IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 16

District Court Appeal (Family Division) No 55 of 2020

Between

VJM

… *Appellant*

And

VJL

… *Respondent*

District Court Appeal (Family Division) No 56 of 2020

Between

VJL

… *Appellant*

And

VJM

… *Respondent*

In the matter of Divorce Suit No 3091 of 2018

Between

VJL

… *Plaintiff*

And

VJM

… *Defendant*

GROUNDS OF DECISION

[Family Law] — [Custody] — [Shared care and control]
[Family Law] — [Custody] — [Access]
[Family Law] — [Custody] — [Relocation]
[Family Law] — [Maintenance of former wife]

VJM
v
VJL and another appeal

[2021] SGHCF 16

General Division of the High Court (Family Division) — District Court Appeal Nos 55 and 56 of 2020
Debbie Ong J
27 January, 29 March 2021

23 June 2021

Debbie Ong J:

Introduction

1 An issue of recent interest in family proceedings, that of 'shared care and control', was involved in these cross appeals before me. The appeals concerned the custody, care and control and access arrangements for the parties' young son, N (a redacted name used in the Grounds of Decision ("GD") of the District Judge ("DJ") in *VJL v VJM* [2020] SGFC 59). The father of N (the "Father") sought shared care and control of N and also appealed against the order allowing N to relocate with N's mother (the "Mother") to the US. N had just turned 4 years of age at the time I delivered my decision for these appeals.

2 The Mother and Father were married in the US in November 2012. The Father commenced divorce proceedings on 5 July 2018, at which time the Mother was 42 years old and the Father was 49 years old. The Mother was the

appellant in HCF/DCA 55/2020 and the respondent in HCF/DCA 56/2020. The Father was the appellant in HCF/DCA 56/2020 and the respondent in HCF/DCA 55/2020. I will address the issues in both appeals together.

Custody: Joint or Sole

3 The DJ ordered that the Mother and Father were to have joint custody of N. The Mother appealed against this order and sought sole custody. Her counsel submitted that should this court be minded to uphold the order of joint custody, then, in the alternative, she should be granted a permanent injunction which prohibits the Father from making any applications relating to N's immigration status without the Mother's prior written consent. She also sought to "have the final say on matters relating to [N's] education". The Father submitted that the order of joint custody should remain.

4 The DJ had explained why joint custody was ordered. In particular, she "did not see any exceptional circumstances that warranted a departure" (GD at [25]) from what the law on custody directs, which is that both parents are responsible for their child, who will benefit from the guidance of both parents in matters of significance; joint custody supports joint parenting and is the default position consistent with upholding the welfare of the child.

5 I did not think that the DJ erred in granting joint custody. The Court of Appeal held in the seminal decision of *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 ("*CX v CY*") at [26]:

> …There can be no doubt that the welfare of a child is best secured by letting him enjoy the love, care and support of both parents. The needs of a child do not change simply because his parents no longer live together. Thus, in any custody proceedings, it is crucial that the courts recognise and promote joint parenting so that both parents can continue to have a direct involvement in the child's life.

There are many growing-up years ahead for N for he is a very young child, and hence there are many years of 'parenting' required. There will be numerous 'forks' ahead in life's road for N; many decisions during his childhood years will have to be made in future which will shape the course of N's life. Better it is that N enjoys the full support and guidance of both his parents throughout the course of his childhood. N's and the parties' circumstances will not remain the same always, and N's relationship with each parent remains dynamic in nature, as all relationships are. It is not in N's interest to deny him his father's inputs on important matters at such an early stage in his life. While I hear the Mother's concerns that conflicts are likely to arise in the areas of immigration and education, projected conflicts should not in themselves sever the Father's involvement in major decisions concerning N. Instead of *excluding one parent* from the child's life in respect of important decisions on the basis of *projected future parental conflicts*, the parties are expected to work on *reducing conflict presently*. This is a practical expectation that flows from the legal obligation of parental responsibility imposed on both parents. I consider the DJ's orders for parties to obtain therapeutic counselling a part of this endeavour (this order is also appealed against and will be addressed below at [42]).

6 The practical effect of 'joint custody' is that both parents must consult each other on matters of importance, including those relating to the permanent immigration status and the education of N. Each parent should consider with an open mind the inputs of the other, to reach the best decisions for N. There should not at this time be restrictions that exclude the Father from involvement in such matters. To have the court decide now to exclude the Father from the child's life in significant matters, when the parents are still in high conflict and in litigation, does not place the child in the best position. The parents may use therapeutic or mediation support to assist them if necessary; the court's intervention, while available, should remain the last resort.

Relocation of the child

7 The DJ granted leave sought by the Mother for N to relocate with her to Florida, USA. The Mother and N have already left Singapore for the US in July 2020. The Father sought a reversal of this order in his appeal.

8 At the hearing, the Father expressed his views that Singapore is a safe country, and a great place to live and to raise a child. I accepted that when the family was intact, Singapore was the choice of the family's residence, but this is no longer the case. Serious conflicts have arisen leading to a divorce, and one party wishes to live in Singapore, but the other party does not. This difficulty is one of the unfortunate consequences of the breakdown of the globalised family.

9 One of the strongest factors in favour of relocation in the present case is the family's lack of connection to Singapore. There are similarities between the present case and *UYK v UYJ* [2020] 5 SLR 772 ("*UYK v UYJ*"), where relocation was allowed. In *UYK v UYJ*, the High Court held at [61]:

> …the parties did not have any permanent immigration status in Singapore. The Father was staying in Singapore on an Employment Pass, while the Mother was in Singapore on a short term visa. …. [the child] was in Singapore on a Dependent's Pass linked to the Father's Employment Pass. The Mother submitted that the Father has not shown whether he intended to stay in Singapore permanently, and that he has shown a propensity for moving between countries for personal reasons such as tax benefits. The Father stated in response that he had made efforts to integrate into Singapore. The pertinent point here is that neither party had any roots in Singapore, or any secure basis on which to remain here in the longer term.

10 In the present case, the Mother moved to Singapore to join the Father in 2013. Their child N, who holds both American and British citizenship, was born on 22 March 2017; he is a young child. The Father is a British citizen while the Mother is an American citizen – neither party holds any permanent residence

status in Singapore. The whole family has no roots nor permanent immigration status in Singapore.

11 The Father highlighted that relocation will result in the child's loss of relationship with him. I agreed that some loss in relationship will arise when parent and child are in different countries, separated by physical distance. However, in *UYK v UYJ,* I had remarked (at [64]):

> We must not forget that the loss of relationship in such situations is an unfortunate consequence of family breakdown. If the parents' desired countries of residence do not coincide and neither parent makes a "sacrifice", a child would, inevitably, be physically separated from one parent. Good access arrangements can mitigate the loss of time and relationship with the left-behind parent. These may comprise physical access which will involve international travel as well as virtual access. Understanding these perspectives should lead us to appreciate that the loss of relationship is a result of the parents being unable to agree on a common country of residence, and if one parent is willing to live in the country chosen by the other, the loss of relationship will not be an issue – such an option remains open even now to the present parties. The willingness and ability of both parents to support substantial access will also mitigate the trauma of such a loss for the child.

12 I did not think the DJ could be faulted in the way she considered the circumstances in the case to reach her decision. I therefore upheld the DJ's order allowing the relocation of N to the US. It was heartening to hear that the Father had expressed his willingness to explore relocating to the US if the relocation order is affirmed. A relocation to the US will enable N to enjoy more time with the Father, so that the father-son relationship may be maintained without the loss that results from being separated by cross-border physical distance.

Care and Control: Shared care or Sole care

13 The Father contended that the DJ erred in finding that shared care and control was not workable. The Mother's counsel submitted that the sole care and control order should remain.

14 The Father's submissions on this issue alluded to the psychological effects of granting sole care and control to the Mother, which he claimed caused her to treat "the Father as less of a parent". He also submitted that an "inclusive view", which in brief, refers to both parents sharing substantially in caring for the child, serves the child's welfare and is consistent with "therapeutic justice". He suggested in his Appellant's Case that an "exclusive view" encompasses views that shared care is "unworkable where the parties have a bitter relationship", that shared care "is overly disruptive to a child's life" as it may involve "uprooting the child every 3-4 days" or that shared care "is not suitable when parents have markedly different parenting styles". To require parents to agree on "every day-to-day decision relating to the child" for shared care is also an "exclusive view", in his submission. He submitted that the court should reject the exclusive view and instead adopt an "inclusive view" which upholds shared care and control.

15 First, let me clarify that these submissions on the "inclusive view" and "exclusive view" are the Father's descriptions and are *not* found in the law. I emphasise that the paramount substantive consideration in the present appeals is the welfare of the child – this is the established legal principle. I do not accept the Father's suggestion that the factors (or views) raised above (at [14]) are "exclusive" in character, that is, that they necessarily have the effect of going against the welfare of the child by excluding a parent from parenting. Instead, they are factors which are clearly relevant when a court considers what living arrangements are in the child's best interests. Established law does not

contradict the Father's submission that cooperative and shared parenting is in the welfare of the child. On the contrary, with the clear guidance of the Court of Appeal in *CX v CY* that joint parenting is in the child's welfare, the courts endeavour to reach orders which promote joint parenting. The more difficult and practical question is what *living arrangements support* the maximum involvement of both parents in the child's life. The factors described by the Father should not be seen as exclusive; instead they are a few of many considerations that assist the court in addressing this difficult practical question.

16 I have pointed out in *TAU v TAT* [2018] 5 SLR 1089 ("*TAU v TAT*") that (at [12]):

> …The ideal state is understandably for a child to be in an intact family where he or she lives with and is lovingly cared for jointly by both parents. Yet, upon the breakdown of a marriage, this is simply no longer fully achievable. The family justice system nevertheless aspires to achieve the ideal state of affairs for the child, or the closest to it possible. But to ignore the realities, including the parental conflict, the parties' emotional baggage and the new dynamics of the various relationships, and impose in all situations a modified version of the perceived ideal (such as equal-time shared parenting or shared care and control) can do more harm than good. Thus in considering whether shared care and control would be in the child's welfare, the court will have to consider factors such as that particular child's needs at that stage of life, the extent to which the parents are able to co-operate within such an arrangement, and whether it is easy for that child, bearing in mind his or her age and personality, to live in two homes within one week.

17 I accept that a parent will need sufficient amounts of regular and frequent time with the child to build a strong relationship with the child. Equally important is how the time is spent with the child. If there is sufficient time with the child for the care or access period to be meaningful, then a strong parent can do much to bond and create many positive memories with the child. To be clear, 'sufficient' time is not equivalent to mathematically equal time between parents.

18 Our law adopts the legal constructs of 'custody', 'care and control' and 'access', which are used to support families in which the child's parents have separated. As 'custody' refers to the decision-making authority and responsibility in major aspects of the child's life, 'custody' is not directly dependent on having physical time with the child. In contrast, 'care and control' involves physical time with the child, caregiving, and the residence of the child with the parent as well as that parent's decision-making responsibility over day-to-day matters. The High Court has explained in *TAU v TAT* at [11]:

> It is common that a parent is granted sole care and control of a child while the other parent has access to the child. In appropriate cases, the court may grant both parents shared care and control if this is feasible and determined to best serve the child's welfare. In such cases, the child may spend about three days of the week with a parent and the remaining four days with the other parent. Each parent will be responsible for day-to-day decision-making for the child when the child is living with him or her. The child will effectively have two homes and two primary caregivers in this arrangement…
>
> [emphasis added]

19 To do away with 'access' and call any arrangement in which a child spends *some* time with both parents a 'shared care and control' arrangement does not fit into the current law. The court *applies* the law; it does not make law. If the use of 'sole care and control' to one parent and 'access' to the other causes any of the negative psychological effects alleged by the Father, the roots of any such potential effects may need to be addressed by legislative reform. The court and lawyers can also emphasise to the parties that both parents are equal parents with equal parental responsibility in the eyes of the law.

20 I had made it clear in *TAU v TAT* that "shared care and control is different from joint custody; the former relates to the child living with both parents, while the latter is about joint decision-making over major decisions affecting the child" (*TAU v TAT* at [11]). The legal concept that upholds the

equal parental responsibility and importance of both parents to the child is 'joint custody'. Joint custody requires both parents to recognise and respect each other's joint and equal role in supporting, guiding and making major decisions for their child. Joint custody assures the child that both her parents continue to be equally present and important in her life. It would be erroneous and unhelpful to co-parenting for the parent with sole care and control to hold the view that he or she is the better or more important parent. Given that it is accepted that joint parenting is in the child's welfare, it seems ironic that a parent who thinks himself or herself the stronger and better parent would undermine the other parent's involvement in their child's life, for a *truly strong parent* is one who *actively supports* the child in having a close *relationship with the other parent*. This ensures that the child does not suffer the 'conflict of loyalty' of being caught between two parents jealous of each other's relationship with her.

21 No one should misperceive that shared care and control is usually considered unsuitable or never ordered by the court. I cannot stress enough that whether shared care and control is suitable for a particular family depends on the precise facts and circumstances of each case. In the decision in HCF/DCA 133/2020, which I delivered recently, I affirmed a Family Court decision which ordered that the parties will have shared care and control of their young daughter (see the Family Court's Grounds of Decision in *TRY v TRZ* [2021] SGFC 13 (*"TRY v TRZ"*)). In this case, years earlier in 2016, the Family Court had granted these parties "joint custody of the child … with sole care and control to the Mother and access to the Father with the Mother's domestic helper who had been looking after the child since birth accompanying the child" (*TRY v TRZ* at [4]–[5]). In 2020, the Family Court granted the Father's application for variation of those orders and made an order for shared care and control. The Mother appealed against that decision and the matter came before me.

22 At the hearing of that appeal, I explained to the parties my decision to uphold the lower court's order for shared care and control (based on extracts reproduced from the minutes of the hearing, with edits made):

> On these facts and circumstances, the district judge is not wrong. I can see why shared care at this time benefits the child on the facts of this case. The child was a 9-month-old baby when the Mother left the Father, with their baby. The Father had to be very committed to bond with a baby who does not live with him. He was indeed a committed father and he built a bond; the Child Evaluation Report tells me he is close to the child, even if between them, the child is closer to the Mother. The Father spent time with the child a few times a week, over the years. The Mother did not block access and she facilitated it; it is positive that she supported the relationship, and she should continue to do so. Today, with both parties' devotion, the child is close to both parents. This is heartening. I accept that the child is closer to the Mother, having been the parent she resided with, and slept with at night, since she was a baby. We have seen a positive building up of the child's relationship with the Father, and we want this to continue. This is not a case where the parties could not co-parent and could only be acrimonious – they had separated years ago, when the child was a baby - for years, they managed to carry out a schedule where the child sees her father a few times a week. They managed this since 2015 – they are both committed parents. Thus on these particular facts and circumstances, shared care ordered by the judge as the next stage is not wrong … The child is young; her parents are physically needed in her life at this young age – now is the time to keep building the bond with both parents. There are many years of parenting to do; the child must be guided, and not take on the burden of decisions on herself.

I noted that on the facts of that case, significant changes had occurred over the years:

> The earlier arrangement was with respect to a very young child and a helper was accompanying the access - over time the father has bonded, the baby has grown up, this is a child of nearly 7 - I don't think a helper needs to accompany the child during access now even if that was suitable much earlier - the child is spending time with her father, enjoying activities with him - things have changed.

It might well be that the future holds new needs for that child, and further adjustments in living arrangements will be required to meet those needs. Should that come to pass, the appropriate way forward would be for the parents, who know their child best and love her most deeply, to work out these parenting matters. They can reach out for therapeutic support or mediation services if they would like assistance.

23 *TRY v TRZ* demonstrates the current law and practice that shared care and control, where suitable in promoting the child's welfare, may be ordered. "There is thus neither any legal principle against shared care and control, nor a legal presumption that this arrangement is always in a child's welfare. Where such an arrangement is suitable for a child in his or her developmental stage of life, considering his or her relationship with each parent and all relevant circumstances, such an order may be made for the child's welfare … ": *TAU v TAT* at [20]. On the question of when shared care and control is suitable, I suggest a full consideration of the principles and underlying philosophy discussed in *TAU v TAT*.

Challenge to DJ's reliance on report

24 The Father in his appeal also challenged the DJ's finding that the Mother is a suitable caregiver to N while he is not.

25 The DJ had set out the parties' allegations against each other with regard to each party's suitability to parent N (GD at [10]):

> …The Father claimed that the Mother was abusive and violent, and the Mother claimed that the Father was a sex addict and a sexual deviant. Both alleged that the other's "condition" would have a negative impact on the child and the child would be placed at risk; and sought that the other party be examined by a psychologist.

26 The DJ appointed a psychologist I shall refer to as 'Dr A', to prepare a report "on the specific issue of whether the Father's sexual habits/lifestyle would affect his ability to be N's caregiver and whether it would have any adverse effect on N in the time spent with the Father" (GD at [12]). The DJ referred to the report prepared by Dr A in her reasons for her decision.

27 In his appeal, the Father submitted that "the DJ's interpretation of and complete reliance on [Dr A]'s findings … is in error". He argued that the DJ "did not give sufficient weight to [Dr A]'s conclusion that the Father is not a sexual deviant or addict and is in fact suitable for caregiving responsibilities", "erred in finding that there is a real risk of harm to [N] by [N] being exposed to the wrong values and behaviour in the Father's care", "completely misinterpreted [Dr A]'s recommendations in finding that the Father needs to be supervised in his care for [N]", and "did not give due consideration to the Father's caregiving for [N]".

28 I observed that the DJ had ordered that the Father will have continuous days of overnight access with N, hence she could not have taken all the positions submitted by the Father; if she had, continuous overnight access would have been inconsistent with those positions. I agreed that the concerns surrounding the conduct and circumstances of the Father addressed in Dr A's report should not result in keeping N away from the Father, and indeed the DJ's orders for continuous days of overnight access acknowledge that the Father can provide such care to N for those days. However, whether he is the better caregiver than the Mother on the specific facts *such that he should have care and control of N instead of the Mother is a different question*. On the facts, I accepted that the Mother has been N's primary caregiver, and it was not in dispute that N has been in her sole care since May 2018. The DJ did not err in ordering that the

primary caregiver, the Mother, should continue to have care and control of N, while the Father will have access.

29 I observed that the thrust of the Father's submissions in respect of this issue is to seek shared care and control. Hence, he submitted that he is a suitable caregiver, and that shared care and control is best for the child. As I had affirmed the order allowing N's relocation, I did not see how shared care and control could be ordered when the parents are residing separately and apart in two different countries. Shared care and control is *not* merely a label that describes *any* arrangement where a child spends some time with both parents, *regardless of* the amount or frequency of time with each parent (see [18] above on shared care and control described in *TAU v TAT* at [11]). To be clear, neither is shared care and control an arrangement where each parent has exactly mathematically equal time with the child.

Access

30 The Father remains at liberty to live in Singapore in accordance with the relevant immigration policies and will have access to N even if he remains in Singapore. It was a positive development that he is prepared to move closer to N should relocation be permitted. But as he has not moved and there is no evidence on, for example, which US state he may move to, how far his residence is from N, and what his working hours and availability to care for N are like, any order made now will be based on speculation.

31 I accept that should the Father relocate to the US in future, there may be reason to vary the DJ's access orders, which were made on the basis that the Father remained in Singapore. However, given the current lack of clarity on whether the Father can and will relocate to the US and where he will reside if he does relocate, it is not appropriate to make orders based on speculations of

future living arrangements. Should the Father relocate, and if the parties themselves are unable to resolve access arrangements, the appropriate application can be made to the Family Court.

32 If the Father remains in Singapore, the following access ordered by the DJ will be relevant (GD at [131(c)]):

(a) Video access once a day, for up to half an hour each time.

(b) Twice a year in the US, for up to 10 continuous days each time, including overnight and overseas access.

(c) Additionally, no more than two further access periods per year, for up to 5 continuous days each time, including overnight access.

(d) Once a year in the Father's country of residence, for up to 10 continuous days each time, including overnight access. The Mother is to accompany N to the Father's country of residence and shall hand over N to the Father for his access. The Mother is to bear the costs of travel for herself and N to the Father's country of residence.

(e) The Father shall inform the Mother at least three weeks in advance of his intended trip(s) to the US, and the Mother shall reply within a week with N's school or activity schedule during the proposed access period. The Father shall take into account N's school and activity schedule during his proposed access period and is responsible for bringing N to and from any school or extracurricular activities during his access period.

(f) If the Father wishes to exercise overseas access pursuant to order (b) above, he is to inform the Mother at least one month in advance with

his proposed itinerary and flight, accommodation and contact details, taking into account N's school schedule. The Mother is to hand over N's passport to the Father during handover for overseas access, and the Father is to return N's passport to the Mother when he returns N after access.

(g) No third party who is not a family member is to be present during the Father's access and the Father must be with N at all times during his access.

33 The DJ had ordered overseas access twice a year in the US for up to 10 days each time in order (b). On appeal, the Father sought overseas access up to twice a year for up to 18 days each time. The Father was essentially seeking a longer access period which includes overseas access. The Mother submitted that there should not be overseas access in order (b). I held that an access period of 12 days is reasonable for order (b). Further, I will explain below that order (d) will be suspended for 3 years, and considering all these circumstances, I was of the view that extending orders (b) and (c) in the light of this was reasonable. I did not disturb the DJ's order that overseas access may be allowed; the Father should have the room to bond with N without such a restriction during these few precious periods of access time he has with N.

34 The Father also sought access in the US up to twice a month from Friday to Sunday, if he is residing in or can otherwise travel to the US. Without relocating to the US, I did not think it practically feasible to grant such frequent access up to twice a month – court orders should reflect practical reality. The DJ ordered 2 additional access periods in the US up to 5 days each time in order (c). I adjusted this order to 2 such access periods each year in the US, up to 10 days each time. If the Father is making the long trip to the US, I thought it was

reasonable for him to have a longer period of time in the US with N. Further, as I have stated earlier, order (d) is suspended for 3 years (see [33] above). Alternatively, the Father may take up to 4 separate access periods to exercise these additional 20 days of access in the US. For example, the Father may exercise 2 periods of access of up to 10 days each time, or he may exercise 3 or 4 periods of access of various lengths, the longest being 10 days in a continuous period, and up to a maximum total of 20 days under this order. I noted that the Mother herself proposed that access to the country of the Father's residence be replaced with 2 additional periods of access in the US per year for up to 5 continuous days each time.

35 The Father also appealed against the order imposing the condition that there be no third-party present during access. In the light of the history of the parties' circumstances and the Father's concessions on some of his negative conduct, the DJ was not wrong to impose this restriction. This order already excludes family members from this restriction and the Father can have paternal relatives present.

36 The Father also sought restrictions on N's travels, while the Mother's counsel submitted that there is no necessity for these restrictions. I agreed with the Mother's counsel; these are parenting issues in which the court ought to be slow to intervene. The parents must discharge their parental responsibility to safeguard N's wellbeing.

37 The Mother also appealed against aspects of the DJ's access orders. Her counsel submitted that overnight access should be conducted in an "environment of accountability and supervision". I was of the view that the Father should have the space to carry out bonding time and discharge his parental responsibility without the proposed restrictions.

38 The Mother disagreed with order (d) on overseas access once a year in the Father's country of residence, for up to 10 continuous days each time; she proposed replacing this order with 2 additional periods of access in the US per year for up to 5 continuous days each time. Her counsel submitted that requiring her to bring N to the Father's country of residence puts a strain on her finances. I was of the view that as all the other orders already require the Father to travel to the US for access and there are travel costs involved for the Father as well, one period a year for N to have access in the Father's country of residence is reasonable. The Father sought overseas access during this period of access in his country of residence. I thought this reasonable as the Father may wish, for example, to take a short trip around the region with N; such access will include overseas access. This is subject to the suspension order in the next paragraph.

39 At the hearing, the Father told the court that he has no intention to cause N to make such a long flight to Singapore, at least for these next few years. Having heard the Mother's concerns, and in the light of these circumstances, I ordered that this specific order (d) be suspended for 3 years from the date I delivered the decision. I bore in mind that with such a suspension, the other periods of access should be lengthened, and I had extended the other periods, as explained above. I clarify that when order (d) is back in force, the longer periods in orders (b) and (c) will still remain.

The child's passports

40 The Father also appealed against the DJ's order that the Mother should hold N's British and American passports. He submitted that he should hold the UK passport while the Mother will hold the American passport.

41 The Father cited two cases where each parent held one of the child's passports or important documents. I noted that he described the parents in those cases as having shared care and control. I found it consistent with case precedents for the parent with care and control to hold the child's passports. In this case, the Mother has sole care and control of N and she will hold the passports.

Orders on counselling

42 The Mother appealed against the order for her to attend counselling. I have stated above in the analysis on custody that the DJ's order for counselling could help the parties to reduce conflict. I was of the view that this was a reasonable order. While counselling fees come with some financial burdens, the facts and circumstances of this case show a deep need for the parties to be stronger parents, for the sake of N's wellbeing. The Mother has financial resources and this order is not perennial; it is for 9 months.

Maintenance of former spouse

43 The Mother appealed against the DJ's order not to grant her maintenance with no liberty to apply. She sought maintenance for herself for 2 years or until she is employed, whichever is earlier. Her counsel submitted that her unemployment was caused by the Father's actions in reneging on his agreement to allow her to relocate with N, and argued that she will face challenges in finding employment in the US in an economy hit by the pandemic.

44 Maintenance for a former wife is not compensation for loss of employment, or compensation for income one might have had the opportunity to earn. Maintenance for a former wife is based on the need for financial

preservation and evening out economic inequities arising from the role one has taken on during the marriage.

45 The DJ's order that there shall be no maintenance for the Mother was not wrong. In ordering maintenance for a former wife, the court will also take into account both parties' property and financial resources, not just ongoing income.

46 The Mother also sought a higher quantum of monthly maintenance from the Father for N. In the court below, the quantum submitted by the Mother's counsel was US$4,700, or about S$6,816. In her appeal, her counsel submitted that N's expenses were US$4,535. In her affidavit in support of adducing new evidence, she set out N's monthly expenses as US$5,053. The increase was due to slightly higher sums in some items of expenses. The DJ had used the quantum of US$4,700 in reaching her order. I did not think there was cause to disturb her order based on the Mother's alleged estimate of a few hundred dollars more than the earlier estimate. Expenses for any person are not going to be exactly the same every single month; it is common to approach maintenance as the 'budget' sum one has, to cover the likely estimated expenses.

47 I considered the DJ's reasoning and found no error in the exercise of her discretion in apportioning the share each parent should bear of N's expenses. The DJ explained that she had taken into account the Mother's earning capacity, even though she may have been unemployed at that time. The Mother also has other substantial financial resources.

Expenses

48 The Mother's counsel submitted that the Father ought to pay for the costs of shipping and related expenses of relocation. Her argument for this rests

largely on the allegation that some time in June 2018, the Father had agreed to allow the relocation and represented that he will pay for shipping their things to the US; he should not be allowed to renege on this promise. The Father explained that he never wanted N to be taken to the US permanently without him, and the Mother had badgered and pressured him into agreeing.

49 This is not the forum for the enforcement of promises. Looking instead at the matter holistically, the question is whether it is reasonable for the Mother or the Father or both to bear these relocation expenses. The Mother sought to adduce further evidence on her expenses related to the relocation. I noted that the Mother was the party who wished to relocate with N and she was not without financial resources. I did not think the DJ was in error in this respect. I therefore did not make further orders on payment of one-off relocation expenses.

50 The Mother's counsel also submitted that the Father ought to pay for N's medical expenses of S$933 for his visit to the allergist and for the associated medicines, as well as N's medical expenses of S$829 and the Mother's expenses of S$642 for their overnight stay at KK Hospital. The Mother also sought N's insurance premium expenses of US$35. The DJ opined that seeking reimbursement of these sums showed extremely petty behaviour on the part of the Mother, given that the Father had paid for most of N's expenses. Indeed, I found the Mother's conduct in respect of these small sums to be petty and calculative. I thus declined to disturb the order.

Appeal on Costs

51 The Mother appealed against the DJ's order that each party is to bear their own costs.

52 Costs orders are within the discretion of the court. The DJ had considered the applicable legal principles on costs in family proceedings and exercised her discretion accordingly. I thus declined to disturb the order on costs.

Conclusion and costs of appeals

53 I therefore dismissed both appeals, save for the different orders I have stated above. All other orders were affirmed.

54 As neither party fully succeeded in their appeals, I ordered both parties to bear their own costs in both appeals.

Debbie Ong
Judge of the High Court

Kanyakumari d/o Veerasamay, Loh Weijie Leonard and Chan Michael Karfai (Tan Kok Quan Partnership) for the appellant in HCF/DCA 55/2020 and the respondent in HCF/DCA 56/2020;
The respondent in HCF/DCA 55/2020 and the appellant in HCF/DCA 56/2020 in person.