

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 267 OF 2025

IN THE MATTER OF an application
under the Child Abduction and
Custody Ordinance, Cap 512 (“the
Ordinance”)

and

Order 121 of the Rules of the High
Court (Cap.4, sub leg.A) in respect of
the children, namely, **ADE** (“the Son”),
a boy, a child born on 10 June 2024 and
AE (“the Daughter”), a girl, a child
born on 1 September 2018

BETWEEN

EY Plaintiff

and

SE Defendant

Before: Hon Au-Yeung J in Chambers (Not Open to the Public)

Date of Hearing: 2 April 2025

Date of Judgment: 14 April 2025

J U D G M E N T

A. *INTRODUCTION*

1. This is the substantive hearing of an application made by the Plaintiff (“**Father**”) by Originating Summons filed on 19 February 2025 (“**the OS**”) under the Child Abduction and Custody Ordinance (Cap 512) (“**the Ordinance**”) and the Hague Convention on the Civil Aspects of International Child Abduction, 1980 (“**the Convention**”) for the return of his two children (collectively “**the Children**”) to Thailand.

2. The Defendant (“**Mother**”) does not dispute that: (i) the Children’s habitual residence is Thailand; and (ii) the removal of the Children to Hong Kong was wrongful and without the consent of Father. However, she objects to the return of the Children to Thailand. She relies on the Art.13(b) defence under the Convention, ie that there is a grave risk that their return would expose the Children to physical and psychological harm or place them in an intolerable situation due to violence or oppressive behaviour of Father. The Children also object to the return to Thailand. Any safe harbour measures or undertakings to be given may not be honoured by Father in a foreign jurisdiction and Mother would be left in a helpless state.

3. Father denies the allegations against him and submits that Mother’s evidence could not meet the high threshold under Art.13(b). He makes cross allegations that it was Mother who exposed the Children to

physical and psychological harm. She was disrespectful to the Thai Court orders by repeatedly refusing Father access. Father, however, is willing to give undertakings to facilitate the safe return of the Children to Thailand.

B. BACKGROUND

4. The parties met in 2009. The Children were both born in [REDACTED]. The Son and Daughter are now aged [REDACTED] and [REDACTED] respectively. Father has always been the bread winner of the family while Mother has been a full-time housewife.

5. Father is aged 44 years and Mother is 43. They are both [REDACTED] nationals.

6. In 2019, Father and Mother were married in [REDACTED]. In July that year, the family moved to [REDACTED], China.

7. In January 2020, the parties further relocated to Phuket Thailand due to Covid-19.

8. Between 2020 and 2022, the parties' relationship deteriorated. They began to separate. During this period, the former matrimonial home in Thailand (defined in the affirmations as "**House W19**") was purchased. The Children had attended school in Phuket until their wrongful removal to Hong Kong.

9. In December 2021, Father accepted a job offer based in Hong Kong. He thus obtained a Hong Kong identity card, although he had never worked out of the Hong Kong office. In July 2022, Mother and the

Children obtained dependent visas in Hong Kong, which are due to expire in 2026.

10. In September 2023, Father moved out of House W19 while Mother and the Children resided there up to March 2024. Between March and October 2024, Mother and the Children moved to a rented apartment (**“the Rented Apartment”**).

11. There are ongoing proceedings in the Thai Court concerning custody and care of the Children. Pursuant to Mother’s application, the Phuket Province Juvenile and Family Court (**“The Thai Court”**) held a hearing on 3 July 2024. Father admitted that he had physically assaulted Mother when they had a quarrel but he did not assault multiple times as alleged. It was thus ordered that,

(1) Father be prohibited from (a) abusing physically, mentally or threatening Mother and her family members; and (b) approaching Mother and her family members within 10 metres, except for meeting and caring of the Children as agreed for 6 months or until otherwise ordered (**“Thai Injunction Order”**).

(2) Mother was to take care of the Children while Father was to have reasonable access to the Children in a public place with a third-party present. The first access was scheduled for 5 July.

12. On 5 July 2024, pursuant to the Thai Injunction Order, access took place between Father and the Daughter.

13. On 11 September 2024, Mother petitioned for divorce in Hong Kong. Father is currently challenging the Hong Kong Court's jurisdiction over the divorce, which will be heard on 18 August 2025.

14. In October 2024, Mother and the Children moved from the Rented Apartment to a new location.

15. On 3 December 2024, a hearing before the Thai Court was held upon Father's application. Pursuant to directions of the Thai Court, a psychologist report dated 6 December 2024 was prepared ("**the Thai Psychology Report**").

16. On 6 December 2024, Father filed for divorce in Thailand.

17. On 3 January 2025, the Thai Injunction Order expired.

18. On 23 January 2025, upon the parties' agreement, the Thai Court granted an interim access arrangement order ordering, amongst others, that: (1) Father shall meet the Daughter once a week; (2) Father be allowed to meet the Son if the Son agreed to do so at a date, time and place of the Son's choosing; and (3) if the Children consented to meeting Father at their school, Father may meet them at the school.

19. On 7 February 2025, after review, the Thai Court refused to extend the Thai Injunction Order on the finding that, after the order was imposed, Father had not physically harmed or threatened Mother or any person in her family in any way ("**the 1st Thai Review Decision**").

20. Mother refused to sign the 1st Thai Review Decision. At her request, another hearing was held at the Thai Court. Another order was then made ("**the 2nd Thai Review Decision**") which recorded the following:

(1) Mother requested the Thai Court to record that the 1st Thai Review Decision was incorrect in stating that Father did not harm or threaten Mother or her family members after the Thai Injunction Order. According to Mother, the truth was that although Father did not physically harm her, he threatened her by sending her an email saying that he would take the Children away from Mother's house.

(2) The Thai Court ruled that even considering Mother's version of events, there was still no reason for the court to extend the Thai Injunction Order which had already expired.

21. Father has not had access to the Son since 10 November 2024 and the Daughter since 19 January 2025.

22. On 12 February 2025, Mother brought the Children to Hong Kong from Thailand without the consent of or notice to Father.

23. On 18 February 2025, upon Father's application, I granted an *ex parte* order prohibiting Mother from taking the Children out of Hong Kong.

24. On 19 February 2025, Father took out the OS.

25. At the call over hearing on 27 February 2025, this Court varied the *ex parte* order by prohibiting both parties from removing the Children out of Hong Kong. This Court also directed a single joint expert report to be prepared by Dr. Craigen to assess the Children's relationship with each parent and psychologically evaluate the effect on the Children of a return to Thailand ("**Dr Craigen's Report**").

26. On 28 February 2025, this Court defined Father's access, including staying access, to the Children in Hong Kong. The scope far exceeded that proposed by Mother and that ordered by the Thai Court. I have been informed by the parties that apart from some hiccups and that some of the access time had been spent on Dr Craigen's assessment of the Children, access in those 4 weeks had worked out well. Father had one night's staying access with the Children at his home.

C. MOTHER'S CASE

27. In gist, Mother's allegations can be classified into 5 limbs:

- (1) Father's domestic abuse against Mother in the presence of the Children.
- (2) Father's continuation of violent and oppressive behaviour leading to and despite the Thai Injunction Order.
- (3) Father's violence and oppressive behaviour extended to the Children;
- (4) F's unbalanced obsession for firearms and combat sports.
- (5) Father exerting financial pressure, including on the Children.

28. It is Mother's case that if the Children are returned to Thailand, there is a grave risk that they (especially the Son) will be exposed to physical or psychological harm or be placed in an intolerable situation. Father would resume his physical discipline of the Son and his previous campaign of intimidation and harassment against Mother, which will adversely affect the Children. The Children also object to the return to Thailand. The Thai Court and law enforcement agencies had been ineffective. Thus safe harbour measures and Father's undertakings may be empty promises.

D. FATHER'S CASE

29. Father admits one incident of assault due to Mother snatching his iPhone from him but denies the rest of the allegations. He asserts that it was Mother instead who was the one pushing and screaming at him. The Thai Injunction Order was granted for 6 months, after which the Thai Court turned down Mother's request to extend it, on the finding that allegations of subsequent harassment were not established. Mother's evidence falls short of establishing grave risk under Art.13(b). Father also asserts that it was Mother who exposed the Children to harm. She disrespected the Thai Court order by denying Father's access. Her latest wrongful removal of the Children to Hong Kong was part of her continuing efforts to defeat the Thai access order. She weaponized the Children in order to extract money from him. Father denies that the Thai legal system will be ineffective in protecting Mother and the Children. He has, however, offered undertakings to implement a safe return.

E. ISSUES

30. In summary, the issues are as follows:

- (1) Whether there is a risk that the Children's return to Thailand would expose them to physical or psychological harm;
- (2) Whether there is a risk that the Children's return to Thailand would place them in an intolerable situation;
- (3) Whether any such risk is grave;
- (4) Whether the Children object to being returned to Thailand; and
- (5) Whether there are safe harbour measures for return to Thailand;

- (6) If an order for return is to be made, what should be the terms and undertakings required.

F. LEGAL PRINCIPLES

F1. Art.13(b) of the Convention:

31. Pursuant to Art.12 of the Convention, if a child has been wrongfully removed according to Art.3, the child shall be ordered to be returned. Art.13(b) provides exceptions to an Art.12 order for return if the person who opposes the child's return establishes that:

“(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views”

F2. Grave risk of physical or psychological harm to the children or placing the child in an intolerable situation if returned

32. Regarding the term “grave risk of physical or psychological harm or intolerable situation” in Art.13(b), Cheung JA has set out the following principles in *M v E*, CACV 75/2015, unreported, 5 June 2015, citing Baroness Hale and Lord Wilson JJSC's joint judgment in *Re E*, at §§8.1-8.2:

- (1) The burden of proof that the children's return will expose them to a grave risk of physical or psychological harm or be placed in an intolerable situation lies on the party who opposes the

A		A
B	return of the children. The party must thus produce evidence to	B
C	substantiate the exception.	C
D	(2) Due to the summary nature of the process under the Convention,	D
E	it is rarely appropriate for the Court to hear oral evidence on this	E
F	issue. The standard of proof is on the balance of probabilities.	F
G	(3) The words “physical or psychological harm” is unqualified but	G
H	they gain colour from the alternative “or otherwise placed in an	H
I	intolerable situation”. The risk of harm to the children must	I
J	have reached a serious level so to be considered “grave”.	J
K	Although “grave” characterises the risk rather than the harm,	K
L	there is often a link between the two: the more serious the harm,	L
M	the lower level of risk might be required for the risk to be	M
N	“grave”, and vice versa.	N
O	(4) “Intolerable” is a strong word which means a situation which	O
P	this particular child should not reasonably be expected to	P
Q	tolerate or put up with, such as physical or psychological abuse,	Q
R	neglect of the child or exposure to the harmful effects of seeing	R
S	and hearing the physical or psychological abuse of his/her own	S
T	parent.	T
U	(5) The exception is concerned with the future when the child is	U
V	returned to his/her home country. This is not the same as being	V
	returned to the person who has requested the child’s return. One	
	would expect protective measures to be put in place by the court	
	of the child’s home country.	

F3. *Child's objection to return*

33. Cheung JA in *LCYP v JEK* [2015] 4 HKLRD 798, §9.4 had followed the English approach in breaking the issue of child's objection into two stages.

(1) The "gateway stage", where the party relying on the exception has to establish that: (a) the child objects to being returned; and (b) the child has attained an age and degree of maturity at which it is appropriate to take account of his or her views. The gateway stage is "confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied" and "[s]ub tests and technicality of all sorts should be avoided".

(2) If the gateway elements are not established, then the child is bound to be returned. If the gateway elements are established, then the Court will move on to the second stage, the "discretion stage", where it will determine whether to return the child even though it is not obliged to do so.

34. For the exception to apply, the child's view must have amounted to objections and nothing less. He/She has to object to returning to the country of habitual residence rather than returning to particular circumstances in that country, such as living with a particular parent. However, the two types of objections are sometimes hard to separate, especially when the abducting parent does not return with the child: *Re M & Others (Children) (Abduction: Child's Objections)* [2016] Fam 1, §§38-45.

F4. Evaluating evidence in Convention proceedings

35. The approach of the Court in evaluating evidence in Convention proceedings has been summarized by the Court of Appeal in *BMC v BGC formerly known as WCY* [2020] HKFLR 344 at §§78-80, following *RE F (A Minor) (Child Abduction)* [1992] 1 FLR 548, at 553:

- (1) Convention proceedings are summary in nature. Thus, parties give evidence by filing affidavit evidence and usually no oral evidence or cross-examination is allowed (§78).
- (2) When the Court is faced with irreconcilable affidavit evidence and no oral evidence is available, the judge has to look for independent extraneous evidence in support of one side. That evidence has to be compelling before the judge is entitled to reject the sworn testimony of a deponent. Alternatively, the evidence contained in the affidavit may in itself be inherently improbable and therefore so unreliable that the judge is entitled to reject it. If, however, there are no grounds for rejecting the written evidence on either side, the applicant will have failed to establish his case (§79).
- (3) The Court may ask instead whether there is sufficient evidence (such as contemporaneous messages) to support the version deposed to, where there is factual conflict (§§79-80).

F5. Protective measures

36. In deciding what weight can be placed on undertakings as a protective measure, the court has to take into account the extent to which they are likely to be effective both in terms of compliance and the

consequences, including remedies, in the absence of compliance: *H v O v The Secretary of State for the Home Department*, [2025] EWHC 114 (Fam), §45(ii) and (iii), MacDonald J. Unless voluntary undertakings are enforceable in the State of habitual residence of the child, they should be used with caution, especially in cases where the grave risk involves domestic violence: *Guide to Good Practice: Part VI, Article 13(b) (2020) of the Hague Conference on Private International Law*, §47.

G. PRELIMINARY OBSERVATIONS

37. Before I analyse the parties' cases, I would like to make a few preliminary observations to guide me.

38. Firstly, Mother explained that her purpose of bringing the Children to Hong Kong was to bring them out from the trauma they had in Phuket. She claimed that schools in Hong Kong were more diligent and could provide better support to the Children. She also had better confidence in the Hong Kong justice system in protecting her and the Children.

39. However, such explanations are incredible. Why would she bring the Children to the very city where the Father has an employment visa and has "substantial connection" (as pleaded in her divorce petition)? It would only give him an opportunity to meet and "harm" the Children.

40. The family had never lived in Hong Kong, but only came here for holidays. Mother has provided no proof of searching for residence, schools or extra-curricular activities in Hong Kong before she left Thailand. Further, as Mr. Egerton accepted at the hearing, Mother gained confidence in the Hong Kong justice system only after she has experienced it. In my

A view, her claims of confidence in the schools and courts here are but
B afterthoughts.

C 41. Secondly, on 14 February 2025, after Mother landed in
D Hong Kong, she sent a message to Father with a photograph of herself and
E the Children outside the office of Father's employer. In a subsequent voice
F call, Mother threatened Father that she would cause him to lose his job. She
G said she would only permit Father to see the Children again if he transferred
H to her USD\$3 million by the following morning, otherwise she would
I disappear with the Children.

H 42. Ms Alison submits that the video and transcript of the voice call
I recorded Mother as engaging in threatening behaviour against Father and
J using the Children as bargaining pawns for more money. On the other hand,
K Mr Egerton submits that Mother's actions were due to her suffering from
L emotional strain from Father's actions.

L 43. Mother might well be suffering from emotional strain.
M However, I agree with Ms Alison's submission. That voice call reflected
N Mother's true emotions – that she did not consider Father to be a threat to
O the well-being of the Children as she now claims. He could see them if he
P had paid. This immediately cast doubt on whether the Children did or will
Q suffer grave risk of physical or psychological harm under the hand of Father.

Q 44. Thirdly, the Son's negative feelings towards Father were
R stronger than those of the Daughter, as evidenced by Dr Craigen's Report,
S notably because the Son received direct "abuses" but not the Daughter. This
T Court will consider both Children together and any order for return to
U Thailand must apply to both Children.

45. Fourthly, the parties' dispute extended to making cross-allegations of abusive conduct and breach of Thai Court orders against each other in these proceedings. It is quite plain that any psychological harm on the Children did not just arise from one party's mode of handling conflicts and children matters. This is also evident from Dr Craigen's Report.

46. Fifthly, defined access under the order dated 28 February 2025 has worked out with no major dispute arising between parties. Even the Son was willing to attend the access. There was no need to involve the police. The parties appreciated each other's respect for the Court order. These indicate that, with proper court intervention, parties can put aside their emotions, thereby benefitting the children too.

47. I now turn to the individual complaints of Mother.

H. WHETHER THERE IS A RISK THAT THE CHILDREN'S RETURN TO THAILAND WOULD EXPOSE THEM TO PHYSICAL OR PSYCHOLOGICAL HARM

48. I will first analyse the 5 limbs of complaints of Mother and then the views in the psychologist.

H1. Domestic abuse against Mother in the presence of the Children

49. The Mother alleged that domestic abuse happened in between January and March 2024. Father broke into House W19 multiple times without Mother's permission by climbing over the wall of the house. Father would then throw things around, push Mother to the ground, shake her in anger, and threaten to burn the house down in the presence of the Children. Mother made at least 3 reports to the Thai police of Father's domestic

violence, only to be ignored. After the police's repeated inaction, she gave up making reports to the police. There were 2 specific incidents.

50. Firstly, on 14 January 2024, after breaking in and during an argument, Father knocked off Mother's mobile phone in her hand. This was supported by videos produced by Mother and Father respectively. Father was featured as having a serious look. Mother alleged that she had fallen to the ground as a result of Father's act. Father denied. The dispute could not be verified by the videos as the screen blacked out towards the end; but this is not important. What is important is that the Children's voice could be heard in the background. According to Mother, the Children heard the noises and went over to check on her.

51. Secondly, on 23 January 2024, Father climbed over the wall above the main gate into House W19. Despite Mother screaming that Father was "trespassing", Father ignored her, passed through the car port and walked up to her. All the while, Father did not say anything but wore a serious look on his face. He did not exert any violence. He used his mobile phone to take a video, whilst Mother had her own mobile phone in her right hand. An altercation took place at the open space just outside the house building. Mother kept repeating, "This is my house." "This is my property." "You can't be in my property." "You are pushing me." The Father was not pushing her and kept saying, "I am not pushing her." "No, this is not your house." "This is my home." He kept stepping back. At times, Mother put her right arm around the shoulder and chest of Father. Mother kept shouting, "Help, I need help." Father repeated, "Call the police. Call the police." The Mother appeared to be distressed throughout the video. Her hair was loose and bare-footed. She appeared to be exhausted towards the end of the video.

52. Father's video on the same date shows that Mother pulled his shirt down at his left shoulder. Mother kept saying, "This is my house." "Help, help, help ..." "This is not your home. This is my home." The Father said several times, "Call the police." He also said, "I'm coming to see you", in response to the Children's voice in the background.

53. Mother also stated that on 23 January 2024, in the presence of the Children, Father pushed her and threatened to burn down the house so that the Children and Mother would have no money and place to live. The Children screamed for the Father to stop and hid out of fear.

54. Then came 2 April 2024 when Father came to the Rented Apartment unannounced, argued with Mother, and punched her in the stomach when trying to grab her phone. It left bruises on her, caused her severe back pain and trouble with breathing. These happened in front of the Children. To support her allegation, Mother relied on: (i) photos of her injuries; (ii) a medical report dated 3 April 2024, and; (iii) Father's limited admission to the Thai Court and the Thai Injunction Order granted as a result. After reviewing her medical report, the Thai police opened a file.

55. Father denied ever hitting Mother on 2 April 2024. He queried as to where her bruises in her photos came from. There was no video footage of the assault and Mother only saw a doctor the day after the alleged serious assault. He claimed that she never called the police concerning that incident. The police never came to Father anyway. Mother only sought an injunction for protection a month after the incident. Father alleged that what truly happened on 2 April 2024 was that when he dropped off the Daughter to the Rented Apartment, Mother grabbed his phone off him. Thus, he grabbed the phone back from her hands. The Children were not present when this happened.

56. The videos do not, of course, form a complete record of the disputes between the parties. Security cameras were only installed in House W19 after 2 April 2024.

57. One can see the physical disparity between Mother and Father. He did not push or use violence on Mother. However, the way he entered House W19, wearing a serious look, was intimidating and harassing. His repetition of the phrase “no pushing”, and daring Mother to call the police whilst taking a video were quite provocative. Mother appeared very distressed and helpless but Father did not back down. Although the video showed that it was Mother who initiated physical contact with Father, it was plain that she just wanted “the trespasser” out of her house.

58. I find that there had been conflicts between the parties when Father had abused Mother in the form of harassment and intimidation by the way he entered and acted inside House W19. On the other hand, Mother had used some force on him too.

59. The voice of children in the background, at least on 14 and 23 January 2024 indicated that some conflicts happened within the sight or hearing distance of the Children. According to Mother, the Children screamed and hid out of fear, which I accept.

60. Notwithstanding Father’s present denial of Mother’s case, the indisputable evidence was that he had admitted the assault before the Thai Court, which led to the Thai Injunction Order. The assault appeared to be more at the spur of a moment in a scuffle rather than pre-meditated.

61. I am satisfied that there was physical assault, harassment and intimidation on Mother. The 1st limb of Mother’s complaint is proved.

H2. Father's continuation of his violent and oppressive behaviour leading to and despite the Thai Injunction Order

62. Mother alleged that Father' violent and oppressive behaviour continued despite her move to the Rented Apartment. There was the incident on 2 April 2024 referred to above. She was granted the Thai Injunction Order on 3 July 2024.

63. Despite the Thai Injunction Order, Father allegedly continued his violent and oppressive behaviour as illustrated by the following events:

(1) Father kept moving his accommodation close to that of Mother and the Children. He purchased **House W12** that is 70m away from House W19 after 30 July 2024. When Mother and the Children moved to the Rented Apartment, Father rented a unit in the same complex. He stood outside of the Rented Apartment to speak to the Children on the balcony. After Mother and the Children moved to a new residence, Father again rented another apartment at the same complex.

(2) On 30 July 2024, Father emailed Mother stating that if she went to House W19 to meet him, it meant that she was not afraid of him and did not need protection.

(3) On the same day, Father attended the Rented Apartment and stayed in front of it. Thai police allowed him to meet with the Children in the presence of the police and security guards.

(4) On 23 August 2024, despite already living in House W12, Father brought his airgun and target into House W19 when Mother and the Children were not there. He claimed to have practised his shots there and left his target full of bullet holes in

House W19. Mother said that it was Father's design to intimidate and threaten.

64. Father denied any intention to harass or intimidate. His explanations for his acts are as follows:

(1) When he bought House W12, Mother and the Children had already moved out of House W19. When he entered House W19 in August 2024, Mother and Children were not there. He needed to utilize a very advanced VPN system installed at House W19 for his work. He only stayed there for work and but not overnight. His email to Mother was for giving her a heads up of his presence there since she was scared of him.

(2) It was during one of the 6 visits to House W19 that he brought and calibrated his airsoft gun at the garden as it was not working. He left the target at House W19 by accident. The gun was actually an airsoft gun which was a toy. He regularly practiced shooting targets with the Son in the garden so there was nothing scary about his action. He queried whether the target scared Mother, if she was able to carry it all the way from House W19 to the Rented Apartment to take photos of it.

(3) After the Thai Injunction Order and his single access on 5 July 2024 with the Daughter, Mother had refused to arrange any further access for him and the Children. His renting of a unit in the same complex of the Rented Apartment was out of his desperation to see the Children. He did so such that he could occasionally stand outside of the Rented Apartment to let the Children see him and speak to him from the balcony.

(4) The Father explained his renting of property at the complex of Mother's new residence in February 2025 was for establishing a neutral location for him to spend time with the Children during his access time. This was because Mother denied Father's access for the reason that he was living with his girlfriend in House W12.

65. Strictly speaking, these acts of Father did not breach the letter of the Thai Injunction Order. He did not, eg come within 10 metres of Mother and the Children. When seen in context, one can also understand his frustration in not being able to see the Children, especially from July 2024 onwards, save for 10 November 2024. He would have reasonably thought that it was Mother who failed to follow the Thai Court orders in facilitating access. He apparently also thought that he had rights over House W19 even though it was in Mother's sole name. He thus entered and left the House as he had wanted. He failed to respect Mother's need for a sense of security whilst the divorce was being sorted out. It was likely that due to these that Father committed and continued the "abuses" on Mother.

66. This is not the forum to debate Father's rights over matrimonial assets or whether he is the right person to have custody. For the purpose of this case, I find that Father's conduct after the Thai Injunction Order did not involve physical violence. However, it could reasonably be interpreted by Mother as continued harassment or psychological intimidation.

H3. Domestic violence extended to the Children

67. According to Mother, Father used force to discipline and punish the Son. This included, while being a 90kg adult, pushing the Son to the

ground, riding and grabbing on him and breaking the Son's watch when the Son was only 8 years old (in 2022), while the Daughter watched.

68. Father also grabbed the Son and tried to drag him from the car on occasions in front of teachers and schoolmates. Father's abusive parenting has caused the Son to be scared of attending school.

69. Mother produced:

(1) A report of Dr Golovanova, a Clinical Family Psychologist and Councillor whom the Son had been consulting since October 2023 and whose evaluation commenced since November 2024. Her report refers to the Son being escorted to school by Father as a potent traumatic reminder, with the Son displaying traumatic stress response, anxiety disorder features and behavioural dysregulation.

(2) A Care Report dated 25 February 2025 for the Son by Ms. Michelle Ring, the school counsellor. It recorded that the Son has been dealing with psychological stress which has impacted his ability to attend school regularly.

70. It is not disputed that the Son's attendance record was good between September and December 2023 but dropped drastically in January and February 2024. The Son's attendance improved in March 2024. Mother said the good and improved record was when Father was not around, but the poor record was when Father was around in House W19. Father said the poor attendance was caused by Mother's obstruction and escalation between the parents.

71. In around January 2024, Father attempted to cancel the Children's enrolment at the school but he was rejected by the Headmaster since it required both parents' consent.

72. This led to the Father taking the Son from the school in the middle of the school day, bringing him to House W19, locking him in his car and demanding Mother to bring the Daughter to him as he wanted to live with them. It was against this context that Mother requested Father not to pick the Children up from the school in the middle of the day but only at House W19 after they finished school. Father ignored these requests and repeated the same unreasonable conduct at least 2-3 times between January and March 2024.

73. Father denied ever disciplining the Son physically in 2022 or dragging the Son off the car or locking him in it. He claimed never to have used force on the Children.

74. Father accepted that he visited the Son's school on a day in January due to visa issues. He took the Son off school early to avoid having to pick him up an hour later. He alleged that the Son did not protest to being taken off school early.

75. Father challenged the impartiality and qualification of Dr Golovanova; and the impartiality and accuracy of Ms Ring's report.

76. Without disrespect, I place no reliance on Dr. Golovanova's Report. Her qualifications are unknown and her report could not be admissible as expert evidence.

77. I rely on Ms Ring's report as to her observation of the Son's lack of attendance and apparent condition but not the cause for his behaviour. It was a one sided report prepared and made without interviewing Father.

78. There is no independent proof to assist me in deciding whose version to accept. There is no basis for me to reject Mother's sworn evidence but then I have not accepted some of her evidence on other issues. The inference I am willing to draw from the Son's failure to attend school is that it was a reflection of traumatic incidents related to the school and the psychological harm he has suffered as a result.

79. The Court is not concerned with assessing the parental skill of Father. That should be a matter for the court dealing with custody. However, it is indisputable that both parents reported difficulties disciplining the Son as he broke family rules and could be disrespectful (§5 of Doctor Craigen's Report). As Dr Craigen observed, whilst Mother criticized Father for being angry with the Children and spanked, grabbed or criticized them when they were disobedient about half the time, Mother also has been struggling to consistently apply disciplinary practices when responding to the Children's misbehavior, She may find it challenging to establish household rules.

80. I find that the Son was psychologically stressed but I am not able to find that it was caused solely by Father's violence.

H4. Father's unbalanced obsession for firearms and combat sports.

81. Mother claims that Father has been keen in introducing firearms to the Son. He sent the Son videos of himself shooting from the window, buying the Son an airsoft gun without Mother's consent and illegally bringing the Son to shoot at a real fire shooting ground in Thailand multiple times.

82. Father is fond of Muay Thai and is a martial art teacher. He admits to at least owning 3 guns and accessing House W19 (without the Son) to "practice shooting a target". Exh ES-2-12(1) was a video that Father sent to the Son showing Father to be holding a long gun and was firing into the garden. The parties agreed that that was at a house in which Father lived in between the time he moved out of House W19 and moved into House W12. That house was never Mother's home. The video did not show anybody else around.

83. In my view, regardless of whether the gun(s) were firearms (on Mother's case) or toy airshot guns (on Father's case), I am not satisfied that they have been a source of harm, harassment or intimidation, whether to the Mother or the Children. As Father says, the Son himself is a fan of firearms. A video taken on 6 October 2022 depicted a happy occasion of the family of four watching the Son open a gift of a toy gun. A video taken by Mother shows the Son's baby gun in a bedroom. The Son appears to enjoy the hobby of shooting at a real shooting ground. The Son had also lit up firecrackers outdoor when the family was around, as can be seen in a video.

84. This limb of Mother's complaint is not established.

H5. Father exerting financial pressure, including on the Children

85. According to Mother, Father has the habit of exerting financial pressure on her during arguments. Since parties started discussing divorce, this has escalated into ceasing financial provision, including for the Children. The Father would create financial insecurity by transferring money in and out of their HSBC joint bank account. Since January 2024, Father has ceased all financial provision to Mother and Children. Since July 2024, he has stopped paying the Children's school fees and extra-curricular activities. He has also obstructed Mother in renting out House W19.

86. Father has given answers to all these allegations. However, it is not necessary to address them. Suffice to say that these allegations should not have any psychological harm on the Children if Mother had not told them about these. Further, Mother has just sold the property under her name in [REDACTED]. Father had also transferred US\$100,000 to her, however one characterized that sum. Mother was and is financially provided for. According to Dr Craigen's Report, Mother was not worried about finance. I am not satisfied that this limb of complaint of the Mother is established.

87. Father claims that Mother has not told him about the need for school fees nor sought reimbursement from him. However, he is willing to give an undertaking to pay for those.

H6. Psychological harm on the Children

88. The complaints in Sections H1-2 have been established.

89. The Thai Psychology Report and Dr Craigen's Report have the common view that the Daughter has taken the parents' conflict better than the Son. She was more willing than the Son to meet Father.

90. The Thai Psychology Report stated that the Daughter consented to meeting Father twice a week. The Son did not wish to meet Father. The Son showed "significant distress and considerable anxiety, likely resulting from psychological trauma caused by knowing that the [Mother] was physically harmed by the [Father]". Without disrespect, I cannot place much weight on this conclusion as it contains no objective data or description of the investigative process.

91. Dr Craigen's Report contains very detailed findings showing the Children's psychological positions:

- (1) Both Children recounted to Dr Craigen the violence of their parents – that they had "broken and thrown things and pushed and shoved each other during conflicts". They witnessed loud, heated arguments between the parents, with the Father "acting crazy", "jumping over fences" and physically assaulting Mother.
- (2) Throughout 2024, both children developed severe emotional symptoms which had knock-on effects on their ability to learn and form friendships (§12).
- (3) The Son experienced elevated levels of anxiety. Sometimes, he wanted to hurt himself. He said he would rather be dead than live with Father. Dr Craigen finds that the combination of emotional and behavioural symptoms he developed in Phuket, probably in response to an identifiable stressor (ie his parents'

A		A
B	conflict), met diagnostic criteria for adjustment disorder with disturbances of conduct and emotion (§4).	B
C	(4) The Son always felt caught in the middle between his parents.	C
D	He feels more threatened, sad and scared than other children during parental disagreements, possibly because he felt powerless to de-escalate the situation (§5).	D
E		E
F	(5) Both Children saw Mother as their primary attachment figure (§§5 & 7).	F
G		G
H	(6) The Son expressed that he became “fearful of “any noise” and each time a car passed their home, he “wondered is that [Father]?” He further became terrified that [Father] would go to his school and remove him from [Mother’s] care”. Dr Craigen opines that the Son’s resistance and refusal to see Father was understandable and may be justified by his observations of the parental conflict and his very real fear that Father may remove him from his primary attachment figure’s care (§8).	H
I		I
J		J
K		K
L		L
M	(7) The Daughter appeared “outwardly” to be effectively coping with the changes in her family system. Her parents and teacher did not have any concerns about her behaviour and they all agreed that she had the skills required to function and meet the demands inherent to her everyday life. However, her teacher observed that the Daughter’s emotional challenges were affecting her academic progress (§9).	M
N		N
O		O
P		P
Q		Q
R	(8) The Daughter clearly stated that she was not scared of Father, despite missing Mother when she was in his care (§10).	R
S		S
T		T
U		U
V		V

92. In my view, it is plain from these findings that the Children have suffered from emotional harm due to parental conflict and not just the behaviour of Father. It was also likely that the Son's worsening attendance record was caused by the parent conflicts. There is risk that the Children's return to Thailand would expose them to such conflict, thereby causing psychological harm on them.

I. WHETHER THE CHILDREN WILL BE PLACED IN AN INTOLERABLE SITUATION

93. Mother has not put forth any reason other than grave risk of exposure to physical and psychological harm to show that the Children will be placed in an intolerable situation. Their willingness to resume seeing Father in Hong Kong is the direct opposite of an intolerable condition. I am not satisfied that this limb of the Art.13(b) defence is proved.

J. WHETHER THE RISK WILL BE GRAVE

94. The Mother contends that should the Children be ordered to return to Thailand, the Father would resume his physical "discipline" of the Son and his previous "campaign" of intimidation and harassment against the Mother which adversely affected the Children. Her reason was that the Father has not shown himself to respect the law in Thailand, in disregarding the Thai Injunction Order. Mother's multiple pleas for help to the Thai police had been ignored until they saw her medical report dated 3 April 2024. Even so, they only advised her to consult a lawyer as it was a marital dispute. The police took no action against Father, apparently taking his word that he had interest in House W19 and he was there to see the Children.

95. In my view, whether Father or the Thai police was right is beside the question. The important thing is that the Mother truly felt harassed and intimidated by the Father's conduct and felt helpless.

96. However, I do not agree with the Mother's description of the Father's conduct as a "campaign" (ie an organized course of action to achieve a goal). It was more akin to improper expressions of frustration at not being able to see the Children and lack of sensitivity to Mother and Children's feelings. She herself did not feel that the Children would be open to grave risk of harm when she asked Father to pay her US\$3 million before he could see them again.

97. Notwithstanding being told about Father's violence on Mother, Dr Craigen opined that Father was "considered to be a low risk with respect to perpetrating physical harm against" the Children.

98. Since my defined access order, the Children have been seeing Father in Hong Kong more than they did throughout 2004 in Thailand. The Mother has not reported any problem with that. Dr Craigen opines that the structure of the access is working well to repair the Children's fractured relationship with their Father in an environment whereby more structure and accountability has been imposed and can thus provide them with the psychological safety they clearly were not afforded in the recent past (§12).

99. This sort of detailed defined access has not been attempted in the Thai Court. The Son was given too much discretion not to see Father.

100. At this hearing, the Father has indicated his willingness to give undertakings not to molest and not to purchase a property in the same complex that Mother and the Children reside at. As such, I consider that

there is a lower risk of Father “trespassing” Mother and Children’s residence or otherwise harass or intimidate them.

101. Having considered all the evidence, although the parental conflicts have caused psychological harm to the Children, I do not consider that such harm on the Children (the Son, in particular) has reached the grave level or will be grave in future if they are returned to Thailand.

K. WHETHER THE CHILDREN OBJECT TO BEING RETURNED TO THAILAND

102. Dr Craigen's Report stated that the Son expressed that he “would rather be dead than live with [the Father]”. This, at best, only constitutes an objection to return to a particular circumstance in Thailand. Mr. Egerton could not point to any other evidence of the Children objecting to being returned to Thailand. Given the Father has been exercising access, even staying access, over the Son, the concerns of the Son have probably been alleviated. I am not satisfied that Mother has established the Children’s objection to being returned to Thailand.

L. WHETHER THERE ARE SAFE HARBOUR MEASURES FOR RETURN TO THAILAND

103. Mother has serious concerns that protective measures or undertakings of Father will not be honoured in Thailand. The violence was domestic in nature. It was not as if she had not sought redress in Thailand. Her statement that Father had further assaulted her was lost through translation, resulting in “miscarriage of justice”; the Thai Injunction Order was not extended. She was consistently ignored by the police. Father denied his violence and aggressive behaviour despite objective video evidence. He

A showed no remorse after his admission to the Thai Court, but attempted to
B recharacterize his assault of Mother on 2 April 2024. He persistently
C harassed and intimidated Mother despite the Thai Injunction Order. There
D is a high likelihood that he will not respect orders made by the Thai Court.

E 104. Whilst I note Mother's concerns, I do not regard those as tipping
F the scale against a return. The Thai Court faced an early stage of high
G conflict between the parties and did not define the access as this Court did.

H 105. At this hearing, it has become clear to the parties that they in
I fact have the common concerns of (i) their children's emotional state; and
J (ii) their Children having friends, school and community. Each party
K acknowledged the other party's respect for the Hong Kong Court order.
L Father expressly acknowledged that the Mother is a great mother. This Court
M expressed appreciation for Mother's effort in encouraging the Children
N especially the Son to meet their Father. This Court also expressed
O appreciation for the Father's patience. Not having seen the Son for months
P since November 2024, he accepted the staged increase in access time.
Q Notwithstanding that the interviews with Doctor Craigen used up some of
R the Father's access time, he accepted the same without grudge.

S 106. Such attitude of the parties represented a major step forward
T since the call-over. It is reasonably foreseeable that once Father's wish to
U have access is met, conduct seen as harassment or intimidation would drop.
V More access for Father will not only be in the best interests of the Children,
but also of the parties in reducing their acrimony and achieving a peaceful
outcome on children issues.

107. The Father would give an undertaking of non-molestation and not to buy or rent accommodation in the same complex at Mother's new home. That would alleviate any concern of Mother as to trespass, harassment and intimidation.

108. For the reasons given, I am satisfied that there are safe harbour measures to protect the Mother and Children upon their return to Thailand.

M. TERMS OF RETURN AND UNDERTAKING

109. The school of the Children has been on holiday since 12 April. In my view, the Children shall return to Thailand a week before the new term starts on 28th, to settle down and start afresh. I therefore order that the Children do return to Phuket Thailand on or before **21 April 2025**.

110. The parties are concerned as to keeping of passports for the trip back and afterwards. In my view, it would be a good idea for them to travel together. One party should sit with the Children whilst the other shall keep the passport, to be handed to one of the Thai lawyers upon arrival in Thailand.

111. The parties shall reside in different residences. Mother intends to rent accommodation near to the Children's school and requests Father to bear the rent of HK\$40,000 per month. In the absence of Father's consent, I would leave this to the Thai Court. The short interval from now until the Thai Court will deal with the matter may only be a few months. The Mother can rent out W19 and apply the rent for the new accommodation. It would not be a burden to her.

112. Whilst I would require mutual undertakings of non-molestation to be given, I do not think it is appropriate to adopt the previous injunctive

terms of the Thai Court. The parties have cooperated recently over access without involving the police of Hong Kong. It is not necessary to impose supervised access or any restraint on Father's access.

113. The consequential orders for implementation of the above order are as follows:

- (1) Leave to Father to take the Children out of Hong Kong no later than 21 April 2025 for the purpose of returning to Thailand.
- (2) The Father shall book seats for the Mother (if she wants to travel together) and the Children on a direct flight from the Hong Kong International Airport to Phuket International Airport. The Father may travel in the same flight but shall not sit together with the Mother and the Children (if Mother travels together). The costs of air tickets shall be borne by Father and Mother in equal shares.
- (3) The Mother shall accompany the Children when travelling to Thailand (if she wants to). The Children's passports, travel and identity documents kept in Court shall be released to Father 24 hours before departure for the purpose of the Children's return to Thailand.
- (4) Upon arrival in Thailand, Father shall release the Children's passports to his or Mother's Thai lawyer for the purpose of safe custody pending order of the Thai Court.
- (5) Upon return to Thailand, the Children do reside with the Mother at [address to be filled in].
- (6) The Father shall reside at [address to be filled in].

(7) The parties are at liberty to provide a copy of this Order to his/her respective legal representative and the Thai Court for the purpose of proceedings relating to the parties' divorce and the custody, care and control of the Children.

(8) The pattern of all previous orders on access, including the order dated 28 February 2025, shall cease to have effect and the interim access of the Father to the Children shall be replaced by the following provisions (proposed by Father) until the Thai Court next hears the parties concerning the Children:

- (a) Tuesdays, from 12 noon to 6:00 pm;
- (b) Thursdays from 6:00 pm to 8:00 pm; and
- (c) Alternating weekend access where in week 1, the Children be with the Father from 9:00 am on Friday until 6:00 on Sunday; and in week 2, the Children be with the Father on Sunday from 9:00 am to 6:00 pm.

(9) There be liberty to apply.

114. I would expect the written undertakings to be along the following lines to be submitted to me on or before **4:00 pm on 17 April 2025**.

(1) Each party do undertake to the Court and to each other that:

- (a) He/she will apply to the Thai Court for mirror orders along the lines of sub-paragraphs (5) to (6) and (8) of the preceding paragraph and these undertakings.
- (b) He/she will not molest, harass, assault or intimidate the other party.

(c) He/she will not enter the residence of the other party without the latter's prior consent, pending further order of the Thai Court.

(2) Father undertakes:

(a) Not to rent, buy or live at a property within the same complex as the residence of Mother and the Children;

(b) The Father shall resume paying the education costs of the Children in Thailand.

N. COSTS

115. Article 26 of the Hague Convention provides that:

"Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial ... authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child."

116. The principles of costs in Hague Convention proceedings have been recently summarized in *Re M (Child Abduction)* [2024] 5 HKLRD 658, H Au-Yeung J. In gist:

(1) The Court has a discretion to order the abductor of the child to pay necessary expenses and legal costs incurred by the applicant. The purpose of such a provision is to act as a deterrent to behaviour which is contrary to the objects of the Convention.

(2) The usual order in children cases is no order as to costs. However, this is a matter of practice and not of law.

(3) Order 62 rule 5(1)(e) of the Rules of the High Court expressly provides that the Court may take into account the conduct of the parties when exercising its discretion as to costs. Rule 5(2)(d) stipulates that “conduct” would include “conduct before, as well as during, the proceedings”.

(4) Costs may be awarded against an unsuccessful party in exceptional circumstances, eg where the litigation has been instigated vexatiously or in bad faith or where the one party has acted in a reprehensible manner or in a manner concerning the litigation which goes well beyond what would be expected of a reasonable parent anxious to secure his or her child’s best interests, or where there is a disparity of means.

117. Mother has not established the grave risk required under Art.13(b). It was, of course, unwise for her, even in an emotional state, to weaponize the Children so as to extract US\$3 million from Father. Although her views towards the Thai Court and the Thai police were subjective, they do not undermine her genuine concerns as to the impact of Father’s behaviour on the psychological wellbeing of the Children. I am inclined towards the view that she had acted without thinking through the implications of her action but has not acted beyond what would be expected of a reasonable parent anxious to secure her children’s best interests

118. I therefore make an order *nisi* of no order as to costs.

119. I thank counsel for their assistance.

120. I wish to remind practitioners that a chronology should succinctly highlight salient events instead of including each and every date mentioned in the affidavits. Setting out in the chronology the opposing views

of an event is wasteful of costs and does little to facilitate understanding of the flow of events.

(Queeny Au-Yeung)

Judge of the Court of First Instance
High Court

Ms. Sasha Allison, instructed by Messrs Payne Velasco for the Father

Mr. Robin Egerton and Ms. Nicole Chui, instructed by Messrs Oldham, Li & Nie for Mother