Re A (an infant)
[2002] SGHC 60

Case Number : OS 5091/2000, 5092/2000 ,RA 720055/2001

Decision Date : 28 March 2002

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Tan Teng Muan and Deanna Kwok (Mallal & Namazie) for the husband (Plaintiff in OS 5092/2000 and Defendant in OS 5091/2000); Yap Teong Liang (Salem Ibrahim & Partners) for the wife (Plaintiff in OS 5091/2000 and Defendant in OS 5092/2000)

Parties : —

Conflict of Laws – Natural forum – Custody of child – Father French citizen – Mother citizen of both Morocco and France – Custody proceedings by both in Singapore – Divorce and custody proceedings by father in France – French court granting interim custody to mother with access to father – Mother seeking stay of all proceedings in Singapore in favour of proceedings commenced by father in France – Child living with mother in London – Whether Singapore or France the more suitable forum to decide custody of and access to child

: This was an appeal by the father against the decision of the district judge in chambers. The district judge granted the mother`s application for a stay of all proceedings in Singapore in favour of the proceedings commenced by the father in the court in France in which he had petitioned for divorce and the ancillary reliefs of custody and access. Having considered the grounds of the mother`s application and all the circumstances, I agreed with the decision of the district judge and accordingly dismissed the appeal with costs. The father has filed an appeal to the Court of Appeal against my decision. I now set out the material circumstances and my reasons.

The main question before the district judge and this court in chambers was whether Singapore or France would be the more suitable forum to decide the questions of custody of and access to the daughter who was about seven years old when the matter was considered by the district judge.

It was not in dispute that both the Singapore court and the French court have jurisdiction to decide the questions of custody and access. It was also common ground that the forum with the most real and substantial connections with the adjudication of the issues of custody and access would be the more appropriate forum. As will be seen later, the father made the point that considerable evidence existed in Singapore and that though the French court would consider the evidence and make its own inquiries it would not be the practice in the French court to allow examination of witnesses. **De Dampierre v De Dampierre** [1988] AC 92[1987] 2 All ER 1 dealt with similar issues. In that case, matrimonial proceedings between the two French nationals were instituted both in England and France. In proceedings in England, the wife had certain juridical advantages in relation to the division of matrimonial property. Lord Goff said ([1988] AC 92 at 107-108; [1987] 2 All ER 1 at 10):

> *Under the principle of forum non conveniens, now applicable in England as well as in Scotland, the court may exercise its discretion under its inherent jurisdiction to grant a stay where `it is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of the parties and for the ends of justice`: see **Sim v Robinow** (Unreported) , 668, per Lord Kinnear. The effect is that the court in this country looks first to see what factors there are which connect the case with another forum. If, on the basis of that inquiry, the court concludes that there is another available forum which, prima facie, is clearly more appropriate for the trial of the action, it will ordinarily grant a stay, unless there are*

> *circumstances by reason of which justice requires that a stay should nevertheless not be granted: see* ***Spiliada Maritime Corp v Cansulex Ltd, The Spiliada*** *[1987] AC 460[1986] 3 All ER 843[1986] 3 WLR 972, 984-987. The same principle is applicable whether or not there are other relevant proceedings already pending in the alternative forum: see* ***The Abidin Daver*** *[1984] AC 398[1984] 1 All ER 470, 476, per Lord Diplock. However, the existence of such proceedings may, depending on the circumstances, be relevant to the inquiry. Sometimes they may be of no relevance at all, for example, if one party has commenced the proceedings for the purpose of demonstrating the existence of a competing jurisdiction, or the proceedings have not passed beyond the stage of the initiating process. But if, for example, genuine proceedings have been started and have not merely been started but have developed to the stage where they have had some impact upon the dispute between the parties, especially if such impact is likely to have a continuing effect, then this may be a relevant factor to be taken into account when considering whether the foreign jurisdiction provides the appropriate forum for the resolution of the dispute between the parties.*

The central question to address in this appeal is this: which was the more suitable or appropriate tribunal to resolve the issues between the parties. The burden of proof was upon the wife to show that the French court was the more suitable or appropriate tribunal. In the context of the guardianship of a child, and the related issues of custody, care and control, it seemed to me that we had to take into account a host of factors and determine which forum would more effectively evaluate the best interests of the child, in terms of a tribunal`s understanding of and affinity to the cultural background, value systems, social norms and other societal circumstances relevant to the best way in which the child is to be brought up. It is to those factors which I now turn; and I begin with the relevant factual background.

The factual background

At all material times, the father is a French citizen, having been born on 12 June 1960 in Agen (Lot et Garonne), France. Though he is a legally trained lawyer, and a member of the Paris bar, he no longer practised law. He became an in-house bank tax consultant and at all material times he was working for a bank in Singapore. The mother was born on 20 November 1963 in Kelaa Des Srangna, Morocco. She is a medical doctor in charge of clinical research. As of July 2000 she was working as the Registrar of the Department of Infectious Disease, Communicable Diseases Centre, Tan Tock Seng Hospital. She is a citizen of both Morocco and France. From August 2000 she took up another employment in England, tenable for three years. The mother brought the daughter along and they have been living in London since August 2000. As from that date her habitual residence was changed from Singapore to London.

The couple first met way back in 1988 when they were both working in Paris, France. At that time, he was an active homosexual. She knew about this. However, they married on 26 June 1993 in Biscarosse, France.

The daughter was born on 30 October 1994 in Paris (14th District), France. The family of three lived in Paris, France until the parents moved to Singapore in January 1998.

It has to be noted that the marriage has been turbulent, to say the least. It is certainly not

appropriate and I do not wish to convey any impression that I am making any finding of facts, drawing any inferences or apportioning blame. As the events would affect the daughter`s interest, I shall be both circumspect and brief in describing some of the events which had happened in Singapore. The father carried on his bisexual activities; he claimed that it was not in any way at the expense of the marriage and they did not render him in any way unfit to exercise guardianship rights over the daughter. The wife on the other hand alleged that he had been callous and had shown propensity for domestic violence. She also alleged that the father had subjected the daughter to sexual abuse. The incidents were reported to the Ministry of Community Development (`the MCD`) and the police. Eventually, the MCD closed their investigations and did not place any restrictions on the father from seeing the child. The police ceased their investigation after the daughter left Singapore. She was no longer within the jurisdiction of the police. The father most strenuously denied this allegation as scurrilous and had produced evidence of independent experts to prove that nothing of the kind had happened and that in fact the daughter had been coached and taught by the wife to imagine those things. One doctor had opined that the wife had in the latter part of 2000 coached the daughter to draw phallic symbols and that it was calculated to make the child appear to be a victim of child sexual abuse. The father went on to allege that the wife had assaulted him in the presence of the daughter and had caused the child a lot of mental anguish and pain. I repeat that apart from stating the allegations, I am not going into the allegations and counter-allegations. I must also say that I do not know if there are any merits in the allegations or the counter-allegations.

Arising out of a number of domestic incidents, the wife on 14 June 2000 instituted an originating summons in the Singapore High Court under the Guardianship of Infants Act (Cap 122) and asked for the following reliefs. She asked for sole custody, care and control of the daughter with no access to the father until further order, maintenance for the child, a business class air-ticket once a year to France. Affidavits were filed by the mother making a number of allegations about the unfitness of the father which disqualified him from the exercise of any guardianship rights over the daughter. He countered with allegations of his own, that she had extra-marital affairs in Singapore and elsewhere and had maliciously made use of the daughter to blackmail him, without any regard for the consequences upon the daughter.

On the following day, the father commenced similar proceedings under the same Act against the mother for interim legal custody of the daughter `pending the outcome of the (father`s) divorce and custody proceedings in France against the (mother)`. He also asked that the mother be permitted supervised access to the daughter in the presence of a third party. In support of his application, he alleged that the wife was having an affair with a musician in a hotel and that she had conducted the relationship in the presence of the daughter, which was not good for the daughter. He alleged that she had received psychiatric treatment which raised serious questions about her fitness to exercise custody, care and control of the daughter. He also accused her of having inflicted injuries on herself and falsely accusing him of having inflicted them. He also accused her of unlawfully taking the daughter out of the court`s jurisdiction. The mother had in mid-2000 taken the daughter to Durban, South Africa where she attended a conference to help those suffering from Aids.

In the father`s affidavit filed on 15 June 2000 he `reserved` his `rights as a French citizen` to have his divorce and ***custody*** matters heard by the French court under arts 14 and 15 of the French Code of Civil Proceedings. He went on to declare that the originating summons that he had filed did not `imply that he submitted to the jurisdiction of the Singapore courts on any issue of (his) divorce`.

At about the same time, the father had engaged lawyers in France. On 14 June 2000 he filed for divorce in the District Court of Paris, France, and for orders in relation to the daughter, which included orders relating to custody and access. In that petition, he applied for interim custody of the daughter pending the hearing of the divorce petition. In April 2000 the District Court of Paris

attempted to reconcile the parties. On 10 June 2000 the District Court of Paris permitted the father to proceed with the divorce petition. As interim measures, the court ordered, inter alia, that both parents exercise parental authority in common, that the daughter shall remain at the mother`s domicile and usual place of resident, that the father have fortnightly access to the daughter, that the father pay maintenance for the daughter and alimony for the mother and that a court appointed doctor perform a medical psychological examination on the daughter and interview the parents. Dr Diran Donabedian was appointed as the doctor by the Judge of Family Affairs. The father refused to be interviewed by Dr Donabedian. In March 2001, he appealed against the orders made on 10 June 2000 and applied to vary the access and maintenance. He failed in his appeal. He appealed again in April 2001 but his second appeal failed.

Finally, the father agreed to be interviewed by Dr Donabedian. He had to ask the court to appoint the doctor again and for that he was ordered to pay 2,000 Francs. He was examined and Dr Donabedian submitted a further report to the court after interviewing the father. In the report dated 20 June 2001 the doctor opined that the maternal home with the mother in London, UK was `enough supporting and structuring`.

In the meantime, the District Court of Paris ordered that the daughter remain with the mother in London. The father has been exercising his rights of access pursuant to the order of 10 June 2000. He had later obtained overnight access.

Counsel for the father made two principal submissions in support of his application that the High Court of Singapore should decide on the question of interim custody. First, he said all the evidence supporting or refuting the allegations and counter-allegations of both parties were available in Singapore. The witnesses could be examined and cross-examined in court. According to the opinion of an expert on French law, Mr Roger-Vasselin, it was confirmed that an order of this court would be enforceable in France since the five conditions would be satisfied, namely: (1) the Singapore court would be competent to issue the order; (2) the proceedings here would be regular; (3) Singapore law would be the applicable law under the French rules governing conflicts of law; (4) the judgment would be compatible with international public order rules; and (5) the judgment would be exempt from `fraud to the law`. In view of the juridical and forensic advantages, counsel submitted that Singapore courts were the appropriate and suitable forum. Second, counsel made the alternative submission that justice would require a refusal of the stay which the mother was asking because there were special circumstances. Though the French court had jurisdiction, he submitted that the best interest of the daughter required early determination of the questions of custody, care and control. Whatever orders which the French court had made were merely procedural and interim in nature. The mother had not filed her answer to the divorce petition. Vital evidence on the unsuitability of the mother to have custody were easily available in Singapore.

Having considered the overall picture, I was not persuaded by those submissions. In the context of these proceedings involving the custody of a child, an important consideration must be the child`s cultural connections with and affinity for the cultural and societal environment which the forum serves. This is self-evident: a child`s best interest is best determined by the forum which is best equipped to determine what is best for the child in all material respects ranging from its health care, education, moral and spiritual and other relevant needs. From this point of view, the French court emerged as pre-eminently more appropriate. The child was living in London with the mother at the material time. The father even obtained overnight access and had exercised it by bringing her to France to be with his extended family.

Secondly, he himself had chosen to have the issues of custody and access determined by the French court. By that choice, he clearly affirmed the positive imperatives of having the French court decide

the fate of a child brought forth by a French couple with the closest links with France than with any other country in the world. He had invoked the guardianship jurisdiction of this court by originating summons because he thought the mother was going to spirit his daughter away from the jurisdiction where the vital evidence against the mother were most easily available. I was not at all satisfied that he could not with facility provide those critical evidence to the French court. They could be made available. Counsel for the father observed that there would not be cross-examination of the witness. That feature was the same for all processes in civilian jurisdictions; it is up to the tribunal to make the inquiries and make the assessments. The quality of assessments in those civilian jurisdiction had not been shown to be inferior to those obtained in common law adversarial systems.

Thirdly, I had no doubt that medical and welfare reports would be available to the court from experts appointed to assist the court in France. They can report both on the psychological suitability of both parties as parents and on the psychological profile of the daughter, including the question whether she had been sexually abused by the father. Undoubtedly, she could be interviewed with profit by the tribunal. There was ample evidence, and it was not seriously disputed, that the daughter was intelligent and mature.

Fourthly, I was not at all concerned that any injustice would arise if questions of custody and related issues were left to the French court to determine. The point was made by the father that `proceedings in France (took) an inordinately long time to be heard`. By the time the issues of custody, care and control were decided on the merits, the child would have been under the mother`s care and control for two years. The short answer was that in the opinion of the doctor appointed by the French court, the maternal home in London provided by the mother was sufficient and provided `structuring` necessary for the child. On the contrary, I feared that if I did not stay both the originating summonses, the result would be that the Singapore High Court would have continued with hearing the father`s application for interim custody, which would have included a hearing of a number of witnesses and the examination of the daughter. That process could have further destabilised the daughter. On the other hand, the French court had granted interim custody to the mother with overnight access to the father who, I had noted, had to fly to England to exercise his rights of access. That would be the price which any true love of a father could sustain without any complaint.

Having considered all these main reasons and all other relevant circumstances as a whole, I decided that a stay of both originating summonses in preference and deference to the French court was inevitable.

Outcome:

Appeal dismissed.