

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 25

District Court Appeal No 2 of 2023

Between

WKN

... Appellant

And

WKM

... Respondent

GROUNDINGS OF DECISION

[Family Law — Custody — Care and control]

[Family Law — Custody — Access]

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WKN
v
WKM

[2023] SGHCF 25

General Division of the High Court (Family Division) — District Court
Appeal No 2 of 2023
Choo Han Teck J
3, 4 and 10 May 2023

15 May 2023

Choo Han Teck J:

1 The appellant (“the Mother”) and the respondent (“the Father”) were married on 12 February 2012. That year, they had a daughter — born on 12 July (“the Child”). She is presently 11 years old. The Father, aged 45, operates a business selling stationery and providing delivery services. The Mother, aged 41, is an admin executive. The Father filed for divorce on 26 September 2016, and the parties obtained the interim judgment of divorce on 13 December 2016. The ancillary orders were made by consent and the interim judgment of divorce was made final on 17 March 2017. Under the ancillary orders, both parents have joint custody of the Child, with care and control residing with the Father. The Mother was given liberal access (including overnight access) to the Child. The Child was 4 years old at the time of the orders. The Mother remarried on 25 May 2019; the Father has not remarried.

2 This arrangement went on for five years until 9 November 2021, when the Child began to reside with the Mother, because the Mother alleged that there had been emotional abuse and neglect of the Child by the Father and his domestic helper. This change in arrangements, however, was done without a court order for variation. The Mother’s actions resulted in the filing of cross-applications by both parties — the Mother filed a belated application for variation of the ancillary orders made during the divorce, and the Father applied to enforce the original orders, and to have the Mother’s liberal access replaced by supervised access at the Divorce Support Specialist Agency (“DSSA”).

3 The cross-applications were heard by the learned DJ Wendy Yu (“the DJ”) on 6 January 2023. The DJ dismissed the Mother’s application and granted an order in terms for the Father’s applications. Since 6 January 2023, the Child returned to live with the Father and the Mother’s access took place at DSSA. The Mother appealed.

4 I heard counsel’s submissions on 3 May 2023 and interviewed the Child the next day. I then allowed the Mother’s appeal and ordered that care and control of the Child be transferred to her and that liberal access be granted to the Father, on the same terms as the DJ granted to the Mother on 6 January 2023. Ms Sharma, counsel for the Father, then wrote a long letter to ask that I reconsider various counselling reports. I asked to see counsel to impress upon her that her letter was without merit and should not have been written.

5 The essence of the Mother’s appeal was that the DJ erred in holding that the alleged sexual abuse and emotional abuse by the Father and his domestic helper were not material changes in circumstances because the Attorney-General’s Chambers (“AGC”) and relevant authorities did not take further action against the Father. Counsel for the Mother, Mr Michael Low, says that

the lack of legal action taken by the AGC does not indicate a lack of change in material circumstances, because the standard of proof of beyond a reasonable doubt for criminal cases does not apply to family proceedings.

6 In response, Ms Sharma says that the DJ was aware of the civil standard of proof and all relevant circumstances when she dismissed the Mother's application. Ms Sharma says that the Mother's allegations are unfounded, citing the reports of the relevant authorities who have conducted investigations into those allegations. She emphasised that the Father remains an able caregiver to the Child, and there was thus no need to vary the care and control orders.

7 I was not persuaded by Mr Low's arguments. From the DJ's oral judgment delivered on 6 January 2023, it is clear that she had applied the civil standard of balance of probabilities when determining if there had been a material change in circumstances. I am of the view that the DJ was justified in dismissing the application of the Mother based on the arguments before her.

8 That, however, does not mean that there is no material change in circumstances based on other factors, that warrants a variation of the original orders for care and control. I am only concerned with the best interests of the Child. Where a child is young and unable to voice her preferences, the best interests of the child will depend on the ability and attitudes of the parents. But when a child is older, the child's views can be significant. The Child, being 11 years old, is sufficiently mature to decide which parent she wishes to live with. At the interview, she was initially shy, but calmly answered my questions. She articulated her opinions with firmness and maturity. She made it clear that she prefers to live with the Mother. She seems clearly happier to be with her. The Child also said that she is comfortable living with the Mother's current husband, and she "talks to [him] about many things". Nonetheless, she was adamant that

she would be happier if the care and control arrangements were reversed. She did not appear to be coached or under the influence of either parent. I am of the view that the Child's best interests would be served by reversing the original orders. That will place her in a comfortable environment where she can be in the right state of mind to focus on her studies, especially with the crucial Primary School Leaving Examinations next year.

9 The Father had made numerous allegations and annexed several documents of events which took place after the appeal. The Father alleges that the Mother, dissatisfied after her appeal was dismissed, attempted to disrupt the Father's exercise of care and control. The Father says that she did so by calling the Child's school and claimed that the Child was suicidal. This allegation was escalated to the relevant authorities, including the DSSA and the Child Protection Services ("CPS"), who concluded that the Child had a low risk of self-harm. The Father also alleges that the Mother had maliciously reported him to the police for child abuse, which eventually turned out to be baseless. The Father says that these baseless accusations caused him much distress and "mental anguish". These allegations were made without leave of court to adduce fresh evidence. Mr Low objected to these being added to the respondent's case, and applied for them to be expunged. I saw no need for that. Even if true, they were not actions directed at the Child but as a means to an end, namely, to regain care and control. To this end, the Child's best interests lie with where she is happiest — and that is with her mother. I thus reversed the care and control not because of the Mother's claims about abuse and neglect, as it seems to me to be insufficiently proved, but because I think that it is in the best interests of the child for her to live with the Mother. The following variations to the previous orders which I made at the hearing are as follows:

- (a) The Mother is to have care and control of the Child;

- (b) The Father is to have access to the child on Tuesday and Thursday nights from 5.30pm to 8.00pm, and on Friday, after school, to Saturday at 8.30pm;
- (c) The Child's mobile phone is to be returned to her, so as to facilitate access to the Father;
- (d) The orders will take effect from Saturday, 6 May 2023;
- (e) Liberty to apply.

10 No order was made as to costs in the present appeal and in the court below.

Choo Han Teck
Judge of the High Court

Low Wan Kwong Michael and Gulab Sobhraj (Crossbows LLP) for
the appellant;
Anuradha D/O Krishan Chand Sharma (Winchester Law LLC) for
the respondent.
