

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 9

District Court Appeal No 158 of 2021

Between

WAH

... Appellant

And

WAG

... Respondent

District Court Appeal No 159 of 2021

Between

WAG

... Appellant

And

WAH

... Respondent

JUDGMENT

[Family Law — Custody — Access]

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WAH
v
WAG and another appeal

[2022] SGHCF 9

General Division of the High Court (Family Division) — District Court
Appeal Nos 158 and 159 of 2021
Choo Han Teck J
20 April 2022

28 April 2022

Judgment reserved.

Choo Han Teck J:

1 The wife is an accountant, and the husband is a practicing lawyer. The parties married on 4 February 2018. After the marriage, the wife moved to the husband's parents' home where the husband resides ("Home A"). In October 2018, the husband's sister ("P") and P's family moved into Home A. The wife was not happy with the move.

2 In April 2019, the wife gave birth to the child. The wife says that P's presence in Home A has brought a lot of unhappiness. The husband says that the wife will often instigate him to force P out of the house. This led to the deterioration of the parties' relationship. In November 2019, the wife moved with the child to her own family's home ("Home B").

3 The parties' relationship became increasingly acrimonious and they pursued a litigious course of conduct over the custody and control over the child. The procedural history of the parties' litigation is summarized as follows:

(a) On 22 June 2020, the wife filed FS/OSG 84/2020, an application under Section 5 of the Guardianship of Infants Act 1934 ("GIA"). On the same day, the wife filed FC/SUM 1588/2020 for the immediate return of the child, saying that the child has been "kidnapped" by the husband the previous day because the husband did not return the child after exercising his usual access.

(b) On 24 June 2020, the learned District Judge Sheik Mustafa ("DJ Mustafa") made the interim orders for:

- (i) the parties to have joint custody of the child;
- (ii) the wife to have sole care and control; and
- (iii) the husband to have unsupervised access every Saturday from 11am to 6pm.

DJ Mustafa also ordered for the husband to return the Child to the wife on 25 June 2020 at 6pm.

(c) Despite the interim orders, the husband did not return the child to the wife on 25 June 2020. On 26 June 2020, the wife filed an urgent application in FC/SUM 1663/2020 seeking for the husband to produce the child at the Family Justice Courts to return the child to the wife. On the same day, the learned District Judge Janice Chia ordered the husband to produce the child. The husband complied.

(d) Both parties appealed against the interim orders made by DJ Mustafa — HCF/RAS 11/2020 (“RAS 11”) and HCF/RAS 12/2020 (“RAS 12”). The parties also filed for stay applications — FC/SUM 1656/2020 and FC/SUM 1960/2020. The stay applications were dismissed on 30 June 2020.

(e) On 13 July 2020, the husband filed FC/OSG 101/2020, which is a cross-application under Section 5 of the GIA.

(f) On 10 September 2020, the parties’ appeals in RAS 11 and RAS 12 were heard in the Family Division of the High Court before Andrew Ang J who ordered for the husband to be given access to the child every Tuesday and Thursday from 11am to 3pm and every Saturday from 11am to 5pm.

(g) On 5 October 2020, the wife filed FC/SUM 2987/2020 to change the access timings. On 24 November 2020, the husband filed FC/SUM 3708/2020 for resumption of access and make-up access. On 9 December 2020, the wife filed FC/SUM 3900/2020 to suspend access. The three applications were heard by District Judge Chia Wee Kiat (“DJ Chia”) on 14 January 2021. DJ Chia varied the interim orders for the Husband to be given access to the Child every Tuesday and Thursday from 2pm to 6pm and every Sunday from 12pm to 6pm.

4 On 2 March 2021, the OSG applications came up for hearing before DJ Chia. On 24 November 2021, DJ Chia ordered for the access arrangements on 14 January 2021 to continue until 2 January 2022. DJ Chia further ordered that with effect from 3 January 2022, the husband shall have unsupervised overnight access on the weekend from Friday 6pm to Saturday 6pm (“overnight access order”). DJ Chia also ordered that with effect from 27 June 2022, the

husband shall have unsupervised overnight access on the weekend from Friday 6pm to Sunday 11am (“step-up access order”). DJ Chia also ordered for the parties to attend counselling programmes by counsellors from Divorce Support Specialist Agencies (“DSSA”) to facilitate the implementation of the access arrangement and to improve the parties’ relationship (“counselling order”). DJ Chia ordered the parties to bear their own costs (“cost order”).

5 On 7 December 2021, both parties filed cross-appeals against DJ Chia’s orders on 24 November 2021. The husband is the appellant in HC/DCA 158/2021, and the wife is the appellant in HC/DCA 159/2021.

6 In HC/DCA 158/2021, the husband is seeking:

- (a) additional three hours of mid-week access on Wednesday evening to pick up the Child after school and to return the Child by 8pm (“mid-week access”);
- (b) additional counselling orders because the parties’ counselling sessions have come to a complete stop when the DSSA counselor took the view that the parties’ relationship was too acrimonious to mediate; and
- (c) specific access orders for school holidays, public holidays, bereavement access and make-up access.

7 In HC/DCA 159/2021, the wife appeals against the overnight access order, step-up access order and cost order granted by DJ Chia. The wife proposes for extended day access to be given to the husband on Sunday from 10am to 8pm before eventually transitioning to overnight access.

8 The parties have since commenced divorce proceedings. The husband filed for divorce on 27 January 2022. The parties are scheduled to attend the Family Dispute Resolution (Child Focused Resolution Centre) (“FDR (CDRC)”) conference on 12 May 2022. The parties are also scheduled for a case conference on 23 May 2022. Therefore, DJ Chia’s access orders on 24 November 2021 are interim in nature since the issues as to custody, care and control and access will be reopened again at the hearing for ancillary matters in the divorce proceedings.

9 Interim and interlocutory orders are made between the commencement of an action and the trial (or final hearing of the action). They are, as the terms suggest, intended to be temporary, pending the trial. They are thus usually made to preserve the status quo or to prevent an immediate loss or damage that, if not contained, would render the trial meaningless. Sometimes they are made to facilitate the trial, for example, by requiring a party to disclose documents in his possession, or to answer questions that, when answered, may reduce the length of the trial.

10 Interim and interlocutory orders do not bind the trial judge, and the trial judge may make orders at the trial varying the earlier orders. The fundamental purpose of interim and interlocutory orders is, therefore, to ensure a smoother, quicker trial, and to keep each party’s position evenly balanced until the trial. That purpose is lost if the justice system is clogged with unmeritorious appeals against interlocutory orders.

11 There are sometimes good reasons for such an appeal to be lodged, but they are often lodged with little merit. It must also be remembered that many interlocutory orders are discretionary in nature or discretionary to a large extent. The exercise of a court’s discretion, unlike the application of an express rule or

principle, should not be disturbed except in the most obvious instance in which the exercise of that discretion had led to a miscarriage of justice.

12 A court's decision to allow an adjournment or an extension of time to comply with a previous order is the clearest instance of the exercise of judicial discretion. Appealing against such an order should only be made in the rarest of cases – to prevent a clear and irredeemable injustice.

13 In family matters, it behoves counsel to impress upon their clients that the resolution of their dispute ought to be made with a clear mind. This often seems terribly difficult because of the rage and animosity between people whose relationships had from love to hatred turned. Nonetheless, litigants should be advised that interlocutory orders should not be lightly appealed against. It will help, of course, to explain to the parties that the trial judge has the final say and that no party is ever really permanently disadvantaged by an interlocutory order. In this case, one of the parties is himself a lawyer.

14 A constant interference by an appellate court over interlocutory orders may lead to a perversion of justice in subtle ways. It may cause the lower court to misapprehend the appellate court's views as to the case. That may thus unduly influence the mind of the trial judge below. It will also lead to parties continuously appealing in the hope that he or she may manoeuvre the trial judge to lean towards his or her position at trial. Sometimes parties appeal interlocutory orders simply because they can afford the costs of doing so. This kind of appeals wear down a poorer opponent. That is neither fair nor just. Sometimes, of course, the grievances are genuine, but in the overall context, the disputes are best left to be resolved at the final hearing unless urgent intervention is needed – but that is what the interim orders are intended for.

15 In the present case before me, the parties in a divorce are both well-to-do and educated. One is a lawyer and the other an auditor in the civil service. The present appeals are against an interim order for custody, care and control of their three-year-old son. The final hearing of the ancillary matters should be held sometime later this year. A case conference is scheduled for 23 May 2022.

16 The quarrel over the days for access at this stage is unwarranted, given that there is nothing ostensibly or manifestly wrong with the decision below. Since these are only interim orders, and may themselves be varied by the trial judge, it is not in the best interests of the child, the parents, nor justice to make small changes before the trial. After the trial, the parties are at liberty to appeal against that judge's final orders; but it is pointless to appeal against them now because even if the orders are varied by this court, they remain interlocutory orders. In the meantime, the objective is to prevent a situation where, as the saying goes, too many cooks spoil the broth.

17 For the above reasons, both appeals are dismissed with each party paying its own costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Yeo Khee Chye Raymond (Raymond Yeo) for the wife;
The husband in person.