

HONG KONG / JUDGMENT

ZZ v. LX**[2023] HKFC 143**

COURT

Family Court

DECIDED

1 August 2023

CASE / FILE NUMBER

FCMP167/2018

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bjbj FCMP 167 /2018

**[2023] HKFC 143 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 167 OF 2018**

IN THE MATTER of Section 10 of the Guardianship of Minors Ordinance, C. 13 and IN THE
MATTER of the Parents and Child Ordinance, Cap. 429 and IN THE MATTER of the custody of
ZCT, a minor

BETWEEN ZZ Applicant and LX Respondent

Coram: His Honour Judge S Lo in Chambers (Not Open to Public) Date of Respondent s written
submission: 28 April 2023 Date of Applicant s written submission: 9 May 2023 Date of Respondent
s reply submission: 15 May 2023 Date of Decision : 1 August 2023

D E C I S I O N (Leave to appeal)

This is the application taken out by the respondent (Mother) for leave to appeal against my
judgment dated 31 March 2023 (

Judgment

), in which I order joint custody of a minor (), care and control to the Mother with defined access
to the applicant (Father). Legal principles Section 63A(2) of the District Court Ordinance
provides that for leave to appeal to be granted, the intended appeal should have a reasonable

prospect of success or there should be some other reasons in the interest of justice why the appeal should be heard. A reasonable prospect of success involves the notion the prospect must be more than fanciful without having to be probable. Grounds 1 and 2 When I said in para. 33 of the Judgment that *ML v YJ* and *Y v P* have very little significance, it does not mean that they have no weight. Ms Anita Yip SC leading Mr Perlman Sam for the Mother submitted in the opening that *PD v KWW (Child: Joint Custody)* [2010] HKFLR 184 is the leading authority for the issue of joint/sole custody. I agree. Each case has its own facts. Since the SWO had the opportunity, whereas the trial judge did not have, to observe the interaction between the Father and the Son, I have to give due weight to the recommendation in the SIRs which proposed joint custody. Besides, as the parties are also highly educated, the Son can no doubt benefit and learn a lot from both of them, but not just from the Mother. As said by Hartmann JA in para. 41 of *PD v KWW*, there is a thin line between sole custody and joint custody. After taking into account of all the relevant circumstances, it is in the best interest of the Son to grant joint custody instead of sole custody to the Mother. I consider that these grounds have no merit and reasonable prospect of success. Grounds 3 and 4 As found in para. 51 of the Judgment, the parties are competent and loving parents. Given their high education backgrounds, I fail to see how they could not communicate with each other without lawyers. In the circumstances, the court is entitled to presume that they are able to co-operate with each other in the upbringing of the Son. In my view, the Father trusts the Mother and that is the reason why he never disputes that the Son's care and control shall be granted to the Mother in the very beginning. If there is any mistrust, it is the Mother who unilaterally does not trust the Father but not the Father. Thus, there is never any mutual mistrust as alleged by the Mother. I consider that these grounds have no merit. Grounds 5 and 6 The Mother on one hand claims to have supremacy as de facto sole custodian and, on the other hand, complains that the Father seriously lack in his interest as a parent. I disagree. I consider that the Mother is all along trying to deprive of the Father's opportunities to participate in the life of the Son. I accept the submission of Ms Audrey Yu SC leading Mrs Dora KH Chan for the Father that the so called status quo was self-generated by the Mother. It is the Mother's insistence to communicate via the lawyers but not the Father. Based on the correspondence between the parties lawyers, the Father had repeatedly requested for all kind of access and information about the Son. Nonetheless, he was kept in the dark of those information. I consider that these grounds have no merit. Grounds 7 to 11 I can understand the reason why the Father withdrew his consent in the Son's Australia visa application. For the purpose of deciding whether to grant joint or sole custody, I do not think that it is necessary to determine the Father's withdrawal is reasonable or not. Indeed, as a loving parent, the Father has genuine worry of the Mother's relocating the Son to Australia permanently without his consent or informing him given her dictatorial and arrogant attitude in the past. Ms Yip SC leading Mr Sam for the Mother argued that to hand over to the Father custodian power of the Son means that the Father will have an indirect but very real custodian power over the Elder Son. I disagree. Undoubtedly, two boys will grow up together, but it does not mean that the Son has to follow his half-brother's footsteps in his development or in the future. These grounds have no merit. Grounds 12 to 15 The legal surname of the Son is always Zhou instead of as stated in his birth certificate. Change of the surname of the Son is a very serious matter, which usually requires the consent of the parents. It is

inappropriate for the Son sending WeChat message saying m XXX Li to his group of friends. In my view, it is extremely embarrassing as the Son s friends may ask him why he has to use the Mother s surname suddenly but not the Father. For access on long school holidays, I have ordered a 9-month supervision order and progress report will be filed by around November 2023. The SWO can make fresh recommendations in this regard. Even if the Mother may have plan for long holiday in summer vacation with the Son, I understand that the Father is always willing to communicate with the Mother for the access arrangements. The parties are indeed entitled to revise the arrangements by consent even without a court order. No appeal is necessary. These grounds have no merit.

Conclusion

To conclude, the Mother has failed to demonstrate any reasonable prospect of success in her intended appeal and there is no other reason in the interests of justice why the appeal should be heard. Her application for leave to appeal should be dismissed. For her application for stay of execution, I am of the view that the appeal, even if successful, would not be rendered nugatory even if there is no stay of execution. Hence, her application for stay be dismissed. Regarding the question of costs, there is no reason why costs shall not follow event. The Father lodged his statement of costs claiming about \$713,000. I consider excessive and order that costs of this application summarily assessed at \$285,000 be paid by the Mother forthwith. (Simon Lo) District Judge Ms Audrey Yu SC leading Mrs Dora KH Chan instructed by Robinsons, Lawyers for the Applicant Ms Anita Yip SC leading Mr Perlman Sam instructed by John CH Suen & Co. for the Respondent See para. 8 of the Judgment See para. 5 of the Judgment It is the Father s surname. It is the Moher s surname.

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Prepared on 28 October 2026 · Esheria