IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 48

Originating Summons (New Legislation) No 11 of 2024

Between

WVG

… *Applicant*

And

(1) WVH
(2) WVI

… *Respondents*

In the matter of District Court Appeal No 123 of 2023

Between

WVG

… *Appellant*

And

(1) WVH
(2) WVI

… *Respondents*

JUDGMENT

[Family Law — Procedure — Extension of time]

WVG
v
WVH and another

[2024] SGHCF 48

General Division of the High Court (Family Division) — Originating Summons (New Legislation) No 11 of 2024
Choo Han Teck J
27 November 2024

20 December 2024 Judgment reserved.

Choo Han Teck J:

1 The underlying dispute from which this present originating summons arises concerns the appointment of deputies over the personal welfare, property, and affairs of an individual, P, who was diagnosed with dementia in January 2020. P is presently 71 years old. The first respondent is P's eldest daughter, and the second respondent, his youngest son. The applicant, a 62-year-old Singaporean woman, has been engaged in an extra-marital relationship with P since 2014, when P separated from his wife and moved in with the applicant. Between 2015 and 2022, P and the applicant travelled together on at least 24 occasions.

2 In April 2021, P's wife filed for divorce. P's health has deteriorated since his diagnosis in 2020, and he has lost mental capacity. Accordingly, in July 2022, the respondents applied *vide* FC/OSM 233/2022 ("OSM 233")

seeking to be appointed as joint deputies over P's personal welfare, property, and affairs. This was primarily to enable them to instruct counsel to act for P in the divorce proceedings. Throughout the proceedings in OSM 233, the respondents did not disclose the relationship between P and the applicant. The applicant was neither served nor informed of the proceedings in OSM 233. OSM 233 was granted in September 2022, and the respondents were appointed as joint deputies over P's personal welfare, property, and affairs. P's relationship with the applicant came to the court's attention only in April 2023, when the respondents filed a summons for an order that the applicant be prevented from access to P. The District Judge ("DJ") thus ordered that the summons be served on the applicant.

3 After the DJ's directions, the applicant learnt of OSM 233 and proceeded to file FC/OSM 253/2023 ("OSM 253") in August 2023 to revoke the deputyship order made in OSM 233 under s 20(7) of the Mental Capacity Act 2008 (2020 Rev Ed) ("MCA"). The applicant also filed FC/SUM 3230/2023 seeking an interim order for her to be added as a third deputy of P, pending the determination of OSM 253. The DJ handed down her decision on 1 December 2023. She dismissed the applicant's application in OSM 253 but appointed the applicant as joint deputies over P's personal welfare. The DJ also made certain orders pertaining to P's living arrangements.

4 Both the respondents and the applicant brought cross-appeals against the DJ's decision on 18 December 2023. HCF/DCA 123/2023 ("DCA 123") was the applicant's appeal against the DJ's decision to dismiss OSM 253 while HCF/DCA 121/2023 ("DCA 121") was the respondents' appeal against the whole of the DJ's decision save for the dismissal of OSM 253. As the parties engaged in settlement discussions, the timelines for the cross-appeals were held in abeyance. However, the attempt to resolve the dispute was unsuccessful and

the parties were directed at a pre-trial conference on 27 August 2024 to file their respective cases and a joint record of appeal by 8 October 2024.

5 The applicant failed to file her appellant's case and record of appeal (the "Appeal Documents") in DCA 123 on 8 October 2024. At the material time, she was represented by Mr Manickavasagam, who took over the matter from the applicant's former solicitors on 13 August 2024. As a result of the failure to meet this deadline, DCA 123 was deemed withdrawn on 10 October 2024. The applicant made a request for an extension of time to file the required documents on 18 October 2024, which was accompanied by an affidavit filed by Mr Manickavasagam on 11 October 2024, in which counsel explained that "due to poor health, [he] over-looked the Court's directions and did not file the Appellant's Record of Appeal and Appellant's case in time".

6 The respondents agreed to this request and accordingly, the applicant commenced this present originating summons, HCF/OSN 11/2024, on 14 October 2024, applying for an extension of time to file the record of appeal and appellant's case, and for her appeal in HCF/DCA 123/2023 ("DCA 123") to be reinstated.

7 The parties were in general agreement concerning the applicable legal principles to an application for extension of time articulated in *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") and applied recently in *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5, namely:

(a) the length of delay;

(b) the reasons for the delay;

(c) the applicant's chances of success on appeal; and

(d) any prejudice that the respondents would suffer if the extension of time is granted.

8 Counsel for the respondents, Ms Eva Teh, brought to my attention the Court of Appeal decision of *AD v AE* [2004] 2 SLR(R) 505 ("*AD v AE*"), in which the Court of Appeal considered that non-compliance with the rules of procedure in the context of matters involving the welfare of the children should not be governed by a more relaxed regime compared to civil proceedings. The court held that finality was no less important in the context of custody proceedings than in civil proceedings. It was of the opinion that uncertainty would not be in the interest of the child: at [22]. Ms Teh says that a similar principle should extend to proceedings under the MCA because the uncertainty as to who P's deputy should be continues to affect P's care.

9 I agree with Ms Teh in so far as finality remains of primary importance and that there did not exist a more liberal regime for considering applications for extension of time under the MCA. However, it must also be borne in mind that the consideration of an application for extension of time ultimately depends on the facts. The court is bound to inquire as to where the justice of the case lies, and accordingly, whether the application is one which is deserving of the court's sympathy: *Sunpower Semiconductor Ltd v Powercom Yuraku Pte Ltd* [2023] SGHC(A) 14 at [21] and *Lee Hsien Loong* at [31]. Seen in this light, although the rules of procedure are no less stringent, it is relevant to the assessment of the "justice of the case" that the nature of a deputyship application is that the true beneficiary of the application is not the contesting applicants, but P, a third party who lacks mental capacity and is thus wholly reliant on the adjudication of the deputyship in his best interests (as necessitated by s 20(4) read with s 6 of the MCA). With this in mind, I turn to the assessment of the four factors.

10 Concerning the length of the delay, Ms Teh suggests that the length of delay is 50 days, being time from which the Appeal Documents were due, 8 October 2024, to the date of the hearing of this application, 27 November 2024. Counsel for the applicant, Mr Manickavasagam, took the position that the length of delay was to be measured from the date on which DCA 123 was deemed withdrawn, 10 October 2024, to the date on which this summons was commenced, 14 October 2024.

11 I am unable to accept Ms Teh's submission. It is well established that the length of delay is calculated from the breached deadline to the date on which the application for extension of time is commenced: see the Court of Appeal decisions of *Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202 at [18] and *Jumaat bin Mohamed Sayed and others v Attorney-General* [2023] 1 SLR 1437 ("*Jumaat*") at [36]. Therefore, the length of delay, being the time from the date on which the Appeal Documents fell due to the commencement date of this summons, is 6 days. Compared to the delay of 17 days in *Jumaat* and 49 days in *AD v AE*, the length of delay in the present case is relatively short. However, the reasons for this delay are even more important.

12 Mr Manickavasagam, by his affidavit filed on 11 October 2024, unequivocally accepts full responsibility for the non-compliance with the timelines. He explained in his affidavit that from 27 August 2024, being the date on which directions were given to file the Appeal Documents, to 11 October 2024, his health had been adversely affected by his Type II diabetes condition which in turn affected his skin and eyesight. He says that on 13 August 2024, he could not see in both his eyes. Even after medical appointments on 19 August, 20 September and 24 September, the condition of his left eye showed improvement but vision in his right eye remained impaired. He

explained that he had also sustained a fall on 5 September 2024 and was on medical leave for four days after the incident.

13 I sympathise with Mr Manickavasagam's health problems, but they are scant justification for his non-compliance with the timelines. First, Mr Manickavasagam was cognisant of his eye condition on 13 August 2024. Yet, at the pre-trial conference on 27 August 2024, he did not tell the court about it. Instead, Mr Manickavasagam stated that he had no objections to the timelines. Second, based on the correspondence between the parties' solicitors which have been placed before me by the respondents, the respondents were prepared to have a consent order extracted as early as 15 October 2024 for the extension of time for the Appeal Documents to be filed by 18 October 2024. However, parties were unable to agree on the wording of the consent order because —

(a) Mr Manickavasagam wanted an agreement by consent that there would be no order as to costs so that Mr Manickavasagam would not have to bear personal costs; and

(b) Mr Manickavasagam requested for the Appeal Documents to be filed within "seven days of the extraction of the order", but the respondents' counsel insisted on the deadline of 18 October 2024.

14 These events are relevant to the reasons for the delay in so far as they were the reasons for which the application became a contested one. I am of the view that the former, being an entirely self-serving reason for the delay in extracting the order, was unacceptable. However, I accept that there was reason for Mr Manickavasagam to dispute on the latter reason, *ie*, the wording of the order. To adopt the respondents' wording might have created an anomalous situation if the order were only made after 18 October 2024. It is common for

parties to undertake to file documents within a certain period of time after the grant of the application: see *Sunpower Semiconductor Ltd v Powercom Yuraku Pte Ltd* [2023] SGHC(A) 14 at [18]. Therefore, I am not minded to give weight to the delay attributable to this disagreement between the parties.

15 I turn to the merits of the intended appeal in DCA 123. It is well established that if an appeal is "hopeless", an extension of time would not be warranted. Ms Teh submits that in so far as the applicant made no arguments as to why she should manage P's property and affairs, this aspect of her appeal is "hopeless". However, Ms Teh accepts that concerning P's personal welfare, this is not a hopeless appeal and thus the factor of the merits of DCA 123 is at best neutral in determining if an extension of time is warranted.

16 I am of the view that this is a far too narrow approach to the issues in DCA 123. The appeal in DCA 123 is against the dismissal of the applicant's application for revocation of the orders made in OSM 233. In any application for deputyship under the MCA where the best interests of P is of paramount importance, the non-disclosure of material facts must be scrutinised. This is all the more so where the non-disclosure involves an alternate choice of deputy whose appointment may be in the best interests of P. The DJ noted that the non-disclosure of the applicant's existence was "regrettable", but held that:

> … the failure to recognise the [applicant] as a relevant person does not in and of itself necessitate a revocation unless the appointment of the defendants was inappropriate.

17 In my view, DCA 123 raises important issues which would benefit from the clarification of a higher tribunal. It appears that the inappropriateness of the respondents' appointment is a separate issue from the inquiry of whether their appointment should be revoked for non-disclosure of material facts. The former would be the natural inquiry if the decision to appoint them was challenged on

appeal. But the situation in this case is different. By their non-disclosure, the respondents deprived the court of a different choice of deputy — the applicant. Leaving aside for a moment the question of their intentions for the respondents' non-disclosure, the effect of this non-disclosure was that the court was limited in its range of alternatives to give effect to the best interests of P. Assuming *ex hypothesi* that the applicant had been served in OSM 233 and allowed to contest, the court could either appoint

(a) the respondents only;

(b) the applicant solely; or

(c) both as joint deputies.

However, because of the respondents' non-disclosure, the assessment of P's best interests was fundamentally limited because it could not be balanced vis-à-vis the applicant. In other words, although it may have been appropriate to appoint the respondents as deputies if they were the only applicants, this may not necessarily be the case if the court is aware of a wholly different person who could serve as P's deputy.

18 In this regard, the intended inquiry in the revocation application does not appear to consider this. The DJ's examination at [13] to [18] of her decision as the appropriateness of appointment of the respondents seemed to presuppose that it would be in the best interests of P to have the respondents appointed. It does not consider the possibility that the best interests of P could be served by having an alternative candidate, the applicant, be appointed as sole deputy, whose existence was suppressed by the respondents in OSM 233.

19 These are issues which can only be determined with the benefit of argument and evidence, which are not before me. But the nature of the

procedural history and the manner in which the cross-appeals were brought are such that if DCA 123 were not reinstated, the appeal court hearing this matter would be hamstrung in that it would no longer be open to the court to appoint the applicant as the sole deputy, noting that DCA 121 does not put in issue the DJ's dismissal of the revocation application. For these reasons, I am of the view that the justice of the case requires that DCA 123 should be instated, so that the appeal court has the full range of options to give effect to the best interests of P, in line with the MCA.

20 As for the final factor of prejudice, Ms Teh submits that there would be a delay to the hearing of DCA 121, and that they would need sufficient time to prepare for DCA 123. This, she says, would be prejudicial to the finality of the proceedings. She also points to prior settlement discussions which led to the lengthy abeyance in timelines (see above at [4]) which the applicant allegedly reneged on before they were approved and extracted.

21 On the first reason, the prejudice to finality alone is not a sufficient ground for prejudice because any decision to grant an extension of time comes at the expense of finality. Were that a sufficient reason, there would be no room to grant any extension of time. Similarly, the need to prepare for and respond to DCA 123 is not a valid one. As for the alleged reneging on the settlement discussions, these are discussion which occur on a without prejudice basis — they may be relevant in the context of costs, but they should not have a bearing on the assessment of the merits of the application in the present case.

22 Finally, Ms Teh submits that any delay will likely result in continued disruption to P and difficulty for P's caregivers. In my view, the nature of proceedings under the MCA is such that reaching the correct decision as to the who should look after P is far more important than a convenient outcome. I am

therefore not persuaded that there is significant prejudice to P and/or the respondents.

23 For the reasons above, I grant the application to restore DCA 123. I direct that the Appeal Documents are to be filed within seven days of this order. The usual timelines are to apply for the filing of the respondent's case.

24 As for the costs of this application and the deemed withdrawal of DCA 123, in the light of Mr Manickavasagam's explanation on affidavit that the fault was entirely his, it would not be fair for the applicant to bear the costs of these proceedings. I therefore direct Mr Manickavasagam to show cause, pursuant to r 859(2) of the Family Justice Rules 2014, as to why he should not be made to personally bear the costs of these proceedings which, in my view, have been incurred unreasonably or improperly, and wasted by his failure to conduct proceedings with reasonable competence and expedition.

- Sgd -
Choo Han Teck
Judge of the High Court

Manickavasagam s/o R M Karuppiah Pillai (Manicka & Co) for the applicant;
Eva Teh Jing Hui, Benjamin Kang and Joan Lim-Casanova (K&L Gates Straits Law LLC) for the respondents.
