

HONG KONG / JUDGMENT

YCKS v. MPKC

[2018] HKFC 25

COURT

Family Court

DECIDED

28 February 2018

CASE / FILE NUMBER

FCMC8480/2015

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[2018] HKFC 25 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 8480 OF 2015

BETWEEN YCKS Petitioner and MPKC Respondent

Coram : Deputy District Judge J. Chow in Chambers (Not Open to Public) Date of Hearing : 9, 11 &
12 January 2018 Date of Judgment : 28 February 2018

J U D G M E N T (Custody and Access Arrangement)

Introduction

The issues in this judgment are custody and access arrangement of the children of the family.

Background

The petitioner (the mother) and the respondent (the father) were married in London in 2001. They have four children, namely, the eldest brother (child C); younger brother (child R), younger sister (child L) and the youngest brother (child T). At time of trial, the four children are respectively 15, 14, 11 and 9 years old. All of them are studying in various international schools in Hong Kong. The family had lived in their matrimonial home, a village house in Lamma Island. The father moved out from the matrimonial house sometime around February March 2015. All four children have been staying with the mother in the matrimonial home since then. The mother claimed she has suffered from violent dispositions by the father. On 6 July 2015, she

obtained a non molestation order to refrain the father from doing so. The mother commenced this petition for divorce on 6 July 2015. No decree nisi has been granted yet. On 25 November 2016, an interim access was ordered, the father shall have interim access: (i) one Saturday each month for a duration of 8 hours for child C and child R; and (ii) two alternate Saturdays each for a duration of 8 hours for child L and child T. On 25 January 2017, the father obtained defined access to the four children on specific dates during the period from 30 January 2017 to 4 April 2017. Save and except the above orders on interim access, no order on custody, care and control has been granted. The open proposals The mother complained of high level of conflict with the father resulting from the past domestic violence suffered by her in the hands of the father. She found fruitful communication and cooperation between herself and the father impossible. She seeks sole custody, care and control of the four children with defined access to the father. She agreed to the recommendations on custody and access by the clinical psychologist. The father disagreed. He agreed care and control of 4 children be granted to the mother, but insisted for an order of joint custody. At time of giving evidence at trial, the father revised his proposals on access to one of reasonable access for child C and child R; and defined access to child L and child T, more particularly, day access on each Saturday and Sunday; the father s birthday; staying access for two weekend per month; day access on the child L and child T on their birthdays on alternate years; half-share of long school holidays and share of access on Christmas and Chinese New Year on alternate years. The social welfare reports and clinical psychological reports A number of reports have been obtained, namely, Ms Cheng s social investigation report prepared dated 28 April 2016 (the 1st SIR report); Ms Cheng s progress report dated 12 September 2016 (the 1st progress report); Ms Lo s progress report dated 30 March 2017 (the 2nd progress report); Ms Lo s updated social investigation report dated 17 October 2017 (the updated SIR report); Dr Poon s clinical psychological report dated 27 April 2016 (the 1st clinical psychological report); and Dr Yau s clinical psychological report dated 17 November 2017 (the 2nd clinical psychological report). I shall summarize them in turn: In the 1st SIR report, Ms Cheng (who was not called as a witness) confirmed the children wanted to stay with the mother, they did not want to live with or have regular access with the father. Ms Cheng also noted the children s hatred and dislike for the father as a result of his angry and violent disposition and treatment to the mother. The father asked for increased access. The children asked for reduced access. Ms Cheng hoped for both the mother and father to put aside their difference and to share parental responsibility and to make decisions for the children. She recommended joint custody, care and control to the mother and defined access at least 2 hours each week with a view to increase frequency of access when the children show willingness and readiness to do so in the future. In the 1st progress report, Ms Cheng noted continuing disagreement on access. The father insisted to increase access; the mother concerned the resistance of the children to see their father. All parties were stressful. Ms Cheng was of the view that the father s request to increase access might not be viable in light of the children s resistance. An increased access at this stage would result of more stress on the children. Ms Cheng suggested access be carried out in pairs, at least once a month, with the presence of the domestic helper, to maintain father child relationship. The 2nd progress report was prepared by Ms Lo. This report was called for on access with the father. Ms Lo noted both the mother, father and the children had been attending counselling services. The mother reinstated

her concern of the children's reluctance to attend access, she said the father shall be blamed. The father said the mother was uncooperative in making access a smooth one. The children maintained their resistance to see their father. Ms Lo held the same view with Ms Cheng, that an increased level of access was untenable, she suggested the same access arrangement as Ms Cheng did in the 1st progress report. The updated social investigation report, called for on issues of custody and access, was prepared by Ms Lo as well. Ms Lo was aware of the mother and father had been undergoing counselling services from therapist and clinical psychologist, she took the view, with a hope, that communication between the mother and father could show improvement gradually. She suggested joint custody. Child C and child R indicated they were engaged in extra-curricular activities and were unwilling to pay visit to the father's home in Yuen Long. Ms Lo then made a recommendation to reduce access duration for both of them to a period of 4 hours, once a month. For child L and child T, Ms Lo suggested access 3 times a week, not more than 5 hours each time. A domestic helper can attend access to make the children comfortable. Ms Lo added access can be increased whilst the children show willingness and readiness in the future. Joint custody of the children, care and control to the mother and defined access is recommended. The 1st clinical psychological report was prepared by Dr Poon (she was called as a witness). She wrote, the father having low frustration tolerance. He tends to get angry and loses his temper easily. Although he does not directly abuse the children, he does not understand them. It is possible that he often says and does things that hurts them and damages their relationship inadvertently. Dr Poon further said the father should make positive changes to regain the children's trust. The father should acknowledge violence done to the mother, learn to ventilate his frustration without using violence, and learn to cope and face the children's rejection. Dr Poon opined present weekly defined access for the children can be continued with a view that each father could have access with each child each week as relationship improved. The 2nd clinical psychological report was prepared by Dr Yau. Dr Yau analysed the children took side with the mother because of domestic violence. They see the father a bad, mean and dangerous person. High level of conflict persisted after separation of the mother and the father. She said in other words, the estrangement becomes consolidated into alienation of the children from the father in the context of a bitter divorce as well as the continual use of violence by the father. However, it is not just brought by a single casual factor, that is, the mother as the single etiological factor. Dr Yau opined joint custody would not work. Joint custody would bring about more disputes, arguments and conflicts. She inclined to suggest sole custody to the mother. Dr Yau recommended the father to have some genuine reflection on issue of domestic violence. The father can only improve the relationship with the children when all forms of domestic violence ceased and then the children can feel safe again. Dr Yau do not agree to staying access, she said 4 5 hours of day access would be appropriate. She agreed to maintain the current access arrangement, i.e. to attend in pairs. Evidence Both the mother and the father testified at trial. The father called the ex-domestic helper, () as his witness. Only Ms Lo, the social investigation officer and Dr Yau, the clinical psychologist were called as witnesses. The legal principles The applicable principles are those contained in section 3(1)(a) of the Guardianship of Minors Ordinance, Cap 13. General principles In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the

application of the income of any such property in any proceedings before any court (whether or not a court as defined in section 2) the court shall regard the best interests of the minor as the first and paramount consideration and in having such regard shall give due consideration the views of the minor if, having regard to the age and understanding of the minor and to the circumstances of the case, it is practicable to do so; and any material information including any report of the Director of Social Welfare available to the court at the hearing; and (ii) shall not take into consideration whether, from any other point of view, the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father. I also take into account the welfare checklist referred to in section 9.29 of the Report on Child Custody and Access published by the Law Reform Commission of Hong Kong in March 2005: the ascertainable views of the child concerned (considered in the light of his age and understanding); the child's physical, emotional and education needs; the nature of the relationship of the child with each of the child's parents and with other persons; the likely effect on the child of any changes in the child's circumstances; the child's age, maturity, sex, social and cultural background and any other characteristics of the child which the court considers relevant; the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents; any harm which the child has suffered or is at risk of suffering; any family violence involving the child or a member of the family; how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; [a broader formulation along the lines of] the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis; The range of powers available to the court under this Ordinance in the proceedings in question; Any other fact or circumstance that the court thinks is relevant. The father's evidence The father insisted joint custody be granted because he was frustrated with the adverse reaction of the children. He protested his access with the children were curtailed, the quality of access was shallow. He found the children have disappeared in his life. He complained now nothing shared, no photos, no advice of what the kids do. The father was eager and had great concern to keep the bondage with his children. He wished to rebuild father child relationship though participating in the children's life with the aid of increased level of access. He was bewildered of the drastic change of attitude of the children and then start to believe the mother was the person to be responsible for this. The father thought there would only be a short separation with the mother from February 2015. He expected the mother and himself will resume dialogue to solve the disputes but things did not go smoothly. The father was unsettled particularly when he had mentioned he was being ousted from the lives of his family by the mother. He was asked to leave the matrimonial home in February 2015 permanently. The father said, the relationship with the children was harmonious prior to the separation. He took care the children, prepared meals for them, brought them to do cycling and so on. He adduced photographs and videos depicting the good moments with the children. The father recalled happy moments when child L, child T and himself staying in United Kingdom few years ago. The father complained the mother debarred him from information of the children. He has no idea of the happenings of the children. In one access session, he learnt child L had injured

her arm recently, neither did the mother inform him of child L's injury and the medical treatments. When being asked of the achievements of child C and child R at school, the father frankly said he had no idea of those deeds. The father further alleged the children were not telling the truth to both the social welfare officers and clinical psychologist. He said the mother has imposed her view on the children of whom were in loyalty conflicts between himself and the mother. The father responded to the mother's allegation of domestic violence. He said he had done nothing to the children. He had only recalled a fight in 2010, when both the mother and himself discussed whether the children were going to have bracelets with an orthodontist, he said there were push, push, slap, slap, you kick me, I kick you. In another incident in 2011, when the mother had asked him to move out, out of reflex reaction, he touched the mother with part of his leg. The father apologised to the mother and no other incidents of the like had occurred. The father further said body movements and physical contacts during discussions were not unusual in their marriage. The mother's evidence The mother said the children were not happy with the father's access. The mother named a few important incidents on domestic violence: On 16 June 2015, the father followed the mother with child L and child T home, he forced entry to the matrimonial home by using a ladder to climb onto the balcony and opened the door. He sat on the sofa and refused to leave. At a time, child L was standing in front of the father, he shoved her out of his way and had caused her head to hit on a basket. The father insisted to stay after the mother reported the incident to the police. He then stayed with child R in his bedroom. On 19 June 2015, at the ferry pier in Central, the father snatched the keys from the mother, both of them struggled. The father pushed and pinned the mother to a low wall, he bent her finger hardly and had caused immense pain to the mother. The medical report showed the mother had swollen finger and abrasions on her arms. The incident was reported to the police again. On 6 July 2015, the father forced entry to the matrimonial home by climbing to the balcony by way of a ladder. He agreed to leave after the police had explained to him of the mother's application for non-molestation order. On 6 December 2015, the father came back to the matrimonial house without notice and had banged on the door for several times. The mother, the children and the domestic helper were scared. The matters were reported to the police again. The mother has successfully applied for non-molestation order against the father. On 21 December 2015, the mother brought the children to IFC, Central. Child C refused to see the father, child R met the father and said he does not to see him again. Child C later saw his father and had resulted some degree of physical contact with him. The father was angry about this, he used foul languages, verbally threatened the children that he will not by paying their school fees. The father later texted the mother and had complained she had poisoned the children not to see him. On 28 December 2015, D brought the children to IFC. The father did not let child L to leave, he cursed her with foul language, and hit child T's leg. On 20 December 2015, D took the children to the father, she returned home afterwards. The mother was told the access was not a smooth one because the children kept telling the father that they did not want to see him. The father shouted at the children and had slapped on child T's leg. On 6 January 2016, D brought child L and child T to meet the father. Child C and child R went joined afterwards. The father complained. Similar incidents occurred as the children keep telling the father that they do not wish to see him. The father shouted at them and child T started to cry. On 10 January 2016, the mother brought the

children to see the father. Notwithstanding argument on the time of access, the mother witnessed the father squeezing child T, refusing to release him. Child T screamed and cried. On 25 January 2016, access of child C and child R with the father. Neither was a smooth one as both of them told their father of their reluctance on access. By the end, the father pulled child C's hood of his jacket and that this close to ripping child C's head off. The father further screamed and shouted at them. On 15 February 2016, D brought child C and child R to meet the father. Both children showed their reluctance. Child R played with his i-touch and child C refused to follow the father's instructions to say Kung Hee Fat Choi on phone to somebody. It resulted in the father's yelling and threatening to hurt them if they do not listen. On 17 February 2016, the father used foul language (to the mother) in front of the children. On 24 February 2017, access with child L and child T. Child L complained the father sat on her and her stomach was hurt. On 22 June 2016, the father appeared in a scout activity that child C and child R had participated with the mother. The father shouted to the mother with abusive language. The matter was reported to the police. The mother testified and said the father controlled her and the children by means of financial threats since November 2014. The father verbally threatened her to reduce or cease to pay maintenance, including but not limiting to rent and school fees. As at the date of trial, child C and child R were being suspended from school because the father did not pay the maintenance. The mother reiterated, the father's behaviour hindered effective communication, joint custody could not be an appropriate option. She will be under stress if such an order be granted. Having said that, the mother encouraged the children to participate in father's access, she brought the children, or sometimes by D (or the current domestic helper) to the father on the day of access. She understood the children were anxious to meet with the father, she witnessed child L had nightmare often after access, child T complained the father was rude to him. The mother denied she had brainwashed the children so as to obstruct access. Notwithstanding the unhappy incidents, the mother still continued to persuade the children to see their father. At times, during access, when she has been told of the children's intention to leave earlier, she would talk to the children on phone and comfort them to stay a little longer. The mother agreed to the recommendations made by both the social investigation officer and the clinical psychologist. The mother responded to the father's complaint of not keeping him informed of the children's school results and information. She said the father's phone number and email address are on the school's intranet list. The respective teachers will send update emails to both the mother and the father directly. The domestic helper's evidence D testified for the father. D worked for this family for 4 years and 3 months, she left in July 2016. She said the relationship between the father and the children was harmonious before February 2015. The father took care of the children, sometimes prepared meals for them. He brought the children for outdoor activities on weekends. The children were comfortable with the father and showed no sign of anxiety. D witnessed no incident of violence done to the mother by the father at any time. After their separation, D saw the father-child relationship deteriorated. When the father called home, child T refused to talk to him. D once reminded child T that the father is your daddy. The social investigation officer's and the clinical psychologist's evidence Both Ms Lo and Dr Yau interviewed the mother, the father and the children. She maintained her recommendation in both her reports mentioned in paragraphs 9(iii), 9(iv) and 9(vi) hereinabove of which I do not intend to reproduce them here.

The Court's view Generally There are overwhelming evidence, including recommendations by experts that care and control shall be granted to the mother. The father has no dispute. I agree it would be the best arrangement for the children. The father acknowledged the negative attitude both child C and child R, both of them did not respect him as a father, each of their access only lasted for a short period of time, uneventful. The father has reasonably revised his stance, during trial, he agreed reasonable access for both child C and child R would be viable. Child C and child R now 15 and 14 of age respectively. Premised on the comments of both Ms Lo and Dr Yau, and also viewed from the children's perspective, I accept, in their best interest, this is an appropriate arrangement to both child C and child R. The outstanding matters to be determined are (i) custody of 4 children and (ii) access arrangement of child L and child T. To determine the issue on custody and arrangement of access for the children, best interest of the child must be the first paramount requirement. In this case, domestic violence ranks high amongst other factors. The children were not infants, their view should be taken into account. Such determination should be done with the assistance of both the information contained in the social investigation reports and clinical psychologist reports. I attuned to the fact that I am not bound to adopt the recommendations given in any of the reports. The children's positions were well written in all the reports. As Ms Cheng and Dr Poon were not called as witness at trial, I shall attach less weight in their reports. In turn I shall focus and consider the reports written by Ms Lo, the social investigation officer and Dr Yau, the clinical psychologist and of course, their evidence. Joint custody appropriate? Having considered all evidence, information and the recommendation of all the reports. The answer is no. The reasons are as follows. The classic principles laid down by the Court of Appeal in *PD v KWW (Joint Custody, Care and Control)* [2010] HKFLR 184, it stated the proper approach of granting joint custody from paragraphs 52 onwards: Joint Custody: the proper approach

52. Today, although there has been no change in our law similar to many other common law jurisdictions, orders for joint custody are in no way exceptional. This is because it is accepted that in principle, such orders are in the interest of children.
53. In all but the most exceptional circumstances, the effect of divorce on the children of the marriage, especially children of tender years, is deeply felt. In all but the most exceptional circumstances, such children desire that they should continue to be protected and guided by both parents. The case before us is an example.
54. In the result, in the best interests of the child, the fact that, as a result of the breakdown of the marriage, relations between the parents are strained is not of itself a reason to refuse to make a joint order of custody. Nor is the fact that the parent to be given care and control does not agree. Such orders look to the future. They will govern a limited area of exchange between the parents, albeit one of the greatest importance.

55. Accordingly, the issue for the judge is whether, with the court proceedings concluded, it is reasonably anticipated that the parents will be able to agree on the questions of importance that will determine the upbringing of their child, both recognizing that, as difficult as it maybe for them, this process of co-operation is in the best interests of the child.
56. In determining this issue, the judge is entitled to proceed on the presumption that competent, loving parents possessed of sufficient objectivity to be able to make rational decisions in the interests of the child will be able to co-operate with each other concerning matters of importance in the upbringing of the child.
57. At all times, the welfare of the child remains the first and paramount consideration. As this Court has recognized (see, for example, *Y v P* [2009] HKFLR 308), there may be occasions when the ability of the parents to reach any rational accord in respect of important matters concerning the upbringing of their child is so deeply undermined that to compel attempts at co-operation will not protect the interests of the child but only leave the child more vulnerable. In *Y v P* [2009] HKFLR 308, Rogers VP also gave an account on whether joint custody and sole custody shall be opted for. On this appeal, the first matter which must be considered is the question of custody. In this respect, attention has been drawn to the decision in *ML v YJ* HMC 13 of 2006, a decision of Rimsky Yuen SC, sitting as a Recorder, given on 23 May 2007. The Recorder/s judgment usefully sets out the law relating to custody. As the Recorder pointed out in paragraph 24, the first consideration as to whether to grant joint custody to both parents or sole custody must be the welfare of the child. The Recorder went on to state that whether or not a joint custody order is workable depends very much on whether the parents can co-operate. The Recorder continued: A joint custody order may in appropriate cases be made for the purpose of encouraging parents to overcome their differences and co-operate for the benefit of their children. Joint custody in such circumstances can serve the purpose of recognizing the role of both parents in the child s upbringing. However, if it is clear that a joint custody is not workable, it seems unlikely that the Court will nevertheless make such a joint custody order solely for the purpose of encouraging the parties to overcome their differences or to recognize the continuing role of the parties. As stated above, a joint custody order which is unlikely to be workable cannot be in the best interests of the children as the adverse consequences will far outweigh the benefits that it may bring . The evidence from all respects points to the fact that both the father and the mother are unable to cooperate, without inkling of effective communication. The situation stemmed from the couples resentment. The mother suffered from physical abuse by the father during their marriage. In some incidents, the degree of violence was serious that the mother had called the police for assistance. The tension between the parties elevated since the separation in February 2015. Taking the incidents prior to formal separation, the couple had had numerous disputes on daily matters. The father testified he always wanted to talk to the mother on issues. Unfortunately, it might be his wishful thinking when disputes had turned into violence. The father has referred to two occasions that he exercised physical contact with the mother. In one incident the father admitted he has touched the mother s leg, he apologised profusely. I fail to see this is whole truth. From

the evidence of the mother, she was able to list out quite a number of incidents. She said the father was a bad tempered person, always in rage when things are not with him. After separation, the pattern of using violence persisted. In an incident on 19 June 2015, the mother's injury as a result of the father's violence was recorded in a medical report. In another incident, the father was bound over for assaulting the mother. The communication problem was also noted by both Ms Lo and Ms Cheng. Ms Lo stated in her reports that she had hoped the parties could learn to cooperate by attending counselling or co-parenting workshops. Ms Lo was over cautions in giving evidence. She insisted on the hope of cooperation between the parties. Joint custody of children shall not premise on the hope that the parties could cooperate in the future for the benefit of the children. For the simple fact that the mother is unwilling to participate in counselling sessions and further mediation (the mother explained the father did not keep his promise) was a strong pointer, not merely they were unable to communicate, but the mother was unwilling to communicate with the father at all. It is self-evident that the mother and the father were in a state of total communication breakdown. Attempts to overcome their difference to discuss, to cooperate and to make decisions for the benefit of their children are almost impossible. The mother refused to communicate with the father. The mother and the father could not discuss matter rationally and make decisions for the children in their best interest. Despite zero reply from the mother, the father sent whatsapp messages to the mother continuously. The mother had replied once I did not want to talk to you . The mother's reluctance to communicate with the father is very clear. The father admitted, during cross examination, that he and the mother are not able to communicate. The father further admitted he has tried his best endeavour to seek joint custody because he wished to participate in the lives of the children. I regret to say the father has misinterpreted the concept of joint custody. It should only be ordered for parents who can still cooperate in making decision for the children after divorce. This is obviously not the case here. With due respect, Ms Lo has underestimated the consistent tension between the father and mother during marriage and after separation. This is a clear case that joint custody is not workable, such order shall not be granted solely for the purpose of encouraging the parents to overcome their difference and to cooperate. The recommendations of Ms Lo should not be opted for. Dr Yau's opinion, on the other hand, was more practical and sensible. She opined joint custody is not viable at this stage. Dr Yau tested the consistency and accuracy of previous claims on domestic violence. She was aware of verbal threats by the father not to pay maintenance to the mother. The conflict between the mother and the father are insurmountable on all topics, and of course, on children issues. Sole custody of the children to the mother was left as the only viable option. I agree.

Access arrangement My determination of access would focus on child L and child T. What is practicing now is that the father will have access of both child L and child T in pairs, twice a month. It took place on alternate Saturdays for 5 6 hours from 11:00 am with the presence of a domestic helper. The father is now seeking day access more frequently and then to staying access progressively. The mother believes, access for child L and child T, once a month, 4 5 hours is appropriate at this stage. The mother also suggests a 4 5 hour access on Christmas holidays Chinese New Year holidays and contact with the father on the child's birthday

would be reasonable. The father pressed for an increased level of access to fix father child relationship. He believed the more the time with the children, the more their relationship will improve. The father relied on D's evidence to support increased access is feasible. The father submitted video clips depicted harmonious moments with child L and child T. D testified for the father. She witnessed the father children were in good relationship prior to separation. There were good days, children had enjoyed spending time with him. He was hands on with the children's daily matter, he took care of the children. It is not surprising that the father and the children had good relationship prior to the divorce, yet, what I have to focus on is the existing relationship. I have doubt in accepting D's evidence. It must be the case that a domestic helper, though working at home may not have witnessed all happenings, including quarrels or actions of the mother and father. D testified in her evidence, after she has ceased working with the mother, she was then employed by the father's cousin. She admitted the father has occasionally advance loans to her and has kept close contact with her since he had moved out from the matrimonial home. She further admitted her witness statement was drafted by the father, she confirmed the contents and had duly signed on it. For her frank admission, I have difficulty to accept she is an impartial witness. I cannot be sure, what she has depicted are all truth. The father then submitted the children have lied to both social investigation officers and clinical psychologists. He criticized the mother must have brainwashed the children. Dr Yau, in her evidence, firmly rejected this possibility. She frankly said, the children were tired of interviews with experts. The children told her clearly that they do not want any more interviews. Dr Yau explained, in occasions where a child attempted to evade from telling the truth, the exchanges during interview would be mechanic because the children will only repeat sentences. In her interviews with the children, they could recall incidents spontaneously, with no signs of reciting any scripts. I accept the observations of Dr Yau, the children have expressed their true feelings and were so recorded in the reports. From the information provided in both the social welfare reports and clinical psychologist reports, the children were being verbally threatened that the father would cease paying them maintenance if the children continued refusing access. Not only child L and child T had witnessed the conduct of the father, they are often subject to the same financial threats. Unfortunately, the financial threat was realised, in default of paying interim maintenance, child C and child R were being suspended from schools. Both child L and child T are mature enough to appreciate what had happened. It would not be surprising if both child L and child T be affected in near future when the mother are unable to pay their school fees. At this stage, potential harm could have disturbed child L and child T's feelings towards their father. The father complained the emptiness of access. Child L and child T were silent, refused to stay, running away and then the father became agitated. Dr Yau was quite right in concluding the father lacks insight on the impact of his conduct on the children. Although he has no intention to hurt the children's feelings, he had done so inadvertently. With the assistance of the welfare checklist, the children's view is of importance. Child L and child T were unhappy during access with the father. It could be well explained that both of them has witnessed violence at home; accidentally suffered from physical contacts by the father when he was in rage; verbal threats

to stop paying interim maintenance; and/or having heard unwelcome exchanges between the mother and the father with foul languages. With these factors, with both child L and child T became reluctant to see their father. The next step, the needs of both child L and child T. The father has put it correctly that the father child relationship has to be fixed. I entirely agree with Dr Yau's observation the imminent thing is to let child L and child T to be comfortable, or to feel safe during access. It takes time. Both of them needed comfort and reassurance by the father, that they will not be subjected to violence, verbal threats during access. Dr Yau as pointed it out correctly, the father has to take responsibility of his past dealings with the mother, to change his attitude during access, to control his temper, to comfort the children and to listen to them. Afterall, access is in practice the right and privilege of the children rather than that of the father. It may not be fruitful by increasing frequency and duration of access as proposed by the father at this stage.

Conclusion

I therefore make the following order: The mother (the petitioner) do have sole custody, care and control of the 4 children of the family, namely, child C, child R, child L and child T. The father (the respondent) do have reasonable access to child C and child R. The father (the respondent) do have defined access with child L and child T in pairs, twice a month for a duration no more than 5 hours with the presence of a domestic helper. The father (the respondent) do have day access with child L and child T in pairs, with a duration of no more than 5 hours, with the presence of a domestic helper, (i) on one day of Christmas public holidays and (ii) on one day of Chinese New Year public holidays. The father (the respondent) do have phone access with child L and child T on the birthday of both children respectively. There be no order as to costs of this hearing. The mother's (the petitioner)

- s) own costs be taxed in accordance with the Legal Aid Regulations. The parties do jointly apply to court for restoring the 1st appointment hearing of this petition within 14 days hereof. (J. Chow) Deputy District Judge Mr John Pickavant of Messrs J M. Pickavant & Co, appeared for the Petitioner The Respondent appeared in person 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 h i H y g d j Z h g d V v g d ~ P g d V v h j Z h h j Z h h j Z h g d x g d V v g d V v g d V v g d M n " h A 3 = g d N (g d x g d m 2 h j Z h g d m 2 g d m 2 g d m K h / r g d m 2 h j Z h h j Z h g d m K g d m K h 1 t & @ @ @ @ @ @ @ @ @ @ g d 1 t & h 1 t & h 1 t & @ @ @ @ g d 1 t & @ @ @ @ @ @ @ @ @ @ @ @ @ @ @ @ @ @ h Z + , h 1 t & g d 1 t & g d 1 t & g d o a h " 8 k g d ' s g d ' s g d h . g d h . g d " 8 k g d " 8 k h / l n h ' s h " 8 k h G A m h . % p & ` # \$ h / l n [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"

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