

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 49

Civil Appeal No 167 of 2017

Between

TSF

... Appellant

And

TSE

... Respondent

Summons No 27 of 2018

Between

TSF

... Applicant

And

TSE

... Respondent

JUDGMENT

[Family Law] — [Custody] — [Care and control]

[Family Law] — [Custody] — [Fresh evidence on appeal]

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**TSF
v
TSE**

[2018] SGCA 49

Court of Appeal — Civil Appeal No 167 of 2017
Judith Prakash JA, Tay Yong Kwang JA and Steven Chong JA
30 April 2018

16 August 2018

Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 The present appeal concerns the appropriate orders for the care and control of a child who is situated in rather special circumstances. Since January 2014, the child's parents have been engaged in an acrimonious battle over the child's custody in two jurisdictions: Singapore and England. Several orders have been made by the English courts requiring the father to return the child to England, but none were complied with. The mother made allegations of criminal conduct against the father which led to his arrest and trial in England, but the father alleges that these were false and malicious allegations as shown by his subsequent acquittal by a jury. Regrettably, in the course of this custody battle, both parents have gone to the extent of committing criminal offences. As a result, neither of them is able to freely travel to the jurisdiction of the other parent's residence. This means that the options available to this court regarding

the child's care arrangements are presented in stark terms, since the parent not granted care and control of the child is likely to have limited interaction in person with the child.

2 In *TSH and another v TSE and another and another appeal and another matter* [2017] SGHCF 21 ("the Judgment"), the learned High Court judge ("the Judge") held, amongst other things, that it was in the best interests of the child for him to be returned to his mother's care in England. The Judge thus granted joint custody to both parents, care and control to the mother, and reasonable access to the father.

3 The Judge's decision resolved many issues. Even custody is no longer in dispute, both parties accepting the order for joint custody. The question before this court is who will have control over the child's daily life. Civil Appeal No 167 of 2017 ("CA 167") is the father's appeal against the Judgment, and Summons No 27 of 2018 ("SUM 27") was his application for leave to adduce fresh evidence on appeal in the form of three reports dated early 2018.

Facts

The parties

4 The subject of the present proceedings is M, a Singapore citizen. He was born in London in mid-2012 and his parents brought him to Singapore in July 2013. Since then, he has been residing in Singapore. M attends a kindergarten in Singapore and is due, if he is to remain here, for enrolment in a local primary school in early 2019. M was born with a congenital lung condition. Initially treated for this condition at a hospital in London, he is currently under the care of KK Women's and Children's Hospital ("KKH").

In early 2017, M was diagnosed by a specialist at KKH as having Autism Spectrum Disorder (“ASD”). He has been participating in an early intervention programme run by the Autism Association (Singapore) (“AAS”) since June 2017.

5 The appellant, TSF (“the Father”), is M’s father. He is a 41-year-old Singaporean. During the marriage, the Father worked in the London office of an international bank. After his return to Singapore in September 2016, the circumstances of which are discussed below (at [27]), he worked as an *ad hoc* tuition teacher and a freelance risk management consultant. His counsel informed this court at the hearing of the appeal that he had recently found employment as an administrator in a local tertiary institution. He presently resides with M in Singapore.

6 The respondent, TSE (“the Mother”), is M’s mother. She is currently 35 years old and is a national of another Asian country. After the parties married in Singapore in June 2011, she moved to London to live with the Father. At present, she is still residing in the parties’ English matrimonial home. She has been granted a “Leave to Remain” permit by the UK immigration authorities. This permit, granted in August 2017, entitles her to live and work in the UK until 31 January 2020, with the possibility of further extensions. The Mother was a student during the marriage but avers that she recently found employment in London as a bookkeeper and office administrator.

7 M and the Father live with M’s paternal grandparents (“the Grandparents”), who are retirees. The Grandparents have been involved in caring for M for a substantial part of his life.

Proceedings in Singapore

8 In July 2013, when M was around a year old, his parents brought him to Singapore so that the Grandparents could look after him while the Mother prepared for an examination in England. Shortly thereafter, the couple returned to the UK, leaving M behind. The relationship between his parents broke down while M was in Singapore. Unbeknownst to the Mother, the Father had decided to end their marriage and he covertly instructed his solicitors in Singapore to prepare the necessary applications.

9 On 18 January 2014, the Father and the Mother arrived in Singapore again. The Mother was under the impression that they were here to pick up M and would return to the UK with him within the month. Within days of their arrival, however, the Father initiated divorce proceedings in Singapore and filed the following applications:

- (a) OSF 30/2014, an *ex parte* application to restrain the Mother from taking M out of jurisdiction while the other applications were being heard;
- (b) OSF 31/2014, an application for sole custody, care and control of M with supervised access to the Mother; and
- (c) OSF 36/2014, an application for leave to file a Writ of Summons for divorce within three years of marriage.

10 The second and third applications were served on the Mother on 22 January 2014. She was caught by surprise. Although the applications had been assigned hearing dates in February, the Mother took no action in Singapore at that point. Instead, she instructed solicitors in England to file an emergency

application in the English courts. She obtained an order from the English High Court on 24 January 2014 requiring the Father to return M to England. According to the Mother, the order was served on the Father by e-mail and so enraged him that he made threats against her life which terrified her. On 25 January 2014, the Mother flew back to the UK alone. At the Singapore airport she was served with the *ex parte* application to restrain her from taking M with her but there is no indication on the record that she was planning to do so at that time.

11 The Mother took no part in the Singapore proceedings for quite a while thereafter but pursued her English proceedings. These led to several orders being made subsequently by the English courts: (a) M was made a ward of the English courts; (b) the Father's passport was impounded; and (c) the Father was repeatedly ordered to return or cause the return of M to the UK. For clarity of exposition, we elaborate on the English proceedings separately at [15] to [25] below. It should be noted that the Father himself returned to England shortly after the Mother, leaving M with the Grandparents, and thereafter contested the English proceedings.

12 On 26 February 2014, the Father was granted leave by the Singapore court to commence a divorce suit within three years of the marriage. The Father filed for divorce here on 28 February 2014. At this point, the Father carried on the proceedings from abroad. Shortly after the divorce proceedings were commenced, the Grandparents filed an application seeking to be appointed legal guardians of M and to have interim custody, care and control, pending the conclusion of the divorce proceedings.

13 In July 2014, interim judgment of divorce was granted to the Father. In January 2015, the court decided it should make no order as to the custody, care and control of M, without prejudice to either party's right to apply for custody after the conclusion of the English proceedings in relation to M. In the light of this, the Grandparents withdrew their application for guardianship.

14 Whilst the Mother's English solicitors wrote to the Family Court in Singapore a few times in 2015 informing them of orders made by the English courts, the Mother hardly participated in the Singapore proceedings. She did not take action here until late November 2015 when she filed an application for an order mirroring those made by the English courts for the return of M and for the recognition of M as a ward of the English courts (hereinafter, the "mirror order"). Shortly thereafter, in January 2016, she filed a Notice of Appointment of Solicitors in the divorce proceedings.

Proceedings in England

15 In the meantime, proceedings relating to the custody of M were apace in England. On 24 January 2014, in response to the Father's applications in Singapore, the Mother filed an emergency *ex parte* application in the English courts for the return of M to England. On the same day, the English High Court made orders for the Father to return M to England no later than 29 January 2014. Further, the Father was to surrender his and M's travel documents, in so far as they were within his possession or control, until further direction of the court. M was also made a ward of the English court until further order.

16 On 30 January 2014, the Father attended at the English High Court and disputed its jurisdiction over M. He took the position that M was habitually resident in Singapore and that it was the Singapore courts that had jurisdiction

to make orders relating to M's welfare. As a result, the earlier court order was suspended and the issue as to M's place of habitual residence was fixed for hearing.

17 On 28 February 2014, the Father was arrested by the London police in relation to allegations of marital rape made against him by the Mother.

18 On 14 March 2014, after hearing arguments as to M's habitual residence, Russell J delivered judgment holding that M was habitually resident in the UK and accordingly ordered the Father's return of M to the UK no later than 18 March 2014: see *Re M (a child)* [2014] EWHC 963 (Fam). The Father's passport was ordered to be detained until M was returned to England.

19 On 3 April 2014, after the Father failed repeatedly to comply with orders to return M to the UK, the Father was found to be in contempt of court by the English High Court and sentenced to 18 months' imprisonment: see *MB v GK* [2014] EWHC 1122 (Fam). The Grandparents were also joined as parties to the wardship proceedings and ordered to return M to the UK. In June 2014, on appeal by the Father, the English Court of Appeal set aside the order of imprisonment but affirmed the finding that M was habitually resident in the UK and consequently dismissed the Father's appeal against the orders requiring him to cause M's return to the UK: see *Re K (Return Order: Failure to Comply: Committal: Appeal)* [2015] 1 FLR 927.

20 Several events occurred in the second half of 2014:

(a) In August 2014, the Mother engaged the assistance of a child recovery organisation and entered Singapore illegally by boat with two of its operatives. They forcibly removed M from the Grandparents' care

while the Grandparents were leaving their residence with M. A scuffle left M and one or both of the Grandparents with minor injuries. The police retrieved M shortly afterwards and arrested the Mother. M was then placed in the voluntary care of the Grandparents. In September 2014, the Mother pleaded guilty to immigration offences in Singapore and was sentenced to ten weeks' imprisonment.

(b) In July 2014, Wood J ordered the Father, in so far as he was lawfully able to do so, to seek the immediate return of M to the UK in the Singapore courts. However, this order was later discharged as the Mother no longer relied on it.

21 In June 2015, Roberts J of the English High Court heard and dismissed the Father's application to stay the English wardship proceedings on the grounds of *forum non conveniens* in *Re K (A Child) (No 3) (Forum Conveniens)* [2016] 2 FLR 132. Further, she made orders in July 2015 for M to be joined as a party to the proceedings, for a third party to be appointed as his guardian, and for him to be returned to England by 9 September 2015. Two further court orders were made in August and October 2015 requiring the Father to cause the return of M to England on pain of contempt of court. Again, these orders were not complied with.

22 In October 2015, the Father was tried for alleged rape of the Mother. He was subsequently acquitted by the jury.

23 According to the Mother, as of November 2015, 11 orders had been made by the English courts for the return of M, none of which were complied with.

24 In late November 2015, the Mother filed OSG 204/2015 in Singapore seeking the mirror order (see [14] above). In December 2015, she also obtained an interim injunction preventing the Father and the Grandparents from removing M from Singapore. In response, the Grandparents made a second bid for guardianship of M. The Father also applied for sole custody, care and control of M with supervised access to the Mother. The Mother in turn applied for the Father's and the Grandparents' applications to be stayed.

25 This led to a total of five applications before the District Judge ("the DJ") in the Family Court and it is to these applications that we now turn.

The decisions below

The DJ's decision

26 On 9 May 2016, the DJ delivered judgment, identified as *TSE v TSF and others* [2016] SGFC 121 ("the FC GD"). It should be noted that at that point in time, both the Father and the Mother were in the UK and the Father was unable to return to Singapore as his passport had been impounded by the UK authorities. The five applications dealt with in the FC GD may be briefly discussed in three groups as follows:

- (a) *Mirror Order*: The Father took no position as regards the mirror order but he objected to the other prayers (eg, that M be returned to the UK) on the basis of *forum non conveniens* (the FC GD at [42]). The DJ held that neither *forum non conveniens* considerations nor M's best interests would be offended if she granted the mirror order, and, accordingly, made that order (see the FC GD at [44]).

(b) *Grandparents' Application:* The Grandparents applied (i) to be appointed M's legal guardians; (ii) to be granted interim custody, care and control of M; and (iii) for the court to request a Social Welfare Report. In response, the Mother applied to stay or dismiss the Grandparents' application on grounds of *lis alibi pendens* and/or *forum non conveniens*. The DJ granted the Mother's application for a stay on the basis, first, that England was the more appropriate forum for M's custody proceedings (*inter alia*, because of the ongoing English proceedings and the presence of both parents in England) and, second, that there were no special circumstances justifying a refusal of the stay application (the FC GD at [37]–[39]).

(c) *Father's Application:* The Father sought sole custody, care and control of M with supervised access to the Mother. His application was filed under the parties' divorce suit that had already concluded, in which an appeal from the district judge's decision to make no order then as to custody, care and control of M was dismissed "save that it is without prejudice to any application made after [the Father's] return to this jurisdiction" (the FC GD at [26]). The Mother applied to stay or dismiss the Father's application. The DJ dismissed the Father's application on the basis that he was not in Singapore and therefore did not satisfy the condition on which he could make a new application (the FC GD at [26]).

Events after the DJ's decision

27 As stated, the FC GD was issued in May 2016. In September 2016, the Father absconded from the UK to Singapore in breach of the English passport orders. His counsel informed this court that the Father had attempted to obtain

a travel document from the Singapore consulate in Dublin, Ireland, under the false pretext that he had lost his passport. This plan was foiled when the consulate discovered that his passport had in fact been impounded by the English authorities. The Father then apparently travelled as a stowaway and somehow reached Ankara, Turkey, where he confessed his situation to the Singapore embassy there. He was given a one-time travel permit which allowed him to return to Singapore. On arrival here, criminal proceedings were brought against him for the false statements that he had made to the consulate in Dublin. In May 2017, the Father was sentenced to three weeks' imprisonment. As a result of this offence, the Father is highly unlikely to be issued a replacement passport by the Singapore authorities for some time to come.

28 Meanwhile in England, Roberts J had convened a welfare enquiry in November 2016 to decide on the final orders to be made in relation to M. She invited the Father and the Grandparents to participate, but they declined on the basis that the English courts lacked jurisdiction. The enquiry led to a judgment delivered in November 2016 for M to be returned to England immediately, whereupon he was to be handed to the Mother and to live with her: *MB v GK and others (No 2) Wardship (Welfare Enquiry)* [2017] EWHC 16 (Fam) (“*MB (Welfare)*”).

The Judge's decision

29 In March 2017, appeals by the Father and Grandparents against the DJ's decision came before the Judge in the High Court.

30 As the Father had by then returned to Singapore, he became the driving force opposing the Mother's applications. In March 2017, he sought and was granted leave to amend his notice of appeal to include an appeal against the

mirror order, even though he had initially taken no position in this regard (the Judgment at [27]). To facilitate this amendment, the parties were granted leave to adduce fresh evidence. Further, the Father filed an application to vary the earlier no-custody order made in his divorce suit. This was directed to be heard together with the appeal. The Grandparents took a backseat and requested that no order be made on their application to be appointed M's guardians.

31 In the High Court, the main issue was whether it would be in M's best interests for the mirror order to be made. The Mother argued that it was in M's best interests to be returned to the UK and placed under her care, relying primarily on *MB (Welfare)*. The Father argued that it was *not* in M's best interests to be returned to the UK, relying in particular on two new facts that were not known to the DJ:

- (a) that M has ASD; and
- (b) the Father's return to Singapore in September 2016 and his willingness to care and provide for M.

32 To aid the court's determination, the Judge appointed Mr Yap Teong Liang ("Mr Yap") as the Child Representative for M and Ms Hazel Yang ("Ms Yang") as the Court Counsellor. Each of them prepared a report which the Judge considered.

33 The Judgment was released on 29 August 2017. For purposes of the present appeal, it suffices to note that the Judge held that *MB (Welfare)* could not constitute *res judicata* (the Judgment at [50]). Instead, the court had a statutory duty under s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ("the GIA") to consider the child's welfare as the first and paramount

consideration in deciding any question relating to the custody or upbringing of an infant (the Judgment at [38]). The concept of the child's welfare was to be understood "in the widest sense" and might implicate a multitude of factors (the Judgment at [74]). In this regard, the Judge adopted the factors proposed by the Family Law Review Working Group in its report titled *Recommendations for Guardianship Reform in Singapore* dated 23 March 2016 ("the Guardianship Report") (the Judgment at [75]).

34 Applying the factors, the Judge found that even though M had settled in a stable environment, the Mother remained the best candidate to care for M on a daily basis (the Judgment at [78]). Her conclusion was based on the following main findings:

- (a) Despite their lack of contact in person for several years, M still shared a stronger emotional bond with the Mother than with the Father. In this regard, the maternal bond is worthy of special protection in cases involving the custody of young infants.
- (b) The Mother was more than capable of meeting M's developmental and material needs.
- (c) If M remained in the Father's household, he would likely see the Mother's role in his life diminish under the influence of the Father and the Grandparents. In contrast, the Mother appeared to recognise that the Father ought to play a role in M's life.
- (d) The need to ensure a stable care environment did not override the need for M to be reunited with the Mother. The challenges that M would face in adapting to a new environment were neither new nor

insuperable. The English courts would also assist M's adaptation to his new environment in the UK.

35 Consequently, the Judge dismissed the Father's appeal entirely. She affirmed the mirror order and, to facilitate that, she also granted joint custody to both parents, care and control to the Mother, and reasonable access to the Father. She made no order on the Grandparents' appeal. Further, the Judge also ordered, amongst other things, that:

- (a) M was to be returned to England within 28 days of the date of the order.
- (b) The Father was to hand M and his travel documents over to the Mother at the Child Focused Dispute Resolution Centre at the Family Courts' premises within 14 days of the order.
- (c) The Father and the Mother were each to have daily access to M (in person or through Skype) before M left Singapore. After M left Singapore, the Father was to have daily access through Skype at a time convenient to both parties.
- (d) M was to commence transition and reunification counselling with a court-appointed counsellor within ten days of the date of the order, the costs of which were to be borne equally by the parents.

The arguments on appeal

36 In the present appeal, the sole issue relates to the Judge's conclusion that it was in M's best interests for him to be returned to England and placed in the

Mother's care. In this regard, the Father raises six main arguments against the Judge's findings:

- (a) that the Judge gave excessive weight to the emotional bond between M and the Mother and the perceived level of intimacy between M and each of his parents;
- (b) that the Judge erred in finding that M is closer to the Mother than the Father;
- (c) that the Judge erred in finding that the Mother would be able to meet all of M's emotional, developmental, and material needs;
- (d) that the Judge gave undue and excessive weight to the Father's perceived character and conduct, without applying the same level of scrutiny to the Mother's character and conduct;
- (e) that the Judge erred in finding that M's relationship with the Mother would not be preserved by the Father and the Grandparents, and conversely that M's relationship with the Father and the Grandparents would be preserved by the Mother; and
- (f) that the Judge gave insufficient weight to the desirability of continuity of arrangements and the likely impact of a change of environment on M.

37 The Mother's submissions respond directly to the arguments raised by the Father and are taken account of in the analysis below. Before moving to the analysis, we deal with the Father's application for leave to adduce fresh evidence in this appeal.

The application to adduce fresh evidence

38 In SUM 27, the Father sought leave to adduce three reports as fresh evidence on appeal.

Contents of the fresh evidence

39 The first report was by a consultant paediatrician of KKH (“the Consultant”) dated 22 January 2018 (“the KKH Report”). This report confirmed the diagnosis of ASD made in respect of M and observed that M had made good progress with improved communication and no behavioural difficulties. The report further stated that such progress was “likely” to be due to the early intervention programme that M was enrolled in, and that if M continued to receive intervention and support from his preschool, it was “likely” that he “may be able to” access mainstream curriculum, either in a mainstream school or a special education school. Conversely, however, the Consultant opined that M’s condition could stagnate if the intervention programme was disrupted:

If there is a disruption to the intervention programme, there is a possibility that there could be stagnation in his progress. Unless ... he gets similar kind of intensive intervention in a foreign country, to which he could take some time to get adjusted. Any kind of transition or disruption is challenging to a child with ASD. With him being close to a year from attending Primary 1, it is strongly encouraged that [M] be allowed to have the opportunity to attend the [intervention programme] and preschool to enable him to have a good foundation before he moves onto Primary 1 in 2019.

40 The second report dated 28 February 2018 was by the Vice Principal of M’s kindergarten (“the Kindergarten Report”). This report stated that M had developed a “very positive and enthusiastic attitude towards school” and was “well-adjusted in school routine”. He had also shown significant improvement

in his speech, organisation of thought, and gross motor skills, which were “likely a result of therapy”.

41 The third report dated 26 January 2018 (“the AAS Report”) concerned M’s performance in an early intervention programme between June 2017 and January 2018. The first part of the report introduced the programme as one based on a structured teaching and curriculum-based assessment adopted from the Autism Resource Centre of Singapore, which was conducted in three-hour, twice-weekly sessions, with a student-to-teacher ratio of 5:2. The report then observed that the Father had thus far demonstrated enthusiasm in participating in the aspects of the programme that required parental involvement, such as by attending meetings to draft individualised education plans for M. The third part of the report recorded that since joining the programme, M had, amongst other things, demonstrated progress in his ability to follow his individualised written schedule for the day and shown improvement in gaining the attention of his peers.

Our reasons for admitting the fresh evidence

42 In determining the admissibility of the three reports, both parties appeared to proceed on the assumption that the principles of *Ladd v Marshall* [1954] 1 WLR 1489 (“*Ladd v Marshall*”) should apply. This was mistaken. *Ladd v Marshall* did not apply because the fresh evidence sought to be admitted in SUM 27 related to events that occurred *after* the Judgment was delivered on 29 August 2017. The relevant parts of s 37 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“the SCJA”) provide as follows:

- (2) In relation to such appeals, the Court of Appeal shall have all the powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to

receive further evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or a commissioner.

(3) Such further evidence may be given without leave on interlocutory applications, *or in any case as to matters which have occurred after the date of the decision from which the appeal is brought*.

(4) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, such further evidence, except as to matters subsequent as specified in subsection (3), shall be admitted on special grounds only, and not without leave of the Court of Appeal.

43 Under s 37 of the SCJA, a distinction is made between fresh evidence relating to matters that occur *after* the date of the decision from which the appeal is brought, and matters which occur *before* the date of the decision. In the case of the latter, the applicant needs to satisfy “special grounds” under s 37(4) of the SCJA. In the case of the former, the *Ladd v Marshall* requirements are inapplicable. Instead, the test is whether the further evidence would have a “perceptible impact on the decision such that it is in the interest of justice that it should be admitted” (*Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (“*Yeo Chong Lin*”) at [13]; *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 at [25]).

44 In this Court’s recent decision in *BNX v BOE and another appeal* [2018] SGCA 29 (“*BNX*”), we affirmed the test set out in *Yeo Chong Lin* and elaborated on it in the following terms:

99 In our judgment, a court faced with an application to adduce further evidence of matters that occurred after the trial or hearing that resulted in the decision of the court below that is being appealed, and deciding whether the further evidence would have a perceptible impact on the decision, should:

(a) first, ascertain what the relevant matters are, of which evidence is sought to be given, and ensure that

these are matters that occurred after the trial or hearing below;

(b) second, satisfy itself that the evidence of these matters is at least potentially material to the issues in the appeal; and

(c) third, satisfy itself that the material at least appears to be credible.

100 Because the relevant matters must have occurred after the trial or hearing below, the court's principal concern is with securing the interests of justice. In that pursuit, the balance should be struck in favour of admitting such evidence as long as it is at least potentially relevant and seemingly credible. Also, even if the material is admitted on this basis, it remains necessary to assess the weight that is to be placed upon it. But, as we have noted above, it is critical first to ascertain that the evidence pertains to "matters which have occurred after" the date of the decision being appealed.

45 While *BNX* itself concerned an application to admit fresh evidence in relation to appeals in the arbitration context, the approach we set out there applies equally to family proceedings.

46 In our judgment, the test set out in *Yeo Chong Lin*, which we subsequently elaborated in *BNX*, was satisfied in relation to all three reports:

(a) The KKH Report was clearly salient and impactful on the decision as to M's custody. It conveyed a trained specialist's opinion of M's progress *vis-à-vis* his ASD condition up to January 2018 and the question of how and to what extent any change in environment would impact M.

(b) The Kindergarten Report would also have a perceptible impact on the decision. It contained observations regarding M's adjustment to his present routine, which is a material issue in the present appeal.

(c) The AAS Report was also salient. It addressed the question of whether and how well M was settling into the intervention programme for his ASD, and allowed an insight into a few aspects of the current programme such as the individualised education plans and progress monitoring systems for M.

47 Counsel for the Mother argued that there was nothing new or of value in the three reports because M's developmental needs and the Father's and Grandparents' efforts in caring for M's ASD had already been known to and considered by the Judge. We did not agree. Although the reports did not provide radically new information about M or either parent, each of them offered the court the most up-to-date information about M's condition and his conduct in preschool and at the intervention programme. As the reports were prepared after M had had some time to settle into the various programmes, they also offered a more accurate insight into M's future needs and the likely demands on the parent who would be granted care and control of M. These were issues that were clearly material to the question of which parent should be granted care and control of M.

48 For these reasons, we were of the view that each of the three reports would have a perceptible impact on the decision as to M's care arrangements such that it was in the interests of justice that they be admitted. Consequently, we allowed the Father's application in SUM 27 during the hearing before us.

Reviewing care arrangements of infants

The standard of review

49 In relation to appeals against decisions involving the welfare of children, the appellate court is slow to intervene and plays only a limited role, in recognition of the fact that the decisions in such cases often involve choices between less-than-perfect solutions. In *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 at [15] and *BG v BF* [2007] 3 SLR(R) 233 at [12], this Court affirmed the House of Lords' pronouncement in *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647 that the Court of Appeal's role in custody cases was "limited", and stated as follows at [17]:

Having regard to the fact that in such cases, there are often no right answers and the judge below was faced with the task of choosing the best of two or more imperfect solutions, we were in agreement with the above approach. We must stress that an appeal should not automatically succeed simply because the appellate court preferred a solution which the judge had not chosen. In other words, similar to the principles that apply to general appellate intervention, *the appellate court should only reverse or vary a decision made by the judge below if it was exercised on wrong principles, or if the decision was plainly wrong, as would be the case if the judge had exercised his discretion wrongly.* ... [emphasis added]

50 While acknowledging the principles governing the consideration of an exercise of discretion, it is also important to remember that no trial took place before the Judge. Instead, the parties gave their evidence by affidavit and through the production of reports and other documents. Thus, this Court is in as good a position as the Judge to draw inferences and conclusions from the evidence.

The welfare principle

51 In this appeal, the parties did not dispute the legal framework *vis-à-vis* the welfare principle that the Judge had adopted from the Guardianship Report. This report contained the considered recommendations of a committee which comprised eminent members of the Bench, Bar, academia, and relevant government agencies. The primary objective of the Guardianship Report was to propose amendments to the GIA to “put guardianship in Singapore on a modern platform that emphasises parental responsibility and the welfare of the child” (at para 1). After surveying the approaches in several Commonwealth jurisdictions, the Guardianship Report proposed (at para 48) a non-exhaustive list of factors that the court should consider in determining the welfare of the child, including the following:

- (a) the child’s physical, emotional and educational needs, and his physical and emotional safety;
- (b) the capacity of each parent to provide for the child’s needs and ensure the child’s safety;
- (c) the child’s relationship with each of his parents and with any other caregiver;
- (d) the need to ensure a continuing relationship between the child and his parents; and
- (e) the effect of any changes to the child’s life.

52 In our judgment, the factors identified in the Guardianship Report afford a sound *starting* basis for any court concerned with the issue of the child’s

welfare. It suffices to observe that factors (a) and (b) are closely related and should generally be considered in tandem. Further, the relevance of these or any other factors to a particular case, and the weight that should be given to each of the factors, is a matter of judgment and will turn on the specific facts and circumstances of that case.

Analysis of M's best interests

Relationship with parents and caregivers

53 Turning to the facts before us, we will first discuss M's bond with each of his significant caregivers: the Mother, the Father and the Grandparents.

54 The Judge found that M's bond with the Mother was strong and that she continued to have a warm relationship with him despite four years of almost continuous separation. The Mother had, in the Judge's opinion, an impressive ability to communicate with M despite his ASD. In contrast, the Father had produced little evidence on the closeness of his relationship with M, and while the Grandparents could assist him in caring for M, there was no substitute for parental love. The Father contends that the Judge gave undue and excessive weight to the emotional bonds between the Mother and M and erred in finding on the facts that M was closer to her than to him (the Judgment at [93] to [106]).

55 There is no doubt that the Mother's love for M is very strong. There is also no doubt that the objective observations of Ms Yang, the Court Counsellor, of two sessions of contact between M and the Mother via Skype, indicated that mother and child have a warm relationship and that the Mother interacts skilfully with M. When asked to do so, M rated his Skype sessions with the Mother as 6 out of 6 (1 being not enjoyable and 6 being highly enjoyable).

Ms Yang assessed the Mother as being attuned to M's developmental needs and being able to engage with him. The Child Representative, Mr Yap, had a similar view.

56 On the other hand, there was also substantial evidence of a close bond between M and the Father in Ms Yang's report. She noted the interaction between the two to be warm and that the Father asserted some level of parental authority over M. The Father was observed to be reassuring and affirming in his interaction with M. M himself was observed as seeking the Father's approval. The Father was attuned to M's needs and was patient and encouraging with his son. It was seen that the Father and M sat in close proximity to each other during Ms Yang's visit and both chatted casually about school with her. Ms Yang noted that the Father was committed to M's developmental needs and was task-oriented in his engagement with the boy. M's relationship with the Father appeared to Ms Yang to be "peer-like and hesitant", perhaps in light of the Father's role as disciplinarian.

57 Ms Yang observed that when at home, M would seek out the Father and Grandparents playfully and would share funny moments with them. The Grandparents, like the Father, were warm and playful in their response. M's school informed Ms Yang that the Grandparents had been involved in and concerned about M's well-being in the absence of his parents. Information and observations gathered by Ms Yang suggested that M shared a close relationship with the Grandparents, particularly the grandfather. They had provided a structured routine and a nurturing care environment which M had adjusted to in his parents' absence.

58 Ms Yang also attempted to ascertain M’s own feelings and views by asking him questions and by giving him tasks to do. When tasked to draw his family, M drew the grandfather as closest to him on his left-hand side, followed by the grandmother. He described the grandfather as being “funny and not fierce”. He placed the Father next to him on the right-hand side and described the Father as “sometimes fierce”. M then drew the Mother on a separate page and when asked why he had done so, he explained that she was very far away. When asked to award hearts to people that he loved and who loved him, he awarded everyone with one heart equally. We note that he also said that he sometimes felt “half angry and half happy” when he had to solve mathematical questions posed by the Father and was “a little scared, sad and angry” when the Father made him solve puzzles that he did not like. In contrast to that, however, he ranked playing with the Father as his favourite daily activity, the second favourite being playing with his friends in school.

59 Overall, Ms Yang assessed M as “an emotionally well-regulated child with his primary care needs being adequately met in his current care environment”. She considered that he had formed secure attachments with the Grandparents and meaningful relationships with his peers and teachers in school.

60 The Judge, with respect, does not seem to have given equal attention to all parts of Ms Yang’s report in coming to her conclusion that M’s relationship with the Mother was much closer than that with the Father and the Grandparents. In her assessment of M’s emotional attachments, she paid more heed to the observations in a psychological assessment report from KKH in early 2017 which recorded the Father and the grandmother telling her that at home M seldom approached his caregivers, and even when he did so it was

usually for the purpose of asking for something he wanted or to seek attention. They also told the psychologist that M was inconsistent in responding to them when they called him by name and would only respond to questions or directions given on his own terms. According to this report, the psychologist saw that M had difficulty engaging in reciprocal conversations initiated by others. She observed his eye contact to be poorly modulated. The Judge's comment was that the way that M interacted with the Mother on Skype revealed an entirely different dynamic (the Judgment at [96] to [98]).

61 The Father criticises this comparison on the basis that the psychologist's report was for the purpose of assessing M's psychological condition and not to show how he interacted with each parent. In our view, that is a valid criticism. The psychologist was observing M's behaviour and posing questions about it with a specific diagnosis in mind. She was engaged in ascertaining whether or not M had ASD and not in assessing the warmth of his relationships with his caregivers. We would observe that a child's general behaviour can be quite different from his behaviour during short periods of time when he is engaged in an interesting activity with a loved one who is making an effort to hold his interest and interact with him.

62 On the evidence therefore, we consider that the most that can be inferred is that M still has a warm relationship with the Mother. It cannot be inferred that his relationship with the Father is not equally warm. No doubt the Father has the advantage now of daily physical contact with M and this has helped develop their relationship. Although M does express some slight fear of and anger with the Father from time to time, this may be a reaction to the Father's asserting parental authority over him and the Father's role as the disciplinarian. M's interactions with the Mother, however, have been entirely playful and she has

had no occasion to assert authority over him. If she did so, he might very well react angrily or fearfully. Ms Yang's observations overall show that despite any anger or fear that M may harbour, his general relationship with the Father is close and warm. As for the Grandparents, there is no doubt as to his closeness to them and the warmth of his relationship with them.

63 As we have stated, the Judge, while giving credit to the care that the Grandparents had lavished on M, did not place as much importance on his relationship with them as on his relationship with his parents. At [103] of the Judgment, she emphasised that the Grandparents' role could not overtake the priority that the law places on parental responsibility and that a child's grandparents are no substitute for the love and care of his parents. While we do not disagree with those observations, they reflect general principles and normal situations and must always be applied with regard to the particular circumstances of the case at hand. In this instance, it is important to remember that the Grandparents have been deeply involved in M's life since his infancy. They visited England during his first year of life and helped looked after him; they were his sole caregivers and, effectively, his substitute parents from the time he was about one year old until the Father returned to Singapore in September 2016 when he was about four; and even after the Father's return they have maintained their significant place in his life. We therefore consider that his bond with them has to be taken into account in assessing how his emotional needs are currently met and how any change would impact his emotional stability.

64 On balance, we are of the view that this factor is neutral as between the parties.

M's needs and the capacity to provide for them

65 In this regard, the Father argues that the Judge wrongly found or assumed that the Mother would be able to meet all of M's emotional, developmental and material needs.

66 Developing this argument, in relation to emotional needs, the Father relies primarily on two factors: (a) in the context of M's life to date, he has been cared for not by the Mother but by the Grandparents for a large part of his life and by the Father himself since September 2016; and (b) that the Mother is living by herself in England and has no support group.

67 We do not think there is much to choose between the parents individually in relation to M's emotional needs. The Mother has been able to maintain a warm relationship with him despite their physical separation and on two recent visits that she made to Singapore, M was happy to spend time in her company. The Father has been engaged in M's life since his return from England and the observations of Ms Yang show that he too has developed a strong and loving relationship with M. However, we cannot have regard to M's relationships with his parents alone. In our view, looking at her situation with a wider lense, the difficulty for the Mother is that if M moves to live with her, she will be, at least for a substantial period of time, the only person with whom he is familiar and who is able to provide him with any emotional support. The Mother argues that she has a network of friends from her expatriate community in England and her local church. The Judge accepted this (the Judgment at [96]). While we agree that it is helpful for the Mother to have such a support group, these persons are strangers to M; they are unlikely to be able to build rapport or interact with him easily for some time to come. On the other hand, the Father

has the support of the Grandparents who have been *in loco parentis* to M for much of his life. As long as they remain in his life they will provide a strong source of emotional comfort and security for him. If M relocates to London, he will not only be largely cut off from the Father but also from the Grandparents. In that case, his source of emotional support will, very substantially, be just the Mother who will herself be adjusting to being his main caregiver. This is a factor that weighs in favour of the Father.

68 Secondly, we have to consider developmental needs. The Father appears to be more equipped to take care of M's developmental needs, in so far as he already has a tried and tested system in place including the intervention programmes reported in the AAS Report. Based on the evidence before us, M appears to be thriving in this system. The Judge herself "applauded" the Father's "systematic and task-oriented approach" in addressing M's developmental needs (the Judgment at [105]). It is true that the Mother has also made praiseworthy efforts in relation to this aspect. She has been able to engage M in age-appropriate activities. She has found a kindergarten in London for M which is equipped to educate children with special needs. She has also given evidence of her attempts to learn about autism in England, having registered herself with the English National Autism Society. At this stage, however, we are not able to assess whether such preparation is sufficient to prepare the Mother to deal with M's autism on a full-time basis. We accept that this is not the Mother's fault, given that she is in England and has been effectively deprived of her role in M's life. The fact nevertheless remains that we are not fully able to assess the adequacy of the facilities and network available for M's development in England.

69 Turning to M's material needs, there appears to us to be little doubt that this factor weighs in favour of the Father. First, the Father has been gainfully employed since his return to Singapore, initially on a part-time basis. He now has a full-time job. Not only that, but the Father held a full-time job for most of the marriage (up to about the beginning of 2014). With the support of the Grandparents, there is little doubt that the Father can continue to provide M with a stable and comfortable home environment.

70 The Mother, on the other hand, did not work during the marriage as she was pursuing further education. Nor does she seem to have worked since the marriage ended. In August 2017, she indicated to the Judge that she intended to seek part-time employment as a retail manager and stated that she was confident of securing such employment in the light of her qualifications. The Judge accepted this (the Judgment at [100]). At the hearing of this appeal, we queried the Mother's employment status. At that stage (which was some eight months after the hearing below), we were told that the Mother was still looking for employment. About three weeks after the hearing, the Mother wrote to the court stating that she had successfully gained employment as a bookkeeper and office administrator. We then directed the Mother to file an affidavit clarifying her employment status.

71 The Mother's affidavit was filed on 19 June 2018. In this affidavit, she stated that she had gained employment as a bookkeeper and office administrator and would be starting her job on 1 August 2018. Her working hours would be from 9am to 5pm and her starting salary was around the equivalent of S\$55,800 per annum. Her employer had been informed of her situation in relation to M and was supportive. The employer had assured her that she would be able to take leave to help settle M in England on his return and was also willing to allow

her to work flexible hours so that she could take M to school and pick him up after school. Although the Mother exhibited an e-mail from her prospective employer, certain details were redacted and it was not possible to identify the contact particulars of the employer. The flexible arrangements the Mother referred to were also not stated in the employer's e-mail.

72 In our view, the Mother's employment status is still uncertain. She has not started work for this employer and has no track record with the employer. There is no way of ascertaining whether the employer will be as flexible with her working hours and leave arrangements as the Mother asserts. The Mother herself has yet to settle into her working routine and therefore the court cannot even speculate how such routine may be impacted by M's arrival in England and how successful she will be in juggling childcare and her job. It is worth noting that Ms Yang voiced some concern about the sustainability of the Mother's plan to assume, single-handedly, the twin roles of caregiver and provider for M.

73 The uncertainty of the Mother's employment and ability to provide materially for M is ameliorated to some extent by two facts. First, it is common ground that she will, fairly soon, receive the sale proceeds of the former matrimonial home in London. The parties disagreed as to how much these proceeds are likely to be but, in any case, they are not insignificant in the short term (amounting to approximately £35,000 by the Father's calculation) and they should provide the Mother with some buffer to meet M's expenses. Second, as the Judge noted in the Judgment at [100], the Father has an obligation to support M financially even if he is in the UK with the Mother. The Father's financial means are undisputed and it appears reasonable that the Father should have the

same amount available to support M in England as he has available to support his son here.

74 Nevertheless, these points do not assuage all our concerns because they each give rise to problems of their own. With the sale of the London matrimonial home, for instance, the Mother may then have to incur rental outgoings which will add to her expenses. No application for maintenance or other ancillary relief has been brought in the Singapore courts yet. On balance therefore, we take the position that M's material needs and the parents' ability to provide for them, again, is a factor weighing in favour of the Father.

The parents' character and conduct

75 This factor, while not identified in the Guardianship Report, played a part in the Judge's decision as she found the Father lacking in the ability to develop M's character. The Father asserts in response that the Judge gave undue and excessive weight to his perceived poor character and conduct, without applying the same standard to the Mother. In essence, his complaint is that the Judge was unfairly critical of his conduct during the course of the litigation.

76 The Judge's reasons for criticising the Father's conduct are summarised at [107] of the Judgment. Amongst other things, she found that the Father made detailed and covert plans to deprive the Mother of all means to contest the divorce and the custody of their son. Prior to coming to Singapore in January 2014, he:

- (a) did not tell the Mother that he had left his job in London;
- (b) emptied their joint accounts in the UK;

- (c) had prepared all divorce documents; and
- (d) cancelled his UK visa on 3 January 2014 and the Mother's and M's dependent visas on or about 9 January 2014, which was right before the Mother returned to Singapore with the Father.

77 Further, in order to mislead the Mother as to his intentions, he booked tickets for himself, the Mother and M to return to England together, thus giving her the impression that that was what the family was going to do. Instead, after arriving here he filed court papers and obtained an *ex parte* injunction preventing the Mother from taking M out of the jurisdiction.

78 The Father tries to paint himself as just “any husband who seeks to end the marriage because he has found it unbearable to live with his spouse” but the way he went about achieving this aim shows a rather disturbing ability to scheme to achieve his own desires. It also indicates that he was either incapable of understanding the necessity of preserving M's bond with the Mother or that he wilfully disregarded it. Subsequently, he was not open with the Mother regarding M's needs: apparently, she only found out about M's ASD from the affidavit that the Father filed in this suit. This shows his reluctance to share information with the Mother even though it would be in M's best interests for her to know his condition and learn how to deal with it.

79 Second, the manner in which the Father's case was run displayed a serious inability on his part to assess the correctness of his actions or how others might view them. Even though he was the one who in January 2014 had sprung a surprise divorce on the Mother and obtained an injunction against her taking M out of jurisdiction, he accused the Mother of “unilaterally” leaving Singapore on her own. He also blamed the Mother for her “self-enforced” absence from

Singapore and for being a forum shopper, when it is clear that it was he who initiated the divorce in a jurisdiction (Singapore) to which the Mother had no reasonable link, and in which she had no support or right to stay beyond the duration of her social visit visa. He further claimed to have tried all means to secure M's return to Singapore, but his conduct of the litigation in Singapore clearly showed the opposite. The credibility of the Father has suffered because of the way he conducted and structured his case.

80 In his own defence, the Father accused the Mother of similarly egregious conduct. First, he alleged that she falsified the marital rape allegations. He was acquitted of those charges but the acquittal in itself does not mean that the Mother was malicious or did not believe in their truth when she made the allegations against him. His second complaint is more substantial and relates to the Mother's attempted abduction of M from Singapore in August 2014. The Judge characterised this attempt as an act of desperation (the Judgment at [94]). The English court in *MB (Welfare)* found the Mother's description of the act as arising out of utter desperation and despair to be truthful. Be that as it may, her conduct on that occasion was not only illegal but also caused M some trauma and cannot be condoned.

81 Between the two parents, however, the Father's behaviour was worse and it is difficult to quarrel with the Judge's assessment that his ability to guide M is open to serious doubt. On the other hand, since the Father has realised through the intervention of the courts how important it is to the assessment of his parenting abilities that he allow M to have regular contact with the Mother, he has shown signs of improvement. The Father and the Grandparents cooperated with the Mother to give her liberal physical access to M on the three occasions when she visited Singapore recently (March and May 2016 and

October 2017). They also now facilitate daily Skype sessions between M and the Mother. This improvement offers some hope that, with suitable encouragement and incentives, the Father can conduct himself better as a role model for his son and look beyond his own desires to assess what is truly in M's interests. It may help him in this process to be reminded that care and control may be revisited if and when circumstances change and that therefore the conduct and suitability of both parents will be subject to continuing scrutiny.

Ensuring a continuing co-parental relationship

82 It is well-recognised that it is in a child's best interests post-divorce for him to maintain a good relationship with both his parents. The court, in deciding which parent to award care and control to, therefore generally takes into account the extent to which the prospective carer will maintain and facilitate the child's relationship with the other parent. The Judge considered this factor and concluded that if M were to remain with the Father, he would not merely be kept away from the Mother but would very likely see her role in his life diminish under the influence of the Father and the Grandparents (the Judgment at [113]). On the other hand, the Mother appeared to recognise that the Father ought to play a role in M's life and had undertaken to facilitate regular Skype assess between M, the Father and the Grandparents. On that basis, the Judge found the Mother to be more likely than the Father to help preserve M's relationship with those members of his family from whom he would be separated as a result of any order the court made (the Judgment at [115]).

83 The Father argues on appeal that the Judge came to the wrong conclusion and that he and the Grandparents have not acted in any way to prejudice the relationship between the Mother and M.

84 As far as this factor is concerned, we see little reason to differ from the Judge’s assessment of the behaviour of the Father and the Grandparents. We have already noted the way in which the Father acted to separate the Mother from M in January 2014. Thereafter, he and the Grandparents were ordered by the English courts on several occasions to return M to the UK. They took no steps to do so. The present limited contact that M has with the Mother is substantially a consequence of their actions. The Judge noted that the Father was prepared to give undertakings to preserve M’s relationship with the Mother in the event that he was granted care and control of M, but observed that the credibility and effectiveness of such undertakings were undermined by the Father’s poor track record in facilitating the Mother’s access to M (the Judgment at [115]). That was a fair point. On the other hand, it must be said that there is no evidence that the Father or Grandparents have attempted to emotionally alienate M from the Mother. Although he has the impression that she lives in a “bad” place, M does not see the Mother herself as bad in any way.

85 As regards the Mother, there is no evidence either way as to whether she will honour her undertakings to the same effect. The Judge gave her the benefit of the doubt and found that she was more likely than the Father to help preserve M’s other familial relationships (the Judgment at [115]). We see no reason to disagree. In the result, this is a factor that weighs in favour of the Mother.

Impact of change and need for stability

86 A child’s need for stability in his relationships and his environment is a deep-rooted one long recognised by the courts. In this case, the order made by the Judge means not only that M will be placed under the care of a parent with whom he has had little daily or personal contact for the past five years but also

that he will be separated from all other aspects of his familiar and settled daily life: his Grandparents, his home, his school, his teachers, and his friends. The old routines will be dislodged and he will have to adapt to new ones. He will also be in a different country, with a different climate and a different social environment. The Judge noted the Father's arguments why it would be in M's best interests for him to remain in a stable care environment but held that the need to ensure such an environment did not override the need for him to be reunited with the Mother (the Judgment at [122]). In this regard, the Judge referred to *ABW v ABV* [2014] 2 SLR 769 ("*ABW*") where the opinion was expressed that whilst stability is desirable it cannot be the paramount factor.

87 We do not disagree with the view expressed in *ABW*. The exercise we are engaged in, however, is an intensely fact-sensitive one. The facts of *ABW* differed from those before us now in significant ways. The possible destabilising effect of the order in that case was in respect of the children's removal from their father's care to that of their mother. They would, however, have remained in the same country as well as the same schools and would have had regular physical contact with their friends and grandparents, which would not be the case here if M were to go to England. As has often been noted, circumstances alter cases.

88 In this case, in addition to the usual concerns regarding upsetting a child's daily life, we have to take account of M's ASD and the additional adjustment difficulties that that condition may cause him to have. Ms Yang expressed the following view in this connection:

31. It is noted that Mother's desire is to take on the sole care of [M] as a single parent and to provide care for [M] in London. *Given [M's] young age and his needs for early intervention to manage his developmental delays, [M] would thrive with a*

consistent caregiver and a nurturing care environment. Of concern is the sustainability of Mother's plan to assume the role as both the caregiver and provider for [M] single-handedly. Whilst Mother has indicated her network of friends and the availability of resources to support her care for [M], it would be pertinent for a local social agency to assess the suitability of Mother's care plan and the current care environment, should [M] to be relocated to her care.

32. [M] has no memory of London and holds a moderately negative impression of London, this could have stemmed from the paternal grandparents' and Father's gatekeeping, as well as the negative experiences that have transpired. *[M] at age 5 is at the cognitive stage of preoperational stage, whereby he may struggle with logical thinking and is highly reliant on his caregiver to create a safe and predictable care environment to safeguard his well-being. It can be a traumatic event should [M] be abruptly brought to a place of unfamiliarity, cut off from his attachment figure.* Should it be ordered for [M] to return to London, it would be pertinent that strong professional support be in place to prepare him and assess his emotional readiness for the transition.

[emphasis added]

89 It would be noted from the above that the Court Counsellor has serious concerns about M's capacity to deal with such a drastic change of environment and caregiver if he were to be uprooted from Singapore. This is also the view of the Consultant who reviewed M's progress earlier this year. In the KKH Report, the Consultant expressed the opinion that M seemed to have made good progress since his last visit to the ASD clinic in August 2017. He was noted to make improved eye contact, had improved his communication skills, and displayed no behavioural difficulties during the consultation. The Consultant considered that M's progress was likely to be due to the early intervention programme that he had attended since June 2017 and also to his pre-school and the support of his caregivers. The Consultant went on to state:

[M] has made good progress in the last 6 months. If there is a disruption to the intervention programme, there is a possibility that there could be stagnation in his progress. Unless of course

he gets similar kind of intensive intervention in a foreign country, to which he could take some time to get adjusted. *Any kind of transition or disruption is challenging to a child with ASD.* With him being close to a year from attending Primary 1, it is strongly encouraged that [M] be allowed to have the opportunity to attend the [intervention programme] and preschool to enable him to have a good foundation before he moves onto Primary 1 in 2019.

[emphasis added]

90 At this stage of his life, M is in a more fragile condition than most other children in his age group. He was diagnosed with ASD in March 2017, some 17 months ago. Whilst since then action has been taken to lessen the effects of the condition on M's development and such action has shown signs of success as noted by the Consultant, as well as the Kindergarten and the AAS Reports, it is still early days and such progress could be severely compromised if not reversed by a drastic change in M's circumstances at this time. This is a factor which, in our view, strongly supports maintaining the *status quo* in relation to where M lives, who he lives with and takes care of him, and where he goes to school and attends other programmes. As M matures and continues to benefit from the early intervention and other programmes, this factor may lose some of its significance. Now, however, it is a weighty consideration in determining where M's best interests lie.

Other considerations

91 We move on to examine other considerations which must play a part in our decision. Some of these could perhaps have been considered under the previous factor, namely, the need for stability and the impact of change, but we think they are important enough in the present case to be dealt with separately.

92 One of the difficult features of this case is that M's parents have different nationalities and live in different jurisdictions with differing degrees of security (from the point of view of their ability to remain in their respective jurisdictions). The Father is a Singapore citizen. Now that he is back here, his residence status is secure. He does not have to rely on the discretion of the immigration authorities to remain. Indeed, the Father's problem is the opposite one: he cannot leave Singapore. Due to the immigration offence he committed in Ireland, he has been denied a replacement Singapore passport and, under the legislation in force, the immigration authorities are entitled to continue to deny him one for at least ten years from his conviction. M is also a Singapore citizen and has equal security of residence. Thus, for the foreseeable future there is no threat of disruption to his life in Singapore with the Father and the Grandparents.

93 The Mother, unfortunately, is in a very different position. She is not a citizen of either the UK or Singapore. She has no entitlement as such to reside in Singapore although visit passes, perhaps even long-term visit passes, might be granted to her if she were to have care and control of M and express an intention to live here to look after him. The Mother has, however, no such intention. She wishes to remain in the UK but she has no permanent right of abode there yet. As stated earlier, she has a permit allowing her to remain in the UK until 31 January 2020. Although we are given to understand that it is possible for this Residence Permit to be extended upon expiry, we have no insight into the likelihood or length of such extension. This Court is unable to speculate as to whether immigration policies adopted by foreign states will remain unchanged in the future. The Mother is reliant on the policies adopted for the time being by the UK immigration authorities for her continued residence in the UK. If M goes to live with her, he will be in a similar position. That, unfortunately, will introduce another significant element of uncertainty

and instability into his life. Further, if and when the Mother were required to leave the UK, she would not be obliged to move to Singapore but could return to her country of nationality where a different language is spoken and social conditions are very different. That would require M to make another major adjustment at a fairly young age.

94 Another consideration is M's liability for national service as a male Singapore citizen. National service involves a number of steps starting from the time he becomes a teenager and ending with his enlistment for full-time national service some time when he is 19 years old. If care and control are granted to the Mother and, in time, M duly returns to Singapore to serve his national service, M would again have to be uprooted and adjust to an unfamiliar environment. If, conversely, M goes to live abroad and does not return to Singapore at the appropriate time, he will likely become a defaulter and be subject to penalties, including criminal liability, if and when he subsequently wishes to return to Singapore, where the Father and the Grandparents are likely to reside in the long term. This would not be a good outcome for him, his paternal family members, or his future continued connection with his country.

95 Finally, we should mention that at the moment M appears quite content with his living and family situation. He knows that the Mother lives in London which, in his own words, is "very very very far away". He has a bad impression of London (probably instilled in him by the Grandparents or the Father) and does not want to go there. When Ms Yang asked him whether he wished to see or visit the Mother, he exclaimed that it was "impossible" because she was very far away. This response must have come from something said by M's caregivers but that cannot be a deciding factor. Ms Yang did query M about his wishes with regard to the access arrangement. He was noted to have difficulties

verbalising his wishes but indicated that he was happy with the current arrangement. Overall, it appears to us that M is presently content with having mainly Skype interaction with the Mother and does not feel a need or desire to visit her in person. This of course may change in time as he becomes more independent and aware of the world.

Conclusion on welfare

96 Having considered and analysed the factors and the circumstances in this case, we must respectfully disagree with the Judge's view that it is in M's best interests for the Mother to have care and control at this time. Rather, in our judgment, M's best interests would be better served if he remained in Singapore with the Father and the Grandparents. We therefore allow the Father's appeal and award care and control of M to him subject to the orders we make below. We are cognisant of the need to preserve and enhance M's relationship with the Mother and consider how best to do this in the next section.

Further arrangements for M

97 It is standard practice for the court, when awarding one parent care and control of a child, to at the same time provide for the other parent to have reasonable access to that child. The court is concerned to maintain the strength of the parent-child bond with both parents despite the dissolution of the relationship between the parents *inter se*. Normally, with both parents and the child living in the same jurisdiction, access arrangements are straightforward. This case, however, requires special orders to be made for the purpose.

98 In his Appellant's Case, the Father asserted that he had consistently taken the position that he was agreeable to the Mother having access to M. In his

proposal submitted to the Judge on proposed care and access arrangements during the hearing below, he had committed to continue facilitating daily Skype contact, and to furnish the Mother with regular updates on M's academic and therapeutic progress. The Father informed the court that he was agreeable to daily unsupervised access if and when the Mother visits Singapore with possible unsupervised weekend stayovers. He was also willing, if allowed to travel, to take M to a third country for the purpose of allowing M to spend time with the Mother.

99 The Mother indicated that she is willing to come to Singapore for the purpose of access to M if she is not granted care and control but has also highlighted the immigration and financial constraints that she is likely to face. As far as entering Singapore is concerned, she needs a sponsor situated in Singapore as a result of the immigration offences that she had committed here. She does not have one at present. The expenses of travelling to Singapore and staying in a hotel here while seeing M would also be difficult for her to bear. Recognising this, at the hearing before us, the Father offered to act as her sponsor for any trips that she might take to Singapore. He also offered to pay for her return airfare and the cost of her accommodation in Singapore once or twice a year.

100 Having considered all the circumstances, including the respective financial capabilities of the parties, we make the following orders in respect of the Mother's access to M:

- (a) The Mother shall have daily Skype access to M for at least 30 minutes between 3pm and 5.30pm (Singapore time) at the Mother's convenience. In this regard, the Mother shall indicate to the Father the

time when it would generally be convenient for her to make the call and, in the event this time needs to be adjusted for any reason, the Mother shall notify the Father of the adjusted time at least two days prior to the relevant call.

(b) The Father shall stand sponsor to the Mother for at least two trips to Singapore per calendar year on the basis that each trip does not exceed four weeks' duration. The Father shall provide the Mother with a return economy class air ticket from a reputable international airline (like Qantas, British Airways, Thai Airways and Singapore Airlines), for at least two trips per year between a location in the UK and Singapore. For each of these two trips, the Father shall also provide the Mother with a lump sum of \$2,000 as a contribution to the costs of her living expenses while in Singapore. The Mother shall be responsible for her own air fare and living expenses for the third or any subsequent trip that she may make in any one year.

(c) When the Mother is in Singapore, she shall have unsupervised access to M every day from Monday to Friday, between 4pm and 7pm; and from 10am to 7pm on Sundays as well as such additional access as the parties may be able to agree between themselves.

(d) There shall be liberty to apply to the Family Court in the event of any desired adjustment to the aforesaid orders regarding access, particularly if the Mother is able to stay in Singapore for long periods of time or more frequently than twice a year.

101 We are acutely aware that family situations can change, either gradually over time or quite abruptly with the occurrence of unexpected events.

Accordingly, we direct that the access arrangements be reviewed by the Family Division of the High Court in one year's time and thereafter, at such intervals as the Family Division shall deem necessary. The Family Division shall be entitled to ask for further reports from Ms Yang or other court counsellor from the Family Courts as it shall require and to make such adjustments to the access arrangements as it may find to be in M's best interests.

Conclusion

102 We are conscious that the outcome of the appeal will be deeply disappointing to the Mother. She has spent years trying to have a normal relationship with M and we commend her efforts in that regard. Our focus in this appeal has been on M and what would be best for him rather than on the behaviour of any of his relatives. Our decision is based on our assessment of M's best interests in the light of the special facts of this case as they were when the case was brought before us. When M is older, he may be able to travel to the UK or elsewhere to visit the Mother so as to further enhance his bond with her.

103 We now have to deal with the issue of costs. In the court below, the Judge made the following orders in relation to costs:

- (a) that the Child Representative (Mr Yap)'s Stage 2 costs be fixed at \$3,000 and be borne by the three parties to the proceedings equally;
- (b) on SUM 1424/2017 (being the Father's application to vary certain earlier court orders) and DCA 68/2016 (being the Grandparents' appeal against the DJ's orders), no order as to costs; and
- (c) on DCA 71/2016 (being the Father's appeal against part of the decision in FC GD), costs to the Mother fixed at \$8,000 all in.

104 We are not minded to interfere with the costs orders made by the Judge. The first two orders were eminently correct. As for the third order, which directed the Father to pay the Mother's costs, bearing in mind that the Mother had no choice but to participate in the Singapore proceedings in order to maintain her access to M in view of the Father's refusal to take him back to England as required by numerous English court orders, we think that it too should remain. In any event, the Father did not make any submissions on why the costs orders made by the Judge were erroneous.

105 As for costs of the appeal, bearing in mind the special circumstances of this case, we order each party to bear his/her own costs.

Judith Prakash
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

Steven Chong
Judge of Appeal

Adrian Tan Wen Cheng and Low Zhi Yu Janus
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Koh Tien Hua and Phoebe Sim Shi Hui (Eversheds Harry Elias LLP)
for the respondent.
