IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 7

District Court Appeal No 68 of 2022

Between

VWJ

… *Appellant*

And

VWI

… *Respondent*

In the matter of Originating Summons
(Guardianship of Infants Act) No 44 of 2021

Between

VWJ

… *Plaintiff*

And

VWI

… *Defendant*

JUDGMENT

[Family Law — Custody — Care and control]
[Family Law — Custody — Access]
[Family Law — Child — Maintenance]

VWJ
v
VWI

[2023] SGHCF 7

General Division of the High Court (Family Division) — District Court Appeal No 68 of 2022
Choo Han Teck J
15 February 2023

23 February 2023 Judgment reserved.

Choo Han Teck J:

1 The appellant (the "Mother") and the respondent (the "Father") were married on 5 January 2020. Their son (the "Child") was born in May 2020 and is presently two and a half years old. This appeal arises out of the decision of the District Judge (the "DJ") in the cross applications of both parents seeking care and control and access to the Child under s 5 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed). Parties could not file for divorce because at the time of the applications, they had not been married for more than three years.

2 Pending resolution of the cross applications, the DJ granted an interim order for the Child to remain with the Mother and that the Father was to be granted weekend access to the child (the "Interim Order"). However, at the end of the hearing, the DJ ordered that the Father be granted care and control of the Child and that the Mother was to be granted access to the child which amounted

approximately to 3 days. The DJ took into account the events which transpired after the Interim Order, which constituted the following:

(a) The Father's inability to have access to the Child;

(b) The Mother's late nights out with friends;

(c) The Mother's failure to procure the Child's attendance at childcare;

(d) The Mother's failure to bring the Child to scheduled medical appointments; and

(e) The ability of the parties to care for the Child.

3 The Wife appeals against the decision of the DJ concerning care and control and access. The Wife asks for a restoration of the Interim Order under which she had care and control, with access to the Father. Counsel for the Wife, Mr Patrick Fernandez, says that the DJ erred in giving excessive weight to the Father's version of the events that occurred after the Interim Order.

4 Counsel for the Mother, Ms Kulvinder Kaur, pointed out that service of the appellant's case was effected at 8.59 am on 15 November 2022, which was a day late and was thus deemed as withdrawn. Rule 827(1) of the Family Justice Rules 2014 ("FJR") requires the appellant's case to be filed and served within one month of the Registrar's notice. Mr Fernandez submitted that the deemed withdrawal under Rule 827(5) of the FJR for non-compliance with Rule 827(1) of the FJR is only limited to filing and not service. In support of this, he says that the time for the Respondent's Case to be prepared only runs upon receipt of service and not filing. He further submitted that whereas filing may easily be effected by e-filing, the same cannot be said for service of documents, as litigants-in-person may evade service, thus leading to service not being in

compliance with Rule 827(1)(*b*) of the FJR. I do not agree with this interpretation. The plain wording of Rule 827(5) of the FJR requires the appellant to comply with Rule 827(1) of the FJR which contains both the requirement to file (Rule 827(1)(*a*) of the FJR) and the requirement of service (Rule 827(1)(*b*) of the FJR). Mr Fernandez's example about litigants-in-person evading service does not assist him in this case, because the respondent was represented by counsel, and the papers could have been served electronically. But I accept that in some cases, service on litigants-in-person may not be carried out in time, but that would be a justifiable basis to seek an extension of time under Rule 827(5) of the FJR, as a genuine attempt was made to comply with the rules in Rule 827(1) of the FJR. This was what counsel ought to have done, rather than assuming that the court will be indulgent just because he was fractionally late. Deadlines laid down in the rules and by the court must be adhered to strictly. The application for an extension of time for non-compliance of any degree, is a matter of procedural fairness to the other party and courtesy to the court. Nonetheless, as the delay in service was only a day and as Ms Kaur did not press her objection, I proceeded to consider the merits of the appeal.

5 On the merits, I find no basis to interfere with the DJ's findings of fact on the above-mentioned points and his order to grant care and control to the Father. Although I do not think that the point about spending nights out with friends should be given much weight, nor that concerning the missing of medical appointments, there is no basis to disturb the DJ's orders which were made in the interests of the Child.

6 On the point concerning the Father's inability to have access, Mr Fernandez says that the fact that the Mother consented at the mediation on 13 September 2021 to allow the Father to have access even if the child was unwell shows that she had no intention to deny the Father access deliberately.

All orders in mediation are made by consent. But the fact that this issue had to be resolved by mediation points to an initial uncooperativeness of the Mother. I see no basis to disturb the findings of fact made by the DJ as to the Mother's use of medical certificates to deny access to the Father. In particular, when the child was issued a 5-day MC for an Upper Respiratory Tract Infection, the Mother did not send the Child for a Covid-19 swab test but unilaterally decided that the Child should rest at home. The parental duty to care for the Child is coequal and there is no reason to doubt that the Father's home is equally conducive as the Mother's for the Child to rest and recover. Thus, this should pose no bar to access arrangements ordered by the Court. I accordingly agree that the Mother's conduct fell short of the spirit of cooperativeness required in co-parenting according to a court ordered access regime.

7 On the point concerning the Child's almost non-existent attendance at childcare, Mr Fernandez takes the position in his written submission that there is no statutory requirement to enrol a child in childcare, and that "attendance in childcare could hardly be described as a crucial aspect of the child's life. Save for sleeping, eating and playing, there is hardly any critical learning for a 2-year-old child in a childcare". This is overstating his case though the child is only two years old. Education is an important consideration in the welfare of a child: see the Court of Appeal's decision in *Wong Phila Mae v Shaw Harold* [1991] 1 SLR(R) 680 at [25]. It is not limited to children attending formal education (*i.e.,* primary school onwards). No part of a child's formative years should be dismissed in the way counsel did. Even if the benefits of attending childcare is minimal, I see no reason to disturb the DJ's order to grant care and control to the parent who sees the value in having the Child attend childcare and is able to faithfully secure the attendance of the child, which in this case is the Father. I further agree with the DJ's order that the Father be granted the sole

right to decide which childcare to enrol the Child in, as it was plain from the evidence that the Mother had been uncooperative with the Father's decision to have the Child enrolled in childcare. At the hearing, Ms Kaur informed me that the DJ's orders have proven beneficial with the passage of time, and that the Child has received positive reports from the current childcare which he is enrolled in.

8 At the hearing, Mr Fernandez submitted that it was unfair that the Mother has to bear the financial cost of the Father's decision for enrolling the Child in his present childcare, which amounted to $260 a month. The Mother says that under the Child's previous childcare, she had to pay only $20 a month. Ms Kaur explained that the rate of $20 a month was obtained through a subsidy which the Mother had dishonestly obtained by claiming she was a single mother. This was not refuted though it came from counsel. In any event, I am of the view that the Mother's complains are unjustified. Under the previous arrangement where the childcare allegedly cost $20 a month, the Mother did not ensure the attendance of the Child. She was also not forthcoming in the subsequent disputes as to which childcare the Child should attend. She cannot now complain that $260 is not reasonable, or that she should not be made to pay her share. Furthermore, I am of the view that $260 a month is a reasonable sum for childcare, and it is fair for the maintenance to be apportioned equally based on the relatively equal financial position of the parties as the DJ had found.

9 The final point raised by Mr Fernandez is that the Father remains a full-fledged international flight steward and there was no evidence to show that the Father was transitioning to becoming a ground trainer which would enable him to be with the Child on a regular basis. This was, in my view, an incorrect statement. The DJ found as a fact that the Father had been placed on a Regional Flying Scheme which puts him on "turnaround flights", meaning that the Father

would be back in Singapore by the end of the day. This finding was made on the basis of the Father's affidavit where he set out his flying schedule. It is clear that this arrangement made his job no different in terms of hours from any other regular office job, allowing him to return home to the Child after office hours. If there is any change to this, the Mother has the option to file an application for variation, but as the evidence stands, I see no basis to disturb the DJ's findings. I also note that the Father has undergone courses to transition into a ground trainer which would eventually allow him to cease flying altogether. On the basis of the evidence before him, the DJ was satisfied that efforts had been made for the Father to become a ground trainer and I see no basis to challenge that finding. However, even under the Father's current Regional Flying Scheme, I do not think that that there is any irregularity of working hours that may undermine his ability to care for the child, and should there be problems in the future, the Mother is at liberty to file for variation.

10 For the above reasons, I affirm the DJ's order that care and control ought to be given to the Father. I also note that the access orders given were fairly generous, providing ample time to the Mother. The Mother's love and care for the child is not in question – but in such a situation, a decision has to be made based on the welfare of the child. The access arrangements almost come close to split care and control arrangements where the child spends almost equal time with each parent. I think that this is a fair order to make which would enable the Child to benefit from the stability of education while giving the Child ample time to experience the maternal love of the mother during the stipulated access times. Both counsel confirmed at the hearing that there were no issues with the smoothness of the present access arrangement. In my opinion, it would not be in the interest of the child to disrupt the continuity and stability of this present working arrangement, especially with the prospect of divorce proceedings and

subsequent ancillary matters on the horizon, where these issues would be canvassed again. By that time, the state of affairs may be different, which may justify a different order to be made. But as things stand at present, I am not convinced that the DJ had erred in his assessment. The appeal is therefore dismissed.

11 Finally, while the DJ did not base his findings on the marks on the Child's body which were used by parties to disparage each other's ability to care for the Child, I affirm the DJ's observation (at [24]) that:

> [...] it cannot be helpful for the Child's mental well-being to be taken to the doctor or hospital frequently every time he shows up with a bruise or mark. Escalating these issues into a blaming exercise detracts from the responsibility of the parents to work together in helping the Child to heal and recover from these injuries.

12 Indeed, when a family has broken down, the welfare of the children comes to the fore of the law's concern. Even if the parents were to see themselves as at war with each other (though they should not), they must not weaponise their children in any aspect or stage of their dispute with each other. Every child should benefit from the love of both parents, and true love is demonstrated by reining in spousal acrimony to ensure that continuity of co-parental love for children post-divorce is not merely an ideal, but a reality.

- Sgd -
Choo Han Teck
Judge of the High Court

Patrick Fernandez (M/s Fernandez LLC) for the appellant;
Kulvinder Kaur (I.R.B Law LLP) for the respondent.