

HONG KONG / JUDGMENT

ZJ v HS

COURT
IN THE HIGH COURT OF THE

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CACV 926/2026 & CAMP 265/2026
[2026] HKCA 1625
CACV 926/2026
IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
CIVIL APPEAL NO. 926 OF 2026
(ON APPEAL FROM FCMC NO. 4265 OF 2026)

BETWEEN
ZJ
Petitioner
and
HS
Respondent
[Children, Injunction]

AND
CAMP 265/2026
IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
MISCELLANEOUS PROCEEDINGS NO. 265 OF 2026
(ON AN INTENDED APPEAL FROM FCMC NO. 4265 OF 2026)

BETWEEN
ZJ
Petitioner
and
HS
Respondent
[Children, Injunction]

(HEARD TOGETHER)

Before :	Hon Kwan VP and Cheung JA in Court
Date of Hearing :	25 August 2026
Date of Judgment :	25 August 2026
Date of Reasons for Judgment and Decision on Costs :	31 August 2026

REASONS FOR JUDGMENT and DECISION ON COSTS

Hon Cheung JA (giving the Court's Reasons for Judgment and Decision on Costs) : I. Leave to appeal (Rolled-up hearing) 1. Deputy District Judge Matthew Leung on 5 August 2026 dismissed the Petitioner Mother's application under the Domestic and Cohabitation Relationship Violence Ordinance (Cap. 189) ('the Ordinance ') for an injunction to prevent the Respondent Father from, amongst other things, molesting and assaulting the children of the family W and C. The Father was represented by counsel before the Judge. The Judge ordered the Mother to pay the Father costs of the application at \$100,000. 2. The Mother by summons dated 10 August 2026 sought from this Court leave to appeal against the Judge's order ('the leave summons') (CAMP 265/2026). Kwan VP on 11 August 2026 ordered the leave summons to be listed for hearing on 25 August 2026 as a rolled-up hearing and further granted the following orders dealing with the care and control of W and C : ' 1) [1] and [2] of the order of Master Anny Chak dated 29 June 2026 be suspended until further order of the Court;

- 2) the children of the family W and C to remain temporarily in the care of the Mother; and
- 3) the Father is to have supervised contact with the children as may be agreed between the parties or as directed by the Court, with no overnight contact pending further order.' 3. We dealt with the rolled-up hearing and made the orders as shown in Attachment I. We will now give reasons for our judgment and our decision on costs. II.

Background

4. The parties were married in Hong Kong on 10 April 2021. There are two children of the family W, a son, now aged nearly 5 and C, a daughter, now aged nearly 3. 5. Due to marital discord, the Mother moved out of the matrimonial home in Tung Chung, Lantau ('the home') on 17 April 2026. She said that she moved out temporarily due to the conflict and hostility at home. She was concerned about the impact on the children and she needed 'a short break to recover and reflect calmly'. She left 'so that both parties could calm down'. The Mother later moved back to the home on 12 May 2026. On the same day, the Father moved out to live with his parents in Tai Wai, Shatin. 6. The Mother petitioned for divorce on

20 May 2026. The Father applied by summons dated 29 May 2026 for interim arrangement concerning the care and control of the two children of the family and by a further summons dated 22 June 2026 applied for an order concerning C's schooling arrangement. The matters came before Master Chak ('the Master') on 29 June 2026. The Mother informed the Master that she had on 23 June 2026 made a report to the Police concerning the Father's inappropriate conducts towards W. The Master ordered, amongst other things, that :

- 1) The parties be granted interim joint custody and interim shared care and control of the children, with the following arrangements :
- (1) The Mother shall have care and control of the children from 3:00 p.m. every Friday to 6:00 p.m. every Sunday;
- (2) The Father shall have care and control of the children from 6:00 p.m. every Sunday to 3:00 p.m. the following Friday; and
- 2) The party who does not have care and control on a particular day has video access to the children for no more than 30 minutes between 7:30 p.m. and 8:00 p.m. ('the Master's Order')

7. The Mother contended that the Master's Order was a sudden and substantial departure from the longstanding arrangement concerning the children, under which she had been their primary carer and her mother had been their principal supporting carer. She lodged an appeal against the Master's orders. The hearing is to be heard on 4 September 2026. Her solicitors had applied by letter to the Family Court to put forward the hearing date but was refused because that was the first available date. 8. On 28 and 30 July 2026, the Mother further supplied the Police with evidence of the Father's inappropriate conducts. On 2 August 2026, the Police informed the Mother that the Father had been arrested for indecent assault. Under the Master's Order, the children were due to be returned to the Father in the evening of 2 August 2026. The Mother did not return the children to the Father and on 3 August 2026 applied by an 'Ex-parte Summons on Notice' before the Family Court for a protective injunction and a suspension of [1] and [2] of the Master's Order. Although the injunction she sought covers both the children, the basis of the injunction is that the Father had conducted himself inappropriately towards W. The Mother relied on a number of incidents, some of which were sexual in nature which the Mother described in her 2nd Affirmation filed in support of her application. These happened on 25 January 2026 and 9 February 2026. The other inappropriate conduct of the Father was that he had repeatedly slapped W's face. The Mother also disclosed that the Father had also conducted himself inappropriately towards W in a sexual nature in early 2023, when W was about one and a half years old. These conducts were repeated in late 2025. The Mother explained in her 2nd Affirmation why she did not report earlier about the Father's inappropriate conducts : ' 32. I anticipate that [the Father] may rely on my previous non-reporting or previous access as suggesting that my concerns are not genuine. That is wrong. At the relevant time, I was pregnant with [C], physically and emotionally vulnerable, under pressure within the marriage, afraid of [the Father's] reaction, concerned to preserve the Children's home and stability, financially weaker, and without proper understanding of the reporting, legal and

child-protection processes. These matters explain my hesitation; they do not lessen the seriousness of [the Father's] conduct or mean that I ever consider it acceptable.

33. The crucial difference is care context. At that time, the Children remained primarily under my day-to-day care and close supervision, with substantial assistance from my mother. I could monitor what was happening, intervene when necessary, confront [the Father], remove [W] from inappropriate situations and take practical steps to prevent recurrence.
34. Under the [Master's] Order, I can no longer do so. [The Father] now has the children for the school week and overnight for most of each week. My past fear, confusion or imperfect response cannot convert serious safeguarding concerns into a safe arrangement.' III. The Judge's reasons 9. The Judge has not provided a written decision of his judgment. An agreed transcript of the reasons by the Judge in Chinese together with the English translation are provided to the Court. From the transcript, we can see that the Judge gave the following reasons for dismissing the Mother's application :
 - 1) Urgency is required for an ex-parte application. There is no urgency as the incidents relied upon by the Mother occurred in 2023 and early 2026.
 - 2) The Mother has not produced any real and similar recent occurrence to justify her worry about the Father repeating such conducts.
 - 3) The Mother made her report to the Police first on 23 June 2023 and the Police did not arrest the Father. The Mother then reported to the Police in July 2026 relying on the same incidents of 2023 and early 2026 without any new incidents. There is no necessity for the Court to intervene at this stage and it is also unfair to the Father.
 - 4) At this stage, the Court is not to determine whether the Father had carried out the inappropriate conducts but rather the delay by the Mother to complain is an important factor in the Court's exercise of discretion. The Mother has not explained the delay. Even if she had, it is not sufficient.
 - 5) The Mother's application for injunction is not the proper channel to change the interim children arrangement. As the appeal against that order is to be heard on 4 September 2026, the Court should not intervene with the interim children arrangement. IV. Relevant principles 10. Section 3(1)(b) of the Ordinance provides that : ' 3(1) On an application by a person the District Court, if it is satisfied that the applicant or a specified minor has been molested by the spouse or former spouse of the applicant and subject to section 6, may grant an injunction containing any or all of the following provisions —
 - (a) —
 - (b) a provision restraining the respondent from molesting any specified minor;' 11. If the Court grants the injunction, it may vary or suspend custody or access orders. In considering varying or suspending a court order, section 7(3) provides that the Court shall : ' 1) regard the welfare of the minor as the first and paramount consideration; and

- 2) in having such regard, give due consideration to—
- (1) the wishes 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
- (2) any material information, including any report of the Director of Social Welfare available to the Court at the hearing.’ 12. Under the Guardian of Minors Ordinance (Cap. 13), in proceedings concerning a child, the Court shall regard the best interests of the child as the first and paramount consideration. The well-established ‘welfare checklist’ regarding a child’s welfare adopted by the Family Court includes a consideration of any harm that the child has suffered or ‘is at risk of suffering’ : H v N (children, variation of interim order)

[2012] 5 HKLRD 498. In considering the risk of suffering or harm a holistic evaluation is required : In re H-W (Children)

[2022] 1 WLR 3243 at [40]. In that case, the Supreme Court of the United Kingdom was dealing with an appeal from a care order of the child. What is said at [47] about the approach of the Court in ensuring that the obligation to intervene only when necessary and proportionate is discharged by reference to the judgment of In re B-S (Children) (Adoption Order: Leave to Oppose)

[2014] 1 WLR 563 at [44] is pertinent to this case : ‘ The judicial task is to evaluate all the options , undertaking a global, holistic and ... multi-faceted evaluation of the child’s welfare which takes into account all the negatives and the positives, all the pros and cons, of each option... ‘What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.’ V. Our view 13. We are unable to accept the Judge’s decision. His exercise of discretion was plainly wrong. This allows us to exercise the discretion afresh and grant the orders as indicated. We are satisfied that the Mother has justifiable grounds to apply for the injunction. The Mother’s complaints of the Father’s inappropriate conducts are supported by contemporaneous evidence including photographs and videos. The Father had not denied these incidents but relied on his right to silence in view of his arrest by the Police. In matters concerning children, their best interest is the first and foremost consideration. The incidents relied upon by the Mother are clearly relevant and important evidence affecting the Court’s decision whether it is in the best interest of W to be left with the Father who will have the sole care and control of W for five nights a week without the presence of the Mother. Apart from the short period when the Mother had moved out of the home for about a month between April and May 2026, both parties had the care and control of the children. The risk of the Father repeating his inappropriate conducts towards W was not properly considered by the Judge who dismissed the Mother’s application on the grounds that the application lacked urgency because she relied on old incidents, she had delayed in lodging complaints and there was no new incident. In our view, the Judge’s view on the lack of urgency is out of focus. The urgency arises because of

the change of the care and control arrangement of the children by reason of the Master's Order. The Mother has explained why she only reported the incidents to the Police recently. Her inaction must be considered in the context of the Mother's wish to preserve the marriage and the stability of the family life. The Mother has provided an explanation for her inaction together with credible evidence of the risk of harm to W, these are matters that any tribunal that has the task of considering the best interest of W cannot simply brush aside. 14. Mr Surman (together with Ms Toh) for the Father who opposed the appeal, referred to *Singh Arjun v SJ*

[2014] 2 HKLRD 678 where this Court held that a party intending to appeal against an interlocutory judgment or decision should apply to the lower court for leave to appeal before coming to this Court. This general rule should apply even in cases with some urgency. Though there could be cases with exceptional circumstances and extreme urgency which call for the exercise of the Court's power under the relevant rules of the District Court or High Court to permit an application to be made directly to this Court, this must be confined to the very exceptional cases. 15. In our view, this is an exceptional case because of the nature of the complaint by the Mother. It is impractical for the Mother to apply for leave before the Judge first in view of the fact that the appeal against the Master's Order is to be heard shortly and the urgent need to preserve the arrangement on the care and control of the children prior to the Master's Order. Direct application to this Court for leave is justified. 16. Mr Surman submitted that there is no actual and real urgency because the Mother had suspended access on 2 August 2026 and the Father had made no attempt to collect or contact the children. We disagree. Until the terms of the Master's Order is suspended, the Mother is required to observe them at the risk of being cited for contempt of court. 17. Mr Surman also referred to *NPYJ v SMRC*

[2018] 1 HKLRD 573 where the headnote of the report summarized this Court's decision : ' (1) Interim-interim arrangements concerning children were in the discretion of the judge and meant to be temporary, provisional and very short-term pending a full inquiry.

(2) The Court of Appeal was not the forum for the parties to make a second attempt when they failed at first instance. That was not a proper use of an appeal. Unless it was extremely plain that the judge had gone wrong, the parties should not appeal against the exercise of discretion.' 18. We recognized that the Master's Order is by way of an interim arrangement but we are not hearing an appeal from it. We granted the injunction to prevent the risk of harm to W in the light of the Father's inappropriate conducts and our order is to temporarily restore the previous arrangement, when the Mother had the right to look after the children during the week, pending the appeal on 4 September 2026. 19. Mr Surman referred to the judgment of Rogers VP in *King Fung Vacuum Ltd & Others v Toto Toys Ltd & Others*

[2006] HKLRD 785 and argued that the Mother's delay in seeking injunctive relief shows lack of urgency : ' 20. There has traditionally been a strong requirement when interlocutory injunctions have been sought, that the plaintiff must show that it has acted promptly and without delay. Promptly in the circumstances of interlocutory injunctions has been

commonly understood to be a period of six weeks or so of unexplained delay and three months with an explanation given for the delay in making application for an injunction. Since the American Cyanamid decision the importance of irreparable damage in an application for an interlocutory injunction is paramount. If there is no irreparable damage demonstrated then the need for an interlocutory injunction has not been shown. This is important because of the approach that the courts take to interlocutory injunctions. They are not the trial of the action and court is concerned with whether irreparable damage will occur before a trial can take place. It stands to reason that if a party is prepared to allow matters to proceed and takes no action with respect to matters which have been extant for lengthy periods, it lies ill in their mouth to say that there is likely to be irreparable damage and that is the case here.’ 20. We agree with Rogers VP’s view on the need to act promptly in seeking an injunction. However, context is everything in a case and we are here dealing with a case where the child’s best interest is the first and paramount consideration. We disagree with the Father’s argument that the Mother’s own conduct is inconsistent with a genuine belief that the children were at immediate risk in the Father’s care. The Father referred to the Mother’s association with another man and her frequent trips outside Hong Kong when the children were left with the Father. But the Father had not denied that the maternal grandmother was involved in looking after the children during the marriage. Whether the parties had agreed that the Father was to have care and control of the children is clearly an issue that needs to be tried. At this stage, the Father had not produced evidence that would persuade us that the Mother had agreed to give up her care and control of the children when she left the home. We reject the Father’s argument that the application before the Judge was an abuse of process by the Mother. VI. Decision on Costs 21. Despite this Court setting aside the orders of the Judge, Mr Surman submitted that the Father is entitled to have the costs below, the costs of the application for leave to appeal to this Court and the costs of appeal. He relied on two matters in support of his application. First, he referred to a letter dated 14 August 2026 from the Father’s solicitors which is said to contain offers to resolve this appeal in a manner which is substantially the same as this Court had ordered (‘the Offer’). Second, the Mother has other avenues to vary the terms of the Master’s Orders without the need to bring the application for injunction. 22. We reject the Father’s application for costs without hesitation. First, we have set aside the order of the Judge and the Offer clearly has no effect on those proceedings. Second, whilst the Offer contained a term which varied [1] and [2] of Master’s Order, it also required the Mother to give certain undertakings that we have not ordered. The reliance on the Offer to seek costs against the Mother is misplaced. In any event, the request for the undertaking is clearly without any evidential support when the Father had made no response to the Mother’s complaints nor raised any allegation against the Mother in respect of those complaints. It is disingenuous and inappropriate to refer to the Mother’s filming of the incidents when the Father had not even responded to the Mother’s explanation as to why she did so. 23. As to the suggestion of alternative avenues being open to the Mother such as to seek variation of the Master’s Order directly from the Master with the new information that the Father had been

arrested by the Police, the reality is that the Master was already aware that the Mother had made a report to the Police when she granted the Father interim care and control of the children during the week. It is purely a surmise that a different decision will somehow be reached by the Master when it is considered that the Mother's application before the Judge was refused even though he was informed of the Father's arrest on 2 August 2026. 24. In our view, this being a children matter, the appropriate costs order is that there will be no order as to costs in respect of the costs below, the ex-parte application for leave before this Court and of this appeal. (Susan Kwan) Vice-President (Peter Cheung) Justice of Appeal Ms June Cheung, instructed by Withers, for the Petitioner Mr Giles Surman and Ms Tanie Toh, instructed by Robertsons, for the Respondent Attachment I

Orders :

1. The Mother be permitted to apply for leave to appeal to the Court of Appeal directly against the decision and orders of Deputy District Judge Matthew Leung made on 5 August 2026 without first applying to Court below.
2. Leave to appeal granted to the Mother, the Mother to file a notice of appeal as per draft annexed to the Ex-parte Summons dated 10 August 2026 within three days hereof.
3. The Mother's appeal be allowed and the decision and orders of Deputy District Judge Matthew Leung made on 5 August 2026 be set aside.
4. Pending the determination of the Mother's appeal against the order of Master Anny Chak dated 29 June 2026 scheduled for hearing before the Family Court on 4 September 2026 and/or further order of the Court,
 - 1) [1] and [2] of the order of Master Anny Chak be suspended and varied to the extent necessary to give effect to the interim arrangements set out below;
 - 2) the children of the family to remain temporarily in the Mother's care;
 - 3) the Father shall not collect, remove or procure any third party to collect or remove either child from the Mother's care;
 - 4) the Father to have such supervised contact with the children as may be agreed between the parties, with no overnight contact;
 - 5) neither party nor any person on his/her behalf shall question, coach, pressure or influence either child concerning the allegations, the Police and Social Welfare Department investigations or these proceedings; and
 - 6) the Father shall lodge the children's passports, travel documents and identity documents with the Family Court or an agreed stakeholder.

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