

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 26

District Court Appeal No 14 of 2022
(Summonses Nos 208 and 273 of 2022)

Between

WCX

... Appellant

And

WCW

... Respondent

JUDGMENT

[Family Law — Child — Care and control]
[Family Law — Child — Access]

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WCX

v

WCW

[2022] SGHCF 26

General Division of the High Court (Family Division) — District Court
Appeal No 14 of 2022 (Summonses Nos 208 and 273 of 2022)
Choo Han Teck J
11 October 2022

21 October 2022

Judgment reserved.

Choo Han Teck J:

1 The parties were married on 29 November 2015. Interim Judgment was granted on 18 February 2021. The Father is 47 years old and owns a digital marketing business. The Mother is 43 years old and is a sales director. Both parties held full-time jobs throughout the marriage. The parties have one son who was born in May 2016. The child is presently attending a full-day kindergarten. The ancillary matters (“AM”) were heard on 6 May 2022. The District Judge (the “DJ”) ordered that the parties have joint custody of the child, with sole care and control to the Mother and access to the Father. In HCF/DCA 14/2022 (“DCA 14”), the Father appeals against the DJ’s decision on the issues of care and control and access.

2 Both parties filed summonses for leave to adduce further affidavits in respect of the appeal. HCF/SUM 208/2022 (“SUM 208”) is the Father’s

application to file a further affidavit to adduce evidence that was not before the DJ. The Father says that there have been changes in his living arrangements as well as his employment situation which he believes are relevant towards the issues of care and control and access. In particular, he says that he has now purchased a property near the child's primary school and that he has also resigned from his position as a part-time lecturer in a polytechnic.

3 In respect of the Father's application in SUM 208, I am of the view that the evidence is neither relevant nor material to my decision in this appeal. The DJ below had asked counsel about the Father's future living arrangements, and was already apprised of the Father's plans to purchase a property near the child's primary school when he determined the issues of care and control, and access. In any case, if the Father is of the view that his living arrangements would have a material impact on the child, he should have ensured that the necessary arrangements were made before the AM matters were heard. It is also of little relevance that the Father has resigned from his position as a polytechnic lecturer as this was only a part-time position, whereas his full-time role is with his digital marketing business.

4 HCF/SUM 273/2022 ("SUM 273") is the Mother's application to file a further affidavit to adduce evidence. She says that since the AM hearing, there were several incidents that have taken place which endangered the child's life, including one incident where the Father shot the child's face with a toy nerf gun. She wishes to adduce, *inter alia*, photographic evidence of an alleged injury caused by that nerf gun.

5 In respect of the Mother's application in SUM 273, I am similarly of the view that the new evidence is neither relevant nor material. The Father's counsel pointed out during the hearing that the toy nerf gun was purchased by both

parents for the child. The child's cheek had a reddish blotch from the nerf gun in the course of playing with the Father, but it would be an exaggeration to say that the Father endangered the life of the child in that way. The nerf gun is a toy found in many toy shops and red blotches can be expected where the skin has been 'shot'.

6 Both SUM 208 and SUM 273 are therefore dismissed. Although the court has a discretion to admit new evidence that is available only after the date of the decision, parties are reminded that this should be evidence which may have an impact on the decision: see *TSF v TSE* [2018] 2 SLR 833 at [43]. If further evidence were to be admitted without restraint, it serves only to distract and be of no help to the determination of the actual issues on appeal.

7 I now address the issues in DCA 14. In respect of care and control, the Father prays that the parties have shared care and control of the child. He proposes that the child shall be under the Father's care from Wednesday after school (or 5.00pm when there is no school) to Saturday 9.00pm, and under the Mother's care for the rest of the week. The Mother says that the DJ's decision on care and control should be upheld.

8 Shared care and control may be ordered in exceptional cases, but this is not such a case. For an order of shared care and control to be made, the court has to consider factors such as the child's needs and stage of life, the extent to which the parents are able to co-operate within a shared arrangement and whether it is convenient for a child, bearing in mind his or her age and personality, to shift between two homes every week: *TAU v TAT* [2018] 5 SLR 1089 at [12]. In the present case, it is evident that parties' have an acrimonious relationship and are distrustful of each other. Furthermore, the child is presently six years old and will be making the transition to primary school next year. The

child needs to have a stable environment that ensures a smooth transition. Having to shuttle between two homes during the week will not be in the best interests of the child. In the present circumstances, shared care and control is neither desirable nor feasible.

9 In the event that shared care and control is not ordered, the Father prays that he be granted sole care and control of the child. The Father says that the DJ, in ordering care and control to the Mother, had placed too much weight on the maternal grandmother's involvement with the child. The Mother says that the DJ's decision should be upheld.

10 In my view, there is no reason to depart from the DJ's decision on care and control. The support and stability provided by the child's maternal grandmother was an important factor which the DJ had rightly taken into consideration. It was not disputed that even before the breakdown of the marriage, both parties were working full time and relied on the maternal grandmother to care for the child. The Mother is also able to play with and care for the child in the evening. Although the Father may be capable of and keen to care for the child, giving sole care and control to the Mother will allow the child to have a stable home environment and would be in the best interests of the child. As I have not disturbed the DJ's decision on care and control, the orders made in respect of the handover location at the Wife's residence and the Wife's safekeeping of the child's documents are to remain.

11 In the alternative, the Father seeks more access time with the child. Under the AM orders, the Father has regular access from Saturday 9.00pm to Monday 9.00am, as well as Thursday after school (or 5.00pm when there is no school) to 8.00pm. He asks that he have increased access to the child from

Wednesday after school (or 5.00pm when there is no school) to Saturday at 9.00pm.

12 The Father's proposal on increased access would have the same effect as ordering shared care and control and is not workable. In my view, the DJ's orders on access are pragmatic and reasonable. The Father has two nights of overnight access for part of the weekend (from Saturday to Monday) and one dinner access on Thursday after school. This affords the Father sufficient opportunities to spend meaningful time with the child. I further add that the access arrangements may be adjusted by the parties' mutual agreement since both are working parents, and some give and take is inevitable.

13 The Father also appeals against the DJ's orders on Chinese New Year ("CNY") access and special day access. In respect of CNY access, the DJ ordered that on even years, the Father shall have access from 10.00am or after school (whichever is later) to 9.00pm on CNY eve; and 10.00am to 8.00pm on CNY Day 2. The Mother shall have access from 10.00am to 8.00pm on CNY Day 1 and Day 3 (if that is a designated public holiday). This is to be alternated on odd years.

14 The Father says that the present orders are unclear as to who has care or access of the child from 9.00pm on CNY eve to 10.00am on CNY Day 1; as well as from 9.00pm on CNY Day 2 to 10.00am on CNY Day 3 (if that is a designated public holiday). In respect of CNY access, the Father seeks increased access as follows:

- (a) Even years:

- (i) The Father to have access from 10.00am or after school (whichever is later) on CNY eve to 10.00am on CNY Day 1.
 - (ii) The Mother to have access from 10.00am on CNY Day 1 to 10.00am on CNY Day 2.
 - (iii) The Father to have access from 10.00am on CNY Day 2 to 10.00am on CNY Day 3 (if that is a designated public holiday) or until before school starts on CNY Day 3 (if it is not a designated public holiday).
- (b) Odd years:
- (i) The Mother to have access from 10.00am or after school (whichever is later) on CNY eve to 10.00am on CNY Day 1.
 - (ii) The Father to have access from 10.00am on CNY Day 1 to 10.00am on CNY Day 2.
 - (iii) The Mother to have access from 10.00am on CNY Day 2 to 10.00am on CNY Day 3 (if that is a designated public holiday) or until before school starts on CNY Day 3 (if it is not a designated public holiday).

15 I accept that the Father wishes to have increased access over the duration of the CNY holiday, which is a special family occasion, and since there are three nights to the CNY holiday, the Father should have at least one of them. I thus allow the Father to have increased access to the child during CNY as follows:

- (a) Even years:

- (i) The Father to have overnight access from 10.00am or after school (whichever is later) on CNY eve to 10.00am on CNY Day 1.
 - (ii) The Mother to have access from 10.00am to 8.00pm on CNY Day 1 and 3 (if that day is a designated public holiday).
 - (iii) The Father to have access from 10.00am to 8.00pm on CNY Day 2.
- (b) Odd years:
- (i) The Mother to have access from 10.00am or after school (whichever is later) on CNY eve to 10.00am on CNY Day 1.
 - (ii) The Father to have overnight access from 10.00am on CNY Day 1 to 10.00am on CNY Day 2.
 - (iii) The Mother to have access from 10.00am to 8.00pm on CNY Day 2.
 - (iv) The Father to have access from 10.00am to 8.00pm on CNY Day 3 (if that day is a designated public holiday).

Where there are gaps in the order, the child is to be in the care of the Mother.

16 In respect of special day access, the DJ had ordered that each parent will have access to the child on their birthday from 11.00am to 8.00pm; and that parties will alternate the child's birthday and public holidays excluding CNY (with the Father taking the next public holiday) from 11.00am to 8.00pm. The

Father asks that the timing for special day access be increased from 11.00am on the special day to 11.00am the next day.

17 I see no reason to disturb the DJ's order on special day access, which is reasonable. The Father's proposal of overnight access on special days may be disruptive to the child's schedule, particularly if the day after the special day is a school day. The Father should note that the child is starting primary school next year and would benefit from having a constant routine in the same residence on weekday nights.

18 For the aforementioned reasons, the AM orders on access are varied to the extent mentioned at [15] above. I make no orders as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Thian Wen Yi (Harry Elias Partnership LLP) for the appellant;
Daljit Kaur d/o Harbans Singh (N S Kang) for the respondent.
