

HONG KONG / JUDGMENT

WD v. LN**[2025] HKCFI 2025****COURT**

Court of First Instance

DECIDED

19 May 2025

CASE / FILE NUMBER

HCMP338/2025

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCMP 338/2025

**[2025] HKCFI 2025 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS NO. 338 OF 2025**

IN THE MATTER OF LNT, a boy, born on xxxx 2022 and IN THE MATTER OF Section 26 of the High Court Ordinance, Cap.4 and Order 90 of the Rules of the High Court, Cap. 4A and IN THE MATTER OF the Guardianship of Minors Ordinance, Cap.13 and IN THE MATTER OF the Parent and Child Ordinance, Cap.429 BETWEEN WD Plaintiff and LN Defendant

Before: Hon H. Au-Yeung J in Chambers (Not Open to Public) Date of Hearing: 13 May 2025 Date of Decision: 13 May 2025 Date of Reasons for Decision: 19 May 2025

REASONS FOR DECISION

INTRODUCTION

By Originating Summons filed on 4 March 2025 (the Originating Summons), the plaintiff applied for various orders, including, inter alia: That the subject Minor (the Minor) be made and shall remain ward of the Court; A declaration that he is the natural father of the Minor pursuant to section 6(1)(a) of the Parent and Child Ordinance (Cap.429, Laws of Hong Kong); An order that he shall have all the rights and authority that the law will allow him as a father pursuant to section 3(1)(d) of the Guardianship of Minors Ordinance (Cap.13, Laws of Hong Kong); An order that the defendant do forthwith return the Minor to the plaintiff; An order of interim custody, care and control of the Minor. At the call-over hearing of the Originating Summons held on 11 April 2025

(the Call-Over Hearing), Ms Anita Yip SC for the plaintiff accepted sensibly that the substantive orders sought under the Originating Summons should be dealt with in the divorce proceedings between the parties at the Family Court, particularly in the light of the fact that there was going to be a hearing before a Family Court Master on 28 April 2025 (the Hearing before FC Master). She also accepted that this Court should not deal with interim interim care and control of the Minor in the meantime. As a result, at the Call-Over Hearing, this Court only dealt with the questions of: travel restriction of the Minor; and access of the Minor by the plaintiff in the period prior to the Hearing before FC Master. Having heard parties submissions, this Court ordered that: The Minor shall remain ward of the Court; The Minor shall not be removed out of the jurisdiction of Hong Kong (the Non-Removal Order); Staying access be granted to the plaintiff covering the following periods: 11 12 April 2025; 18 19 April 2025; 25 26 April 2025. (the Interim-Interim Access Order) By summons filed on 2 May 2025 (the Leave Summons), the defendant applied for leave to appeal against the aforesaid Orders made at the Call-Over Hearing, and for an order that a remark be made on the order that the said orders were made in the circumstances where the defendant had not perused the plaintiff's skeleton argument. THE LEGAL PRINCIPLES The requirement for granting leave to appeal is set out in section 14AA(4) of the High Court Ordinance (Cap 4, Laws of Hong Kong). It is trite that leave to appeal shall not be granted unless the court is satisfied that the intended appeal has a reasonable prospect of success or there is some other reason in the interest of justice why the appeal should be heard. It is also well established that a reasonable prospect of success means an appeal with prospects that are more than fanciful without having to be probable (e of this sort of arrangement, I wholeheartedly endorse what Butler-Sloss J had said in the case of *Re J* which was cited by the judge in her decision refusing leave. In the case of *Re J* [1989] 2 FLR 304 where her Ladyship said at page 308: I must say I would deprecate the instant appeal of an interim order. There was an interim order in that case but we are not even dealing with an interim order. We are dealing with an interim-interim order. I continue with the citation. Her Ladyship referred to their attention being drawn to the case of *Edwards v Edwards* [1986] 1 FLR 205, at page 209 of that case where the following was said: I venture to comment that appeals concerning a matter of care and control, in order to hold the position pending a full inquiry, are very difficult appeals to establish successfully. The reason for this is simple: it is a matter which is essentially in the discretion of the judge, who sees the parties (although in this case they did not give evidence before him) and who has a feel of the case, and, moreover, it is essentially a matter for him during the interim proceedings. But essentially, in interim orders of this kind it must be difficult to establish such a departure from the principles to be applied in an interim decision so as to enable this court to interfere.

6. After citing this, Butler-Sloss J continued to say the following: I would respectfully adopt those words and say that this is not the sort of case, unless it is extremely plain, in which there should be an appeal against the first part of an interim order made even prior to having the interim application fully litigated.

7. This is the approach the Court of Appeal in this jurisdiction would adopt with regard to any intended appeal against interim-interim orders. I say this for the benefit of the profession. And also one must bear in mind the practical side of the matter. If there is the possibility of going back to the court for changing the arrangement on an interim-order basis (since this is only an interim-interim order which, as I have explained, is only meant to be temporary, provisional and should only be an arrangement made on the basis that the court has not had the sufficient time and sufficient assistance to fully and properly consider the matter), then it is really very difficult for the parties to say that, Well, we should come to the Court of Appeal in order to get a feel from the Court of Appeal before we go back to the court below.
8. The Court of Appeal is not the forum for the parties to make a second attempt when they fail in the first instance, just hoping that the Court of Appeal or judges in the Court of Appeal will form different views on the weight to be attached to a particular factor. That is not a proper use of an appeal. As we have said on a number of occasions, in an appeal against discretion, the court is not to exercise the discretion by the members of the Court of Appeal as if we were sitting in the Court of First Instance. We only examine whether there is any error on the part of the judge which is so plainly wrong. And in the present context, I would adopt the wording of Butler-Sloss J, unless it is extremely plain that the judge has gone wrong, parties should not come to this court. It is also trite that the Court of Appeal would not entertain an appeal which is academic: *Tele-Art Inc (In Liquidation) v Tam King Ching Kenny and Shum Lap Chi, The Joint and Several Liquidators of Tele-Art Ltd (In Liquidation)* (CACV 234/2007, unreported, 19 March 2008) at [22]. DISCUSSION With greatest respect to the defendant, her intended appeal has no prospect of success at all and is bound to be dismissed for reasons to be explained below. The Non-Removal Order First, it is beyond argument that such an order is necessary for the best interest of the Minor because of the defendant's threat that she was minded to bring him to USA. Plainly, the Minor should not be relocated to another country without leave of the Court. Second, in any event, it is academic and serves no useful purpose at all to appeal against the Non-Removal Order made by this Court because: At the Hearing before FC Master on 28 April 2025, a Master has made another non-removal order in respect of the Minor; Since then, this Court has de-warded the Minor. The Interim Interim Access Order The Interim Interim Access Order only covered the period between 11 April 2025 and 28 April 2025 because it was anticipated that the access matter would be taken up by the Family Court since the date of the Hearing before FC Master. Now that we are in May 2025, the appeal against such an order has become academic. The plaintiff's skeleton argument and hearing bundle The defendant further submitted that the orders made at the Call-Over Hearing should be set aside (and a remark should be made at the order) because the plaintiff's solicitors did not send her the plaintiff's skeleton argument and hearing bundle for the said hearing, and as a result, she could not understand the exchanges between the Bench and Ms Yip SC at the Call-Over Hearing. This argument cannot assist the defendant for various reasons. First, as a matter of fact, the plaintiff's solicitors have filed an affirmation of service confirming that the said skeleton argument together with the hearing bundle for the Call-Over Hearing had been

served on the defendant by leaving the same at the front door of the defendant's house on 9 April 2025 (2 days before the hearing). Indeed, the defendant did not dispute the same at the hearing. She only stated that she did not open the documents because she was worried about her safety if she did that. However, in this regard, I should make it clear that, from the photograph attached to the affirmation of service of Pang Ryan Yue Hin filed on 10 April 2025, it can be seen that: The skeleton argument and hearing bundle were not put inside any envelope; and The box files were sent together with a 1-page covering letter placed at the top. Hence, the defendant could appreciate what had been sent to her even without having to touch the documents. In other words, the allegations that the defendant had not received the above documents and that she was not aware of what the documents were are totally false. Insofar as it was alleged that she did not read the documents, it was her own choice.

Second, in any event, the exchange between the plaintiff's senior counsel and the Bench at the beginning of the Call-Over Hearing was almost entirely about whether the plaintiff's application under the Originating Summons should be dealt with in the Family Court. Even if the defendant did not understand what was going on (which I do not accept, because this Court did explain to her what the exchanges were about after the conclusion thereof), that would not affect the fairness of the orders subsequently made. Third, most importantly, before this Court dealt with the 2 remaining issues (i.e. travel restriction and interim access), this Court did explain to the defendant in detail what the issues were about and she was then given a full chance to make submissions thereon. All in all, the desperate attempts on the part of the defendant were in vain.

ORDER For the above reasons, the Leave Summons had been dismissed.

COSTS This is a child matter. Hence, the Court in the usual circumstances will not impose a costs order on either of the parents, and would only do so in exceptional circumstances (see KK, H v PK, H (formerly known as PS, V) [2023] HKCA 176, at [25] [26]). However, in my view, this is a case where the defendant should be ordered to pay the costs of the plaintiff, because: Her application is totally unmeritorious and misconceived; Indeed, during her oral submission in Court, the defendant accepted that the orders made at the Call-Over Hearing show the forward-thinking of this Court which had considered the overall situation of the matter; While the defendant is unrepresented, she should be able to understand that it is useless and a waste of time and costs for her to appeal, particularly after this Court's explanation of the situation at the Call-Over Hearing; The defendant has persisted in making this application despite the plaintiff's invitation for her to withdraw the same with no costs consequence; Despite the Court's explanation, she insisted to proceed with the application. I therefore ordered that the defendant should bear the plaintiff's costs of the Leave Summons. Such costs had been summarily assessed at the sum of \$75,000. The defendant shall pay on or before 13 June 2025. (H. Au-Yeung) Judge of the Court of First Instance High Court Ms Anita Yip SC leading Ms Helen Au and Mr Jonathan Chan, instructed by Johnnie Yam, Jacky Lee & Co., for the plaintiff The defendant was unrepresented and appeared in person

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 vi_X_KA; gdvx gdvx (#p# gdvx gdvx gdvx }
wne_eYSeM gdH?{ hH?{ tft[P@P h9\$S h~07 h~07 h~07 gd@} gd@} gd@} gd@} gd@} gd@}
gd@} gd@} gd@} gd@} gd@} gd@} gd@} gd@} gd@} gd@} ~ul`WK h @} h8*P \TPTP h @}

hy-[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 :pnN :py-[[Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}#
theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@j!Q- jyV` |
PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE\} theme/theme/_rels/
themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/
theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/
themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?>
<a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1"
tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3"
accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/>
[Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml XbzA
5@5E (,Zl gl'i'j =8|cW ~ZOQoGu [b9F (P- 5Vlz drs/downrev.xmlL z|X^_@ (OyQ3
[Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK
[Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml [qV{i
1Y-I 'fB(ql4{ EX | (P5 drs/downrev.xmlL or.W3 [Content_Types].xmlPK _rels/.relsPK drs/
e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels
fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml Q1P JUU?` ` #R+^ 1Y.H Vz@y {M?9 U^N6 0J'J \*C N axK`
@ZeV drs/downrev.xmlL x1ti [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/
downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/
e2oDoc.xml ;}N qKG@ KZo, >3m+ 9@6E CtE8 GfB(hGA% /fyQ]W u'9 NjqP`A 7xqt A`>i O-T3
(Mo| y zle drs/downrev.xmlL z|X^_@ (OyQ3 [Content_Types].xmlPK _rels/.relsPK drs/
e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels
fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml fBmK X7Z2n VTV;] e`9f drvt Xz<1 `kle4 vs#- q>ZO
mZx* tx)B{ drs/downrev.xmlL eRp# oj{S [Content_Types].xmlPK _rels/.relsPK drs/
e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels
fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml uV{i)F(Q/_\ ;KL' .=C n[Ay #Ez(#*Cv jpz4 Q;~c T(l
Gprxp> n{'-: Yu[] 7MbV drs/downrev.xmlL x1ti [Content_Types].xmlPK _rels/.relsPK drs/
e2oDoc.xmlPK drs/downrev.xmlPK H; <)FrF `+<N j1VB 7;+[ +ko@ 7;+[ )FrF `+<N QQqi ' '%
w|'V &N#)]mOw*Vc j^TS9 `w3:p w*Vc&N#) QQqi w3:p CACV Jeannie MY MokSo
Normal.dotm Windows User Microsoft Office Word Judiciary CACV Title <?xml version="1.0"
encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA"
xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"
xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"></
b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem
ds:itemID="{8E1C058B-91EA-4DF7-AA28-FA59F4426B69}" xmlns:ds="http://
schemas.openxmlformats.org/officeDocument/2006/
customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/
officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word
97-2003 Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=169343

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/wd-v-ln-2025>

Prepared on 29 October 2026 · Esheria