

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 8

HCF/District Court Appeal No 120 of 2017

Between

UFZ

... Appellant

And

UFY

... Respondent

JUDGMENT

[Family law] — [Custody] — [Care and control] — [Relocation]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

UFZ

v

UFY

[2018] SGHCF 8

High Court — HCF/District Court Appeal No 120 of 2017
Debbie Ong J
31 January 2018

13 March 2018

Judgment reserved.

Debbie Ong J:

Background facts

1 The Appellant is referred to as the “Father” and the Respondent is referred to as the “Mother”. In this judgment, all the children’s names are pseudonyms.

2 The parties have three children: Andrew, Brenda and Chloe who are 14, 11 and 9 years old respectively this year.

3 The family has been living in Singapore since June 2008. The Father was originally a British citizen but has become a Singapore citizen since 2013. The Mother is still a British citizen and has been a Singapore Permanent Resident since 2009. The three children have dual citizenship, being British citizens and also Singapore citizens since 2013.

4 The parties married on 9 June 2000 in Belgium. The Mother commenced divorce proceedings on 16 June 2014. An Interim Judgment of Divorce was granted on 29 January 2016. The District Judge (“DJ”) made orders on the ancillary matters on 15 August 2017.

5 The DJ granted care and control of the three children to the Mother and allowed her to relocate with the three children from Singapore to the UK. She also made orders on the Father’s access to the children upon their relocation, and on the maintenance for the children and the Mother. The Father appeals against a majority of the DJ’s decision, primarily against the orders on care and control and relocation. The Father submits that only if the appeal is allowed against the relocation will this court then have to determine the Father’s maintenance for the children and the Mother as they continue to live in Singapore.

6 I heard the parties’ oral submissions on 31 January 2018, and also interviewed the three children together on 23 February 2018. In coming to my decision, I also had the benefit of two prior Custody Evaluation Reports, dated September 2015 and May 2017 respectively.

Law on parental relocation of children

7 The applicable legal principles in relocation applications have been set out by the Court of Appeal in *BNS v BNT* [2015] 3 SLR 973 (“*BNS*”). As with all proceedings where the custody or upbringing of a child is in issue, “*the welfare of the child is paramount and this principle ought to override any other consideration*” [emphasis in original] (at [19]). This principle is also the statutory direction in s 125 of the Women’s Charter (Cap 353, 2009 Rev Ed) and s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed).

8 The inquiry of what is in the welfare of the child involves a consideration of a multitude of factors. Relocation applications involve one parent exercising his or her authority to relocate the child to another jurisdiction. Two important factors that will come into play will unsurprisingly be: (i) the reasonable wishes of the primary caregiver; and (ii) the child’s loss of relationship with the ‘left-behind’ parent (*BNS* at [28]). These factors, amongst others, are pertinent in helping the court assess what the best interests of the child are. This assessment is “*an intensely fact-centric exercise*” [emphasis in original] (*BNS* at [28]) and will remain a very difficult one in all relocation cases. I emphasise that every relocation case is unique, because every family’s circumstances and dynamics are unique. Thus, while past cases are useful in elucidating the various factors the court will consider, each case will be decided on its own facts.

9 I first highlight two fairly recent reported decisions where relocation was *not* allowed. In *BNS*, the Court of Appeal affirmed the High Court’s decision to disallow the mother’s relocation application to her country of origin, Canada. Both parents were Canadian citizens who married in Canada, but had been living in Singapore since 2008 with their children who were around the ages of two and one then. While the mother was the primary caregiver of the two children, her personal well-being was not to trump the best interests of the children in continuing the good and close relationship they shared with their father. The children were enjoying a “strong, vibrant relationship” with their father, who had “taken steps to play an active, involved role in their lives” amidst the divorce (at [31]–[32]). The father himself could not seamlessly relocate back to Canada when considering his employment prospects. By not granting the relocation, the young children, aged nine and seven at the time of the decision, could enjoy to the full extent possible a normal family life with frequent personal physical contact with *both* parents.

10 In *TAA v TAB* [2015] 2 SLR 879 (“*TAA*”), a decision considered by the Court of Appeal in *BNS*, I had affirmed the District Court’s decision to disallow the father’s relocation application. That was not a case where the relocating parent desired to return to his country of origin. The father, the primary caregiver, was a Singapore citizen settled in Singapore. He had remarried and sought to relocate with the three children (the youngest being 11 years old) to Spain, his new wife’s country of origin. Relocation was incompatible with the children’s interests for many reasons, including the following:

- (a) the children would have been uprooted from their very stable living and education arrangements in Singapore for a possibly non-permanent relocation to Spain (an unfamiliar environment to the young children, where English is not the main language of communication);
- (b) there was no evidence of efforts by the father to support the access of the mother to the children post-relocation;
- (c) even though there was tension in the relationship between the children and their mother, she was trying to rebuild this relationship and relocation to Spain was “likely to sound a death knell” to it instead (at [23]); and
- (d) the three siblings would have been separated, as the eldest child intended to live and continue her studies in Singapore.

11 Relocation often “represents a serious threat to [the] ideal state of joint parenting” from which the child benefits (*BNS* at [25]). The relocated child would likely have much less access and interaction with the parent left behind. However, this factor is not in itself determinative in relocation decisions. The paramount consideration is always the welfare of the child, which necessitates

a careful consideration of all relevant factors and circumstances. This is reflected in two recent unpublished decisions where I had *allowed* the parent with care and control to relocate with the children.

12 In the 2015 decision in HCF/DCA 71/2015, which is the appeal against the decision in *TCI v TCJ* [2015] SGFC 58, I affirmed the District Court's decision to allow the mother with care and control of the children to relocate with them to her home country, Australia. The parents and the children were Australian citizens. The mother was in Singapore with no kinship support but had her parents' support in Australia. I explained why I held that relocation was in the welfare of the children in that case:

The Father in the present case has submitted how involved he was with the children. I have no doubt that he loves the children. But I do not find that the District Judge was unreasonable in finding that the Father was more involved in his career in the children's earlier years and sought to be more involved in the later years. The relationship is still being built up. The Father's counsel could not give substantial evidence on the strength of the Father's relationship with the children prior to the breakdown.

Will relocation dilute the Father's relationship with the children? Of course distance will have an effect. Can we lessen these effects? [Video link and instant communication platforms] and periods of physical access can assist but it will not be the same as being in the same country.

The court has to balance all the circumstances. Something will have to give ... There is a real enough option for the Father to meet the children relatively frequently as he has the financial means to do so, and the Father also has a real option of returning to Australia. (He is Australian. Neither the Mother nor the Father has permanent immigration status in Singapore.) Parents may have to make certain sacrifices for their children.

In [TAA], where relocation was disallowed, the parent who sought relocation was domiciled in Singapore but was 'trying out' living in Spain; the children were older children settled in Singapore schools who were being uprooted to a country where English was not the medium used. The oldest child [intended to remain] in Singapore and relocation would have split up the children. The facts in [TAA] are quite different from the present

facts.

There will be some pain involved when relocation is granted, and this decision is not easy to reach at all. But balancing all the factors, the scales tip in favour of relocation, for there is a real possibility of settledness and kinship support for the children, including an educational system that can support [Dylan]'s needs. Access to the Father must be supported to the fullest in order to reduce the loss of relationship with him. This decision is made for the welfare of the children, it is the one I reach because overall, it supports their continued welfare better.

13 Thus there was, in that case, a real possibility of settledness and kinship support for the children, including an education system that seemed to better support the special needs of one of the children. The mother and children also had citizenship privileges in Australia. While the relocation might likely affect the progress in the father's relationship with the children, which was still being built up, there was a real option for the father to meet the children relatively frequently given his financial capability. In allowing the relocation, I emphasised that the father must be supported in his access to the children and I granted him liberal access to them.

14 In another case, in the 2017 decision in HCF/DT 4196/2012, I allowed the mother with care and control of the children to relocate with them to her home country, New Zealand ("NZ"):

I have considered this matter carefully. I had interviewed the children, and then ordered a 'specific issues report' requiring a trained counsellor/psychologist to speak to the children to give views on the matter of relocation. I had also asked the parties to consider at the last hearing – if relocation is permitted, how best to arrange for access to support the children's relationship with their father.

I accept that the children have intact relationships with both parents. This is not a case where the children are not close to the potential left-behind parent. I am acutely aware of the potential loss of relationship with the Father if relocation is permitted. I had highlighted in my previous decision [TAA], as

well as my academic writings, the importance of this factor and pointed out how the courts had not been giving sufficient weight to it. Thus I give careful consideration to the principles stated by the Court of Appeal in [BNS] – I weigh the potential loss of relationship with the Father against the reasons and benefits of relocation.

In the present case, the Mother is a [NZ] citizen and the children are both Singapore and NZ citizens. The Mother has extended family in NZ. She had attempted to relocate to NZ about five years ago. The children have spent time in NZ and have connected with their extended family there. The Mother has thought through the consequences of relocation on National Service (“NS”) requirements and has assured the court that she will apply for an exit permit for [Eric] and ensure he returns to serve NS.

[Eric] is going on 17 and [Fred] is going on 13. They have expressed their wish to relocate, for various reasons. To [Eric], education is a consideration and his views in respect of that seemed to be independently motivated by what he perceived to be better opportunities and fulfilment of his life’s goals. I am very aware of the fact that [Eric and Fred] are children and they may lack sufficient maturity to decide major issues such as this for themselves. But neither does this mean that their wishes ought to be brushed aside. Children continue to grow in maturity and they keep learning from experiences.

...

The factors, considered as a whole, persuade me that a grant of leave to move to NZ will be in the children’s interest, provided that access arrangements can be satisfactorily made to support their relationship with the Father. I am of the view, in view of their ages, that [video link and instant communication platforms] and such access will go a long way towards maintaining and developing the father-and-child relationship when they are physically apart. Physical access of a few times a year will also be necessary to support their relationship.

The parents’ conflict is still ongoing – access is not free from issues arising from parental conflicts. The parents must discharge their parental responsibilities in cooperating for the welfare of their children. They must minimise the acrimony and be bigger, kinder and wiser in this respect. Where there are good reasons for relocation, and this is an increasingly more common phenomenon in the globalised world, keeping the family together in the same country to support the parent-child relationship may not always be feasible. This is when the parties must try even harder to cooperate to support their children’s needs, using all resources available to achieve the

best arrangements possible.

15 I had in that case interviewed the two children (who were around the ages of 17 and 13 respectively) and also ordered a ‘specific issues report’ requiring a trained counsellor/psychologist to speak with them to give views on the relocation matter. In making my decision, I premised the grant of relocation on access arrangements, including liberal access, being satisfactorily made to support the father’s relationship with the children. Because the children were in their teenage years, the father-child relationships could also be cultivated via instant communication platforms despite the physical distance.

16 I emphasise that in these cases where relocation was allowed, the access plan for the non-custodial parent was crucial to addressing the loss of the children’s relationship with that parent. Access must be supported to the fullest to reduce this loss of relationship, such as in granting very liberal access to the non-custodial parent.

17 While one may draw certain analogies to the cases I have cited, one must never simply approach the relocation decision as a matter of ticking off boxes on a checklist. The issue of relocation is too serious a matter for such a simplistic assessment. As has been emphasised repeatedly, each case must be decided on its own facts, and it is always a question of what is in the welfare of the child.

18 “The law expects parents to put the interests of the children before their own” (*TAA* at [17], cited by *BNS* at [20] and [29]). On the one hand, where the relocation application is granted, the left-behind parent will lose precious access time with the beloved child. On the other hand, where the relocation application is denied, the parent with care and control may be tied, against his or her wishes, to an environment towards which he or she has little affinity and still be required

to do his or her best in caring for the child, as well as find employment. Globalisation is a phenomenon which puts many families between a rock and a hard place. The court will do right by focusing on the child, and deciding what is best in his or her welfare. The outcomes reached often require the parents to make personal sacrifices for their children.

Issues and decision

19 In this case, the Father appeals against the DJ's orders granting care and control of the three children to the Mother. He also appeals against the DJ's orders in allowing the Mother to relocate with the three children to the UK. These are two distinct issues.

Care and control of the children

20 The Father argues that the parties should be granted shared care and control of the three children.

21 I recognise that the Father has made substantial efforts in building up his relationship with the children. He rented a separate apartment within the same condominium to ensure as much access and interaction with the children as possible despite the parties' divorce. I accept that the Father is trying to be as involved in the children's lives as he can while working full-time, committing to his parenting plan to facilitate a co-parenting arrangement around his busy business travel schedule.

22 While I recognise the Father's efforts and commitment, I agree with the DJ in granting care and control of the three children to the Mother. The Mother is their primary caregiver. Throughout the course of the marriage and until today, she has been a full-time homemaker. The Father, on the other hand, has

a busy work travel schedule that takes him overseas frequently. When he travels, the Mother has to take full responsibility for the three young children. The emotional bond and attachment the children have with the Mother is thus very strong in comparison to that with the Father.

Relocation of the children

23 The Father's main contention on appeal is against the grant of the application for the Mother and the three children to relocate to the UK.

Reasonable wishes of the Mother

24 I first consider if the wishes of the Mother to relocate with the children to the UK are reasonable.

25 The Father submits that the parties had intended for the entire family to stay in Singapore for the long term. They applied successfully for Permanent Residency in Singapore in 2009, fairly early since coming to Singapore. The Father and the three children became Singapore citizens since 2013. I also hear the Father's submissions that in the later half of 2013, the Mother still indicated to third parties her love for Singapore as a country of residence and her intention for her and the children to stay in Singapore.

26 The Mother submits that the circumstances have changed given that the parties' marriage had broken down. The family had originally moved to Singapore because of the Father's employment. She now wishes to return to the UK.

27 The Mother intends to relocate to Trelawnyd, North Wales, UK, where her father and sister's family are presently living. She intends for the children

to attend schools there. She submits that she has no family support network in Singapore and is thus unable to work full-time to provide for the family because she has to care for all three children as the primary caregiver. As the Father's work takes him overseas frequently, the Mother also has to assume the responsibilities of caring for the children by herself when he travels. She thus wishes to return to the UK where, she submits, she is able to return to the workforce with the necessary support from her extended family in caring for the children. The Mother submits that the Father's extended family living in the UK can serve as such family support too.

28 The Father has raised his strong concerns about the Mother's intended relocation destination with regard to its conduciveness for raising the children, and the strength of the family support the Mother and the children would actually receive.

29 I find the Mother's wishes to relocate reasonable. The divorce has brought about changed circumstances. The marriage has broken down. The Mother is now encouraged to return to work to maintain herself and the children. Yet, the two younger children need substantial care given their young ages. Where the Mother finds difficulty joining the workforce in Singapore because of the absence of familial support for the children, returning to the area in the UK wherein her extended family resides is a reasonable option. There may have been a physical and temporal separation from the extended families of both parents because the parties and the children have been living in Singapore since 2008. I nevertheless am of the view that both extended families can still serve as a support network for the Mother and the children.

Uprooting the children

30 A particularly relevant consideration in this case is that the three children have spent most or all of their lives in Singapore and have integrated into Singapore society. The issue here is whether moving the children from their familiar environment in Singapore to have them adjust to a new way of life in the UK is in their welfare.

31 Andrew and Brenda have lived in Singapore for the past nine years since June 2008, when they were aged four and one respectively. Chloe was born in Singapore in 2009. (From 2005 to 2008, Andrew had lived in Louth, UK when he was one to four years old. Brenda was born in 2007 in the UK and lived there until she was around one year old.)

32 The Father also submits that the children have only attended formal schooling in local schools in Singapore. However, considering the school reports tendered to me, I find it hard to accept his submission that the children are “thriving” in school.

33 On the other hand, the UK is the home country of the Mother and Trelawnyd is where the maternal extended family resides. I accept that there will be a family support network to help the children and the Mother integrate into the society there.

34 The children themselves have expressed a strong desire to move to the UK, particularly 14-year-old Andrew. The two older children expressed that after their two-week June 2017 visit to Trelawnyd, they became clear and firm in their desire to relocate. This was in contrast to their previous wish to just “try out” the UK. During that recent visit, the children bonded with their maternal

extended family and visited the school there for an afternoon, expressing their liking for the different teaching approach and learning environment.

35 I am nevertheless mindful that the children, especially the two younger ones, still lack sufficient maturity to decide major issues like relocation for themselves. This recent experience back in the UK is also one-off and considerably short. I also accept that the Mother's desire to relocate to the UK would have influenced the children in their own wishes too. This is in light of the children's close relationship with and dependence on the Mother. I bear these caveats in mind when assessing their views in this matter.

Loss of the children's relationship with the Father

36 The loss of the children's relationship with the Father weighs against allowing their relocation to the UK. As far as is possible, joint parenting is encouraged for the children's development and welfare in general. Allowing the children's relocation would mean a significant distancing between them and the Father, as it would disrupt his frequent personal contact with the growing children.

37 The Father has made Singapore his home (he has relinquished his British citizenship) and has also been based here for the past decade for his work. He has been making efforts to strengthen his relationship with the children, such that at present, the parties live in two different apartments within the same condominium even though they are divorced. Relocation would thus likely adversely affect the Father's efforts to build up his relationship with the children.

38 The Mother submits that even if the relocation application was denied, the Father is unable to provide for the daily care arrangements for the children.

His busy work travel schedule requires the Mother to take full responsibility for the three young children when he makes his frequent travels overseas. The Mother also submits that the Father does travel frequently to Europe for business as well and the DJ's liberal access orders for him, upon the children's relocation, will allow him to continue building his relationship with them.

39 I also note briefly that there is tension in the relationship between the children and the Father because of his new girlfriend. This has recently created unwillingness in the children to have access with their father.

Other relevant considerations

40 Andrew, being a Singapore citizen, will have to serve NS. The Mother has obtained his exit permit. Andrew is himself aware that he has to return to Singapore in a few years' time to fulfil his obligations.

Welfare of the children

41 Allowing a relocation would mean uprooting the children from the familiar country of Singapore in which they grew up. I note that the children were raised in Singapore for most or all of their young lives. They have, however, encountered difficulties in school. Andrew has also mentioned that the Mother and the children have already been trying to move to the UK for the past few years. This has some bearing on the settledness of the children's present lives in Singapore, especially in terms of their mental and emotional states. The Mother had previously filed a relocation application on 7 December 2014, after she commenced divorce proceedings but before the Interim Judgment of Divorce was granted. Interim orders were made on 29 January 2016 following the application for custody, care and control of the children, without granting their relocation then.

42 It is significant that the Father travels frequently for his work and that the Mother needs to be present to care for the young children whenever he is away. I find this responsibility on the Mother immense if the relocation was not allowed. This is also in light of the fact that the family had originally moved to Singapore because of the Father's employment. Now that the marriage is terminated and the Mother herself does not wish to remain in Singapore, denying the relocation application will mean that she will have to remain to physically care and provide emotional and psychological support for the children without kinship support and the practical benefits that British citizenship would have accorded her and the children. Again, I emphasise that this factor of the Mother's reasonable wishes is not in itself determinative of the relocation issue.

43 The children and the Mother may have to undergo a transition phase to get used to living in Trelawnyd. However, this transition is likely made easier because the children and the Mother can rely on her extended family for some support. Even the Father's extended family will be near enough to reach by road. The Mother can also seek the employment she needs in the UK to support the family.

44 Andrew has also expressed his longing for family support which, apart from his parents, he lacks in Singapore. The transition to post-divorce life is often difficult and painful for adult parties. This transition can be especially discomfoting and even distressing for young children, who are much less equipped to deal with the vagaries of life. The three children here are the innocent victims of their changed family circumstances in a globalised world.

45 I accept that there may be some loss of the children's relationship with the Father upon relocation, particularly with regard to the diminished frequency

and quality of personal contact between them. However, because of his work commitments which involve overseas travel, the Father already spends significant periods of time away from the children even now in Singapore. That being the case, if the post-relocation access plan for the Father affords him substantial time with the children, this would mitigate the possible loss of relationship between them. Given that the Father himself travels frequently to Europe for business, travelling to meet the children in the UK is feasible in this case.

46 Therefore, on the particular facts of this case, I am satisfied that the DJ's decision to allow the Mother's relocation to the UK with the three children is in the welfare of the children. The DJ's orders on access to the Father are very important in mitigating any loss of relationship with the Father.

Post-relocation issues

47 I recognise that this decision will be agonising for the Father. This is the reality of the consequences of globalised families breaking down. While it will be painful for the Father to live apart from the children for extended periods of time, I urge him to do his best to make the most optimal use of the access time with the children. The children have expressed that they would like to travel with their father on holidays during access periods.

48 In affirming the DJ's orders, I emphasise the importance of the Mother cooperating to facilitate the Father's access. Despite the physical distance, joint parenting is still necessary for the welfare of the children and their development. To this end, the Mother must facilitate the Father's access of the cumulative 13 weeks of school holidays, pursuant to the DJ's orders. As the Father remains committed to interacting with the children via instant communication platforms

too, I am confident that his relationship with the children will also strengthen. I urge the parties to be flexible and ready to arrange additional or substituted access to the Father, as and when he may be able to travel to the UK. I also remind the parties to be reasonable and cooperative in their interactions. While their marriage may have ended, they remain bound to cooperate with each other in caring and providing for their three children (see s 46(1) of the Women's Charter).

Conclusion

49 I dismiss the appeal.

50 The matter of costs shall be agreed between the parties. If they are unable to agree, they may write to the Registry for a hearing before me to submit on the matter of costs.

Debbie Ong
Judge

Yap Teong Liang and Tan Hui Qing (T L Yap Law Chambers LLC)
for the appellant;
Yeo Khee Chye Raymond (Raymond Yeo) for the respondent.
