

HONG KONG / JUDGMENT

RMH v. GY**[2023] HKFC 204****COURT**

Family Court

DECIDED

10 October 2023

CASE / FILE NUMBER

FCMP38/2020

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FCMP 38 /2020

**[2023] HKFC 204 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NUMBER 38 OF 2020**

IN THE MATTER OF an Application under Section 10 of the Guardianship of Minors Ordinance,
Cap 13 AND IN THE MATTER OF the minor, W BETWEEN RMH Applicant and GY Respondent

Coram: His Honour Judge I Wong in Chambers (Not open to Public) Dates of Hearing: 3 – 5, 10 &
19 May, 31 October and 30 November 2022 Dates of the Applicant's Submissions: 21 December
2022 & 11 January 2023 Dates of Respondent's Submissions: 21 December 2022 & 11 January 2023
Date of Judgment: 10 October 2023

Judgment

Maintenance - Guardianship of Minors Ordinance

The Application 1. The parties are estranged unmarried couple. This is a trial on the mother's application against the father for financial provision for the benefit of their son pursuant to section 10(2) of the Guardianship of Minors Ordinance, Cap 13 ("the Ordinance"). 2. In this Judgment, I shall, for the ease of reference, continue to refer to the applicant as "the mother", the respondent as "the father" and the son as "W". W was born in October 2016; he is 7 years old. 3. The father is immensely wealthy. His responsibility towards W is never denied. Indeed, the father puts up a 'millionaire's defence': he is capable of paying any amount that the court may order towards the maintenance of W. Thus, the only issue before the court is the quantum of

maintenance payable by the father. Parties' Background and Orders made 4. This is a cross-cultural relationship. The mother is Caucasian American, and aged 35. The father is 56 years old, a Chinese mainlander with the right to reside in Hong Kong. 5. The parties met in October 2015 when the mother was staying in Shanghai and the father was living in Shenzhen. The mother was single and the father was already married with 2 children at that time. The father is a very successful entrepreneur and billionaire. He is the CEO of a company listed in Shenzhen. The father is so wealthy that he occupies a ranking in Forbes. 6. Their relationship quickly turned to an intimate one as evidenced by the fact that the mother moved to Shenzhen, staying at an apartment rented by the father. In about January 2016 the mother found herself pregnant with W. 7. In April 2016, the father arranged the mother to come to Hong Kong on the strength of a visitor visa. Upon her arrival in Hong Kong, the mother was arranged to stay at the Mandarin Oriental Hotel for a month while a suitable apartment was being looked for. Needless to say, all expenses were footed by the father. 8. In May 2016, a 3-bedroom apartment at the Mid-Level, Central at a monthly rental of \$150,000 was found as the home for the mother and W ("the Hong Kong Home") while apparently the father had his own residence elsewhere in Hong Kong. There had been two 2-year tenancy agreements in the joint names of the father and the mother up until May 2020 when the 2nd tenancy agreement expired. At the time of its expiry the monthly rental was \$168,000. 9. The mother had been the primary carer of W since his birth with the assistance of 2 domestic helpers and a chauffeur. A Range Rover worth \$2.3 million was also bought for her use. 10. As a visitor the mother was not permitted to work in Hong Kong. It is also not the father's case that the mother was expected to make the necessary application so as to allow her to work. 11. On 6 January 2020, at the verge of the outbreak of the Covid-19 pandemic, the mother took W to Los Angeles ("LA"), the United States. She said it was originally meant to be a short trip for about 2 weeks and the father was informed of the plan. The Hong Kong Home was left intact with the domestic helpers remained there. 12. It transpired that at the relevant time the mother had developed a relationship with her boyfriend whom I shall refer to as "GB". GB, a Hong Kong gentleman, is also a man of great wealth. While the parties have dispute over if GB was living with the mother and W while they were in LA, it is clear that GB was travelling with the mother there. 13. Shortly after the mother's departure for LA, in early March 2020, the father stopped paying her and W's living expenses and discontinued the rental payment of the Hong Kong Home. Before then, on the top of the monthly rental, the father was giving \$400,000 per month to the mother for her and W's living expenses. Prior to July 2018, the mother had the use of the father's credit card with unlimited spending, too. 14. The mother said as a result she had to take out the present proceedings during the Covid-19 lockdown period. 15. With the leave of the court the mother was permitted to commence the present proceedings during the time when all court proceedings were adjourned generally (abbreviated as "GAP") and the Court Registry was closed due to the Covid-19 pandemic. In her Originating Summons of 28 April 2020, the mother seeks various financial remedies against the father for the benefit of W. 16. Leave was also granted by this court to deal with the interim relief during the GAP on 4 May 2020 as a result of which, after having heard counsel for the mother and the father, I granted the sole custody and sole care and control of W to the mother with reasonable access to the father. At the same time, I ordered the father to pay to the mother an interim-interim maintenance including mother's allowance in the

sum of \$557,000 per month (including \$157,000 for the rent of the Hong Kong Home) for the benefit of W. This was the figure paid by the father before the breakdown of their relationship. 17. Since the tenancy agreement of the Hong Kong Home was due to expire in May 2020 and that the father did not intend to have it renewed, upon the application of the mother, I also made an order restraining the father from withdrawing the rental deposit in the sum of \$471,000 so that the mother might make use of the money for the renewal of the tenancy. 18. By a Judgment handed down on 30 December 2020 (“the Interim Maintenance Judgment”), I reduced the interim maintenance to \$463,400 per month, inclusive the rental for the Hong Kong Home. The mother’s application for Legal Costs Provision was denied: see *RMH v GY* [2020] HKFC 275. 19. As things turned out, due to the worsening of the Covid-19 situation in Hong Kong and with W’s school and extracurricular activities being suspended indefinitely, the mother decided to extend her stay. In the meantime, the Hong Kong Home remained intact. 20. As we all knew, the pandemic went from bad to worse worldwide and the lockdown lasted much longer than expected. It is to be recalled that for a substantial period of time starting from mid-2020 until towards the end of 2022, all non-Hong Kong residents coming from overseas countries and regions by plane were denied entry to Hong Kong. While W, being a Hong Kong resident, was not subject to the embargo, this was not the case for the mother. In the result, the mother and the son were stranded in LA. 21. Another development was that in about August 2020 the mother broke up with GB who previously was a possible source of finance for her. In view of this material change in the circumstances and upon the mother’s renewed application for Legal Costs Provision, on 11 June 2021 I ordered the father to pay a Legal Costs Provision in the sum of \$1,800,000, payable by 10 monthly instalments of \$180,000 each: see *RMH v GY* [2021] HKFC 109. 22. In May 2021, the mother decided to terminate the tenancy for the Hong Kong Home. Sometime later in about August 2021, the mother decided to stay permanently in LA, to which the father had no objection. A formal consent order granting leave for W’s relocation was made on 13 September 2021. The mother and W’s personal chattels, together with their dog and some furniture, had to be packed and shipped to LA. Her employees had to be dismissed. 23. As the rental for the Hong Kong Home was no longer payable, by an order dated 26 August 2021, I reduced the interim-maintenance for October 2021 from \$463,400 to \$324,400 and as from November 2021 to \$260,400 per month. This is the figure currently payable by the father. 24. By reason of the public health restriction, it was not possible for the mother to return to Hong Kong for the trial. Since the father was spending most of his time in Shenzhen it was also not practical for him to do so. The trial was therefore conducted by way of remote hearing, with the mother attending from LA and the father from Shenzhen while their legal teams were in court. The trial took longer than usual for two reasons. First, though the father was able to communicate in English, he required interpretation service throughout. The second is that due to the difference in time, it was physically demanding for the mother to attend trial till mid-night; as a result of which the court was not able to make full use of the sitting hours. Current Situation of the Parties and W 25. The mother and son are currently residing in a leased apartment in LA which I shall refer to as “the Montana Property”. The mother claimed, as a full-time mother, she has not been working and has had no income. While in Hong Kong, in September 2018 the mother started a business in the name of “R Limited” on luxurious supplements. This business, according to her, never yielded

any income. 26. W started attending a learning centre for his education in May 2021. Since January 2022, he has been attending a regular school. The mother has serious concerns that W may be suffering from dyslexia. 27. The father works and spends most of his time in Shenzhen where his company is. He is married with 2 children who are still under education. He said his wife and children are staying most of the time in Switzerland. The father has homes in Shenzhen, Hong Kong and Switzerland. Exchange Rate 28. Parties adopt an exchange rate of USD1.00 to HK\$7.80. Open Proposals 29. Thorpe LJ commented at [47] of *Re P (Child: Financial Provision)* [2003] EWCA Civ 837, [2003] 2 FLR 865 that specialist family lawyers are adept at producing rival budgets. Invariably the applicant's budget hovers somewhere between the generous and the extravagant; and invariably the respondent's budget expresses parsimony. This unfortunately happened in this case. Indeed, I would say the parties excelled in this game where the mother significantly over-pitched and the father was at the far end of the other side. 30. Ms Irving, who appeared on behalf of the father throughout, put forward two arguments. The first is that the mother is approaching her claim as if she were a married woman seeking a divorce after a long marriage, with a full raft of ancillary relief claims for herself, and apparently based on a standard of living that went even beyond what the father once provided for W and her when they were still together. The second is the mother has grossly inflated the quantum. 31. The original basis of the mother's claim was that W's living in Hong Kong had to be replicated in LA. 32. At one time before trial, the mother claimed W's expenses in LA to be about \$956,100 per month. Shortly before trial in February 2022, she increased the figure to \$970,455. 33. The open proposal made by the mother about 2 weeks before the trial was a monthly sum of \$792,765 (including mother's allowance) payable by the father plus a one-off payment of \$1,769,207. Additionally, she sought a lump sum for the purpose of enabling liabilities or expenses incurred by the mother in maintaining W to be met. 34. The father's proposal shortly before trial was on the other extreme. He offered to pay a monthly maintenance of \$52,000 plus undertakings to pay rent, school fees and medical/dental expenses capped at \$65,000, \$23,000 and \$10,000 per month respectively. 35. The parties' differences were somewhat narrowed at the start of the trial. The mother accepted that replication of previous life-style in Hong Kong is not a realistic option. She no longer asks for a housekeeper and a driver. In return for an undertaking by the father that he is to pay all school-billed expenses and any deductibles and out-of-pocket medical expenses not covered under the health insurance and that a life insurance plan be purchased with W as the beneficiary in the event he dies, the mother agrees to reduce the monthly sum to \$386,589 (including mother's allowance of \$50,000) and the one-off payment to \$1,286,591. Undertakings by the Father 36. During the course of trial, the parties have been able to come to agreement to dispose of W's education and medical expenses by way of undertakings to be provided by the father. 37. The father agrees to undertake to pay directly to W's school within 7 days of production of an invoice or bill issued by the school; such school means the school that W is currently attending or any one of the 4 schools the mother has identified in the proceedings. His undertaking to pay also include any annual uplift in the school fees and any ad hoc charges (including all extra-curricular activities and field trips, etc of the school) as billed by the school. 38. Since the schools have already been identified and the fees will be paid directly to the school, I see little purpose being served in setting a ceiling or a range within which the school fees are payable. 39. The father also

agrees to undertake to provide medical insurance for the mother and W by paying directly the insurance premium in respect of the current plan, namely, the Platinum 90 PPO Benefit Plan and to pay any deductibles and out-of-pocket expenses not covered under the Plan, so far as it relates to W, within 14 days of production of the relevant invoices or bills issued by hospitals, clinics or other medical service providers. There will be no ceiling on W's uninsurable medical/dental expenses, and the undertaking also covers any psychological and/or psychiatric treatment for W as is necessary with proof of referral from a medical doctor or other licensed professional. 40. As the undertakings cover uninsurable items such as dental, vision care, psychological and psychiatric treatment and, where necessary, dyslexic treatment, too and there is no financial limit on these undertakings, I find them reasonable and acceptable. Witnesses 41. Both the mother and the father were discredited in cross-examination. Both were evasive at times, failed to answer even the simplest questions and made up their evidence along the way. 42. The mother was cross-examined on the alleged expenditures both in Hong Kong and in LA. While I accept that it may not be possible for the mother to produce all documents and receipts in support of her figures nor are they necessary, I must say there are ample evidence that the mother grossly inflated her figures. 43. The father was in an even worse situation; his evidence in many aspects crumbled as a witness. It transpired that he takes an unreasonable and, in a way, portrays himself as being a mean person; his allegation that the mother is dishonest and a sex-worker is particularly distasteful, if not disgusting. His harsh approach towards the mother can be explained by his statement that he is willing to be generous if the mother is honest and they are in a relationship. The Legal Principles 44. The present application for maintenance is made under s 10(2) of the Ordinance. The provision of s 10(2) is as follows, (2) The court may as regards a minor, on the application of a person with whom, whether by virtue of an order under subsection (1) or otherwise, custody of the minor lies at law, make in respect of the minor any one or more of the following orders— (a) an order requiring payment to the applicant by the parent or either of the parents of the minor of such lump sum (whether in one amount or by instalments) for the immediate and non-recurring needs of the minor or for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the minor before the making of the order to be met, or for both, as the court thinks reasonable having regard to the means of that parent; (b) an order requiring payment to the applicant by such parent or either of such parents of such periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent; (c) an order requiring the securing to the applicant by such parent or either of such parents, to the satisfaction of the court, of such periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent; (d) an order requiring the transfer to the applicant for the benefit of the minor, or to the minor, by such parent or either of such parents, of such property, being property to which the parent is entitled (either in possession or reversion), as the court thinks reasonable having regard to the means of that parent; (e) an order requiring the settlement for the benefit of the minor, to the satisfaction of the court, of such property, being property to which such parent or either of such parents is so entitled, as the court thinks reasonable having regard to the means of that parent. 45. The manner in which how the power is to be exercised by the court is framed in general terms. The court is given a wide discretionary

power; it may exercise the power given under s 10(2) as it thinks reasonable having regard to the means of that parent. 46. In *WGL v ASB* (Child Maintenance under the GMO) [2013] HKFLR 391, Deputy High Court Judge Chu (as she then was) compendiously analysed the differences between Hong Kong and England in terms of the legislative framework and came to the view that, despite the differences in the statutory framework, courts in Hong Kong, in the exercise of discretion under s 10(2), may give regard to the matters provided in the English legislation. These matters include the factors set out in paragraph 4(1) of Schedule 1 of the English Children Act 1989. Paragraph 4(1) read as follows, “In deciding whether to exercise its powers under paragraph 1 or 2, and, if so in what manner, the court shall have regard to all the circumstances including – the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph 4 [either parent] has or is likely to have in the foreseeable future; the financial needs, obligations and responsibilities which each [parent] has or is likely to have in the foreseeable future; the financial needs of the child; the income, earning capacity (if any), property and other financial resources of the child; any physical or mental disability of the child; the manner in which the child was being or was expected to be educated or trained.” 47. In *Re P*, Thorpe LJ and Bodey J, after having reviewed the authorities, gave helpful guidance on how such application should be approached. 48. Bodey J gave the following guidance, [76] In the light of para 4 of Sch 1 to the Children Act 1989 and the authorities to which we have been referred, the following summary can be offered as to the considerations applicable to claims under Sch 1: (i) The welfare of the child while a minor, although not paramount, is naturally a very relevant consideration as one of ‘... all the circumstances...’ of the case. (ii) Considerations as to the length and nature of the parents’ relationship and whether or not the child was planned are generally of little if any relevance, since the child’s needs and dependency are the same regardless: *J v C* (Child: Financial Provision) [1999] 1 FLR 152 at 154B. (iii) One of the ‘... financial needs of the child...’ (to which by para 4(1)(c) the court must pay regard) is for him or her to be cared for by a mother who is in a position, both financially and generally, to provide that caring. So it is well established that a child’s need for a carer enables account to be taken of the caring parent’s needs: *Haroutunian v Jennings* (1980) 1 FLR 62 at 66C; and *A v A* (A Minor) (Financial Provision) [1994] 1 FLR 657 at 665G. (iv) By paras 4(1)(a) and (b) of Sch 1, the respective incomes, earning capacities, property and other financial resources of each of the parents must be taken into account, together with their respective financial needs, obligations and responsibilities. So ‘... the child is entitled to be brought up in circumstances which bear some sort of relationship with the father’s current resources and the father’s present standard of living...’ – per Hale J in *J v C* (Child: Financial Provision) [1999] 1 FLR 152. (v) However, as this latter concept lends itself to demands going potentially far wider than those reasonably necessary to enable the mother properly to support the child, ‘... one has to guard against unreasonable claims made on the child’s behalf but with the disguised element of providing for the mother’s benefit rather than for the child...’ – *J v C* (Child: Financial Provision) [1999] 1 FLR 152. (vi) In cases where the father’s resources permit and the mother lacks significant resources of her own, she will generally need suitable accommodation for herself and the child, settled for the duration of the child’s minority with reversion to the father; a capital allowance for setting up the home and for a car; and income provision (with the expense of the child’s education being taken care of, generally, by the father

direct with the school). (vii) Such income provision is reviewable from time to time, according to the changing circumstances of the parties and of the child. (viii) The overall result achieved by orders under Sch 1 should be fair, just and reasonable taking into account all the circumstances. [77] From the experience of this case, I would propose three further considerations: (i) In considering the mother's budget, at least in bigger money cases, the court should paint with a broad brush, not getting bogged down in detailed analyses and categorisations of specific items making up opposing budgetary presentations. Rather, the court should do its best to achieve a fair and realistic outcome by the application of broad commonsense to the overall circumstances of the particular case. (ii) Comparisons with the commercial cost of providing professional care are unlikely to be of great assistance and may only serve to distract. (iii) When setting up a budget for the sort of lifestyle a child should be enabled to have, the court should not generally attach weight to the risk that the father may reduce or withdraw his support when the child comes of age (or ceases education or training) thereby obliging the child to adapt to a lower lifestyle at that time. 49. While Bodey J said at [76](i) that the welfare of the child is naturally a very relevant consideration as one of '... all the circumstances...' of the case, it should be noted that Thorpe LJ at [44] of the same judgment went further to say welfare must be not just 'one of the relevant circumstances' but, in the generality of cases, a constant influence on the discretionary outcome. Apart from this, Thorpe LJ largely agreed with Bodey J's views. 50. Lastly, it should not be forgotten that courts in Hong Kong are enjoined by section 3 of the Ordinance that in dealing with matters concerning a child's custody and upbringing, the courts shall regard the best interests of the child as the first and paramount consideration. A Broad Brush Approach 51. All that is required is a broad brush approach in assessing the reasonable needs of W. The court should not engage itself in detailed analyses and categorisations of specific items of the budget. Of course, at the same time, I have to guard against unreasonable claims on W's behalf but with the disguised element of providing for the mother's benefit. 52. I have to bear in mind there should not be any discrimination against W, who was born out of the wedlock. As said by Hale J (as she then was) in *J v C (Child: Financial Provision)* [1999] 1 FLR 152, the underlying principle is that children should not suffer just because their parents had, for whatever reason, not been married to one and another: *Re P*, at [55]. Neither should there be any distinction between wanted and unwanted children: *Re P*, at [39]. 53. Although the father has put up a 'millionaire's defence', the court must still decide on what is reasonable provision for the child, with reference to the child's home environment but with regard to the affluence of the father: see Rayden and Jackson on Relationship Breakdown, Finances and Children, at [17.107], quoting *Re A (a child)* [2014] EWCA Civ 1577, approving *AH v PH (Scandinavian marriage settlement)* [2013] EWHC 3878 (Fam), [2014] 2 FLR 251. 54. In my view, the following factors are relevant in the exercise of the broad discretion given to the court in this case. 55. The first is the standard of living of the father. W is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living: *Re: P*, at [76](iv). An ancillary issue to this is the nature of the parties' relationship. 56. The second is the cost of living in LA. The Father's Standard of Living Nature of the Parties' Relationship 57. The parties agreed they came to know each other through a dating website but the agreement ends there. 58. The father said their relationship was, put it in neutral term, a "mutually beneficial arrangement" whereby the

mother was paid a “salary” and an accommodation for the intimate relationship. In my view, it is a mild way to say their relationship was purely a “commercial one”. Before moving to Hong Kong, the price he paid for the mother to move from Shanghai to stay with him in Shenzhen was RMB100,000 plus a leased apartment at a monthly rental of RMB30,000. The father is adamant that as he was already married with children it was not part of the “mutually beneficial arrangement” that the mother should fall pregnant. 59. The father accepted that, after the mother had come to Hong Kong, on the top of the monthly rental for the Hong Kong Home, starting from May 2018 he had been paying a monthly sum of \$400,000. At one point, the father said in his 1st affirmation of 4 May 2020 that this \$400,000 covered (i) the mother’s “salary” under the “mutually beneficial arrangement”; (ii) reasonable provisions for W’s needs; (iii) rental for the mother and W at a less extravagant address; and (iv) the excess, which he expected to be a significant portion of \$400,000, to be saved up or invested for W’s future use. At another point, in his 2nd affirmation of 7 August 2020, the father said the \$400,000 was for the maintenance of both the mother and W, with half of it, ie \$200,000 to be saved up for W’s future use. 60. In evidence, the father added that the mother had assured him that she would save up all the money so that she and W could lead their own lives in the United States and he could lead his own lives. 61. The mother denied any “arrangement” ever existed. She claimed she was induced into the relationship in that the father misrepresented that he was a divorcee. What was more, the father was/is a philanderer and has had relationships with at least another woman with whom he has a child. The mother claimed upon discovering these she went into depression and suffered from ulcerative colitis around the time when she was carrying W. The father continued to be polygamous and so she was very much one of his random families. Discussion 62. To begin with, the father claimed he came from a humble background; it was through his own intelligence and industry that he has become an extremely successful entrepreneur and a billionaire. Against this backdrop, I find it hard to understand why the father would have believed that his “service provider” would save up any part of \$400,000 for “her” customer’s son. 63. The father purchased a \$2.3 million Range Rover for the mother in March 2017. He explained in evidence that it was after hit quarrels lasting for 3 months that he conceded to the purchase. After the purchase he realized that the mother was not saving any money, so he did not believe in her. I take it to mean that he did not believe the mother would have saved up money whether for herself or for his son. It is significant to note that it was after this incident that the father started to give the mother \$400,000 per month. The WhatsApp messages exchanged between the parties on 25 September 2018 show the father complained about the mother’s spending was too liberal and was not saving up money. In reply, the mother said she had kept some savings but, as I can see from the messages, the father did not follow up on that. Certainly, there was no reminder on the part of the father about the “agreement”. In any event, the monthly payments continued. Indeed, at one point during cross-examination, the father admitted he believed the mother had not been saving. If the father’s testimony is truthful, there was no basis why he would have continued to pay the mother such a substantial sum every month and still expected her to save in the manner allegedly agreed. 64. The father said he did not want to continue with the tenancy of the Hong Kong Home upon expiry of its first term because it was too expensive. However, the mother forged his signature in renewing the tenancy. She also forged his signature when hiring the domestic

helper. The father also complained of the mother's extravagant spending. That was why he stopped the mother's credit card. 65. The mother admitted signing the documents. She did so on behalf of the father only. That was something that a couple would have done. She denied her spending was extravagant and gave the explanations that either it was at the suggestion of the father (for instance, the hiring of a personal assistant), or it was approved by the father (for instance, the hiring of 4 full-time staff in the household at one time), or it was out of necessity that an English speaking chauffeur who charged double more than a local one was hired. If the father had not approved and provided her with the monies, there was no way she could have paid. 66. Further, the mother said the father never expected her to save. She had a very high lifestyle. Her evidence is that by and large she spent the entire \$400,000. That included extensive travels either on her own or together with W. She did not keep any record, nor she was so required to do so by the father. 67. In my view, the father was the one who ultimately paid all these expenses out of the \$400,000, and though he was not around all the time – the mother said at the height of their relationship the father stayed with them 2 days a week - it is hard to believe that he was not aware of the situation and still reasonably believed the mother could have saved. I find that the mother's version is closer to the truth. 68. In November 2016, the father admitted in a WhatsApp message that he was polygamy and hoped the mother could accept it. There were some WhatsApp conversations on 27 September 2018 about the mother's thinking of moving back to the United States. The father gave her some advices. I do not need to go into these conversations. Suffice to say is that my reading is these exchanges were chats between a couple rather than some "business" talk. 69. On the above analysis, I reject the father's version that there was a mutually beneficially arrangement and that there was any arrangement or agreement that the mother had to save whether for herself or for W. I also reject the father's version that the lease of the Hong Kong Home was renewed without his consent. 70. I find that the father and the mother were a family, that this family was one of the father's families (at least a second one if not one of his random families as claimed by the mother), that the father allowed or acquiesced in the mother's level of spending, and that he was aware that the mother did not save. 71. I believe the father cut off the mother's finance not because he believed she had saved up sufficient money for her new lives in the United States but because the mother had had a relationship with GB. 72. These findings cast light on the father's own standard of living or how the father himself had viewed the lifestyle or circumstances in which W should be brought up: see *WGL v ASB* at [49]. The father was agreeable to spend \$557,000 every month on this family and was contended with his son W being taken care of by the mother at that level of spending which he described as extravagant. I recognise that, as conceded by Mr Chan, the \$400,000 had a relationship element and that the father consumed a part of the household expenses when he was there. It is clear that when she was in Hong Kong the mother was given the control of W's budget. She took care of W without much involvement of the father but with the assistance of two domestic helpers and a chauffeur. 73. I am aware that W was only a small boy of 2 to 3 years old at the relevant time, yet I am sure W had the service of the household staff, the domestic helpers and the chauffeur and was able to travel around with his mother. This was the level of living standard that W enjoyed when he was in Hong Kong. 74. I cannot agree with the father's repeated statements in evidence that his proposal is generous in terms of an average American. The fact is the father is simply not

an average American. He is definitely qualified to be a billionaire in any corner of the world. 75. The mother mentioned about the father's high standard of living in her affirmations. She knew of the particulars from the father when talking over the dinner table. 76. The father denied what were said by the mother. He reported in his Form E of 17 June 2020 that his total monthly expenditure for his family is \$296,192, with general expenses being \$96,631, personal expenses being \$28,784 and his children's expenses being \$170,777. In evidence, the father admitted having a home in Hong Kong, Shenzhen and Zurich. His home in Hong Kong, located in a prestigious location at Mid-Level Central ("the Mid-Level Home"), is close to the Hong Kong Home; and his Shenzhen home is less than 2,000 ft². His wife and his two children (a son and a daughter) are spending most of their time in Zurich. They live in a leased apartment of 1,600 ft². His children initially attended a boarding school for immigrants. His daughter then changed to a local school and his son is already in a Swiss university. His wife does not have any staff, full-time or otherwise, in Switzerland. She attends to all household chores and cooking herself. His wife and his children travel by public transport in Switzerland, and he drives himself. There is no "24 hour on-call driver" as alleged by the mother. The father's wife or his children used to take buses and trains, especially when travelling with their friends. He does not own a Bentley and/or any hotels that the mother referred to in her affirmations. They are both assets of the company (of which the father is the majority shareholder) that he works at. The father adduced evidence that one of his children pays a school fee of CHF2,450 (about \$19,300) per month only. 77. It was found out during cross-examination that the father did not disclose his expenses in relation to the Mid-Level Home and his home in Shenzhen, saying that they were not relevant. Yet, he admitted that his wife and children could have access to his home in Shenzhen. It is hard to believe in the father's assertion that his wife and his children do "basically no travel". At the very least, they would travel to visit the father during holidays; and I believe they did/do other travels, too, in both pre and post-Covid times. The food expense of \$23,940 for all the family members is incredibly low. His wife's clothing and personal grooming of \$5,000 and \$1,000 respectively are unbelievably low. There are no figures for his wife's entertainment and travels. At the end, the father accepted some items were missing but claimed this was not his fault. 78. It seems to me clear that the father has understated his expenditure. I reject his version regarding the level of spending of his main family. Indeed, in light of the lavishness he allowed when the mother and W were in Hong Kong, I take the view that the father has grossly understated his expenditure. The only logical inference I am able to draw is the father has had a very high standard of living, as reflected from what he provided for W. The Cost of Living in LA 79. The final relevant factor that I should take into account is the cost of living in LA. 80. Hong Kong has always been regarded as one of the most expensive places to live. Both parties are in agreement that the cost of living in LA is lower than that in Hong Kong. 81. While there are no concrete evidence or figures adduced in this respect at trial, there are evidence casting light on how the parties perceived the cost of living if the mother and W are to be relocated to the United States. 82. In August 2016, the father mentioned in his WhatsApp message to the mother that if the mother is to return to United States, a monthly sum of USD100,000 is "fair" (it being "too expensive in Hong Kong"), with USD50,000 for living and USD50,000 saving for W. 83. I acknowledge that when the father said this the parties were in a loving relationship. Yet, this is still relevant as to how he

perceived the level of living that W, being his son regardless of whether the parties were in a loving relationship, should be able to enjoy in the event of a relocation. 84. On 27 September 2018, the mother said in her WeChat message that, “It’s easy to live on 20k USD in the USA”, and “If you assist me to buy a home in the USA, the mortgage would be around 5000 USD per month”, “Home ownership and low costs. So easy”. 85. In the WhatsApp messages of 18 February 2020, it was mentioned by the mother that there could be better standard of living with nice house and nice car for half of the price. In her own words, “it’s time to think about moving W out of Hong Kong”. She was “unsure about the future there (ie Hong Kong)”. She found some places to rent, almost half price of (the home in Hong Kong). She “can save a lot of money and may be get a mortgage on a house in a few years”. 86. I remind myself that the parties’ views are very general indeed and the United States is a vast country with diverse costs of living. Mr Chan accepted that the standard of living in Hong Kong would be difficult and much more expensive to replicate in the United States. As a matter of fact, the mother was not seeking this when it came to the trial. Nevertheless, this, said by Mr Chan, should remain factors relevant to considering W’s standard of living and elements of mother’s allowance/nanny/child caring. I agree. 87. I now turn to the items. Rent 88. Same as the father in the present case, the father in Re P was described as fabulously wealthy and was able to comply with any maintenance order to be made by the court. Thorpe LJ suggested that, at [45] to [47] (to which Bodey J agreed at [102]), for cases where one or both of the parents lie somewhere on the spectrum from affluent to fabulously rich, the starting point is for the court to decide, at least generically, the home that the father must provide for the child. The value, the size, and the location of the home all bear upon the reasonable capital cost of furnishing and equipping it as well as upon future income needs, directly in the case of outgoings but also indirectly in the case of external expenditure such as travel, education and even holidays. Once the decision has been taken, the court can proceed to determine what budget the mother reasonably requires to fund her expenditure in maintaining the home and its contents and in meeting her other expenditure external to the home, such as school fees, holidays, routine travel expenses, entertainments, presents, etc: see also Rayden and Jackson on Relationship Breakdown, Finances and Children, at [17.89]. 89. The mother and W are currently residing at the Montana Property. Initially, they stayed at vacation homes. The Montana Property is already their fourth home after arrival in LA in January 2020 and is meant to be on more permanent basis. The lease started in May 2021 and its rental is currently USD12,500 (or \$97,500) per month. 90. At this point, I digress to discuss if the trip to LA was originally meant to be a short one as claimed by the mother or for good as alleged by the father. I was taken to the credit card statements on the first two months of the mother’s arrival in LA. There were frequent medical consultations and skin treatments as if she was in a rush. I reckon that from 10 January 2020 to end of February 2020 she spent about \$615,440 on plastic/ reconstruction surgeon consultations and skin clinic treatments, averaging \$307,720 per month. Further, the mother just took some luggage and left the Hong Kong Home intact, leaving essentially all furniture and even cash in the safe. I incline to accept that it was meant to be a short trip. 91. The father’s stance is the apartment is excessively large and hence expensive. He agrees to pay a monthly sum of \$70,000 only. 92. Ms Irving pointed out to the mother that when she entered into the lease for the Montana Property in 6 May 2021, there was already in place an interim order giving her \$240,000

only but she chose to spend around \$105,000 on the apartment (rental of USD12,000 plus some expenses), it was virtually impossible to cope with. She simply chose to live beyond the budget. To this, the mother simply said that the apartment was a good choice for W in terms of safety, convenience and environment. There was also a room for W's playroom. She also referred to the living standard enjoyed by the other children of the father. She just did what is the best for W. The mother emphasized the apartment was similar to what she had in Hong Kong and was cheaper.

93. Ms Irving complained that the Montana Property is a penthouse, with a size of 3,680 ft², 4 bedrooms and 4 bathrooms and 3 car parks; it is excessive and extremely spacious for a small child and it is more for the mother's needs, benefit and desire. There are units of smaller size in the same block and also on the top floor that ask for less rentals. The father also said the mother should have leased a furnished apartment. 94. The mother accepted the properties mentioned by the father are perfectly reasonable, generous accommodation for W and might be available but said these are hot and hard to get hold of. The mother even said the advertisements produced by the father on the same block that there are 3 bedrooms' apartment are wrong. Every listing of 3-bedroom apartment, she said, is wrong. She knew the market well; there are only 2-bedroom apartments. When Ms Irving pointed out that she did not rebut this in her affirmation, she gave the excuse that it was an oversight on her part. 95. There are merits in Ms Irving's criticism: the mother simply chose to overspend. It was her deliberate choice to rent the present accommodation notwithstanding there were more suitable, smaller and less expensive alternatives in the neighbourhood. That said, I agree if the mother had made a decision to stay, a longer term accommodation should be put in place and it was not unreasonable for her to have found an unfurnished one. 96. I agree with Mr Chan that after having moved a number of times, W has now finally settled into a home that by now he has been living in for more than 2 years. This has achieved a level of stability for this small child. 97. The father seemingly agreed that W has now settled down in one place; it is better for him to stay. However, he said it is up to the mother's choice; \$70,000 per month is all that he is agreeable to pay. If the mother wants to stay, she has to make up the shortfall by herself. The father however gave no plausible explanation on how the mother could afford the difference. 98. I must have regard to the status quo. I agree it is to W's benefit to stay; another benefit is in that event no further moving and set up costs would have to be incurred. 99. I recognise that comparing Hong Kong with LA may just like comparing apples and oranges, nevertheless the objective fact is the monthly rental of Montana Property is still way lower than that of the former Hong Kong Home. The same argument that an apartment is too large and spacious for W could equally apply to the Hong Kong Home. The mother's evidence that the Montana Property provides a playroom for W is not challenged. A dominant feature in the present case is the scale of the father's fortune and his chosen way of life. Considering all these, I assess the monthly rental payable by the father at USD12,500 (or \$97,500). Utilities (electricity, gas, rates, telephone & water) 100. The mother in her affirmation of 30 July 2021 initially required a monthly sum of USD500 (or \$3,900). She later increased 3 folds to USD1,500 (or \$11,700). 101. I agree with Ms Irving that the mother appeared not to know what her utility bills actually were. While the mother is not expected to produce all the receipts or documents in support of all her claim, she is expected to make out her case with supporting evidence (oral and documentary) so that the court could have a proper picture. In the

circumstances, I shall err in favour of the father's proposal of \$4,000. I assess it at USD600 (or \$4,680). Food 102. The mother seeks \$25,000 (USD3,205). 103. The mother's bank statement in May 2020 shows she spent USD4,000 on food delivery in that very month. As pointed out by Ms Irving, there was not a single day she did not order, though the mother said she tried to cook as much as possible and W was always hungry. On my part, it is hard to image how the mother and a then 3-year-old boy would need that much. Even considering the scale of wealth of the father, I am sure there must be some modestly as regards this item. I shall give a figure of USD1,923 (or \$15,000), on average \$500 per day. Household Expenses 104. The mother seeks a monthly sum of \$30,000 (about USD3,850). There is some force in Ms Irving's submission that these undefined household expenses are a good example of a figure plucked from the air to inflate the claim. I agree that USD3,850 is excessive for 2 persons in a leased apartment. 105. Doing the best I can, I give a figure of USD1,000 (or \$7,800). Subscriptions (including iTunes, Apple, Netflix, etc) 106. This has been agreed at USD128 (or \$1,000). Car 107. The father agrees that W should have the use of a car; what are in dispute is the type of car and whether the father is liable for it. 108. The mother requests that a Range Rover be purchased. This would cost USD120,000 (or \$936,000). Alternatively, the vehicle could be rented at \$127,000 per month. I gather this would be a rent-to-own arrangement. In justifying a Ranger Rover is needed, the mother referred to the fact that the father has a 24 hour on-call driver with a dedicated luxury SUV for his children. He himself drives a Bentley SUV. 109. The father denies having any dedicated luxury SUV for his children. The Bentley currently driven by him belongs to his company. According to his research, cars, SUV or otherwise, can be rented at a rate of USD1,001 – 2,286 (\$7,808 - \$17,831) per month, depending on the brand and model. There are also brands such as Ford, Toyota, Hyundai and Chevrolet with SUV to be purchased from USD33,295 – 42,540 (\$259,701 - \$331,812). 110. In any event, the father refused to make payment for the purchase or the renting. The reason being the mother had already sold her Range Rover in Hong Kong in October 2021, which on her own unverified version, for \$500,000; she could have used this sum of money for a car in LA. He is not going to pay twice. 111. I am afraid the father has made a bad point. There is no question that W needs a car for commute in LA. The car is a necessity for him. In my view, it is unhelpful for the father to say the mother could have used the proceeds to buy a car in LA when in fact the mother does not have the money now. The father, as a loving parent, should be proactive in trying to make ways in order to ease his own son's daily routines, especially when he is not able to be by his side. His son should not be penalized because of the antagonism between his parents. 112. Section 10(2)(a) of the Ordinance provides that a lump sum order can be made by the court for meeting the immediate and non-recurring needs of W. The Court of Appeal in *IDC v SSA (Financial Provision: Child of Unmarried Parents)* [2014] 4 HKLRD 220 held that while the power under this sub-section could be exercised more than once, in each application, the court could only make a lump sum award for needs within the immediate future. In that case, the Court of Appeal confirmed that the housing needs of a minor is a recurring need and could not be described as "immediate and non-recurring needs". 113. I take the view that the same rationale applies to the car to be used by W. The vehicle, if well taken care of, could be used for a good number of years. As such, the needs of the car cannot be described as "immediate and non-recurring". Indeed, this is one of the grounds relied upon by Ms Irving in rejecting the mother's claim. 114. That said,

while the car could not be purchased by way of a lump sum order, it is perfectly within the power of the court to make a periodical payment order under Section 10(2)(b) for the renting of it. 115. Alternatively, reliance can be placed upon Section 10(2)(e) whereby an order of settlement can be made. The Court of Appeal in *IDC v SSA (Financial Provisions: Child of Unmarried Parents)* took the view that “property” includes “a sum of money” and held that, upon a proper construction of the provision, “It is perfectly viable to have a sum of money to be settled on trust for the purchase of a property to be used for the benefit of the child up to a certain point in time and thereafter to be held for the father by way of reversion”: see [31] to [34]. Hence, it is open to the court to exercise its discretion to order the father to purchase a car for W’s use, which car is to be returned to the father when W does not need it in the future. 116. I am aware that a car’s value, because its wear and tear, would depreciate substantially over a course of time. At the end of the day, the father may just be able to retrieve a nominal value. Taking this into consideration and in all fairness, I am of the view that it is more appropriate for the father to provide a periodical sum for renting a car. 117. The mother said when choosing the Range Rover, she has considered the suitability of the car for carrying W, in particular, its safety features; nevertheless, she conceded that the less expensive models suggested by the father are also acceptable. 118. I accept that the brands and models suggested by the father are decent brands. I also accept these models are entirely appropriate for average American families. The father in this case, however, is not an average American. A Range Rover was purchased for W’s use when he was in Hong Kong. Added to this is I have disbelieved what he said about his own and his main family’s rather modest living standard. At the same time, the fact that the mother could have used the proceeds of the Hong Kong Range Rover must carry some weight. In other words, on the one hand, I must cater for W’s daily needs but on the other, I must do fairness to the father. Considering all these, I would err on the lower side and award a monthly sum of USD2,180 (or \$17,000). Car Expenses, Initial Insurance Premia (Renter) and Monthly Insurance Premia (Renter) 119. These 2 items are classic examples of parties bickering over small amounts, which are entirely unwarranted for a case of this scale. Car Expenses 120. The mother seeks a monthly sum of \$11,700. The father counter-offers \$10,000; this figure seemingly includes the car insurance. A more generous approach should be adopted. I assess it at USD1,500 (or \$11,700). Monthly Insurance Premia (Renter) 121. The mother was required to pay a renter’s insurance under the existing tenancy; the monthly payment is USD97.36 (or \$759.40). The father refuses to pay, on the ground that, as stated on the Updated Schedule of Expenses, the same has been included in the rentals. I was, however, not referred to any part of the father’s affirmation evidence in support of this assertion nor evidence was adduced in his oral testimony. I find in favour of the mother. I would round up the figure to USD97.43 (or \$760). Insurance Premia (for driver and car) 122. The mother seeks a monthly sum of USD500 (or \$3,900). The father says no provision should be made for this item. 123. I agree with the father. When the mother was seeking this item in her affirmation of 30 July 2021 she was speaking in terms of hiring a driver, a nanny and a housekeeper via a professional agency for W. In response, the father said the agency chosen by the mother was no ordinary housekeeping agency and her figures were excessive and extraordinary. As I said, since then there have been some developments; as of now, the mother is not seeking any provision for hiring a driver. Since I have already included the car’s insurance under “Car Expenses”, I fail to see why there is a need

for another separate item. Tuition Fees and Extra-Curricular Activities of the School 124. These items have been dealt with by way of undertakings to be provided by the father: see [36] to [40] above. Out of School Extra-Curricular Activities (ECAs) 125. At trial, there have been some debates over this item. The mother is seeking a monthly sum of USD8,333 (or \$65,000). She takes the view that if there is no financial limit set on ECAs organized by the school, likewise there should not be any limit set on out-of-school ECAs that the mother considers beneficial to and suitable for W; further there would not be any school ECAs during term breaks. On the other hand, the father considers that a monthly sum of USD1,923 (or \$15,000) is sufficient. 126. I agree with the father that, given W attends full-time education, on any view, USD8,333 a month or USD99,996 (or \$779,969) a year for out-of-school ECAs is a staggering figure. There must be a limit to the number of activities a child can do. I wonder how W would have the time to exhaust the budget. I accept that W may need more ECAs during term breaks and summer vacation. The mother is at liberty to save up some of the money during the school terms and have them used during the term breaks. The overall principle is there should not be excess at the end of the period. 127. Doing the best I can and for the reason that I am going to set out as regards the country club membership, I give a figure of USD1,923 (or \$15,000). Entertainment/Presents 128. The sum has been agreed at USD641 (or \$5,000). School books and Stationery 129. I assess it at USD641 (or \$5,000). Clothing/Shoes 130. The father has no strong view on the mother's figure of USD718 (or \$5,600). I would award this sum. Holidays 131. The mother seeks a monthly sum of USD3,846 (or \$30,000); this covers both W and her holidays expenses. 132. While the father agrees to make provision in the sum of USD1,282 (or \$10,000) per month for W, he insists the mother has to finance her holiday expenses out of her own pocket. 133. Travels could be a good stimulation for W's development and emotional well-being. The evidence suggests that while in Hong Kong W used to enjoy extensive and in all likelihood luxurious travels with her mother to different parts of the world. With all travel restrictions gone in the post-Covid era, flying is now a reality. W may need to travel to Hong Kong or to the Mainland for seeing his father; and there could be travels within or out of the country during holidays, whether by planes or other means of transportation. The father is therefore on the right track by agreeing to pay for W's holidays. 134. I have determined the father and his family's standard of living. I incline to accept the mother's evidence that the father regularly treats his other children to trips to Sydney, to his residences in Switzerland where they can enjoy the two hotels he owns there, and to his apartment on the Billionaire's row in Manhattan, New York City. 135. The father accepted that W, being a small child, cannot travel on his own until the age of 15 or 16 years. In other words, as of now and in the near future, he has to be accompanied by the mother. That being the case, I am of the view that any provision for W's holidays should cover that of the mother in order to make "holidays" a reality for W. This, I emphasize, is not a separate item for the benefit of the mother, but is part of W's maintenance. 136. I regard it is not inappropriate to assume the mother would need a larger budget when travelling with W. Considering the history of the matter, I assess this item at USD3,205 (or \$25,000) per month. Child-Minding Fees 137. At trial, the mother seeks a child-minding fee of \$25,000 per month. This is to be contrasted with her initial claims for the service of a nanny, a housekeeper and a driver which are way higher than \$25,000 per month. In reply, the father agrees to pay \$10,000 for providing the mother with some part-time cleaning service.

138. Under cross-examination, the father somewhat reluctantly agreed that, the mother, being a single parent, do require some level of assistance. An additional sum of \$10,000 for child-minding was suggested but was rejected. 139. The father's offer is to cover part-time cleaning service only. This is different from child-minding. As see it, it is reasonable and necessary for W to have a childminder so that the mother may have some time-off for her personal matters or taking care of her health issues. 140. I assess this item at USD2,564 (or \$20,000). This includes the fees for housekeeping and child-minding. Country Club Membership 141. The mother said the Montana Property does not have any amenities of any kind. There is no lawn, or area to play and exercise. Across the street there is a sports social club which offers swimming, tennis, and various other amenities for kids. The club also host frequent family activities. It is a safe and a close by alternative to having residential building amenities. She requests the father to pay an initial one-time membership fee of USD8,400 (or \$65,520) plus a monthly fee of around USD314 (or \$2,450) together with the fees for any sports lessons taken. 142. It would appear to me that the club membership is more for the mother's benefit than for a small child. I am sure there must be social and sports amenities around available for public without having the need to subscribe for a private club. There are already an extra playroom in the Montana Property and financial provision for W's ECAs covering both on campus or out-of-school. I do not consider a social club membership is for the reasonable and immediate maintenance of a little child of 7 years old. In any event, the mother's claim for an initial joining fee, being non-recurring, is caught by Section 10(2)(a) of the Ordinance that I have already dealt with under "the Car": see [112] to [113] above. Life Insurance 143. The mother worries that if she is to unexpectedly pass away W would be left without any care, both physical and financial. She requests a life insurance to be taken out so that W would be given a guaranteed death benefit of USD5,000,000 (or \$39,000,000) upon her death. This would require a monthly life insurance payment of USD4,865 (or \$37,948). 144. As I see it, the problem with this request is the mother may or may not die prematurely. I was not told by Mr Chan what would happen to the insurance policy or the values in it if the mother survives, nor was I taken to how USD5,000,000 (or \$39,000,000) could be a reasonable financial provision for W's maintenance at any point of his life before the age of 18 or completion of full time education. For these reasons, I reject the claim. Mother's allowance 145. It is well settled that the court may augment the periodical payments order for a child to include an allowance for the mother, especially if the mother has to give up work or is unable to work because she has to look after the child: *Haroutunian v Jennings* (1980) 1 FLR 62; *WGL v ASB* (Child Maintenance under the GMO) [2013] 1 HKFLR 391, at [194]; see also, *K v W* (Children – Removal from Jurisdiction) [2006] 2 HKFLR 292, *T v J* FCMP 38 of 2007 (unreported, dated 26 August 2008); *H v S* FCMP 70 of 2008 (unreported, dated 29 April 2009) and *IDC v SSA* [2013] HKFLR 61. 146. Thorpe LJ said at [42] of *Re P* (Child: Financial Provision) that a more generous approach to the calculation of the mother's allowance is not only permissible but also realistic and essentially a broad-brush assessment is to be taken. On the approach to be adopted, the learned judge said,

[48] In making this broad assessment how should the judge approach the mother's allowance, perhaps the most emotive element in the periodical payments assessment? The respondent will often accept with equanimity elements within the claim that are incapable of benefiting

the applicant (for instance school fees or children's clothing) but payments which the respondent may see as more for the benefit of the applicant than the child are likely to be bitterly resisted. Thus there is an inevitable tension between the two propositions, both correct in law, first that the applicant has no personal entitlement, secondly, that she is entitled to an allowance as the child's primary carer. Balancing this tension may be difficult in individual cases. In my judgment, the mother's entitlement to an allowance as the primary carer (an expression which I stress) may be checked but not diminished by the absence of any direct claim in law.

- [49] Thus, in my judgment, the court must recognise the responsibility, and often the sacrifice, of the unmarried parent (generally the mother) who is to be the primary carer for the child, perhaps the exclusive carer if the absent parent disassociates from the child. In order to discharge this responsibility the carer must have control of a budget that reflects her position and the position of the father, both social and financial. On the one hand she should not be burdened with unnecessary financial anxiety or have to resort to parsimony when the other parent chooses to live lavishly. On the other hand whatever is provided is there to be spent at the expiration of the year for which it is provided. There can be no slack to enable the recipient to fund a pension or an endowment policy or otherwise to put money away for a rainy day. In some cases it may be appropriate for the court to expect the mother to keep relatively detailed accounts of her outgoings and expenditure in the first and then in succeeding years of receipt. Such evidence would obviously be highly relevant to the determination of any application for either upward or downward variation. 147. In dealing with mother's allowance by way of an independent assessment, Thorpe LJ had regard to the likely costs of running the home, to the fact that the mother is to be the child's primary carer, who provided 24-hour care for the child. That level of care would be difficult to buy in, even for a wealthy and resourceful father. Unlike nannies, a mother is not entitled to days off, weekends off and holidays; see [54]. 148. This approach was followed in *IDC v SSA*, *supra*, where HH Judge Bruno Chan said,
84. The evidence before the court is that the Mother used to earn between HK\$20,000 - \$30,000 per month before she gave birth to Z. While she is certainly not entitled in law to claim her carer's allowance on the same basis of a wife for ancillary relief, it would not be inappropriate in my view instead to use her former average income as the basis for assessing her allowance as the primary carer, which as Thorpe LJ said in *Re P* above, and using his words here, may be checked but not diminished by the absence of any direct claim in law, and that in order to discharge this responsibility as the primary carer of Z, she must have a budget that reflects her position and the position of the Father both social and financial, as she should not be burdened with unnecessary financial anxiety or have to resort to parsimony when the Father chooses to live lavishly. 149. The mother's previous position was that her entire living expenses had to be provided for by the father by way of a mother's allowance. Hence, at the start of the trial she sought a sum of USD17,469 (or \$136,260) per month, covering all her personal expenses. This attracted criticism from Ms Irving that the mother was making a full raft of ancillary relief claims as if she were a

divorced wife. She subsequently reduced the figure to USD6,410 (or \$50,000) per month, which is merely a fraction of her claimed expenses. 150. The father's stance is simply that there should be no separate allowance after taking into account that the mother would be benefitting from rent, utilities, car running costs, and household expenses being paid by the father for W. Additionally, the mother will also be benefitting from the medical insurance Policy for her and W for which the father has undertaken to pay. The mother therefore should provide for her own personal expenses, including food, eating out, travel, holidays, clothes and entertainment. 151. In considering this item, I should give weight to the fact that the mother is a single-parent taking care of W 24 hours around the clock with no support from the father. She is alone in LA. She has not had the kinds of help, assistance, support, time or break that other mothers would; eg where those fathers would take care of the children some of the time or sharing some of the holiday periods. She has to perform all the roles of mother, maid/cleaner, driver and nanny. As pointed out by Thorpe LJ, unlike nannies, a mother is not entitled to days off, weekends off and holidays: see *Re P*, at [54]. Apart from these, I accept that the mother has her own medical conditions to look after – both physically and financially. By contrast, while in Hong Kong, the mother and W had the benefit of assistance from 2 domestic helpers and a chauffeur. While this level of assistance is not being sought to be replicated, I agree with Mr Chan that this should be a relevant factor when considering W's standard of living and elements of mother's allowance. 152. I am mindful that the mother was not being frank regarding her career plan. Upon the court's enquiry following her evidence that she could not do a "9 to 5 job" and would like to establish her own business or engage in some commission based work, the mother said she would like to be in the real estate market. Upon further enquiry, the mother admitted that she had obtained a California Real Estate license a year ago. She also admitted that she has been associated with a real estate agency, yet she denied working with this company, putting up an explanation that she is just an intern and has been given the title of "associate". She has not been paid anything and she has not been to the office for the last 6 months. When being pointed out that she did not disclose these in any of her affirmations, she gave the excuse that the license was part of her continuing education. 153. I agree with Ms Irving that these facts are relevant and should have been disclosed. This is a skill that she can market; and the compelling evidence is that she has already been doing this. The mother took the trouble and time to have her qualified as a realtor. It is hard to believe that she did it for no reason other than for continuing education. The mother has all along been represented by family law specialists. I have also reminded her of the duty to give full and frank disclosure of her financial situation when I dealt with her application for interim-maintenance: see *RGH v GY* [2020] HKFC 275 at [114]. I find there was a deliberate concealment of this material information on the part of the mother. 154. The mother is merely 35 years old. It seems clear to me that she has some earning capacity but such capacity has been curtailed by her obligations towards W. She is also career-minded and ambitious, as can be seen from her setting up the R Limited and in obtaining a real estate agent license. When being cross-examined on whether the mother has any earning capacity, the father alluded to the mother as a sex worker and said he is not sure if the mother still has any income from the trade. It is

apparent that the father was just mindful of making insulting remarks and did not respond sensibly to the question. I must say this does not put him in a very good light. 155. I remind myself of Thorpe LJ's advice that the mother's entitlement to an allowance as the primary carer may be checked but not diminished. Considering the case in the round, I do not think this is an appropriate case where the mother's allowance is to be subsumed in the father's contribution towards W's household expenses. I am convinced that the mother should be entitled to a modest allowance of USD1,282 (or \$10,000). In arriving at this sum, I have already taken the USD2,564 (or \$20,000) child-minding and housekeeping fees into consideration. Lump Sum Payment 156. The mother seeks a lump sum of USD164,947.50 (or \$1,286,590.50), being (1) the set up and furnishing costs of the Montana Property, (2) the Initial Insurance Premia (Renter), (3) the country club membership and (3) the car purchase. 157. With the conclusions that I have come to, the country club membership and the car purchase are not relevant anymore. 158. The mother paid an initial renter's insurance down payment USD206.50 (or \$1,611) when taking out the lease for the Montana Property. The set up and furnishing costs were said to be USD36,341 (or \$283,460). Both items have already been paid, so prima facie, they are refundable. 159. The father however opposes on the ground that the mother has already received monies on which the mother could have been used. As a matter of fact, Ms Irving reckoned that a total sum of \$1,891,773 has been unaccounted for by the mother. 160. While I do not necessarily agree to the figure put forward by Ms Irving, I, however, agree that there are substantial sums either unaccounted for or used for purposes other than that for which they were intended. 161. The first order I made was an interim maintenance order on 4 May 2020 by which the father was to pay a monthly sum of \$557,000 (inclusive of rental of \$157,000 for the Hong Kong Home). 162. On 30 December 2020, I handed down the Interim Maintenance Judgment reducing the interim maintenance to \$463,400 per month. Of this sum, \$157,000 is earmarked for the rental of the Hong Kong Home. 163. In other words, as from May 2020, the rent of the Hong Kong Home had been fully catered for. However, the mother failed to pay the rentals for the months of February, March and April 2021, totalling \$471,000. Additionally, at the material times, her then boyfriend GB also paid 3 months' rents for the mother when the father was paying the same too pursuant to the Order. This means a total of \$942,000 (\$157,000 X 6 months). When Ms Irving pointed out that the mother benefited from these \$942,000, the mother merely gave the explanation that the monies were for the benefit of W. She said since at that time formal education was not available for W, she made the decision to hire a private tutor. I regard it as a mere say-so on her part. 164. Mr Irving also rightly pointed out that the mother sold her Hong Kong Range Rover for \$500,000 and chose not to spend the money in buying a car in LA. The mother replied she had credit card deficit to cover and also at that time, she had already hired a Porsche and she was bound by the contract. 165. Ms Irving also criticised the mother for not having provided any proof of removal costs that she said required and was provided for by the father pursuant to court's Order. 166. Lastly, the mother said in her affirmation of 30 July 2021 that GB incurred \$8,463,000 expenses for her and W for the period between 1 January 2019 and 30 April 2020 (ie a total of 16 months), averaging \$528,931 per month. Significantly, at least up to end of

February 2020, there was an overlapping of 14 months on which the mother was in receipt of monthly sum of \$400,000 from the father. Under cross-examination, the mother however retracted to say she was not in receipt of any living expenses from GB. She gave the incredulous explanation that these were things bought by GB for her (for instance, a piece of jewellery may cost \$500,000) on which she had no control. 167. The mother's credit card and bank records show she spent substantial sums on medical consultations, spa, skin and nail treatments, shopping and her R Limited. The mother accepted that substantial amounts were spent on settling her AE credit card the majority of which was for her personal purposes. 168. I am satisfied that there should have been sufficient monies for the insurance and the set up costs; the mother simply overspent and did not use the monies intended or ear-marked for their purposes. In all fairness, for the reasons aforesaid, I do not see any justification for having these costs to be refunded by the father.

Conclusion

169. To recap, the awarded items are set out below (in Hong Kong dollars only). Item Amount (HK\$) 1 Rent 97,500 2 Utilities 4,680 3 Food 15,000 4 Household Expenses 7,800 5 Subscriptions 1,000 6 Car 17,000 7 Car Expenses 11,700 8 Monthly Insurance (Renter) 760 9 Out-of-School ECAs 15,000 10 Entertainment / Presents 5,000 11 School Books / Stationery 5,000 12 Clothing / Shoes 5,600 13 Holidays 25,000 14 Child-Minding / Housekeeping 20,000 15 Mother's Allowance 10,000 Total 241,040 170. The total sum is \$241,040. I think I am entitled to take judicial notice that since trial there has been significant inflation in the United States. I shall round up the figure to \$250,000. I do not propose to make any adjustment or back-dating. There is no such application before me. 171. Mr Chan requests that in terms of logistics/mechanics, the monthly payment date to be changed to the 15th day of each calendar month being payment in advance for the next calendar month. It appears Ms Irving has no objection to that. I see no reason why this cannot be done. The order to be made in this Judgment is to take effect on 15 October 2023 and is to replace the previous interim maintenance order of 26 August 2021. Order 172. Subject to the undertakings on the part of the father to be approved by me, the father shall pay the mother periodical payments for the maintenance of W in the sum of \$250,000 per month, the first payment to be made on or before 15 October 2023 (for November 2023) and thereafter on the 15th day of each month until W reaches the age of 18 or completes full time education, whichever shall be later. 173. I direct the father's solicitors to draft the order (with undertakings included) for my approval. Costs 174. As I said, both were discredited as witnesses. In terms of items awarded and issues determined, on the face of the judgment neither can be said to be an overall "winner". I understand that negotiation between the parties had taken place before and during the trial. Further, some of the items have been disposed of by way of undertakings by the father. Lastly, I have not had the benefit of the parties' submissions on costs yet. I will therefore deal with the costs issue by way of paper disposal. 175. Before I conclude, it is pertinent to remind parties of the following points and I would encourage them to consider the costs issue amicably. 176. Firstly, Hartmann J (as he

then was)’s guidance in *F v F* (No 2) [2003] 3 HKLRD 976 at [22] that “the long-established principle that costs are determined not by dividing litigation into quantifiable subjects and figures, like a profit and loss account, but rather by way of overall impression” should be remembered. The court will not engage in a stocktaking or auditing exercise. 177. Secondly, it has been said by the Court of Appeal that because of the special dynamics of family litigation, the discretion of the court on costs may be broader than in civil matters generally: *L v. C*, (unreported; CACV No. 169/2006, 9 March, 2008), at [23]. 178. Thirdly, Mr Mostyn QC (as he then was as deputy judge of the English High Court)’s criticism on spread betting in *GW v RW* (Financial Provision: Departure From Equality) [2003] 2 FLR 108, at [88], should be borne in mind. 179. Lastly, as I said in *RMH v GY* [2021] HKFC 109 at [27] when I dealt with the mother’s application for legal costs funding, W himself is the sole beneficiary out of the proceedings. 180. I direct that parties do lodge and serve their written submissions on costs on or before 31 October 2023. Unless with the leave of the court, such written submissions shall not be more than 10 pages (printed one-sided on A4 paper, at font 13 and 1 ½ line spacing) and any annexures shall not be more than 20 pages. (I. WONG) District Judge Mr Jeremy Chan, instructed by Chaine Chow & Barbara Hung, Solicitors, appeared for the Applicant Ms Frances Irving, instructed by Stevenson Wong & Co, Solicitors, appeared for the Respondent

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Prepared on 26 October 2026 · Esheria