IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 23

District Court Appeal No 114 of 2023

Between

WRU

… *Appellant*

And

WRT

… *Respondent*

JUDGMENT

[Family Law — Child —Relocation]

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v
WRT

[2024] SGHCF 23

General Division of the High Court (Family Division) — District Court Appeal No 114 of 2023
Mavis Chionh Sze Chyi J
3 May 2024

20 May 2024 Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 The appellant ("Mother") and the respondent ("Father") were married in 2011 and divorced in 2017. They have two children, [G] and [K], who are presently aged 12 and 10 respectively. The parties and the children are all Singapore citizens.

2 At the time of the divorce, the parties agreed that they would share joint custody of the children, and that the Mother would have care and control of the children with reasonable access to the Father.[1] Six years have passed since the divorce and the parties have moved on with their lives. The Mother's new partner, Mr [B], is an American citizen and the Mother intends to relocate to the

[1] Record of Appeal ("ROA") (Vol 4) at p 3.

United States of America ("US") where he resides, as they are now engaged to be married.

3 The central dispute in this case concerns whether the children should be allowed to relocate with the Mother to the US. The learned district judge ("DJ") dismissed the application and set out the grounds of his decision in *WRT v WRU* [2023] SGFC 38 ("GD"). The Mother now appeals against the DJ's decision.

Procedural history

The decision below

4 During the proceedings in the Family Justice Courts, the Mother had requested for the DJ to interview the children. Given that there were allegations by the Father that the children had been negatively influenced by the Mother, the DJ was of the view that a specific issues report prepared by a Court Family Specialist would be more helpful, as it would provide an independent, objective and confidential report to enable the court to obtain a fuller picture of the family (GD at [4]).

5 The DJ rightly recognised that the welfare of the child is paramount in relocation applications. He took the view that relocation would not be in the children's interests for the following three reasons. First, he considered that while the Mother's wish to move on to the next stage of her life was understandable, the Mother's decision to relocate was a matter of choice and not borne out of necessity (GD at [32] and [36]). In particular, he found that the Mother had not given sufficient consideration or seriously explored the alternative option of having Mr [B] relocate to Singapore, which would be less disruptive to the stability that the children currently enjoy (GD at [35]).

6 Second, the DJ found that while the evidence displayed a weakened relationship, it could not be said that there was no subsisting relationship between the Father and the children (GD at [45]–[46]). The DJ was of the view that the relationship was salvageable with appropriate intervention and more opportunities for the Father and the children to bond, which would not be possible if the children relocated to the US (GD at [47]).

7 Third, the DJ placed little weight on the Mother's assertion that the children had often expressed their desire to relocate, bearing in mind the fact that the children were still young and might not fully appreciate the importance of maintaining their links with both parents and the significance of the loss of relationship with the Father (GD at [49]–[52]). He further considered the significant adjustments that would be required in a cross-cultural marriage, whereby the children would be uprooted from a familiar environment to a new environment with little family and social support (GD at [53]).

The appeal

8 On 12 March 2024, the Father filed an application for leave to adduce fresh evidence for the hearing of the appeal (HCF/SUM 74/2024). I heard the parties' submissions on 3 May 2024 and dismissed the summons. I observed that the fresh evidence sought to be adduced included, *inter alia*, WhatsApp messages between the Father and the children, and undated photographs showing the Father with the children. The Father sought to convince me that the fresh evidence was important to show the close relationship he previously shared with the children. In this regard, having considered the test for further evidence as set out in *Ladd v Marshall* [1954] 1 WLR 1489, as well as the Court of Appeal's observations in *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 at [58] that "the court should also

consider if there are any reasons for which the *Ladd v Marshall* requirements should be relaxed in the interests of justice", I was satisfied that the fresh evidence sought to be adduced by the Father would not have a perceptible impact on the outcome of the appeal. The Father had already exhibited some evidence of a similar nature in the proceedings below, and I was of the view that the fresh evidence would not add much more to the evidence already before the court in helping the court make its assessment of the state of the relationship between the Father and the children.

9 Having dismissed the summons, I proceeded to hear the parties' submissions on the appeal. Counsel for the Mother raised six key points. First, it was submitted that the DJ had placed too much weight on the potential loss of relationship between the Father and the children, given that the Father had never fully utilised the access periods over the past six-odd years. Counsel tendered documentation to show that the Father had allegedly failed to turn up on 73% of the occasions when he had access to the children. It was argued that the Father's lack of interest in the children was the main reason why he did not have a close relationship with them.[2] Second, counsel for the Mother argued that the Father had agreed to the children migrating to Australia, and that on this basis, less credibility should be given to his submission that he would not be able to see his children as often if they relocated.[3] Third, it was argued that the DJ had failed to give sufficient weight to the wishes of the children.[4] Fourth, it was argued that detailed arrangements would be put in place to ensure the children would be able to settle well in the US. This was evidenced by, *inter alia*, Mr [B] purchasing a larger house with a swimming pool for the children,

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2 Appellant's Case dated 20 December 2023 at paras 8–18.

3 Appellant's Case dated 20 December 2023 at paras 47–48.

4 Appellant's Case dated 20 December 2023 at paras 21–26.

and also by the schooling arrangements that had been put in motion by the Mother.[5] Moreover, the Mother contended that relocating would enable her to spend more time with the children because Mr [B] had the financial wherewithal to support the Mother and the children,[6] thereby allowing her to be a full-time homemaker in the US. Fifth, the DJ failed to consider that the Mother and the children would have a strong support network in the US, in particular, due to the close relationship shared by the children and Mr [B]'s family.[7] Finally, counsel for the Mother also argued that liberal access arrangements would be put in place to enable the Father to remain in contact with the children.[8]

10 The Father, on the other hand, categorically denied having agreed to allow the children to migrate.[9] As to his relationship with the children, he claimed that while his work schedule might have prevented him from turning up on some occasions when he had access, these absences could not have amounted to 73% of his total access periods. Moreover, according to the Father, there were many other occasions when he had visited the children without the Mother's knowledge, even if he had not kept records of these visits.[10] The Father also downplayed the children's relationship with Mr [B] and his family, claiming that the children had only spent about 20 days in the US and would therefore not have had sufficient opportunity to develop strong ties. In addition, he expressed concerns about Mr [B]'s financial position and ability to support

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5 Appellant's Case dated 20 December 2023 at para 27.

6 Appellant's Case dated 20 December 2023 at paras 36–39.

7 Appellant's Case dated 20 December 2023 at paras 28–31.

8 Appellant's Case dated 20 December 2023 at para 43.

9 Respondent's Affidavit dated 8 March 2024 at p 11.

10 Respondent's Affidavit dated 8 March 2024 at pp 3–5.

the family, and the risk that the Mother as well as the children would be left without a safety net if her relationship with Mr [B] failed.[11]

The applicable legal principles

The law on appellate intervention

11 An appellate court will usually be slow to intervene in appeals against decisions involving the welfare of children, in recognition of the fact that the decisions in such cases often involve choices between less-than-perfect solutions (see *TSF v TSE* [2018] 2 SLR 833 ("*TSF v TSE*") at [49], citing *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 ("*CX v CY*") at [15] and *BG v BF* [2007] 3 SLR(R) 233 at [12]). The court ought only to reverse or vary the decision below if the trial judge committed an error of law or principle, or exercised his discretion wrongly (see *VDX v VDY and another appeal* [2021] SGHCF 2 at [24] and *TSF v TSE* at [49]). Nevertheless, where the proceedings below lack the characteristics of a trial, the appellate court may be said to be in as good a position as the first-instance court to draw inferences and conclusions from the evidence (see *TSF v TSE* at [50]).

The relevant factors in relocation applications

12 The applicable legal principles relating to the permanent relocation of children are not disputed and are summarised in the GD (at [27]–[29]). The paramount consideration in relocation applications is the welfare of the child (*BNS v BNT* [2015] 3 SLR 973 ("*BNS v BNT*") at [19]). While this principle seems simple at first glance, the challenge lies in determining whether relocation would be in the best interests of the child: this requires a balancing

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11 Respondent's Affidavit dated 8 March 2024 at pp 9–10.

of many factors which are driven by competing and often irreconcilable considerations.

13 Two important considerations that may often be diametrically opposed are (a) the reasonable wishes of the primary caregiver, and (b) the loss of relationship between the left-behind parent and the children. There is no legal presumption in favour of allowing relocation when the primary caregiver's desire to relocate is not unreasonable or founded in bad faith (*BNS v BNT* at [21]). Nor is the loss of relationship between the left-behind parent and the children treated as having determinative weight or as being decisive in every case (*BNS v BNT* at [26]):

> How adversely the loss of that relationship will impact on the child's welfare is, of course, a matter that depends on the facts, *in particular, the strength of the existing bond between the left-behind parent and the child*. In general, the stronger the bond, the larger the resultant void in the child's life if relocation is allowed, and, accordingly, the weightier this factor must be in the overall analysis. Indeed, it may *further* be appreciated that it is only when there is a *subsisting* relationship between the left-behind parent and the child that one can properly speak of there being a "*loss*" of that relationship upon relocation. As has been astutely contrasted in *Ong* at para 9.42, the severance of an already functioning (if not blossoming) relationship will generally be both more agonising and disruptive to the child than if the effect of relocation was, relatively speaking, merely to hamper the "*building*" up of that particular parent-child relationship:
>
> > There is a difference between the trauma and harm to a child arising from the *loss* of a close relationship and the benefits of *building* a relationship with both parents. Where the relationship between the child and non-custodial parent is not close, it may still be beneficial for the law to support the maintenance of this relationship or encourage parties to strengthen the relationship. However, if this must be sacrificed because of pressing reasons for relocation, it may be the less harmful choice for the child. In contrast, where a *loss* of a close relationship is concerned, the harm to the child may not justify the sacrifice. [emphasis in original]

> [emphasis in original]

14 It bears emphasis that in considering these two factors, the impact of the court's decision on the parents is not relevant *per se*: such impact is only relevant to the extent that it is shown to have an impact upon the children (*BNS v BNT* at [3]).

15 Other factors that the court may have regard to apart from the reasonable wishes of the primary caregiver and the child's loss of relationship with the left-behind parent include "the child's age, the child's attachment to each parent and other significant persons in the child's life, the child's wellbeing in her present country of residence, as well as the child's developmental needs at that particular stage of life, including her cognitive, emotional, academic and physical needs" (*UXH v UXI* [2019] SGHCF 24 ("*UXH v UXI*") at [28]).

16 Further, the court should also consider the wishes of the children. Section 125(2)(*b*) of the Women's Charter 1961 provides that:

> **Paramount consideration to be welfare of child**
>
> …
>
> (2) In deciding in whose custody, or in whose care and control, a child should be placed, the paramount consideration is to be the welfare of the child and subject to this, the court is to have regard –
>
> …
>
> (*b*) to the wishes of the child, where he or she is of an age to express an independent opinion.

17 The question of how much weight is to be attached to the wishes of the child is a matter that falls within the judge's discretion. Relevant factors that the judge should consider include the age and maturity of the children and the risk that the children may have been coached and pressurised by a parent to express

certain views (*AZB v AZC* [2016] SGHCF 1 ("*AZB v AZC*") at [15] and [25]; *ZO v ZP and another appeal* [2011] 3 SLR 647 at [15]–[16]). Children's views may be presented in child welfare reports, including specific issues reports, which are prepared by professionals. Some guidance on how the court ought to consider child welfare reports can be found in the Court of Appeal's recent decision of *WKM v WKN* [2024] 1 SLR 158 (at [74]–[75]):

> In the process of generating their reports, the professionals would have engaged directly with the relevant persons involved in the child's life and observed some of their interactions with the child. Their observations serve as crucial insights into the child's world and greatly assist the court by presenting the realities of the child's situation. Given their expertise, they are well suited to identify issues, such as excessive gatekeeping behaviour by the parents and even possible signs of abuse. The judge, on the other hand, does not have the benefit of such extended interactions with the child or other family members. The court should, nevertheless, be very mindful that the information in the reports remain untested by cross-examination. Such reports must thus be carefully considered. Where there are observations in the reports which contradict the narrative presented in the parties' affidavits, it is important that the court carefully considers whether the observations in the reports are clearly explained and the factual bases for the observations and assessments. The court may also seek clarification from the professionals who had submitted the report or ask further questions in respect of the content in the report.
>
> If the judge chooses to place reliance on child welfare reports in the court's decision-making process, this should be included in the court's grounds of decision. We emphasise that references to the contents of the reports must be made in an appropriate manner that will not compromise the child's interest, bearing in mind the confidential nature of these reports. For example, a court may state that it accepts the observations in the report that a parent has attempted to alienate the child from the other parent and provide instances of the factual bases for such observations which are facts already known to both parties. Such a manner of referencing avoids disclosing details that the child may have provided in confidence.

18 Although there is no legal presumption in favour of allowing relocation when the child wishes to relocate, research supports the view it is more often

than not beneficial for the parties and the children for the children to be given a voice on arrangements that are made for them (see *AZB v AZC* at [12], citing Jan Ewing *et al*, "Children's voices: centre-stage or sidelined in out-of-court dispute resolution in England and Wales?" (2015) 27(1) Child and Family Law Quarterly 43 at 47). Some authors have gone further to suggest that at "a threshold level, there is no way to consider the best interests of the child without a consideration of the child's feelings", and that the "heart and mind of the child ought to be central to the issue of relocation" (see Judith Wallerstein and Tonty Tanke, "To move or not to move: psychological and legal considerations in the relocation of children following divorce" (1996) 30 Family Law Quarterly 305 at 307). I also note that the decision of the Court of Appeal of England and Wales in *Re F (A Child) (International Relocation Case)* [2017] 1 FLR 979 ("*Re F*") supports the view that greater focus ought to be placed on the child's wishes and feelings in determining the welfare of the child (at [18] and [40]).

19 One local decision where the children's wishes played a role in the court's assessment can be found in the 2017 decision of HCF/DT 4196/2012, which was cited by the High Court in *UFZ v UFY* [2018] 4 SLR 1350 ("*UFZ v UFY*") (at [14]). In that case, Debbie Ong J (as she then was) found that the two teenage children were close to their father but had, through judicial interviews and a specific issues report, expressed their wish to relocate to New Zealand with their mother. Although the children lacked sufficient maturity to decide major issues such as relocation for themselves, this did not mean that their wishes were to be brushed aside. As a result, the relocation application was granted, subject to satisfactory access arrangements being made to support the children's relationships with their father.

20 Ultimately, it must be remembered that relocation involves the risk of loss of an important relationship and the risk of harm that might entail. The following observations of Ryder J in *Re F* (at [38]) are worth highlighting:

> … High on the list of important questions should have been an evaluation of the harm, on the one hand, to [the child] of leave being refused as against, on the other hand, the harm that would result from separation from her father should she move.

Relevant factors in the present case

The reasonable wishes of the primary caregiver

21 The Mother's desire to move on to the next stage of her life is understandable, and I find that her desire to relocate is not founded in bad faith (GD at [32]). I note, moreover, that the Mother has "made concrete preparations and done most of what she could to ensure a smooth transition" (*Tan Kah Imm v D'Aranjo Joanne Abegail* [1998] SGHC 247 at [57]) – *inter alia*, she has done careful research on schools for the children; Mr [B] has made preparations for the living arrangements of the newly reconstituted family; and the children themselves have been brought to the US to see the arrangements made for them.

22 On appeal, the Mother submits that her income as a sales representative in Singapore fluctuates, and the monthly maintenance sum of $900 paid by the Father is insufficient for the children's expenses.[12] In contrast, Mr [B]'s current job in the US pays him around US$8,000–9,000 a month,[13] which the Mother asserts would allow her to be a full-time homemaker capable of dedicating her time to the children. The increase in disposable income available to the family would also expand the scope and breadth of opportunities available to the

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12 Appellant's Skeletal Submissions dated 24 April 2024 at para 10; Appellant's Case dated 20 December 2023 at para 37.

13 ROA (Vol 3) at pp 74, 139.

children.[14] She contends that if Mr [B] were to relocate to Singapore, it would be unlikely for him to earn enough to be the sole breadwinner, and thus she would have to work to support the family.[15]

23 As I have noted, the Father has submitted that the Mother's plan is overly reliant on Mr [B]'s income,[16] which – according to the Father – would put the children at risk if anything were to happen to Mr [B] (*eg*, if he were to lose his job) or if Mr [B]'s relationship with the Mother were to deteriorate.[17]

24 I accept that the Mother's claims are, to some extent, contingent upon the goodwill of third parties, including Mr [B] and his family. However, it would be speculative and unduly pessimistic of me to suggest that the Mother should not rely in good faith on the goodwill of others. Indeed, the authorities clearly show that the presence of familial support is a factor that can weigh in favour of relocation (see *AZB v AYZ* [2012] 3 SLR 627 ("*AZB v AYZ*") at [29] and *UFZ v UFY* at [29]); and in the present case, based on the evidence available, the attitude of Mr [B]'s parents towards his new family unit appears to be welcoming and positive. Further, counsel for the Mother informed at the hearing before me that the Mother intends to retain her flat in Singapore, which would provide a safety net for the children in the event that they have to return to Singapore. This would go some way towards ameliorating the Father's concern that the children would be left without a safety net if they relocate.

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14 Appellant's Skeletal Submissions dated 24 April 2024 at para 10; Appellant's Case dated 20 December 2023 at para 38.

15 Appellant's Case dated 20 December 2023 at para 37.

16 ROA (Vol 2) at p 5.

17 Respondent's Affidavit dated 8 March 2024 at pp 9–10.

25 It is additionally true that the welfare of the children is inextricably tied together with the well-being of their primary caregiver (see *BNS v BNT* at [20]; *AZB v AZC* at [34]; and *ULA v UKZ* [2018] SGHCF 19 ("*ULA v UKZ*") at [47]). In this connection, it is also worth highlighting the following observations of Ormrod LJ in *Chamberlain v de la Mare* (1983) 4 FLR 434 at 442, which was cited with approval by the High Court in the cases of *AZB v AYZ* (at [15]) and *ULA v UKZ* (at [45]):

> … [I]f the court interferes with the way of life which the custodial parent is proposing to adopt so that he or she and the new spouse are compelled to adopt a manner of life which they do not want, and reasonably do not want, the likelihood is that the frustrations and bitterness which would result from such an interference with any adult whose career is at stake would be bound to overflow on to children. …

26 The Mother has indisputably always been the primary caregiver of the children, and she is predominantly responsible for the well-being of the children. On the evidence before me, the Father's support appears to have been limited to the maintenance that he was ordered to pay and his occasional visits to see the children. While I do not accept counsel's suggestion that the Mother has no support network at all in Singapore, I do accept that the support network does not appear particularly strong: *inter alia*, she is clearly not on good terms with her mother. Insofar as the relocation would enable the Mother to benefit from Mr [B]'s support network, it would indirectly benefit the children too, since she is their primary caregiver and the parent on whom they depend on for their daily needs. In this connection, I also accept the Mother's submission that she would have more time to spend with the children when she relocates, and that Mr [B] has made genuine efforts to enable her and the children to settle in smoothly to their new surroundings (*inter alia* by purchasing a larger family house).

27 Further, I note that the children themselves will have the opportunity to build rapport with and interact with the Mother's support network; in particular, Mr [B] and his family. I should clarify that while the Mother has claimed that the children already share a close relationship with Mr [B] and his family, this claim should be viewed with some degree of circumspection given that the relationship is at a relatively nascent stage. What can be said is that the evidence does demonstrate Mr [B]'s and his family's *willingness* to develop a close rapport with the children; and this lends weight to the Mother's submission that the relocation should result in incidental benefits to the children's emotional well-being. In other words, the children's interests are aligned with the Mother's interests.

28 Finally, the DJ considered that the Mother had given little thought to the possibility for Mr [B] to relocate to Singapore instead, which would be less disruptive for the children. I accept that the present case shares some similarities with *TAA v TAB* [2015] 2 SLR 879 ("*TAA v TAB*") (at [21]) and *UXH v UXI* (at [25]), which were both cases where the applicant parent sought to relocate to a country that was not their own home country, and where the relocation application was ultimately dismissed. However, I do not think it is fair to say that the Mother has given little thought to the alternative of having Mr [B] relocate to Singapore: I find that she reached the conclusion that relocation would be in the children's best interests after factoring in the overall standard of living and emotional support that the family would be able to enjoy in the US, as compared to Singapore. In my view, this would be a neutral factor.

29 In my view, the DJ undervalued the ways in which the Mother's desire to relocate would impact on the children. This would be a factor that weighs in favour of relocation.

The wishes of the children

30 The Mother submits that the children have expressed a strong desire to move to the US.[18] She claims that Mr [B] has "fully immersed himself into the role of a father" and that there is "no denying that he will look after the children in America".[19] The Father does not dispute that the children wish to relocate to the US, but he submits that children's desires are dynamic and subject to change, and he further claims that the children's views have been heavily influenced by the Mother.[20]

31 I am acutely aware of the difficulties that arise when the court is tasked to assess the wishes of the children. In the first place, I accept the DJ's finding that the children are still young and may not fully appreciate the importance of maintaining links with both parents and the significance of the loss of relationship with the left-behind parent (GD at [52]). This difficulty is compounded by the fact that the parent with care and control of the children would, in most cases, have some degree of influence over the views and wishes of the children. This is evident in the present case, and for this reason, I do not place any weight on the letters from the children which the Mother adduced in the proceedings below and in which the children purported to express their desire to relocate to the US.

32 Leaving aside these letters, there is still ample evidence before me (including the specific issues report) that the children are in favour of relocation. I am of the view that the DJ placed insufficient weight on the children's wishes in assessing whether relocation would serve their best interests. Although the

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18 Appellant's Case dated 20 December 2023 at para 21.

19 Appellant's Case dated 20 December 2023 at para 35.

20 Respondent's Affidavit dated 8 March 2024 at pp 10–11.

children are young, they are able to form views on their likes and dislikes, and some weight ought to be given to their wishes. In the present case, the children's wishes to relocate have a significant bearing on their mental and emotional states if they were to remain in Singapore: *eg*, there is evidence to suggest that the children are under-performing in school, influenced in part by their desire to relocate to the US.[21] Further, the children's desire to relocate has created tensions in their relationship with the Father.[22] In my view, the welfare of the children will almost certainly be negatively impacted in the short-term if relocation is denied in the present case. It is more difficult to gauge the longer-term impact of denying the relocation application. On the one hand, the children may grow to appreciate the relationship they share with their Father. On the other hand, they may grow resentful of the Father for having denied them the opportunity to pursue what they presently perceive to be a more fulfilling path in life.

33 Conversely, I accept that the children's desire to relocate will play a role in enabling them to better adapt to the relocation. The Mother's evidence is that the children are comfortable with Mr [B] and his family, and that this has played a part in shaping their views on relocation. Her evidence is corroborated by the findings of the Specific Issues Report. This would go some way towards ameliorating any concerns that the court has in relation to how relocation may uproot the children from their lives in Singapore and how well the children may adapt to their new environment. I add that in my view, both children are at an age where, all things being equal, they should find it relatively easier to adapt to new surroundings.

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21 ROA (Vol 3) at pp 161–162; Appellant's Case dated 20 December 2023 at para 13.

22 ROA (Vol 3) at pp 62, 155.

The loss of relationship between the Father and the children

34 I turn to consider the strongest factor cited by the DJ against relocation, which is that the relocation will adversely affect the Father's relationship with the children. The Mother's case is that the children have "never shared a close relationship with the Father", because the Father has not fully utilised his access periods over the past six-odd years;[23] and further, that even when he had access to the children, he would often lose his temper at the children, resulting in their feeling uncomfortable around him.[24]

35 On the other hand, as I have noted, the Father claimed that he actually shared a close relationship with the children without the Mother's knowledge. He claimed that they were not close to him whenever the Mother was around because they were "fearful of [the Mother]".[25] According to the Father, the children often sent him secret messages asking him to play with them, to bring them for outings, and to buy them toys.[26] The Father has acknowledged, however, that his relationship with the children now is "not so ideal" as the children are "angry with [him] for not allowing them to relocate to [the] USA".[27]

36 Based on the evidence before the court, and the Father's own admission, I find that the children presently share a poor relationship with the Father. While the evidence also shows that the children did spend some time with the Father *in the past*, the court is predominantly tasked with assessing the merits of the relocation application on the facts as they *presently are*, as opposed to the state

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23 Appellant's Case dated 20 December 2023 at paras 2(a), 12.

24 Appellant's Case dated 20 December 2023 at paras 13–16.

25 Respondent's Affidavit dated 8 March 2024 at p 2.

26 Respondent's Affidavit dated 8 March 2024 at p 3.

27 Respondent's Affidavit dated 8 March 2024 at p 10.

of the relationship in the past (see *ULA v UKZ* at [50]). Regardless of what state their relationship might previously have been in, it cannot be denied that the relationship between the Father and the children has been poor in recent months. For completeness, I should make it clear that on the evidence before me, while the deterioration in the relationship between the Father and the children has been particularly marked in recent months, it is also the case that he has not had a close relationship with the children for much of the six years post divorce.

37 In this connection, I reject the Father's submission that the presently poor relationship he has with the children is due to the Mother preventing the children from getting close to him. There is simply no evidence of the Mother preventing the children from having access to the Father. Based on the evidence available (including the Specific Issues Report), it is more likely than not that the Father's behaviour around the children (including his lack of understanding of the children's needs) has played a significant role in the deterioration of their relationship.[28] The deterioration of the relationship may also be attributed in part to the resentment that the children feel against the Father for preventing them from relocating.[29] These factors go towards the *quality*, rather than the *quantity*, of access. In so far as the *quantity* of access is concerned, I do not think it is appropriate – nor is it consistent with the spirit of co-parenting – for parties to squabble about the documentation and mathematical computation of one parent's utilisation rate of access hours. Such an approach is too narrow and simplistic to fully assess the loss of relationship and its impact on the children. I make no finding as regards the Mother's allegations as to the Father's infrequent access to the children.

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28 ROA (Vol 3) at pp 19, 39–40.

29 ROA (Vol 3) at pp 62, 155.

38 While it may be said that the relationship between the Father and the children is potentially salvageable with appropriate interventions, I am equally concerned that dismissing the relocation application will create a greater risk of resentment on the part of the children, if they perceive that the reason why they were deprived of the opportunity to move abroad was because of the Father. On balance, based on my earlier findings as to the state of the relationship between the Father and the children, I find that the loss of relationship in the present case would not occasion the sort of trauma and agony to the children that would arise in cases where the bond between the left-behind parent and the child is extremely strong (as envisaged in *BNS v BNT* at [26]). Relocation would also not deprive the children of a father figure entirely, bearing in mind the relationship that the children share with Mr [B]. As to the concern about the opportunities which the Father will have to build a meaningful relationship with the children, this may be addressed through appropriate arrangements which I address in [44]–[45] below.

39 For the avoidance of doubt, I have disregarded the Mother's argument that the Father previously agreed to the children emigrating to Australia, as the statement in the Father's text message which counsel pointed out to me was equivocal at best.

40 Finally, I add that the findings of the Specific Issues Report cohere with the overall picture painted by the evidence adduced by the parties, and I have also placed weight on the views contained therein.

My decision

41 Having regard to the evidence available, I am of the view that the DJ exercised his discretion wrongly by placing insufficient weight on the ways in

which the relocation would benefit the children, as well as the harm that would arise if the relocation application were denied. I accept that the Father's loss of relationship with the children is an important factor; and that relocation inevitably reduces the amount of time that he can spend physically with the children. Nevertheless, painful as it may be for the Father, I find that the strength of the relationship between him and the children *at present*, and the corresponding harm which would be suffered *by the children* as a result of the loss of relationship, are not such as would warrant denying the relocation application.

42 I should add that I do not give much weight to arguments that maintaining the status quo would be beneficial for the children. As the Court of Appeal of England and Wales held in the case of *Re K (A Child) (International relocation: appeal against judge's findings of fact)* [2017] 1 FLR 1459 (at [62]), "the benefits of a status quo that no longer accords with the wishes of a child … may weigh differently from a status quo to which no exception is taken." I agree with these observations and find in the present case that maintaining the status quo may in fact be *detrimental* to the children's welfare.

43 On balance, I find that it is more likely than not that greater harm will be suffered by the children if they are not allowed to relocate, as compared to the harm suffered from the loss of relationship between the children and the father. I conclude therefore that it would be in the best interests of the children to relocate to the US together with the Mother.

44 I stress that a strong post-relocation access plan should help to mitigate to a considerable degree the possible loss of relationship between the Father and the children. The Mother has proposed access on the following terms:[30]

> a. The Father shall have telephone/video access to the Children every day;
>
> b. The Mother shall travel to Singapore with the Children once a year for a period of at least 4 weeks, or twice a year for a period of at least 2 weeks (until such time that the Children reach 21 years of age), and the Mother shall inform the Father of the duration of these trips at least 1 month in advance. During these trips to Singapore, the Father shall have access to the Children for the first half of the duration of the trips from 10am to 9pm every day.
>
> c. Any overnight access with the Children shall be discussed and agreed between the Mother and Father at least 1 week before the Children's trips to Singapore.

45 I find that the Mother's access proposals are generally reasonable, save that I would add that the Father's access to the children during their annual trips should be generous and that he should also be given the opportunity to have generous access to his children when he visits them in the US. The Mother should also actively encourage the children to spend quality time with the Father during the remote access periods. For example, it will not be enough for the Mother simply to provide the children's contact details to the Father, and *vice versa*. Instead, in the spirit of co-parenting, the Mother should expressly set aside time with the children for them to speak with their Father on a regular basis. She should also update the Father regularly about activities that the children are engaged in, so as to enrich the quality of conversations between the Father and the children and thereby to facilitate effective access by the Father to the children even when he is physically distant from them. As a guiding

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30 Appellant's Case dated 20 December 2023 at para 43.

principle, the Mother should bear in mind that it is ultimately in the children's interests to build a harmonious and meaningful relationship with the Father.

Conclusion

46 For the reasons given above, I allow the appeal. The Mother's application to relocate the children to the US is allowed, subject to the access arrangements I have outlined in [44]–[45].

47 I believe both parties in this case want the best for their children at the end of the day, even if they may not always see eye to eye on what is best for the children. With this appeal having been determined, both parties are strongly encouraged to set aside their differences, and to focus on helping one another develop strong relationships with the children going forward.

48 Having regard to the nature of these proceedings and my findings herein, I make no order as to the costs of the appeal and of HCF/SUM 74/2024.

Mavis Chionh Sze Chyi
Judge of the High Court

Kulvinder Kaur and Kalvinder Kaur (I.R.B. Law LLP) for the appellant;
The respondent in person.