

HONG KONG / JUDGMENT

WM v. CNK

[2019] HKFC 246

COURT

Family Court

DECIDED

20 September 2019

CASE / FILE NUMBER

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[2019] HKFC 246 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 19 OF 2012

BETWEEN WM Applicant and Respondent

Coram: HH Judge C.K. Chan in Chambers (Not Open to Public) Dates of Hearing: 22-23, 29 August
2018 Date of Applicant s Reply Submissions: 28 September 2018 Date of Respondent s Reply
Submissions: 28 September 2018 Date of Judgment: 20 September 2019

J U D G M E N T (VARIATION OF MAINTENANCE)

This is a hearing of the parties respective summons for variation of the maintenance payable under the consent order dated 17 July 2013 (the Consent Order). The Applicant (the father) asks for the undertaking to purchase a property for the use of the child () to be discharged and the maintenance payable to be reduced, whilst the Respondent (the mother) asks for the maintenance payable to be increased.

Background

The father is a German national. He was and still is a Chief Executive Officer () of a listed company in Germany. The mother is a local Chinese. The parties met in Hong Kong sometime in 2006 and thereafter developed a romantic relationship. M was born in 2008 and is now aged 11. M is currently living with the mother in Hong Kong and being a Year 7 student of an English Foundation School (). The parties relationship came to an end towards 2011/2012, leading to the

present proceedings during which a settlement on M's maintenance was reached as evidenced by the Consent Order before HH Judge Bruno Chan on 17 July 2013 (A/1-5). The relevant and essential terms of the settlement were as follows:

- (1) The father undertook to purchase a property (with certain conditions on size, price, location, etc.) for the mother, M and a domestic helper to live in rent free until M reaches the age of 18 or when he leaves Hong Kong for overseas tertiary education or when he finishes tertiary education in Hong Kong.
- (2) The purchase will take place before the end of 2017, at the latest.
- (3) The father shall pay the monthly maintenance of \$48,000 for M commencing 1 August 2013 until the mother commences full time employment or 30 December 2014, whichever is earlier, after which the maintenance payable will be reduced to \$38,000 per month until the purchase of the property for the occupation of the mother and M.
- (4) After the mother and M move into the property purchased by the father, the maintenance payable will be further reduced to a monthly sum of \$23,000 until M reaches 18 or finishes secondary education. It is not disputed that the father has failed to honour the full terms of the agreement in at least 2 ways. Firstly, he unilaterally reduced the monthly maintenance to \$32,000 (as opposed to \$38,000) since February 2015. Secondly, he failed to purchase a property for the mother and M's occupation by the end of 2017. Instead, the father took out a summons on 9 November 2016 (A/6) seeking to be released from his undertaking to purchase a property for the mother and M's occupation and also a downward variation of the maintenance payable for M. In his supporting affirmation, the father asked for the monthly maintenance to be reduced to \$23,000 (B/6, 14). After the conclusion of the evidence, counsel for the father asked for the sum to be further reduced to \$13,000 together with the father's undertakings in respect of M's educational costs (88 of counsel's Closing Submission). The parties had attempted negotiation for a settlement but unfortunately failed. On 29 March 2018, the mother took out her summons for an upward variation of M's maintenance from \$38,000 to \$41,300 until June 2024, and \$41,900 until M reaches 18 or finishes secondary school education. The mother had at the same time issued a judgment summons () for the outstanding arrears amounting to a sum of about \$288,695 being the difference in monthly maintenance the father had unilaterally reduced since February 2015 up to March 2018. The JS is now adjourned sine die pending the determination of the present 2 summonses.

Issues

It is to be noted that it is now the father's case that his ability to pay is no longer a primary issue. In counsel's Closing Submission, it was stated at 86 that:

86. So far as maintenance the primary issue after the oral evidence is not the Father's ability to pay but what in fact are the real expenses of [M]. Therefore, it is my view that the issues to be decided now are:
- (1) Have there been any major change of circumstances, rendering it reasonable for the father to withdraw his undertaking on the purchase of a property for the use of M and the mother?
 - (2) What are the reasonable monthly expenses of M that should be paid by the father under the present circumstances of the case? The law giving the court's jurisdiction to vary a maintenance order in respect of a minor born outside wedlock is found in section 10 (4) of the Guardianship of Minors Ordinance, Cap. 13 ():
 - (4) An order under subsection (1) or an order under subsection (2) (other than an order for a lump sum payment in one amount, for a lump sum to be paid in instalments where all such instalments have been paid or for the transfer of property) may be varied, discharged, suspended or revived after being so suspended, by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under this Ordinance, or (before or after the death of either parent) on the application of any other person having custody of the minor by virtue of an order under subsection (1). On how to exercise the court's discretion, I agree with counsel that helpful guidance can be found from similar cases brought under section 11 of the Matrimonial Proceedings and Property Ordinance, Cap. 192 (MPPO) for children born within wedlock together with the relevant case laws. In the case of *AEM v. VFM*, Cheung JA has explained the modern approach in dealing with such an application at paras 14.4-8 of the Judgment:
4. The modern approach, as required by section 11(7), is for the Court to consider all the circumstances of the cases. The Court is not required to proceed from the starting point of the original order but look at the matter afresh: *Flavell v. Flavell* [1997] 1 FLR 353 at 357B following *Lewis v. Lewis* [1977] 1 WLR 409 and *Garner v. Garner* [1992] 1 FLR 573.
 5. Any change in any of the matters to which the Court was required to consider when making the original order was one of the circumstances to be considered.
 6. Almost invariably, an application to vary an earlier periodical payment order will be brought on the basis that there has been some changes in the circumstances since the original order was made, for example, continuing inflation; the increased costs in supporting a growing child and that one party may be more adversely affected than another by the increase in the costs of living: *Garner v. Garner*.
 7. An increase in the wealth of the husband was a relevant factor to be taken into account: *Primavera v. Primavera* [1991] 1 FLR and *Cornick v. Cornick* (No. 2) [1995] 2 FLR 490.

8. At the same time the basis and intended effect of the original order are relevant factors to which the Court on variation should pay regard and there should not be a radical departure from the approach taken by the parties themselves when they had entered into an agreement embodied in a consent order: *Boylan v. Boylan* [1988] FLR 282. As to the weight to be attached to the original order, Tang VP (as he then was) said in the case of *HCTT v. TYYC* [2008] 5 HKC 86 at paras 15-16:
15. But as *Garner v. Garner* [1992] FLR 573 shows that does not mean that the earlier order, whether made by consent or not, carries no weight. How much weight should be given to the earlier order must depend on the circumstances. Cazalet J said in the English Court of Appeal: Almost invariably, an application to vary an earlier periodical payment order will be brought on the basis that there has been some change in the circumstances since the original order was made; otherwise, except in exceptional circumstances, the application will, in effect, be an appeal. If an order is not appealed against, or is made by consent, then the presumption must be that the order was correct when made. If it was correct when made, then there will usually be no justification for varying it unless there has been a material change in the circumstances. However, because of the impact of continuing inflation, because children grow older and cost more to support and because, for example, the cost of living in its increase may hit one party harder than another, it will usually follow that, if time has passed, there will inevitably have been changes in the circumstances, of the parties concerned. Following *Lewis v. Lewis*, by which decision this court is bound, a court on the hearing of an application to vary is fully entitled to look at all the relevant matters set out in s.25 of the Matrimonial Causes Act 1973. On occasions, the court may be slow to accede to an application to vary a consent order; not least because the parties solicitors might otherwise be deterred from either seeking to negotiate such a provision or to achieve finality. Another factor which may influence a court will be the time that has passed since the original order was made. If an application consequent on an order is brought very soon after that order has been made, the court, in normal circumstances, is likely to attach more weight to the earlier order than if it had been made some years previously. Likewise, the court would expect to pay full regard to any special terms agreed between the parties at the time the original order was made- as, for example, when endorsements on briefs or contemporaneous correspondence show that an agreed order has, for some particular reason, been set at an artificially low figure. Shortly stated, the court must decide what weight it should attach to the original order and all the surrounding circumstances. However, once an application to vary is before it, the court is fully entitled to make an order considering all the circumstances afresh, paying such regard to the older order as may be appropriate. Thus, although the jurisdiction to vary is untrammelled, normally the earlier order would not be varied unless there has been a material change in the circumstances.
15. I shall bear the above principles in mind when I come to consider the facts of this case. The Father's Case and Financial Circumstances

16. It is the father's case that his ability to pay is no longer a primary issue. By this, I take it to mean that he has no difficulty in paying the maintenance as claimed by the mother for M. What remains disputed is whether the amount claimed is reasonable and whether they should be allowed in full. Despite the father's concessions, I still find it necessary to go into a brief discussion on his financial positions so that the final decisions on M's maintenance could be made in proper context. The father is a German national now aged 54. He is currently the Chief Executive Officer of a listed company in Germany earning an average monthly income of about HK\$376,963 (B/119). He is also in possession of the following assets and liabilities (B/118): Assets (+)
- (1) Various bank accounts HK\$2,664,756
 - (2) Various stocks HK\$8,533,331
 - (3) Insurance and endowment policies HK\$1,077,295
 - (4) Valuable personal items HK\$319,000
 - (5) Pension/MPF/Gratuity interests HK\$724,666 Liabilities (-)
 - (6) Loans and various credit cards HK\$1,005,829 Net Assets: HK\$16,551,922
- In his evidence, the father has testified on his financial responsibilities towards his ex-wife and child from his first marriage; and also his responsibilities towards his current wife and child, the marriage of which was entered into shortly after his separation from the mother. But as the father's ability to pay is not a major issue here, I will not venture into a detailed discussion of those financial responsibilities as they will not have a profound impact on the father's abilities to satisfy the reasonable needs of M. It is the father's case that the mother has also entered into a marriage shortly after the Consent Order was made. Her husband (Mr. Lo) works in a disciplinary force and is being provided with married quarters as part of his remuneration package. As the housing needs of both the mother and M have now been catered for, the need for the provision of housing by the father is no longer there. Therefore, the father asks for the withdrawal of his previous undertaking in purchasing a property for the use of M and the mother. The father also submits that as the mother's marriage (in the year of 2014) happened so shortly after their settlement on financial provisions (in 2013), it is reasonable to assume that when the parties were negotiating for and finally reached a settlement in 2013, the marriage was well within her contemplation and therefore should have been disclosed to him during negotiation. In short, the father is alleging that the mother has breached her duty for full and frank disclosure when negotiating for the settlement. Furthermore, it is also the father's case that many of the expenses as claimed on behalf of M are without evidential support or unreasonable in amount or nature. He is now willing to give an undertaking to pay for M's educational expenses together with payment of a monthly sum of HK\$13,000 towards the reasonable maintenance of M, the breakdown of which could be found at Annex B of counsel's Closing Submission dated 19 September 2018. The father also asks for the variation to be backdated to the date of the mother's marriage (on 8 May 2014) and claims for the return of a sum of \$598,320 from her. In the event that the

court does not accede to the request for backdating to the mother's marriage, he asks for backdating from his summons, i.e. 9 November 2016 in the sum of \$231,840. The Mother's Case and Her Financial Circumstances The mother is now aged 40. On 8 May 2014, she married Mr. Lo who is a civil servant working in a disciplinary force in Hong Kong. Together, they have another child born in 2016. Therefore, the family of 4 (the mother, Mr. Lo, M and the new born child), together with a domestic helper are now living in government quarters. In order to care for M, and her new born child, the mother could not return to full time employment. According to her, she is now working as a part time English tutor earning about \$2,400 per month in 2016/17 which has recently increased to about \$4,200. In the mother's Form E (B/96-97), she has listed out M's current monthly expenses (as on 29 March 2018) but I also note that some of those items have been revised in her latest (6th) Affirmation (B/68-69) as follows (the figures in bracket are sums claimed before revision):

Items	Monthly Amount (HK\$)
General Rent	\$379
Utilities	\$1,000
Household expenses	\$500
Domestic helper	\$1,125
Child School fees	\$7,740 (from \$8,920)
Extra tuition fees	\$3,200
School books and stationery	\$1,000
Transport to school	\$1,200
Medical/dental	\$1,500
Extra-curricular activities	\$4,400
Entertainment/presents	\$3,130 (from \$2,510)
Holidays	\$2,500 (from \$3,333)
Clothing/shoes	\$1,000 (from \$1,500)
Insurance premia	\$593
Lunches and pocket money	\$8,900 (from \$9,300)
Other transport	\$500
Uniform	\$300 (from \$200)
Others	\$583 (from \$413)
Total	\$36,546 (from \$38,569)

It is the mother's further case that the school fees of M will be increased to \$9,390 in 2018-19 (which should have already happened by the time of this judgment). Upon M's entry into secondary education in 2019-2020, there will be a further increase of 38% for Year 7 school fees and a further increase of about 6-7% for Year 8 to Year 13. In addition, the mother asks for the father to provide security to his payments (2 of her summons, A/27) and raises objection to the release of the father's undertaking to provide housing for M. During the hearing, sometime has been spent on whether the mother has fully utilised her earning capacity by returning to the labour market on a full time basis. I presume that line of cross examination was based on the fact that the mother had once undertaken in the Consent Order that after her return to full time employment, she would also contribute to the expenses of M in the monthly sum of \$10,000. I think it is now unrealistic to expect the mother to fulfil this undertaking in view of the development since the Consent Order. I am glad to see that counsel has sensibly not made any submissions in this area in both his Opening and Closing Submissions and I will say no more in that regard. Father's Undertaking to provide Housing An important part of the father's application is for the withdrawal of his undertaking to purchase a property before the end of 2017 for the exclusive occupation of the mother and M. It is not disputed that such undertaking was breached by the father as such a property has never been purchased, nor provided to the mother and M for their occupation. It is the father's case that the purpose of such undertaking was to provide both the mother and M a proper accommodation. As their accommodation has now been properly provided for by virtue of Mr. Lo's employment, there is no reason why the father should not be released from that undertaking. The mother objects by saying that the accommodation offered by Mr. Lo cannot be said to be stable. Putting aside the facts that Mr. Lo's employment may be

subject to changes in future and staff quarters are not a guarantee, M is facing an additional difficulty in that as an illegitimate child, he may be evicted therefrom as he is not treated as a family member of Mr. Lo from the prospective of [the government]. My Views It is quite clear from the mother's evidence that she and Mr. Lo knew each other when they were still young. Shortly after the breakdown of her relationship with the father in 2011, the mother's relationship with Mr. Lo has become close and intimate. Mr. Lo even helped her to sign for a tenancy because according to her, she as a single mother and without stable employment was in great difficulty in securing a rental accommodation. However, there is no evidence on when the mother and Mr. Lo decided to form a new family by marriage. It is true to say that the period between the settlement and the mother's marriage was relatively short, but I am not prepared, without any further evidence in this respect, to jump to the conclusion that the mother must have formed the intention to marry Mr. Lo at the time of the settlement and thus failed to fulfil her duty for full and frank disclosure. As to whether the father should be released from the undertaking to buy a property for the use of M and the mother, one has to bear in mind that the purpose of such undertaking is to satisfy the reasonable housing needs of M, and ancillary to that the housing needs of the mother as well. The reality is that M is now living with the mother in a new family in staff quarters provided by the employer of Mr. Lo. There is no evidence to suggest that Mr. Lo is not treating M as a child of the new family. In her evidence, the mother has hinted that M may not be allowed to stay in the government quarters but apart from that bare assertion, I see no concrete evidence in this regard. Under these circumstances, it is not realistic to expect the mother and M to move out from the new family even if the father should have honoured his undertaking in purchasing a flat now. After hearing the parties' evidence in this regard, I am satisfied that the reasonable accommodation needs of M has now been catered for and this significant change of circumstance would justify the withdrawal of the father's undertaking in respect of the purchase of a flat for M and the mother's accommodation. Reasonable Needs of M

Educational Costs The father is willing to give an undertaking to pay for M's educational costs until he completes his secondary education as billed by his school from time to time. He further maintains his undertaking under paragraph (A) (3)(a) of the Consent Order concerning M's tertiary education. In view of the increasing costs of M's education in the years to come, an undertaking in this regard seems to be a better option so as to avoid any future adjustment. I am satisfied that M's educational costs can be secured by a proper undertaking from the father.

Life Insurance of the Father The father also confirms his previous undertaking under paragraph (A)(4) of the Consent Order in respect of his life insurance. In paragraph 4 of Annex A to counsel's Closing Submission, the father has reiterated his undertaking with more details. Counsel has also enclosed the insurance's annual statement provided by HSBC in Annex C to his Closing Submission. I am satisfied with the father's undertaking in this regard.

Other Needs In Annex B of counsel's Closing Submission, Mr. Egerton has set out a table setting out the claims of the mother as opposed to the proposals of the father. But as that table has not incorporated the mother's revised claims in her 6th Affirmation, I would further revise the table for the ease of comparison:

Items	Mother's Claims	Father's Proposals
Rent	\$379	\$379
Utilities	\$1,000	\$500
Household		

expenses \$500 \$200 Domestic helper \$1,125 \$1,125 School fees \$7,740 (as revised)

Undertaking to pay all items billed by School Extra tuition fees \$3,200 \$800 School books and stationery \$1,000 \$500 Transport to school \$1,200 \$500 (including school bus) Medical/dental \$1,500 \$1,000 Extracurricular activities \$4,400 \$1,000 Entertainment/presents \$3,130 (as revised) \$1,000 Holidays \$2,500 (as revised) \$1,000 Clothing/shoes \$1,000 (as revised) \$1,200 Insurance premia \$593 N/A Lunches and pocket money \$8,900 (as revised) \$3,200 Other transport \$500 N/A Child-minding fee N/A N/A Uniform \$300 (as revised) \$200 Others \$583 (as revised) Undertaking to pay all items billed by school Total: \$39,550 (as revised) \$12,604 but say \$13,000 The items in italics are those in dispute and they are now reproduced hereunder for ease of reference: Items Mother s Claims Father s Proposals Utilities \$1,000 \$500 Household expenses \$500 \$200 Extra tuition fees \$3,200 \$800 School books and stationery \$1,000 \$500 Transport to school \$1,200 \$500 (including school bus) Medical/dental \$1,500 \$1,000 Extracurricular activities \$4,400 \$1,000 Entertainment/presents \$3,130 (as revised) \$1,000 Holidays \$2,500 (as revised) \$1,000 Clothing/shoes \$1,000 (as revised) \$1,200 Insurance premia \$593 N/A Lunches and pocket money \$8,900 (as revised) \$3,200 Other transport \$500 N/A Uniform \$300 \$200 Others \$583 Undertaking to pay all items billed by school It is regrettable to note that a vast majority of the mother s claims are disputed in one way or the other. Some differences are really minor involving only a few hundred dollars (for the item of uniform, the difference is merely \$100). Having said that, I note from Mr. Egerton s Closing Submission that counsel has reasonably not made submissions on each and every disputed items, especially those very minor ones. By this, I take that the father has decided not to put up any serious challenge to those very minor items, although that does not mean that he agrees to each and every one of them. Therefore, when I come to the discussion on the reasonableness of the mother s claims, I will concentrate on Section E of counsel s Closing Submission which set out the father s objections to the quantum of M s monthly reasonable needs. Before I proceed to discuss the more significant disputed items, there are some general comments that I want to make here. It is apparent that many of counsel s attacks on the mother s claims centred on the fact that she had not produced all the receipts in support. I think that is true for many of those challenges as raised by the father. Although I must bear in mind that the general burden of proof rests squarely on the mother, one must not lose sight of the fact that many of those daily expenses are not of very great amount of which one would always keep a receipt. I also note that after the mother s quotation of M s various expenses at her Form E (B/97) on 28 March 2018, there has never been any request from the father for further and better particulars or for the production of the actual receipts for verification. Moreover, many of those expenses are not static and by nature will change from time to time. That means those figures are necessarily estimated averages and therefore, their reasonableness has to be assessed in that particular light.

Extra tuition fees The mother claims for \$3,200 per month for M s extra tuition fees. The father proposes a figure of \$800. It is true to say that the mother did not produce receipts amounting to the sum of \$3,200. But everybody knows that in Hong Kong, students taking extra tuitions are extremely common. I have no doubt that M must have taken and may be still taking those extra tuition classes, or at least some of them. It is also common that

students may attend extra tuition for different subjects at different times. Therefore, the tuition fees claimed under this item must be an estimated average figure, instead of an actual reimbursement figure. As far as that figure is concerned, \$3,200 per month does not seem to be unreasonable despite the lack of receipts and I will therefore allow them in full.

Transport to School (including School Bus) The mother claims for \$1,200 per month. The father proposes \$500. School bus receipts are much more straight forward and there is no reason why those receipts could not be produced. Since the father is challenging the quantum and the burden on proving such quantum rests squarely on the mother, I tend to accept the father's contention that a monthly sum of \$500 should be allowed instead of the \$1,200 as claimed.

Medical/Dental The mother claims for \$1,500 per month for M's medical and dental expenses. The father proposes \$1,000. In cross examination, it was put to the mother that the receipts produced only amount to \$4,324 in total, averaging about \$864.80 per month. Again, I accept that the amount claimed is just an estimated average figure and the claim of \$1,500 per month for a minor's medical/dental expenses does not seem to me to be unreasonable. I will allow them in full.

Extra-Curricular Activities The mother claims for \$4,400 per month for M's extra-curricular activities. The father proposes \$1,000. It is the father's case that the mother could only produce an application form to ABC Cooking Studio with \$2,900 worth of cooking lessons thereon together with \$400 admission fee being billed. The father complains that there were not enough details on how often M would go to those cooking lessons and how long would \$2,900 last. He further complains that no receipts from the mother were produced. The mother explained that the extra-curricular activities would include swimming, tennis and chess classes, which were not unusual activities for M given his educational background. I accept that for a minor like M, the attendance in various extra-curricular activities is quite common. The nature and expenses on those activities are not static and will change from time to time. M might be attending activities like cooking, swimming, tennis or chess at the time of hearing, but by the time of this judgment, he might be attending other activities instead. As an estimated average figure, I do not find the sum of \$4,400 being unreasonable.

Entertainment/Presents In her latest affirmation (B/68), the mother claimed for \$3,130 as M's expenses on entertainment and presents (only \$2,510 in her Form E). The father proposes \$1,000. In her supporting affirmation, the mother was suggesting that M had to spend about \$1,730 per month on movie. I agree that sounds a bit too much. I would reduce it to \$1,000 (a deduction of \$730) for movies. After such adjustment, I would allow \$2,400 in this item ($\$3,130 - \$730 = \$2,400$).

Holidays In her latest affirmation, the mother claimed for \$2,500 per month as M's holidays expenses (B/69), instead of her previous claim of \$3,333 in Form E (B/97). The father proposes \$1,000. It is the father's case that the receipts produced by the mother do not support the said amount of \$3,333 (nor the lesser sum \$2,500). For example, for the receipt in support of the Thailand trip, the sum quoted may have included expenses for other family members, including those of the domestic helper. Mr. Li for the mother submits that M is a child with international background and with his advancing age, a yearly budget of \$40,000 for holidays is not unreasonable. I accept that the mother has not produced enough evidence to support an annual budget of \$40,000 (nor the lesser budget of \$30,000) for M's holiday expenses. Doing

the best as I could, I would say a monthly sum of \$2,000 is about right, that is roughly about 1/3 of what the father is spending on his own holidays (B/121, the father's Form E). Clothing/shoes Although the mother claimed for \$1,500 per month as M's expenses on clothing and shoes in the Form E, I note that in her most updated evidence, (B/69), she has reduced it to \$1,000 only. I would adopt this latest figure of \$1,000 although Mr. Egerton said the father proposed \$1,200. Lunches and Pocket Money In the mother's latest affirmation (B/69) she claimed for \$8,900 per month as M's lunches and pocket money, instead of her previous claim of \$9,300 per month in the Form E (B/97). It is apparent that this amount would include all expenses on food, snacks and pocket money as there was not a separation claim for food in the Form E. The father said that in some of the receipts produced, the expenses of other people must have been included. One obvious example was the receipt from Le Meridien Cyberport in which 2 bottles of wine were included. Obviously, these could not be M's expenses. Although there is some force in the father's argument, I have to remind myself that this item would include the daily food consumption of a minor who is entering into his teens. It would be impossible for the mother to produce all the supermarket receipts and make a proper apportionment. Furthermore, food and lunches are only parts of this item and we also have to consider the pocket money to be given to M, which was \$20 per day, or about \$600 per month. I would expect this sum to be increased further upon M's entry into secondary school. The father proposes \$3,200 which is a totally unrealistic figure. I would allow \$8,100 per month (\$7,500 for food and dining out, \$600 for pocket money). In other words, a sum of \$800 will be deducted from this item. Summaries of M's reasonable expenses as allowed Based on the above discussion, I would allow the followings as M's reasonable monthly expenses: Items Deduction Amount Allowed Rent --- \$379 Utilities --- \$1,000 Household expenses --- \$500 Domestic helper --- \$1,125 School fees Undertaking to pay --- Extra tuition fees --- \$3,200 School books and stationery --- \$1,000 Transport to school (-) \$700 \$500 (including school bus) Medical/dental --- \$1,500 Extracurricular activities --- \$4,400 Entertainment/presents (-) \$730 \$2,400 Holidays (-) \$500 \$2,000 Clothing/shoes --- \$1,000 Insurance premia --- \$593 Lunches and pocket money (-) \$800 \$8,100 Other transport --- \$500 Uniform --- \$300 Others --- \$583 Total: (-) \$2,730 \$29,080 For the ease of calculation, I would round up the sum to \$29,000. It has to be noted that this sum of \$29,000 is in addition to the father's undertakings to pay the school fees of M and also the provision of a life insurance on the father with M being named as the beneficiary.

Orders

Based on the above reasons, and subject to the undertakings of the father that:

- (i) The father shall reimburse the mother all school fees paid by her on behalf of M as billed by an ESF School in Hong Kong for his secondary school education within 14 days; (ii) In the event that M attends tertiary education (local or overseas), the father shall discuss with the mother as to the amount of such education and his contributions; and (iii) The father shall maintain his life insurance policy number 20562097-20 with HSBC with: M being named as the sole beneficiary; It has a current death benefit of HK\$580,890 increasing to HK\$689,405

when M attains the age of 18 (Year 2024); When M turns 18 and if he wishes to continue with his tertiary education, the said policy may be surrendered to finance his tertiary education; and The father shall continue to pay the annual premium of HK\$85,000; I hereby make the following orders:

- (1) The Consent Order to be varied to the effect that the father shall pay a monthly sum of HK\$29,000 to the mother as M's maintenance payable on the 1st day of every month starting from 1 October 2019 until M reaches the age of 18 or finishes full time education, whichever is the latter;
- (2) The variation on maintenance will be backdated to 1 April 2018;
- (3) The father's undertaking to purchase a flat for M and the mother's occupation to be discharged and backdated to 9 November 2016; and
- (4) All undertakings contained in the Consent Order will be discharged and replaced by the undertakings above. Costs The father succeeds in discharging the undertaking on the purchase of a flat for M, whilst the mother succeeds in achieving an upward variation of the maintenance payable by the father (although the father is currently paying \$32,000 per month, that is inclusive of M's school fees). It may not be easy to decide who the winner is concerning these 2 applications. Be that as it may, I note that there is a vast disparity between the financial abilities of the parties. Furthermore, it was the father who has unilaterally breached all his undertakings and the orders on maintenance in the Consent Order without the prior approval of the court. Those actions should not be condoned. In order to show this court's disapproval of those breaches, and after considering all the circumstances of this case, in particular, the vast disparity of the parties financial abilities and for the protection of M's best interests (any requirement for the mother to pay costs or share part of the costs would effectively mean that those costs have to be paid out from M's maintenance), I have decided to exercise my discretion in favour of the mother in awarding her costs in these 2 applications, including all costs reserved with certificate for counsel. This will be an order nisi to be made absolutely after the expiry of 14 days from the hand down of this judgment. C.K. Chan District Judge Representation: Mr. Robin Egerton, Barrister-at-law instructed by Messrs T.K. Tsui & Co., solicitors for the Applicant Mr. Felix Li, Barrister-at-law instructed by Messrs So Keung Yip & Sin, solicitors for the Respondent

[2008] HKFLR 106 PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V hX1- hX1- hX1- xfTf@f. gd%o dO:(hX1- pbT< }l[]{}J}Jl h\MV hm?1 XGX6 h\MV ycHcy7 h\MV hIZW hD'V gdD'V gdD'V gdD'V nLnLn hD'V h\MV hD'V gd* gdw/ gd* uduS h\MV h\MV udSd>d {jY{jEY4Y gd,j gdZ0 gdZ0 gd* fUDz gd,j gd,j gd,j gdZ0 lWlF4F4F# hTZ3 hTZ3 gdTZ3 hTZ3 hTZ3 hTZ3 hTZ3 hTZ3 ;M* hTZ3 hTZ3 hTZ3 hTZ3 gd| 9{ gdyL gdyL h|9{ gd|9{ gd` \xVxVx xVgVx h|9{ uauP< gd cf gd cf gd!0 gd!0 h cf h;YN h>jK h cf gd>jK ~eK4 h>jK h>jK h>jK h>jK uaM9( h>jK h;YN gdnM gdnM gd` \gd` \ gdnM h;YN gdnM gdnM vbvN h;YN h;YN h;YN h;YN hht9 gd3= gd3= gdht9 hht9 raP?ar) hht9 hht9

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Prepared on 29 October 2026 · Esheria