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UHA
v
UHB

[2017] SGHCF 27

High Court — HCF/Originating Summons (G) No 11 of 2017
Hoo Sheau Peng J
4 September 2017

Civil procedure — Appeals — Extension of time

13 November 2017

Hoo Sheau Peng J:

1 The parties are the parents of a 12-year-old girl ("the child"). On 4 September 2017, I granted the plaintiff-mother ("the mother") an extension of time to file an appeal against an order made by the District Judge on 26 April 2017 ("the Order") in Originating Summons (G) No 40 of 2016 ("OSG 40/2016"), which was an application by the defendant-father ("the father") under s 5 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed). The father has appealed against my decision to grant a time extension. I now provide my reasons.

Brief background

2 The parties were never married to each other. The mother is a Japanese citizen. The father is an Australian citizen and a Singapore Permanent Resident.

The child has dual citizenship in Australia and Japan. Between October 2007 and December 2014, the child lived with her parents in Singapore. In December 2014, the mother and the child moved to Japan where the child enrolled in an international school. The parties disputed whether they had agreed for this to be a temporary or permanent relocation arrangement.

3 On 26 April 2017, the District Judge heard OSG 40/2016 and ordered, amongst other things, that the parents shall have joint custody, as well as shared care and control, of the child. Also, the mother was ordered to bring the child from Japan to Singapore by 1 July 2017. The decision to relocate the child was and is at the heart of the substantive dispute about the Order.

4 Pursuant to r 821(*n*) read with r 825 of the Family Justice Rules 2014 (S 813/2014) ("the FJR"), the mother had until 11 May 2017 (being within 14 days after the date of the Order) to file her appeal (as 10 May 2017 was a public holiday). On 3 May 2017, the mother submitted a request for further arguments but this was rejected by the District Judge on 8 May 2017. The mother stated that on or about 7 May 2017, and then again on 9 May 2017, she instructed her then-solicitors to file an appeal. Five days after the time for appeal had lapsed, the mother attempted to file a notice of appeal on 16 May 2017. Shortly after the notice of appeal was rejected, the mother filed this application for an extension of time on 19 May 2017, eight days after the expiry of the time for filing an appeal.

5 On 1 July 2017, in compliance with the Order, the mother brought the child to Singapore. On 15 August 2017, the mother's application to stay the execution of the Order was dismissed. At the time of the hearing before me on 4 September 2017, both the mother and the child were in Singapore on social visit passes. The mother's social visit pass was to expire on 30 August 2017,

but was extended to 6 September 2017 on account of the hearing before me. The child was residing with the mother for four days a week at a serviced apartment, and with the father for three days a week at his residence. Due to the child's immigration status pending these proceedings, as well as the disagreements between the parties about the appropriate schooling arrangements for the child, the child has not attended school since she arrived in Singapore.

The parties' submissions

6 The mother explained that even though she had instructed her previous solicitors to file an appeal within time, there was a slip-up by them. However, the length of the delay was not substantial. The short delay caused no prejudice to the father. The mother submitted that she had a reasonable chance of success in the appeal because the Order was not in the child's best interests. The Order was made without taking into account the views of the child, and without first ensuring that immigration permits, accommodation and living expenses for the child and the mother were secured, and that schooling arrangements for the child were made. Without a secure immigration status, the mother could possibly be repatriated and separated from the child. Further, the mother pointed to matters which were discovered after the child's return to Singapore and which were allegedly suppressed at the earlier hearing of OSG 40/2016. These included the facts that the father had become unemployed and had moved with a new partner to a new place of residence which was unfamiliar to the child. It was submitted that these facts were material considerations which would have persuaded the court against making the Order.

7 The father submitted several reasons to dismiss the application. First, although the delay was short, it was critical that the appeal be filed on time as preparations had to be made for the child's schooling, accommodation and

immigration permit in Singapore. Due to the delay, the child had already returned to Singapore. Allowing the mother to now appeal would be "incredibly disruptive" for the child and himself. Second, the fact that the mother's former solicitors had failed to act on her instructions in a timely manner was insufficient reason to allow her to file the appeal out of time. Third, the appeal had very low chances of success. Lastly, allowing an appeal out of time would be disruptive and prejudicial to the child's life and education, as well as to the father, who had already made arrangements for the child in Singapore.

My decision

8 It is well established that in determining whether to grant an extension of time to file an appeal, the court will consider the following four factors in a holistic manner (see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 ("*Lee Hsien Loong*") at [18] and [28]):

(a) the length of delay;

(b) the reasons for the delay;

(c) the chances of the appeal succeeding if time for appealing were extended; and

(d) the prejudice caused to the would-be respondent if an extension of time was in fact granted.

Length of the delay

9 In *Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202, the Court of Appeal calculated the length of delay as the time between the last day for filing a notice of appeal and the day on which the plaintiff filed an originating summons seeking an extension of time (at [18]). In the present case,

the delay was eight days (see [4] above). I was satisfied that this was a short delay. The father did not dispute that the delay was short. As for the father's submission that timeliness was crucial because of the arrangements to be made for the child in Singapore, and that there would be disruption to the lives of the father and the child, I deal with this in the assessment of prejudice.

Reasons for the delay

10 To explain the short delay, the mother's former solicitors filed an affidavit explaining that after the request for further arguments was rejected on 8 May 2017, they had insufficient time before 11 May 2017 to advise the mother, obtain her instructions and obtain the monies required for security for costs for the appeal by telegraphic transfer from Japan. Her former solicitors also explained that they were under the impression that r 839 in Division 60 of the FJR applied, such that the time for filing a notice of appeal only started running from 8 May 2017, the date when the request for further arguments was rejected (see r 839(3)(*b*)(ii)).

11 Before me, the mother did not dispute that r 839(3) was not applicable. The appeal, being an appeal from "an order relating to the custody, care and control of a child … the relocation of a child … pursuant to an application under the Guardianship of Infants Act", was brought under r 821(*n*) in Division 59 of the FJR, rather than Division 60. Under r 825(*b*) of the FJR, an appeal brought under Division 59 must be filed within 14 days after the date of the judgment or order appealed against. Division 59 is silent on the procedure or timelines when a party requests for further arguments, and thus, the time for appealing stipulated by r 825(*b*) still takes effect.

12 In this regard, I refer to *Lim Kok Boon (Lin Guowen) v Lee Poh King Melissa* [2012] 2 SLR 1082, cited by the father, where Quentin Loh J interpreted

and applied O 55C r 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the 2006 ROC") which sets out the procedure for appeals from the then Subordinate Courts to the High Court. Like Division 59 of the FJR, O 55C r 1 of the 2006 ROC was silent on the procedure and timelines when a party asks for further arguments. (I note that Order 55C r 1 has since been amended to specifically provide for the procedure and timelines where a request for further arguments is made – see O 55C rr 1(6)–(7) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), which are *in pari materia* with rr 839(3)–(4) of the FJR.) Justice Loh held that where the rules were silent, as Division 59 of the FJR is, on the matter of further arguments, and where a request for further arguments is not a bar to an appeal, this must mean that time for appeal is not to be extended when a request is made (at [10] and [15]). Again, this means that in the present case, the time for appealing is within 14 days after the date of the Order.

13 Insofar as the legal position above ought to have been patent to the mother's former solicitors, the father has some grounds to submit that the mother should have taken advice on and made preparations for the filing of the notice of appeal even whilst the request for further arguments was pending. Nonetheless, in my view, the mother has provided a sufficient explanation for the short delay. The mother made a detailed request for further arguments. After the request for further arguments was rejected, time was needed for the former solicitors to confirm instructions from the mother, and for the mother to transfer monies for the security for costs from abroad. There was no undue delay in the process. Once her former solicitors were notified that the appeal was filed out of time, they acted promptly to remedy the non-compliance by filing this application. The mother did not act in a dilatory manner. There was nothing to suggest that she abused the process or deliberately dragged her feet.

Chances of the appeal succeeding

14 In assessing the merits of the appeal for the purposes of an application for an extension of time, the court adopts a very low standard. The test is "whether the appeal is 'hopeless'" (*Lee Hsien Loong* at [19]). Unless one can conclude that "there are no prospects of the applicant succeeding on the appeal, this is a factor which ought to be considered to be neutral" rather than against the applicant (*Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 at [43]). In the present case, I was of the view that the appeal is not hopeless. The dispute concerned the welfare of the child who has been relocated. There is room for argument about whether shared care and control in Singapore, in a situation where both the mother and the father are jobless and where the mother apparently has no secure immigration status and place of residence, is in the child's best interests.

Prejudice to the father

15 In *Wee Soon Kim Anthony v UBS AG and Others* [2005] SGCA 3, the Court of Appeal clarified (at [53]) that the relevant prejudice refers to that faced by the would-be respondent if an extension of time were granted and not the prejudice to the would-be appellant if the extension were not granted; the latter would be present in every case because the would-be appellant would necessarily be deprived of his right of appeal without an extension (at [54]). Further, prejudice cannot refer to "the mere fact" that the "appeal would be constituted" if an extension were to be granted (at [55]).

16 In my view, since the delay was a mere period of eight days, I did not see how the father would be prejudiced by allowing the application for an extension of time. Essentially, the father submitted that during this time, he has had to make arrangements for the child in Singapore. With a pending appeal,

the child's life and education would be kept in suspense. However, even if the appeal had been filed eight days earlier, pending the appeal, the father would have had to make the necessary arrangements for the child, and the same concerns would have been present about the impact of the proceedings on the lives of the father and the child. I was not persuaded that these matters formed any sufficient basis not to grant an extension of time.

Conclusion

17 For the reasons above, I granted the mother an extension of time to file the notice of appeal and certificate for security for costs (by way of undertaking) in respect of the Order within two days of my decision. Given the significant nature of the case, which involves the question of whether the child is to live in Japan, Singapore or elsewhere, it is clear to me that there is merit in having an appellate court consider the case. However, the father's concerns (set out at [16]) underscored the need for the appeal to proceed expeditiously. To this end, I directed the mother to expedite the appeal. I also urged the parties to cooperate in the process of placing the child in a school in Singapore. Costs in the cause of the appeal were awarded to the father.

Hoo Sheau Peng
Judge

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