IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(A) 10

Civil Appeal No 45 of 2022

Between

UBQ

… *Appellant*

And

UBR

… *Respondent*

In the matter of Divorce (Transferred) No 1861 of 2015
(Summonses Nos 326 and 370 of 2021)

Between

UBQ

… *Plaintiff*

And

UBR

… *Defendant*

JUDGMENT

[Family Law — Custody — Care and control — Security for overseas travel]
[Family Law — Custody — Access]
[Family Law — Child — Appointment of therapist]

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v
UBR and another matter

[2023] SGHC(A) 10

Appellate Division of the High Court — Civil Appeal No 45 of 2022 and Summons 29 of 2022
Woo Bih Li JAD and Hoo Sheau Peng J
12 August, 13 September 2022

23 March 2023 Judgment reserved.

Hoo Sheau Peng J (delivering the judgment of the court):

Introduction

1 The parties are divorced. They have been engaged in protracted litigation for more than seven years. They have two sons ("the Children"). We shall refer to the parties as "the Father" and "the Mother".

2 Essentially, the present appeal ("the Appeal") is the Father's appeal against the decision of the High Court judge ("the Judge") in HCF/DT 1861/2015, dismissing his applications in HCF/SUM 326/2021 ("SUM 326") and HCF/SUM 370/2021 ("SUM 370"). The applications relate

to the welfare of the Children, and the Judge's grounds of decision are contained in *UBQ v UBR* [2022] SGHCF 13 ("the GD").

3 An appeal filed by the Mother, *ie,* AD/CA 48/2022 ("AD 48"), is closely linked to the Appeal. We shall explain further at [28]–[32] below. For now, it suffices for us to mention that on 9 June 2022, we allowed AD 48. In doing so, we issued grounds of judgment which were annexed to our minute sheet ("the AD 48 Grounds"). In this judgment, we shall refer to the matters set out in the AD 48 Grounds.

4 Apart from the Appeal, AD/SUM 29/2022 ("SUM 29"), an application by the Father for permission to adduce further evidence on appeal, is also before us.

Background

The parties' marriage and divorce

5 These are the material facts. The parties were married in 2006 in the United States of America ("the US"). The older son ("[A]") was born there in 2008. Shortly after, the family moved to Singapore. In 2010, the younger son ("[B]") was born here. The Children are now 14 and 13 years old respectively. The Father is a Canadian citizen, while the Mother and the Children are US citizens. While living in Singapore, it became the Children's routine to visit the US where they would spend time with their maternal grandmother and their cousins. Presently, all four members of the family reside in Singapore.[1] The Children study in an international school.

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[1] Grounds of Judgment in AD/CA 48/2022 dated 9 June 2022 ("the AD 48 Grounds") at [3].

6 In April 2014, the Mother moved out of the matrimonial home and commenced divorce proceedings. She also filed an application to relocate the Children to the US. On 31 March 2015, after mediation, the Mother withdrew her divorce proceedings and the relocation application.[2] Less than two months later, on 5 May 2015, the Father commenced divorce proceedings. Interim judgment was granted on 5 November 2015.[3]

The ancillary matters and the AM Orders

7 Thereafter, the parties proceeded to deal with the ancillary matters arising from the divorce. On 7 June 2018, the Mother made a second relocation application. This was FC/SUM 1980/2018 ("SUM 1980"). On 21 March 2019, she filed an application in HCF/SUM 76/2019 for, amongst other things, an expedited decision on SUM 1980. As one possible alternative, she asked that the Children be permitted to temporarily relocate to the US until the resolution of the ancillary matters in the divorce proceedings.[4]

8 On 7 May 2019, the Father filed an application, *ie,* HCF/SUM 110/2019 ("SUM 110") praying for, amongst other things, the appointment of a Child Representative. He also sought that the Children remain in Singapore to allow the Child Representative to conduct interviews of them. Tan Puay Boon JC ("Tan JC") granted these prayers on 10 June 2019.[5] Pursuant to the order of court, the Children were not able to travel to the US during the summer and winter breaks that year.

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2 The AD 48 Grounds at [4].

3 The AD 48 Grounds at [5].

4 The AD 48 Grounds at [6].

5 The AD 48 Grounds at [7]. Order of court in HCF/SUM 110/2019.

9 In 2020, the COVID-19 pandemic struck. International travel was in a state of flux. In April 2020, Singapore entered into the "Circuit Breaker" period. During this time, the parties engaged in a series of correspondence which culminated in an interim order on 26 May 2020 made by Tan JC restraining the Children from being taken out of Singapore because of the pandemic. Hence, during the 2020 summer break, the Children were again unable to travel to the US.[6]

10 On 21 September 2020, Tan JC dismissed the Mother's application in SUM 1980 to relocate the Children: see [7] above.[7] He also made orders regarding the ancillary matters ("AM Orders"). For the purposes of the Appeal, the relevant orders in relation to the Children provide that:[8]

(a) The Mother has sole care and control of the Children.

(b) The Father is to have unsupervised access to the Children at specified times during their school term. He is to have full unsupervised access during their spring break and fall break.

(c) The winter break is to be spent with the Mother.

(d) For the summer break, the Father is to have access from after school on the last Friday of the school term until the next Saturday at 8pm. He is also to have access from 2pm on the Friday two weeks before the end of the summer break, until 8pm of the Saturday before the school term resumes. The Children are to spend the rest of the summer break with the Mother.

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6 The AD 48 Grounds at [8].

7 See paragraph (c) of HCF/ORC 31/2021; The AD 48 Grounds at [9].

8 See paragraphs (b) and d(i)-(vii) of HCF/ORC 31/2021; The AD 48 Grounds at [9].

(e) During each break, the parent who is with the Children is free to travel with them without the consent of the other parent.

11 In addition, Tan JC also ordered maintenance for the Children and the Mother. For the Mother, the Father was ordered to pay $6,000 per month for a period of 48 months, and monthly rent for the Mother's accommodation for a period of 48 months (capped at the rent paid by the Father for his apartment) ("the Maintenance Order").[9] For the Children, the Father was ordered to pay monthly maintenance of $2,500 for each child, their full education, health, medical and enrichment related costs and $10,000 in yearly maintenance for each child's summer and winter break travel expenses.[10]

The Father's applications to restrain travel and the May 2021 Trip

12 On 18 November 2020, the Father filed HCF/SUM 330/2020 ("SUM 330"), which was an application to restrain the Mother from taking the Children out of Singapore during the 2020 winter break. The application was premised mainly on the risks arising out of the COVID-19 pandemic. However, the Father also brought up concerns about the Mother's relocation plans, deposing that she may use the trip to the US to support a "backdoor" relocation attempt. On 9 December 2020, this application was granted by Tan JC. Once again, the Children were not able to travel to the US for their vacation.[11]

13 On 13 May 2021, just before the summer break, the Father applied again to restrain the Mother from taking the Children out of Singapore. This was HCF/SUM 116/2021 ("SUM 116"). The Father also sought a variation of

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9 See paragraph (f) of HCF/ORC 31/2021.

10 See paragraph (e) of HCF/ORC 31/2021.

11 The AD 48 Grounds at [10].

Tan JC's access orders.[12] The Father brought the application for two main reasons. First, he claimed that he had not seen [A] for several months. Second, he argued that the COVID-19 pandemic restrictions would make it difficult for the Children and the Mother to re-enter Singapore if they travelled overseas.[13]

14 The hearing for SUM 116 was scheduled for 25 May 2021 before Dedar Singh Gill J ("Gill J"). On 19 May 2021, however, the Mother and the Children left for the US. They only returned to Singapore on 6 November 2021, almost six months later. We refer to this as the "May 2021 Trip". The Mother does not dispute that this trip was made in breach of the AM Orders. Pursuant to the AM Orders, the Father was supposed to have access to the Children from 28 May 2021 to 5 June 2021, as well as later from 23 July 2021 to 7 August 2021. However, during those periods, the Children were with the Mother in the US.[14]

15 On 8 July 2021, the Father commenced proceedings in the US under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") for the return of the Children to Singapore ("the Hague Proceedings"). Four days later, on 12 July 2021, the Father withdrew SUM 116. As for the Hague Proceedings, on 1 October 2021, after a hearing in September 2021, a US Federal Judge ordered the return of the Children to Singapore within a reasonable time. As set out above, the Mother returned to Singapore on 6 November 2021 with the Children.[15]

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12 HCF/SUM 116/2021.

13 The AD 48 Grounds at [11].

14 The AD 48 Grounds at [12].

15 The AD 48 Grounds at [13]–[14].

The Father's further applications: SUM 326 and SUM 370

16 After the Children's return to Singapore, the Father filed SUM 326 on 12 November 2021. The prayers in SUM 326 sought the following:

(a) Prayer 1: An injunction restraining the Mother from taking the Children out of Singapore without the Father's written consent or an order of court.

(b) Prayers 2 and 3: Orders for the Mother to hand over the Children's passports to the Father for safekeeping, and for the release of the passports to the Mother only with the Father's written consent or an order of court.

(c) Prayer 4: In relation to any overseas travel by the Mother with the Children (by agreement between the parties or an order of court), an order for the Mother to furnish security of $100,000 for each child to ensure his return to Singapore.

17 On 19 November 2021, the Judge heard SUM 326 on an urgent *ex parte* basis. She granted an interim injunction restraining the Mother from taking the Children out of Singapore without the Father's written consent, and ordered that the Children's passports be handed to his lawyers for safekeeping pending the hearing of SUM 326 on an *inter partes* basis ("the 19 November 2021 interim injunction").[16]

18 On 23 December 2021, the Father filed SUM 370. In the main, this was an application to vary the AM Orders on care and control, as well as access arrangements. The prayers in SUM 370 sought the following orders:

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16 The AD 48 Grounds at [15].

(a) Prayer 1: Sole care and control of the Children to the Father, with consequential changes to access arrangements.

(b) Prayer 2: Alternatively, split care and control of the Children for three months, with sole care and control of [A] to remain with the Mother, but sole care and control of [B] to be switched to the Father. After the three months, sole care and control of [A] to be switched to the Father as well. Consequential orders as to access by the Mother to the Children were also sought.

(c) Prayers 3 and 4: Certain orders to provide make-up access for the Father to the Children for the durations that the Father was deprived of such access in contravention of the AM Orders (see [10] above).

(d) Prayer 5: An order for one of three named therapists to be appointed to conduct therapy aimed at restoring the Father's relationship with [A].

(e) Prayer 6: An order for the appointment of a parenting co-ordinator.

(f) Prayer 7: An order that the parties do not disclose information relating to the proceedings to the Children, and that parties do not speak ill of each other in the presence of the Children, *ie,* to impose restraints on the parties' communications with the Children.

The decision below

19 The Judge heard SUM 326 and SUM 370 *inter partes* on 7 and 21 April 2022 and dismissed them on 10 May 2022.[17]

20 In relation to SUM 326, the Judge noted that in matters concerning the custody or upbringing of a child, "the welfare of the child is paramount, and that this principle ought to override any other consideration", citing *BNS v BNT* [2015] 3 SLR 973 at [19]: the GD at [8]. The Judge observed that there were concerns about the May 2021 Trip, including the fact that the Mother had, in breach of the AM Orders, left for the US with the Children over a period for which the Father was supposed to have access, and her conduct of making placement enquiries at several American schools. However, she considered that 2021 was an exceptional year when global travel was severely affected. Unprecedented restrictions applied for the re-entry into Singapore for non-citizens and permanent residents (like the Mother and the Children). Further, the circumstances of the May 2021 Trip had to be understood with reference to the Father's earlier obtaining of an injunction in SUM 330 to prevent the Children from travelling to the US during their winter break in December 2020 (see [12] above). The Judge accepted the Mother's explanation that the Children's trips to the US were important for their well-being and provided them with stability and respite from their parents' marital breakdown. The Children were distraught by the cancellation of their intended trip in December 2020 and the Mother was worried that something similar would happen again when the Father filed another application, *ie,* SUM 116, in May 2021 (see [13] above): the GD at [9]–[11].

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17 The AD 48 Grounds at [17].

21 The Judge understood that the Father was still concerned over the travels by the Mother and the Children. However, again, she was of the view that 2020 and 2021 were exceptional years. Thus, the Father should support the travels by the Mother and the Children as provided for in the AM Orders. The Judge also noted that even if the Mother had any intentions to use holiday travel to relocate the Children permanently, she had experienced the Hague Proceedings and was well aware that she would not be able to do so: the GD at [13].

22 Applying the welfare principle, the Judge came to the view that it would be in the Children's interests to be permitted to travel to the US twice a year as provided in the AM Orders. There should be no need for the Mother to furnish security to travel, and the passports should be held by the Mother (as the parent with care and control of the Children). Therefore, the Judge dismissed SUM 326: the GD at [14]–[15].

23 The Judge also dismissed SUM 370. The Judge noted that pursuant to s 128 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter"), the court has the power to vary any order for the care and control of a child where it is satisfied that there has been any material change in the circumstances. By s 125(2) of the Women's Charter, again, the welfare of the child is the paramount consideration: the GD at [23].

24 The Judge noted the Father's assertion that the Mother had placed the Children at the centre of her "relocation efforts". The Father was concerned for the Children's well-being, especially [A]'s "path of delinquency" and [B]'s suicidal tendencies. He also attributed his deteriorating relationship with [A] to the Mother's influence and conduct: the GD at [18].

25 However, the Judge also noted that the Mother had been the primary caregiver of the Children, and it was most beneficial for their well-being to maintain the continuity of that arrangement. The Children had suffered under the burden of litigation. Even before the AM Orders, [B] was assessed to be at a high risk of suicide. While the Father felt that his relationship with [A] had deteriorated after the AM Orders, the Children's emotional state was a result of both parties' actions: the GD at [22]–[24]. The Father's alternative proposal for split care and control was also rejected because it was not in the Children's best interest to separate them. They had grown up together and each was a vital source of support for the other: the GD at [25]. The Judge also declined to make any change to the access arrangements to grant make-up access to the Father: the GD at [26]–[29].

26 Further, the Judge declined to appoint any of the therapists named by the Father to restore the relationship between the Father and [A]. While no order was made, the Judge agreed that it would be in the best interests of [A] to continue seeing the therapist that he was familiar with, rather than to start the process again with a new therapist. The Judge also suggested that, where appropriate, sessions could be arranged jointly with the Father to repair his relationship with [A]: the GD at [32]. She also declined to order the appointment of a parenting co-ordinator, or to make a specific order imposing any restraints on the parties' communications with the Children: the GD at [34] and [36].

The Appeal, SUM 135 and AD 48

27 On 11 May 2022, the Father filed the Appeal against the whole of the Judge's decision.[18] We shall return to the Appeal at [34] below.

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[18] The AD 48 Grounds at [18].

28 Thereafter, on 17 May 2022, the Father filed an application in HCF/SUM 135/2022 ("SUM 135") for a stay of the Judge's dismissal of SUM 326. The Father also sought that the 19 November 2021 interim injunction granted by the Judge "be reinstated" and other orders. It will be recalled that this interim injunction was initially granted by the Judge on an urgent *ex parte* basis but then eventually set aside on 10 May 2022 (see [17] and [19] above).

29 On 23 May 2022, SUM 135 was heard by Gill J. Gill J granted the Father's stay application to ensure that the Appeal would not be rendered nugatory. In doing so, he also ordered that the 19 November 2021 interim injunction "be reinstated" and that the passports of the Children were to continue to be held by Engeline Teh Practice LLC (who were the Father's then-lawyers) pending the hearing of the Appeal.[19] On 24 May 2022, the Mother appealed against Gill J's decision by way of AD 48.[20]

30 As mentioned at [3] above, we allowed AD 48. In the AD 48 Grounds, we explained that the two main questions which arose in AD 48 were as follows:[21]

(a) First, was it in the interest of the Children to be permitted to travel to the US?

(b) Second, was there a risk that the Mother would use the intended trip in June 2022 to the US to attempt to permanently relocate the Children, and would that render the Appeal nugatory?

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19 The AD 48 Grounds at [19]–[20].

20 The AD 48 Grounds at [20].

21 The AD 48 Grounds at [24].

31 On the first question, we considered that it was undoubtedly in the Children's interests to have their routine travel to the US during school vacations restored.[22] On the second question, while there was some risk that the Mother would attempt to permanently relocate the Children if she was allowed to take them out of the jurisdiction, we concluded that it was not a risk that would be truly permanent and irreversible such that it would render the Appeal nugatory.[23]

32 Accordingly, we set aside Gill J's orders in SUM 135 made in respect of the stay of the dismissal of SUM 326, the reinstatement of the 19 November 2021 interim injunction, and for the passports to continue to be held by Engeline Teh Practice LLC pending the hearing of the Appeal.[24] Notwithstanding the overlap in issues in these two closely linked appeals, we emphasised that the determination of AD 48 would not affect the outcome of the Appeal. We cautioned, however, that the parties' conduct would remain relevant to the Appeal.[25]

33 Thereafter, the Mother took the Children to the US as planned on 11 June 2022 and duly returned with them on 29 July 2022.[26] We refer to this trip as "the June 2022 Trip". This brings us to the parties' respective positions in the Appeal.

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22 The AD 48 Grounds at [27]–[28].

23 The AD 48 Grounds at [29]–[43].

24 The AD 48 Grounds at [44].

25 The AD 48 Grounds at [45].

26 Father's written submissions ("AWS") at para 7.

The Father's case

34 Turning to the Father's written submissions for the Appeal, he argues that the Judge's decision on SUM 326 and SUM 370 should be *reversed*, as it was premised on a "fundamentally and deeply flawed understanding of the events of the abduction" [emphasis in original omitted].[27]

35 To summarise, the Father argues that the Judge wrongly excused the Mother's conduct in relation to the May 2021 Trip by characterising it as a reaction to the Father's application in SUM 330 and the COVID-19 pandemic. The Father's application in SUM 330 was not meant to "stymie" travel in December 2020, but "to prevent the abduction of the [Children]".[28] The Mother was "hell-bent on relocating [the Children]", "pandemic or no pandemic".[29] Related to the above, he submits that the Judge also ignored the Mother's repeated attempts to relocate the Children,[30] and glossed over the Mother's disregard of court orders.[31] In particular, the Father takes issue with the Mother's conduct during the May 2021 Trip, including the arrangements for school tours and school applications for the Children and the delayed return to Singapore.[32] In order to relocate the Children, she alienated the Children, especially [A], from him. She also put [A] through the trauma of the Hague Proceedings, by relying on the Art 13 defence which required [A]'s views to be

27 AWS at para 4.

28 AWS at para 14.

29 AWS at paras 13–16.

30 AWS at paras 17–19.

31 AWS at para 21.

32 AWS at paras 22–26.

heard.[33] By the Mother's actions, much trauma has been suffered by [B], who was at risk of self-harm and suicide.[34]

36 Based on such arguments, the Father contends that the Judge was wrong in her decision. The decision, he asserts, provides "judicial blessing to [the Mother's] brazen attempt to achieve back-door relocation through the abduction of [the Children] …" [emphasis in original omitted],[35] and imposes no sanctions on the Mother for her actions.[36]

37 In any event, the Father asks for the imposition of "guardrails" on future travel "to lessen the chance of a second (and irreversible) abduction of [the Children] upon travel out of Singapore" [emphasis in original omitted] as follows:[37]

> (a) An order requiring the Mother to furnish a banker's guarantee of $100,000 for each child before overseas travel.
>
> (b) An order providing that all remaining maintenance amounts due to the Mother under the Maintenance Order to cease should she not return the Children to Singapore in breach of the AM Orders.

38 Further, the Father also specifically seeks an order for him and [A] to attend "re-unification therapy sessions" for 18 months to repair their relationship.[38] The Father does not make any specific submissions in relation to

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33 AWS at paras 27–41.

34 AWS at paras 42–46.

35 AWS at para 4.

36 AWS at para 5.

37 AWS at paras 1(a), 2 and 47–62.

38 AWS at paras 1(b), 3 and 63–72.

the other consequential reliefs contained in either SUM 326 and SUM 370, such as make-up access to the Children, the appointment of a parenting co-ordinator or the imposition of restraints on the parties' communications with the Children.

The Mother's case

39 In the Mother's written submissions, in relation to SUM 370, the Mother submits that the Father's application was not made with the best interests of the children in mind. Instead, he is trying to "punish" her.[39] She submits that the Judge was correct to find that there was clearly no material change in circumstances that justified a change in care and control of the Children.[40] She argues that her conduct in relation to the May 2021 Trip must be viewed in context of the exceptional time and the fragile mental state of the Children.[41] While the Mother admits that the fractured relationship between the Father and [A] is of concern, she denies that she is the cause. Instead, the breakdown in the Father's relationship with [A] is due to his conduct over many years.[42] As for [B], the Mother accepts responsibility for the impact arising from the May 2021 Trip. However, [B] has resumed access with the Father thereafter, and his mental condition is also improving with professional help.[43] The Judge thus did not err in finding that a switch in care and control, or split care and control, would not be in the Children's best interest.

40 Turning to SUM 326, the Mother argues that contrary to what the Father suggests, she is not a "flight risk". Apart from the "lone incident" of the

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39 Mother's written submissions ("RWS") at para 48.

40 RWS at para 50.

41 RWS at para 51.

42 RWS at paras 56–68.

43 RWS at paras 50–55.

May 2021 Trip, she has never failed to return to Singapore with the Children. While she is not "proud" of what she did in relation to the May 2021 Trip, it was "due to the circumstances then". The trips to the US are crucial for the Children's mental health, as they enjoy bonding with their friends and spending time with the family. The summons to restrain travel taken out by the Father in SUM 116 was "jarring" and she did what was necessary to protect her children. In any case, she eventually returned to Singapore after the June 2022 Trip, which shows that the Father's fears of permanent relocation are unfounded.[44] The Judge was correct to hold that the trips to the US are in the Children's best interest, and to dismiss SUM 326.[45]

41 The Mother also makes specific arguments in relation to the consequential prayers for both applications, which we shall deal with in due course, as is necessary.

Our decision

The application to adduce further evidence

42 Before dealing with the Appeal, we turn to SUM 29 (mentioned at [4] above), which is the Father's application filed on 12 August 2022 for permission to adduce a judgment of the US District Court on costs relating to the Hague Proceedings dated 25 July 2022 ("the US Judgment").

43 In this regard, the Father argues that he has satisfied the three requirements for permission to adduce fresh evidence on appeal set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*").[46] We note that

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44 RWS at paras 79–81.

45 RWS at para 82.

46 Father's written submissions in SUM 29.

the US Judgment was released on 25 July 2022, after the decision below was rendered on 10 May 2022. Pursuant to s 41(5) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), such evidence may be adduced before the Appellate Division of the High Court *without* permission of court. This means that the *Ladd v Marshall* requirements are not applicable in the usual way. Therefore, strictly speaking, SUM 29 is unnecessary.

44 However, it remains for this court to decide the issue of whether the evidence should be *admitted*. In this connection, the interest in finality in litigation should be protected, and this means that the appellate court's discretion to admit such evidence should only be exercised where the evidence may materially alter the basis of the decision. The principal concern is whether such evidence would have a perceptible impact on the decision such that it is in the interest of justice that it should be admitted (*BNX v BOE and another appeal* [2018] 2 SLR 215 at [97]).

45 The US Judgment is a decision by a judge ("the US judge") on the Father's "Motion for Attorney's Fees and Costs" in relation to the Hague Proceedings. In deciding the appropriate award of fees and costs to the Father, the US judge noted that the relevant considerations included: (a) the reasonableness of the fees; (b) the culpability of the Mother; (c) the difficulty of the case; (d) whether the Mother had a reasonable (although mistaken) belief that the removal of the Children was consistent with the laws of Singapore; and (e) whether the award would affect the Mother's financial ability to care for the Children.[47]

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47 Father's affidavit in SUM 29 at pp 5–7.

46 In this regard, the US judge made three main findings. First, that the Mother "did not act in good faith".[48] Second, that the Father was "presumptively entitled to a fee award, and the requested fees [were] not excessive".[49] Third, that the fee award would "not cause financial hardship" to the Mother or the Children.[50]

47 In his written submissions dated 13 September 2022, the Father's position is that the US Judgment is "diametrically opposed" to the Judge's decision.[51] The Father states that the US judge found that the Mother's conduct was "motivated by the hope of obtaining a more favorable custody determination."[52] He claims that this is a "conclusive determination" that the Mother had abducted the Children with "the specific intent" of obtaining relocation to the US.[53] He claims that the reasoning of the US judge is in line with Tan JC's reasoning in making the AM Orders, while the Judge had ignored Tan JC's reasoning completely.[54] The US judge had also observed that there were no facts to suggest that he was at fault for the Children's inability to return to Singapore promptly.[55] Broadly, he argues that the US Judgment would have an important impact on the outcome of the Appeal.

48 We pause to observe that despite being informed of the prescribed timeline for filing her affidavit in response, if any, and the prescribed timeline

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48 Father's affidavit in SUM 29 at p 7.

49 Father's affidavit in SUM 29 at p 11.

50 Father's affidavit in SUM 29 at p 14.

51 Father's submissions in SUM 29 at para 9.

52 Father's submissions in SUM 29 at para 26(b).

53 Father's submissions in SUM 29 at para 25.

54 Father's submissions in SUM 29 at paras 11–12.

55 Father's submissions in SUM 29 at para 34; Father's affidavit in SUM 29 at p 10.

for both parties to file their written submissions, if any, the Mother chose not to file either document. However, after receiving the Father's written submissions in SUM 29, she sent a short e-mail dated 19 September 2022 to the Registry, objecting to certain aspects of the Father's written submissions. As a form of submissions, this e-mail was not filed in accordance with procedure, or within the prescribed timeline. We therefore decline to consider it. As such, we also do not take into account the Father's e-mail in response to the Mother's e-mail, sent on the same day to the Registry.

49 For the following reasons, we allow the US Judgment to be admitted. The Hague Proceedings are a part of the legal proceedings leading up to the Appeal, and it would be preferable for us to have the full picture when deciding the Appeal. Further, as argued by the Father, the US Judgment contains certain observations about the Mother's conduct which, at least preliminarily, appear to differ somewhat from the Judge's views. Undoubtedly, the Mother's conduct in relation to the May 2021 Trip is relevant to both SUM 370 and SUM 326. We therefore consider that the US Judgment may have a perceptible impact on the decision in the Appeal. That said, as we stress below, the paramount consideration in SUM 370 and SUM 326 should be the welfare of the Children, and *not* the past conduct of the Mother.

50 Accordingly, for the reasons at [43] above, we make no order on SUM 29. However, for the reasons at [49] above, we allow the US Judgment to be admitted.

The Appeal

51 Turning to the Appeal proper, we begin by setting out the threshold to be met before appellate intervention is warranted. An appellate court will be slow to reverse or vary a decision made by the judge below unless it can be

demonstrated that the judge has committed an error of law or principle, the judge has failed to appreciate certain material facts (*ANJ v ANK* [2015] 4 SLR 1043 at [42]; *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 at [53]), or the decision was plainly wrong, as would be the case if the judge had exercised her discretion wrongly (*TSF v TSE* [2018] 2 SLR 833 ("*TSF v TSE*") at [49]). That said, in a case where evidence is given by way of affidavits, the appellate court is in as good a position as the judge to draw inferences and conclusions from the evidence (*TSF v TSE* at [50]). With that, we shall deal with the issues arising from the parties' cases in the Appeal.

Variation of care and control, and access orders

52 We begin with the issues relating to care and control, as well as access, raised in SUM 370. The Father is highly critical of the Judge's reasons for dismissing his prayers in relation to these matters. As set out above at [23], the Judge correctly identified that to vary a care and control order, there must be a material change in the circumstances, and the paramount consideration is the welfare of the child.

53 The Father focuses on arguing that the Judge's decision was plainly wrong, especially in her assessment of the Mother's conduct in relation to the May 2021 Trip. He suggests that the Judge's dismissal of both SUM 370 and SUM 326 was based on a "misunderstanding of basic facts".[56] We refer to the summary of his position at [35] above. The crux of the Father's case is that the Judge failed to draw the correct inferences and conclusions from the materials before her. In particular, she failed to understand that the Mother was "hell-

[56] AWS at para 8.

bent" on relocating the Children, "pandemic or no pandemic". By erring in this way, the Father contends that the Judge reached a plainly wrong decision in dismissing SUM 370 (and SUM 326).

54 In our view, the Judge duly considered the material facts raised by the Father in relation to the Mother's conduct in May 2021: see [20]–[21] above. Specifically, the Judge noted that the Mother had acted in breach of the AM Orders when she brought the Children to the US in May 2021, and that while there, the Mother made enquiries about schooling for the Children. By way of context, the Judge also noted the Mother's previous application to relocate the Children to the US in SUM 1980 (and that SUM 1980 was denied). She was also cognisant of how the Mother had resisted the Hague Proceedings, that the Mother relied on the Art 13 defence which required [A]'s participation for his views to be heard, and how the Children were returned to Singapore only after the Father succeeded in those proceedings: the GD at [12].

55 Like the Judge, we accept that, as the Mother submits, the May 2021 Trip was an aberration. While it is true that the Mother applied for relocation previously, we know of no issues arising from previous trips to the US. In relation to the May 2021 Trip, the Mother understands that she was wrong although she maintains that she did not abduct the Children, and she has apologised. She also asks for her conduct to be viewed against the circumstances of the time. As we stated at [32] of the AD 48 Grounds, there does not seem to be a good reason for the Mother's breach of the AM Orders. That said, we agree with the Judge that the Mother's conduct must be viewed through the lenses of the ongoing litigation at that time regarding travel, and the difficult circumstances of the COVID-19 pandemic, as well as the point that the Mother had not been allowed to travel with the Children to the US for the 2019 summer

break, 2019 winter break, 2020 summer break, 2020 winter break and 2021 winter break (see [8], [9], [12] and [17] above).

56 Turning to the US Judgment, we note that the US judge found that there was no good reason to deny the Father reimbursement by the Mother for legal expenses he had incurred for the Hague Proceedings. In making this finding, the US judge did conclude that the Mother "did not act in good faith in removing the [Children] from Singapore".[57] That conclusion, however, does not assist the Father because the question before the US judge was simply whether the Mother had acted in good faith such that a fee award against her was "clearly inappropriate". To answer this question, the US judge concluded that the Mother: (a) did not act in the reasonable belief that her actions were compliant with Singapore law, and instead evinced an intent to evade or subvert the same; (b) did not act with the Father's permission or notice; (c) did not act pursuant to an agreement with the Father; and (d) did not act so as to protect the Children from grave risk of harm if returned. It is not controversial that all this is true of the Mother's conduct. However, these points are not determinative of the question before the Judge which was a much wider one: whether the Mother's conduct was so egregious that it was no longer in the Children's best interests to remain in her sole care and control.

57 In our view, the Father goes too far to allege that at that time, the Mother was "hell-bent" on relocating the Children, and that the surrounding circumstances had little or no part to play in the Mother's actions. As we explain in greater detail at [64]–[71] below, we are not satisfied that the Mother's conduct in relation to the May 2021 Trip suggests that she will attempt to

[57] The US judgment at p 7.

relocate the Children in the future. At present, we are of the view that, moving forward, the Mother is likely to comply with the terms of the AM Orders.

58 Apart from the claim that the Mother would seek to relocate the Children by way of future travel, the Father also makes allegations about the Mother's role in the deterioration of the Children's emotional well-being and [A]'s relationship with him. He alleges that the Mother has sought to use [A] to further her relocation attempt, especially by placing [A] at the centre of the Hague Proceedings. He also alleges that the Mother has sought to alienate [A] from him, resulting in a deteriorating relationship between father and son. In addition, he alleges that [B] has suffered trauma arising from the May 2021 Trip, and has exhibited self-harm and suicidal tendencies. The Mother disputes the Father's allegations in relation to [A], and submits that [B]'s mental health is improving. The Father's submissions are detailed, but we do not propose to delve into the details here. Just as the Father has his perspective on the events, the Mother, too, has her side of the story.

59 For present purposes, it is important to highlight that the Judge was clearly mindful of the material facts, including the thrust of the allegations made by the Father against the Mother. In the GD, she took pains to set out these matters in detail: the GD at [18]–[21]. Thereafter, it was her considered view that "the actions of both parties had also contributed to the emotional state that the Children are in": the GD at [22]. We agree with this view.

60 All things considered, we agree with the Judge's conclusion that it would not be in the Children's interest for a switch of sole care and control from the Mother to the Father. It is not disputed that the Mother has been the primary caregiver of the Children. Notwithstanding the Mother's conduct in relation to the May 2021 Trip, and on the premise that moving forward, both parties will

comply with the terms of the AM Orders, there is really nothing to suggest that such a switch in care and control will be beneficial for the Children's mental and emotional well-being. As we explain at [87] below, we are hopeful that the Mother appreciates that it is in the Children's interests to comply with the AM Orders. Contrary to the Father's contention, the Judge was not plainly wrong. Accordingly, we affirm the Judge's decision to maintain the status quo, and to dismiss the prayers of SUM 370 on the variation of care and control, and consequential orders on access.

Restrictions on overseas travel

61 Having determined that the Mother should retain care and control of the Children, we now consider the restrictions the Father sought to impose on overseas travel by the Mother with the Children in SUM 326. As set out above at [20], in dealing with SUM 326, the Judge noted that the welfare principle is paramount. The Father does not argue, nor do we think it can be argued, that the Judge committed an error of law or principle. That said, as set out above, the Father was very aggrieved by the Judge's reasons, especially her assessment of the Mother's conduct.

62 Having analysed the material facts set out at [54] above, the Judge arrived at her view that it would be in the Children's interest to travel to the US twice a year as per the AM Orders. On this point, we agree completely with the Judge. We need say no more than what we have already said in the AD 48 Grounds at [27] which we reproduce:

> … it is undoubtedly in the Children's interest for them to spend time in the [US]. It is not disputed that prior to the COVID-19 Pandemic, the Children routinely travelled to the [US]. It is also not disputed that they looked forward to these trips as they were able to spend time with their extended family. Over the past few years however, the Children's ability to travel has been severely limited, either due to court orders, or by the COVID-19

> Pandemic. This has been a significant disruption to their normal routine. It seems to us, and it is not disputed, that such trips provided a tremendous amount of support to the Children. Having lived through the past two years of COVID-19 Pandemic, as well as having experienced the trauma of extensive litigation between their parents, the Children should have some sense of normalcy return to their lives. Thus, in our opinion, it is in the interest of the Children to restore their routine travel to the [US].

63 The Father's written submissions do not persuade us otherwise. In fact, it seems to us that at the end of the day, the Father does not seriously dispute that the trips *per se* are in the interest of the Children. Expanding on the gist of the Father's case set out at [35] above, the pertinent point he makes is that it would *not* be in the Children's interest to be "abducted" again so as to remain in the US permanently, and that there is a risk of this given the Mother's history of attempts to relocate the Children and the May 2021 Trip. We shall refer to this as the "relocation risk", and we discuss this in more detail shortly. For now, we observe that we do not accept that the likelihood of any relocation risk materialising is such that it should be addressed by imposing the stringent restriction set out in Prayer 1 of SUM 326, *ie, for an injunction to restrain such travel, save with the Father's consent or a court order.* This would amount to removing routine travel, and to our minds, it would *not* be in the Children's interests to do so. Hence, we see no basis to intervene in the Judge's decision to refuse the injunctive relief sought. We also do not think there is any reason for the Father to hold onto the Children's passports (which was the subject matter of Prayers 2 and 3 of SUM 326). As explained above, we are of the view that the Mother should remain the parent with sole care and control of the Children. The passports should thus remain with her.

64 As alluded to earlier, the Father's main concern is that a future trip may result in a "a second (and irreversible) abduction of [the Children]": see [37] above. Whether any relocation risk is likely to materialise, and whether any

measures are required to mitigate any relocation risk, are questions to which we now turn. In particular, we consider these questions in the context of the Father's request to impose "guardrails" on future travel.

65 As mentioned at [37] above, the Father requests two "guardrails" in respect of the Mother's overseas travel with the Children. We begin with the first, which is the requirement for the Mother to furnish security of $100,000 for each child to ensure his return to Singapore (see [16(c)] and [37(a)] above). As we recognised in the AD 48 Grounds at [31], on the evidence before us then, there was *some* risk that the Mother would attempt to permanently relocate the Children if she were to be allowed to bring them out of the jurisdiction. Since then, however, the June 2022 Trip appears to have gone smoothly, with the Children returning on 29 July 2022 as the Mother promised.

66 Admittedly, as the Father contends,[58] this could partly be attributable to our warning in AD 48 about the impact of any poor conduct on the outcome of the Appeal. Thus, the fact that the June 2022 Trip proceeded without issue does not necessarily mean that the same will be true of future trips, if the Appeal is decided without imposing any "guardrails". In particular, the Father submits that the Mother will not give up her quest to relocate the Children, and she will not wait six years for [B] to graduate from high school. As time goes by, [A]'s views of not wishing to be in Singapore will become more entrenched, and this will strengthen the Mother's defence against return of the Children in any future Hague Convention proceedings. Furthermore, when [A] turns 16 years old, the Hague Convention will become inapplicable to him.[59] The Father also expresses concern that given that the Judge endorsed that the Children should not be

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58 AWS at para 49(a).

59 AWS at para 50.

separated, this would mean that [B] would be "bootstrapped" to [A]'s wishes and would be pressured to stay in the US.[60]

67 As explained at [55] above, we are satisfied that the May 2021 Trip was an exceptional one, born out of the circumstances at the time. Arising from the May 2021 Trip, the Mother had to defend the Hague Proceedings in the US, and contest the multiple applications and appeals in Singapore. With the conclusion of the Appeal, the litigation concerning travel by the Children should finally cease. The COVID-19 pandemic situation has also largely resolved, with no more uncertainty about travel out of and into Singapore by the Mother and the Children. Given that the Mother and the Children have ties to the US, the history of the case and the saga concerning the May 2021 Trip, we accept that it cannot be said that there is no longer *any* relocation risk. However, given the recent developments, in our opinion, the likelihood of any relocation risk materialising is substantially ameliorated.

68 Further, as we warned previously in AD 48, the Mother should be well aware that should she attempt to relocate the Children in breach of a court order, she will probably be met with a second set of Hague Convention proceedings to ensure the return of the Children. Not only will this impact the well-being of the Children, it will also come at a significant cost to the Mother (including financial cost) as that attempt will provide further ammunition to the Father in any future application he embarks on. This should serve as effective deterrence against any future relocation attempt without a proper application, and as a safeguard against the relocation risk materialising.

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60 AWS at paras 57–59.

69 We appreciate that [A] will turn 16 years old in 2024, and that at that point, the Hague Convention shall cease to apply to him: Art 4 of the Hague Convention. However, that is more than a year away. Even then, [B] will remain subject to Hague Convention proceedings for about two years after that. While we note the Father's concerns, we are not persuaded that in any further legal proceedings, [B] will be "bootstrapped" to [A]'s wishes. [B]'s welfare will be equally important in any court proceedings. Also, we are doubtful that the Mother will split the Children, leaving [A] in the US should [B] be required to return to Singapore by a court order. The point to be made is that should the relocation risk materialise, there will still be an avenue for the Father to ensure that the AM Orders are complied with, and the best interests of the Children are protected.

70 We turn to the consider the fact that on 14 December 2021, the Mother wrote to the Judge, asking to travel with [A] during the winter break, and for this purpose, offering to put up a bond of $50,000 security. Specifically, the Mother wrote as follows, "[A] will not put [the Mother] in a position where he will not return – especially knowing the great cost to [the Mother]". As the Father argues, this shows that the Mother admits to the "efficacy" of the security requirement, to ensure [A] does not resist returning to Singapore. Although the Mother made the offer, we note that she did so on an *ad hoc* basis so as to provide some form of assurance for [A]'s conduct. She did not offer this as a continuing measure to allay the Father's concerns that she was a flight risk. Further, she made this offer in the midst of a hard-fought application in SUM 326, hoping to be able to travel after a long hiatus. Thus, we do not consider it appropriate to accord much weight to this voluntary offer in respect of the intended trip in December 2021, or to rely on it to find that the security requirement should be imposed on the Mother for all future travel. We accept the Father's point that a strong financial disincentive will reduce the likelihood

of the relocation risk materialising, but the real question is whether this financial disincentive is necessary or appropriate in the present circumstances.

71 Having considered the fact that the likelihood of the relocation risk materialising has been reduced, and that there is recourse available to the Father should the relocation risk materialise, we do not think that the Judge was plainly wrong in deciding that the security requirement was not necessary to mitigate any relocation risk. As an appellate court, we do not see any basis to intervene to vary this aspect of the decision.

72 We now turn to the second guardrail. The Father seeks the cessation of the Mother's maintenance as required by the Maintenance Order should she breach the AM Orders by not returning to Singapore with the Children (see [37(b)] above). It is important to note that this was not expressly sought in any of the prayers in SUM 326.

73 Section 118 of the Women's Charter sets out the power of the court to vary orders for maintenance and provides that the court may rescind any subsisting order for maintenance where it is satisfied that "the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances".

74 However, it is well-established that the power to order maintenance is supplementary to the power to divide matrimonial assets, meaning that courts would generally take into account the party's share of matrimonial assets when determining the quantum of maintenance to be ordered: *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [26]. If any breach, however minor, would mean cessation of maintenance, this seems draconian. It would therefore not be appropriate to use the threat of cessation of maintenance as a guardrail.

75 By the above, we see no reason to impose the guardrails sought by the Father.

Therapy for [A]

76 We will now turn to consider the specific request by the Father in relation to therapy for [A].

77 In Prayer 5 of SUM 370, the Father asked that one of three named therapists be appointed to carry out the necessary therapy or treatment "to restore the relationship between [him] and [A]". The Mother explained that [A] was already seeing [Therapist Y] and should continue doing so. The Judge noted this at [32] of the GD, and decided it best that [A] continue with therapy sessions with [Therapist Y]. She also considered that joint sessions could be arranged with the Father. However, the Judge declined to make an order on this (see [26] above).

78 We do not see how it can be argued that the Judge was plainly wrong to dismiss Prayer 5 of the application. That said, on appeal, the parties appear to agree that [A] requires therapy sessions. In his submissions, the Father has not pursued his request for the specific therapists that he named in SUM 370 to be appointed and instead focuses on the need for reunification therapy to repair his relationship with [A]. The Mother also asks for the necessary orders to be made in respect of therapy for [A] in the sense that she seeks an order to appoint [Therapist Y] to be the therapist for [A] and for the costs of therapy to be borne by the Father. She also seeks other orders which we need not elaborate on at present.[61] We note that while both parties seem to agree that the court should formally appoint a therapist for [A] and the Father has been paying the costs

[61] RWS at para 75.

thereof, it is unclear whether the Father agrees with the other orders sought by the Mother as they were not part of a formal application by her.

79 We agree with the Judge that should it be in [A]'s best interests to continue therapy, this should be with [Therapist Y] with whom he is familiar. We are of the view that [A] should continue with some therapy until the parties agree otherwise. The details of the therapy, such as the number of sessions, the duration of the sessions, the scope of the sessions and whether the sessions are to be joint sessions with the Father, should be determined by [Therapist Y] rather than mandated by court order. This is because we have little basis for determining what specific treatment would be in [A]'s best interests. [Therapist Y], who has been seeing [A] and is a professional, is best placed to decide these details in line with [A]'s best interests. We understand that the Father's primary concern is that his relationship with [A] has broken down and he is eager for it to be repaired. However, how this should be done, in [A]'s best interests, is best left to [Therapist Y].

80 We note that the Father has not asked specifically for the Mother to share in the cost of [A]'s sessions with [Therapist Y]. He has been paying for these sessions thus far,[62] and he should continue to do so.

Make-up access, and the appointment of parenting co-ordinator

81 Moving on, the Father does not specifically ask for any other consequential orders to be made by this court in the Appeal such as make-up access (see Prayers 3 and 4 of SUM 370), or the appointment of a parenting co-ordinator (see Prayer 6 of SUM 370). The Mother argues that there is no reason

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62 Mother's affidavit in SUM 370 at pp 416–417.

to fault the Judge's decision. We, too, do not see any reason for such orders, or any basis to intervene in the Judge's decision to dismiss those prayers.

Imposition of restraints on the parties' communications

82 Further, the Father has not pressed for the imposition of restraints on the parties' communications with the Children (as requested in Prayer 7 of SUM 370). The Mother does not object to such an imposition as such although she agrees with the Judge that there is no need for such an order. In any case, we agree with the Judge that such conduct is already expected of the parties and that it is not necessary to make such an order.

Wasted expenditure claim

83 For completeness, we note that the Mother has, in her written submissions, asked that the Father be ordered to reimburse her for wasted expenditure of $5,663 which she incurred as travel costs for the 2021 winter break trip which did not go ahead (see [17] above).[63] In this connection, we observe that the Children's travel expenses are meant to be covered by the AM Orders, under which the Father is required to pay $10,000 in yearly maintenance for each child's summer and winter break travel expenses. Thus, the factual and legal basis for seeking the reimbursement is unclear. In any event, we note that the Mother did not formally apply for this. It appears that the request was only raised at para 172 of her affidavit in support of SUM 326. The Judge did not deal with this matter, and the Mother did not appeal against the Judge's decision. Thus, we are unable to deal with the Mother's reimbursement claim.

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63 RWS at para 89.

Conclusion

84 For the foregoing reasons, we dismiss SUM 29 and the Appeal, subject to [85].

85 We order that [A] is to continue therapy with [Therapist Y] until the parties agree or the court orders otherwise. The details of the therapy sessions, including the number of sessions, the duration of the sessions, the scope of the sessions and whether the sessions are to involve the Father, are to be determined by [Therapist Y]. Further, we order that the costs of the therapy sessions are to be borne by the Father. For the time being, we will not make other orders sought by the Mother in respect of the therapy. Hopefully parties can agree on them, going forward, if necessary.

86 We now deal with the costs of the Appeal, SUM 29 and AD 48 (the costs of AD 48 were reserved pending the hearing of this appeal). An order for costs may be made by the court to reasonably compensate a successful party who is not legally represented for the time and work required for the proceedings, and for reasonable expenses (see O 21 r 7 of the Rules of Court 2021). The Father has been unsuccessful in AD 48, SUM 29 and the Appeal, which means that he has not managed to challenge the AM Orders (which in our view provide suitably for the Children's best interests). Based on the circumstances of this case, we are of the view that the Mother is entitled to some reasonable expenses for all three matters. Although we could have asked the Mother to state her expenses for all the three matters in question, we thought we would estimate them the best we could and then fix the amount. We do so with a view to saving the parties the time of trawling through the expenses, with the attendant aggravation the process would undoubtedly bring. Accordingly, in the round, we order the Father to pay $5,000 for the Mother's expenses for all three

matters. The usual consequential orders will apply in relation to the security for costs furnished by the parties for these matters.

87 In closing, we observe that after the intensely fought litigation in relation to SUM 326 and SUM 370, the parties are back to square one, with this court affirming the AM Orders, especially in relation to the travel arrangements for the Children. By now, both parties must be keenly aware that stability is critical for the Children. Compliance with the AM Orders offers the Children precisely a measure of that in their daily lives. For that reason, both parties are urged to abide by, co-operate and support each other to comply with the meaning and spirit of the terms of the AM Orders. Further litigation is only going to bring about more uncertainty, pain and harm to the Children. It is our hope that both the Father and the Mother do not visit this upon the Children.

Woo Bih Li
Judge of the Appellate Division

Hoo Sheau Peng
Judge of the High Court

The appellant in person;
the respondent in person.