boys throughout all these times. If the relocation application is refused, I am sure she would be unhappy and disappointed but I am certain that she would not be devastated.
- (7) Overall what would be in the best interests of the children? AUTONUMOUT Even when it is found that the mother s plan is realistic this would not be the end of the matter. The above appraisals must be brought into an overriding review of the children s best interests as the first and paramount consideration. As I have emphasized in the Security for Costs Judgment, the court would not consider the relocation issue by just weighing all the factors in respect of L alone as if G is of no concern. The proper question to ask is, whether it is to the boys best interest if they are to stay with their father in Hong Kong or whether it is to their best interest if L alone is to go to Japan. In other words, the issue of whether or not L should be allowed to go cannot be considered without reference to G or without having regard to G s interest: see [86]. AUTONUMOUT There are a couple of factors that I need to consider. The Care of the Boys AUTONUMOUT Whilst in her SIR Ms Lo agreed that the mother s living condition in Japan has improved, that Mr Y and her parents are ready to render childcare support and also acknowledged that the significance of maternal care is important for the boys emotional development, she is not supportive of the mother s application. At trial, Ms Lo maintained her views that the boys should continue to live with their father in Hong Kong. AUTONUMOUT It was commented by Ms Lo that the father, who has become the primary carer for the boys, has been coping well in his childcare role since G and L returned to his care in September 2016. Both boys have been under the adequate and proper care of the father and have demonstrated their close bonding and related well with their father. It would be more favourable for them to continuously reside in a place they are familiar with and maintain their social network in Hong Kong instead of uprooting them to an unfamiliar country, cutting their ties. Ms Lo considered that it would be for the boys best interests for them to be under the care and control of their father and their mother to continue to have

access to them. AUTONUMOUT Her evidence was unshaken when being cross-examined by Mr Egerton. I accept she has conducted her investigation properly and has come to her own independent judgment. Physical Care AUTONUMOUT L has been continuously under the father's care since he started his kindergarten education. Ms Lo reported in her SIR that the mother raised the incident that L was seen to have touched the breast of Ms OH when he was at kindergarten. The mother saw it as a sign of attachment to his natural mother but this incident was unsupported by Ms OH's evidence. L was about 3 years old when the mother left, I have no doubt that that was the time when L, as a child of tender years, was most in need of his mother when compared to what he is now. Thankfully, L appears to have been growing well in the absence of his mother on a daily basis. In any event, Ms OH was proved to be a confusing and evasive witness. She was confusing because when being cross-examined she said she was not aware of the contents, specifically the recommendations of the SIR. She was evasive on various aspects, such as on whether she got a university degree and whether she has had a fairly good relationship with the mother. AUTONUMOUT I acknowledge that given L's age, the presence of his mother physically in his life is of great importance. However, physical care is one of the issues that the court has to consider. The term best interests of the minor in section 3 of GMO should be given the widest meaning. It is not limited to monetary or material needs, the minor's physical well-being or physical comfort but encompasses medical, moral, religious and emotional issues: *H v N (Children: variation of interim order)* [2012] 5 HKLRD 498, at [25]. AUTONUMOUT As far as L's physical care is concerned, I have already mentioned the uncertainty arising from the grandmother's potential health issues in [55] above. Given that the grandfather is already 72 years old, I believe I must too have regard to the grandfather's potential health issues which inevitably would have an impact on his availability in taking care of L. AUTONUMOUT Another uncertainty is that the benefits under the policies of the mother's employer as portrayed by her are the maximum allowable benefits that she may have. It remains to be seen as to whether and to what extent these benefits would be approved in her favour. That being the case, it is certainly valid for Mr Pickavant to have pointed out why the mother did not secure a positive response from her employer prior to trial and why the mother did not take the benefit of these policies when G and L visited her in January and March this year. AUTONUMOUT At trial, when she was asked by her counsel Mr Egerton on why she considered it is in L's best interest to be relocated with her to Japan, the mother's answer was L could be with his mother and immersed himself in Japanese culture. It is significant to note that the mother did not refer to any complaints she had made in her affirmations against the father nor did she mention any misconduct or lack of care on the part of the father. The father has been criticised for having frequent overseas trips but it is clear that these lines of attack have not been pursued. In any event, I do not see the complaints justified. Likewise, the mother's allegations against the father about his alcoholic abuse and that Ms K is a smoker are without justification. AUTONUMOUT As I see it, the objective fact is during the past 3 to 4 years, in the absence of their mother in Hong Kong, the boy flourished. There is also evidence in the SIR that the father is very hands-on. The father would coach L on his home assignment and would also read story to him during bedtime.

The Boys Emotional and Education Needs AUTONUMOUT In the previous relocation trial, the judge found the mother was an impulsive person, would do things her way without considering others feelings and have told many lies: at [142] & [145]. In fairness to the mother, these findings were made on the basis of things that had happened before the 2016 Relocation Judgment. AUTONUMOUT At the present trial, it was reported by Ms Lo that when G was asked about his feeling if he was arranged to be relocated to Japan, he broke into tears and said it could be an option for him but he did not really want to. He treasured to be with his close friends in Hong Kong and he would miss them, and he enjoyed the soccer activities in Hong Kong. Importantly G said he had expressed his will of staying in Hong Kong to his mother who however did not really take it and was still keen on bringing him and L together to Japan. As I see it, it is indicative that the mother is rather egocentric. AUTONUMOUT G was said to have mentioned to Ms Lo that when he was with the father, he felt relaxed but when he was with the mother, he felt a bit cautious. There was an occasion when he was talking with the mother about his wish to change schooling, she opposed to it and became impulsive. She grasped hold of his chest out of temper and that had upset him. He told Ms Lo that when he was with Ms K he felt like he was a grown up kid as Ms K showed respect to him, and when he was with Mr Y, he felt cautious as he had to be mindful of his manner in face of a Japanese who had their particular Japanese etiquette. He hoped his mother would block less things from his wills. One of the things that he mentioned was that his mother blocked him from changing to an international school which made him feel distressed. On the other hand, G hoped that his father could give more help to him in his study. As I read it, it is evident that G would prefer to look to his father for help. AUTONUMOUT L was too young to give his views to Ms Lo. However, it was reported that when he was asked if he would like to stay long with his mother in Japan, his reply was he preferred holiday with her to living in Japan forever. AUTONUMOUT On evidence, I have no doubt that the father is a more compassionate person who would be more responsive to the boys needs and feelings. AUTONUMOUT The mother was said to have mentioned to Ms Lo that if she fails in her application, she would consider moving back to Hong Kong. In her affirmation of 1 September 2018, she also said if her relocation application is unsuccessful, she would reluctantly return to Hong Kong given that she is to be granted the care and control of the boys. At trial, the mother retracted from what she had said. Both the mother and Mr Y said in evidence that the mother would not be moving back to Hong Kong for the purpose of taking care of the boys. AUTONUMOUT Mr Pickavant criticized the mother for having abandoned the boys after her previous relocation application had failed. In the 2016 Relocation Judgment, the judge found that Mr Y was the only reason why the mother chose to leave Hong Kong: at [128] & [129]. Despite the father s offer that the boys be taken care of by their parents on alternate weeks so that she might stay in Hong Kong for the benefit of the boys, she decided and did leave for Japan just 3 weeks after the 2016 Relocation Judgment. In that sense, I agree with Mr Pickavant that she abandoned her children. That was a decision consciously taken by the mother that she accorded priority to Mr Y over her boys. That said, I should not be mistaken to have come to a view that she is currently not a caring and loving parent. I have no doubt that she is. That is evident from the fact that she

has been diligently returning to Hong Kong on alternative weekends. AUTONUMOUT In the 2016 Relocation Judgment, the judge found the father had undoubtedly demonstrated his ability to look after the boys and therefore granted care and control of the boys to him: [179] & [180]. The father also impressed me as always having been a loving and caring father. He has never given the boys up. He is well commented by Ms Lo to have been giving proper care to the boys. It is glaringly apparent that the father is a more dependable and suitable parent. Bonding between the Brothers AUTONUMOUT The siblings close bonding is of great concern for Ms Lo. It was reported by Ms Lo that L loves to play with and attaches to his elder brother, who is his close playmate. G also expressed openly that he treasured the moments with his younger brother. It is significant to note that Ms Lo already envisaged the situation where the mother is seeking relocation in respect of L alone well before the mother's change of stance. It was observed by Ms Lo that the brothers are good friend to each other and they have very close bonding. If L leaves for Japan with the mother, both brothers would be deprived of the siblings bonding which may not gear to their best interest and healthy social and emotional development. Whilst it was conceded in the SIR that L has developed a close bonding with the mother as well, nevertheless it was commented that L has got used to living with his father and G whom he maintains close bonding with. The father has become a significant person for L, from whom he has been receiving proper and stable care. Continuity of existing care for L in a place where he is familiar, rather than removing him to Japan, can strengthen his sense of security. AUTONUMOUT The father and Ms K said L idolizes and adores G. The boys play together and enjoy the same sport soccer that G is remarkably good at and is able and happy to coach L. I agree with Mr Pickavant that the boys have become an intricate part of each other's lives. Under cross-examination, the mother agreed that the brothers have a close bonding to each other and to some extent L looks up to G as a model and tries to follow his steps. That said, the mother's case is that the boys should be able to maintain their bonding even when L leaves for Japan. I accept that to some extent the boys should be able to maintain their relationship even if relocation is allowed but the ultimate question remains what the best arrangement should be. AUTONUMOUT The mother's plan is to put L to a public school that follows the local curriculum and the Japanese schooling system. At the same time, G would continue to follow the international schooling system in Hong Kong. In that event, the only common holiday is the Christmas vacation where L would have 14 days while G would have about a month. In my assessment, 14 days are hardly sufficient for the boys to maintain their bonding. AUTONUMOUT Further, it is not just a matter of for how long the boys could stay together. Since L is going to attend a local Japanese school if relocation is allowed, his upbringing and mind-set in all probability would be typically Japanese, plus perhaps some influences from his father or G. Much has been said from the mother's side about the 8 years gap between G and L. As I see it, it is exactly because of this gap that one has to be extremely careful and sensitive to the potential impacts on the boys in considering this issue. If relocation is allowed, given that G and L would be under different education systems and live in different countries and cultures, in times, (I am afraid this would happen soon) the boys would be far apart from each other and the close bonding between them would be lost.

AUTONUMOUT I am conscious that in all likelihood G will be attending university (probably in the UK) in 2 years time; by then G will be spending the school times in the UK while L will be spending his in Hong Kong. In that event, there would be more opportunities for the boys to meet and enjoy their time together during holidays or term breaks. AUTONUMOUT For these reasons, I have no doubt that the bonding of the brothers could best be achieved when the 2 boys are together, especially when they are attending the same school and enjoying the same sport now. AUTONUMOUT It has been said that generally speaking if the status quo is found to be working satisfactorily the courts will be reluctant to intervene: see *F v L*, FCMC 11896/2005, (date of judgment: 7 June 2007) at [34]. It is of course not a statement of principle but surely there is wisdom in it. The mother is not the primary carer of the boys. It is clear that neither L nor G would suffer as a result of the refusal of her application. The possibility of separation of the boys is clearly a concern; added to this is the separation of L from the father who has become the significant person in his life. AUTONUMOUT With the conclusion that I have come to, it is unnecessary for me to deal with the parties other allegations. For instance, the mother alleged that the father was not truthful or at least not forthcoming in the trial of the mother's earlier relocation application by not mentioning the potential change of the former domestic helper Ms M who had been a significant factor in determining care and control. Nor had the father referred to his relationship with Ms K who soon began to cohabit with him since September 2016. I do not think it is necessary for me to come to a finding as to whether the father was not truthful at that time as alleged. AUTONUMOUT Turning to the mother, she is being criticised for, first, having declined a school place for L in a preferred kindergarten in June 2016 without informing the father. Instead, she kept L in Ms OH's kindergarten because she was familiar with Ms OH through whom she could control L. AUTONUMOUT Secondly, the mother bribed Ms S, the domestic helper, with a pair of shoes, a hairdryer and bakery goods so as to obtain information about the boys. The mother agreed that she did so but that was her expression of gratitude for Ms S's understanding of her difficulties in getting updates about the boys. I will revert to this allegation when I deal with the question of access below. AUTONUMOUT Thirdly, the mother tried to entice G by arranging a kid model audition with a modelling agency and joining a professional football team in Japan. The mother said she was trying her best to help G fulfilling his dream. AUTONUMOUT Fourthly, the mother was reluctant and was being late in the delivery of the boy's medical records and birth certificates. AUTONUMOUT Fifthly, it has been alleged by the father that there was an incident where the mother had slapped Mr Y in the presence of the grandfather, her younger brother and the boys over Mr Y's access to his own children. AUTONUMOUT Again, with the conclusion that I have come to, it is unnecessary for me to come to any finding on these allegations. AUTONUMOUT For the above reasons, the mother's summons for L to be relocated to Japan should be refused and the summons that care and control of L be transferred to the mother should also be refused. L's Schooling Arrangement AUTONUMOUT The mother proposes that L follows G's example to study at G's previous Japanese school until Primary 6. This would allow L to immerse himself in the Japanese culture sufficiently to preserve and develop his Japanese heritage, and properly learn Japanese. AUTONUMOUT It has been emphasized by Mr

Egerton that it was the parties intention since 2016 for L to attend a Japanese school upon graduating from kindergarten. G s fluency in Japanese (orally and in writing) is no doubt a crucial component of his half-Japanese identity. This has been the result of his Japanese education and making friends who are also Japanese. The mother added that fluency in Japanese is a clear advantage to learn Chinese. The mother, having lived overseas for half of her life, appreciates the importance of being able to master the English language. Any concerns about L s English standard can be addressed before it becomes a problem.

AUTONUMOUT The father said when G was in the Japanese school system, he had achieved an A in English but had failed twice in ESF s English tests. G currently has an English level of D at his International school despite making improvements. In terms of English standard, there is evidently a huge disparity between the Japanese system and the international school system. The experience of G is alarming; L may be way behind his counterparts in the international school system if he is to re-join the Japanese system. Since L is going to stay in Hong Kong, I agree with the father that L should not suffer from the same problem.

AUTONUMOUT Further, if L is to attend a Japanese school, the father, who does not speak Japanese but having the responsibility of giving day to day care to him, would have difficulties in attending school events due to language and cultural barrier. AUTONUMOUT I accept that in terms of location the Japanese school is easily accessible but the same applies for the A School that G and L are attending. I also accept that L has settled down in the present school. AUTONUMOUT I have not lost sight of the mother s concern. The father has a positive plan for L to continue to learn Japanese. L has been attending Kumon Japanese class twice per week and Ms K and G could continue to provide support in strengthening L s Japanese language ability. I have no doubt that L would communicate in Japanese each day with the mother and in addition, he will be immersed in Japanese when he visits Japan on staying access. I am sure the mother could help in this respect. AUTONUMOUT The combination of all the above considerations compellingly point to a conclusion that it is not to L s benefit if he is to move to another new environment. For the above reasons, I give an order that L should continue with his schooling at the A School. Access AUTONUMOUT The mother proposes that she has time with the boys for the majority (about 2/3) of their school holidays so that she could arrange more quality and meaningful time with them. This arrangement is clearly beneficial and necessary so that L would have more time to bond with his mother. AUTONUMOUT The father sees that the present access arrangement should be maintained. AUTONUMOUT There were disputes over L s recent inoculation and milk teeth in 2016, where the father was of the opinion that rotten milk teeth would fall off naturally, as opposed to the mother s opinion that they should be treated. The father saw the mother as obstructive and uncooperative. AUTONUMOUT It is clear on evidence that communications between the parties have broken down. This is undesirable. The parties have the joint custody of the boys; it is of utmost importance that they are able to communicate for the benefit of the boys. The existing situation where the mother would be able to receive information about the boys from G or Ms S only is utterly unacceptable. By way of example, when L s elbow was injured in 2017, which turned out to be more serious than the father and Ms K s initial assessment, the mother only learned of this from G and Ms

S. As I see it, there is no reason why the mother could not have been informed by the father at the earliest opportunity. I agree with Mr Egerton that it is against this background that drove the mother to turn to Ms S for updates about L. The giving of gifts to Ms S by the mother (alleged by the father as bribes) should accordingly be seen in that light. As the parent having the daily care and control of the boys, the father should diligently provide updates of the boys to the mother; especially in the case of L when he is too young to have his own mobile phone. AUTONUMOUT It is correct for Mr Egerton to have made the point that according to the father's email to the mother on arranging access, he seemed to have claimed that he was in a position to grant the mother access to the boys. This is a misconception. The vicious cycle is that the more the father takes the attitude that he is the one to grant access, the more the mother wants to know the boys and tries to exert control of the boys in other ways and that in turn leads to the resistance of the father by way of controlling access or in some other ways. AUTONUMOUT There are undoubtedly instances (at least 3) where the parties had disagreement regarding the schedule of overseas trips and where the father unilaterally changed the agreed schedule at the last minute as a result of which the mother sought reimbursement of the unused flight tickets from the father. For instance, there was a dispute over a trip to Singapore in April 2019. The father asserted that the mother made use of the consent as a condition for payment of the money that the mother said was owed to her, and it was not in the last minute that she gave her consent. The mother denied and said it was the father's breach of agreement that he suddenly intended to bring L to Singapore, causing her the cost of the air-ticket and it was already the third time. AUTONUMOUT Access is beneficial to the boys and accordingly should be accorded top priority. Access is not something that is dispensable in the sense that it could easily give its way to other activities including overseas trips. Once again, it has to be emphasized that the father does not have the right to grant access to the mother. In my view, given the dynamics of the parties in the present case, once an access is scheduled neither party should be able to change it unless with the consent of the other side or with the endorsement of the court. AUTONUMOUT The mother said in evidence that if the relocation is refused she would arrange one more day in Hong Kong so that she would be here from Friday to Sunday but the frequency of trips may have to be reduced to once a month. I consider this is a sensible, viable and much better arrangement. This would allow the mother to have better quality of access to the boys. I also consider it is a sensible arrangement for the mother to have more time with the boys during longer holidays when in future she will be seeing the boys on a less frequent basis. A balance, however, should be struck because equally important is for the boys to have quality time with their father during holidays. AUTONUMOUT Considering all the above factors in a round, I consider that the mother should continue to have access to the boys in weekends (from Friday to Sunday) for not more than twice per month during school days. As regards long holidays, the mother should have half of the time except that she should have 2/3 of the time with the boys during the winter break. AUTONUMOUT The dates and the details of access should be agreed upon by the parties at least 2 weeks before the access. AUTONUMOUT The mother should appreciate that leaving the boys at home unattended or lack of meaningful time would only have the effect of killing their enthusiasm

for joining her in Japan. The mother is urged to make use of her employer's policies set out in [48] above to arrange quality access for the boys in both Hong Kong and Japan.

Permission from the Mother for the boys Removal AUTONUMOUT The father proposes that the requirement for the mother's approval for the boys to leave Hong Kong should be removed. AUTONUMOUT The father said from time to time the boys have to leave Hong Kong for short breaks, holidays in the UK and frequent football tournaments. Mr Pickavant drew the court's attention to the evidence of the father that he trusts the mother to return the boys after access visits and the mother also confirms that she has no fear that the father would fail to return the boys back to the jurisdiction. In addition, the mother was repeatedly unreasonable in her dealings about providing consent for the boys trips outside Hong Kong. She incorporated financial demands in return for her consent: see [119] above. For these reasons, it is Mr Pickavant's submissions that there is no need for any permission to be sought from the mother for regular trips outside Hong Kong. AUTONUMOUT The mother does not agree. It was submitted by Mr Egerton that it is inappropriate to lift the statutory and standard direction for a parent to seek the other's written consent or the court's leave before removing the children out of jurisdiction. AUTONUMOUT As I have said in [120] above, access is not something that is dispensable. One of the sources of hostility between the parties in the past clearly arose from changes of agreed access schedules. The parties should treat each other as equal partners as regards the boys overseas trips and for this reason, they are encouraged to communicate in a constructive manner well in time so that overseas trips would not clash with the mother's access schedules. I have no doubt that the existing arrangement should continue.

Orders

AUTONUMOUT For the above reasons, I give an order that the petitioner's amended summons dated 27 October 2017 on variation of care and control and relocation be dismissed.

AUTONUMOUT As for access, I give the following orders: The petitioner do have access to the children of the family in weekends (from Friday to Sunday) for not more than twice per month during school days. The petitioner do have half of the time of the children's long holidays for access except that she shall have 2/3 of the time of the winter break for access. The winter break access is to commence in 2020/2021. The dates and the details of access shall be agreed upon by the parties at least 2 weeks before the access. Costs AUTONUMOUT As for costs, given that this is a child related matter, I am not convinced that the father should have the costs. I give an order nisi that there be no order as to costs of the summonses, including all costs reserved. There shall be certificate for counsel. (I. Wong) District Judge Mr Robin Egerton, instructed by Stevenson, Wong & Co, appeared for the petitioner Mr John Pickavant of John M. Pickavant & Co, Solicitors, appeared for the respondent - PAGE PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V ~vi`i` hFd# h{,\$ h{,\$ h{,\$ h{,\$ h{,\$ hR7A h{,\$ h{,\$ h{,\$ hvS; hvS; hvS; hvS; ha M ha M h{,\$ hvS; hvS; hvS; hvS; hvS; hvS; hvS; hvS; hvS; yti3 ji}i} {o[]}{o{ gdwF &`#\$ ~x~x &`#\$ yti3 [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ)# theme/theme/

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Prepared on 29 October 2026 · Esheria