

UXH v UXI
[2019] SGHCF 24

Case Number : District Court Appeal No 74 of 2019
Decision Date : 09 December 2019
Tribunal/Court : High Court (Family Division)
Coram : Debbie Ong J
Counsel Name(s) : Philip Jeyaretnam, SC (instructed) (Dentons Rodyk & Davidson LLP), Gloria-James Civetta and Shereen Goklani (Gloria James-Civetta & Co) for the appellant; Koh Tien Hua and Ho Jin Kit Shaun (Eversheds Harry Elias LLP) for the respondent.
Parties : UXH — UXI

Family Law – Child – Relocation

9 December 2019

Debbie Ong J:

1 The appellant (“the Mother”) and the respondent (“the Father”) were married on 22 December 2007 and have two children, a son who is 6 years old and a daughter who is 12 years old (“the Children”). Both parties and the Children are Portuguese citizens as well as Singapore Permanent Residents (“PRs”). The Children have lived in Singapore their entire lives and are enrolled in international schools here.

2 The Mother sought a divorce on 16 February 2015 and final judgment of divorce was granted on 29 September 2015. The court granted a consent order under which the parties agreed that they would have joint custody of the Children, with care and control to the Mother and reasonable access to the Father. Parties also agreed that, should either parent wish to relocate, they would “mutually discuss and come to a mutual consensus and/or agreement of the same taking the children’s welfare as paramount consideration”.

3 Since the divorce, both parties have moved on with their lives with their new partners. The Mother’s partner is a British citizen and the Mother intends to relocate with him to a town called Danbury, in the United Kingdom (“UK”). Unfortunately, it appears that when discussions about relocation arose, parties were unable to reach an agreement. On 18 January 2019, the Mother filed Summons No 237 of 2019 for leave to relocate to the UK with the Children. On 17 June 2019, the District Judge (“DJ”) dismissed her application. Dissatisfied with the result, she filed the present appeal.

4 The DJ provided a comprehensive overview of all the relevant facts in his grounds of decision in *UXH v UXI* [2019] SGFC 64 (“GD”). After carefully considering the facts, I dismissed the Mother’s appeal on 15 October 2019. I now set out the full reasons for my decision and highlight relevant concerns for the court in future relocation applications.

The parties’ submissions

5 The DJ summarised the Mother’s reasons for relocation as follows (GD at [18]):

(a) The parties always intended to relocate to another country, and specifically provided for such a situation in the consent order leading to the divorce.

(b) The Mother started planning for the relocation in August 2018 and carried out extensive research into the Children's accommodation, school and co-curricular activities.

(c) The Children should relocate now while they are younger to ease the adjustment, and they would have been able to commence school in time in September 2019.

(d) The Mother was actively involved in the selection of schools in Singapore, and the Children are adequately equipped to adjust to schools in the UK.

(e) The Children are not fully integrated into the wider Singaporean community as their friends are expatriates too.

(f) The Mother had already secured accommodation for the Children in the UK.

(g) The Children will have an extensive support network of family and friends, and they will be physically closer to Portugal.

(h) Their domestic helper will move to the UK with them, to provide consistency and familiarity during the transition.

(i) The Mother's employer is supportive of her relocation to the UK and will allow for flexible work arrangements.

(j) The Mother has been the primary caregiver of the Children since birth, and there will be limited loss of relationship with the Father as the Children can maintain contact with him through technology and he can travel to them.

6 On the other hand, the Father opposed the relocation for the following reasons as summarised by the DJ (GD at [19]–[21]):

(a) The Mother did not give any good reason to relocate. She is not a trailing expatriate wife who wants to relocate to her country of origin because of the divorce or because she lost her job. Relocating to be with her new partner is not a reasonable wish, and she has not shown that the schools in the UK are better than schools in Singapore. Her decision to relocate is a matter of personal preference.

(b) The relocation is not in the Children's best interests. Both parties are able to provide for the Children. The Mother has not shown that she has obtained a new job in the UK and she does not have a support network there.

(c) Should relocation be allowed, any form of access will be severely curtailed and the relationship between the Father and the Children will be eroded.

The decision below

7 The DJ dismissed the Mother's application. He found that the Mother's decision to relocate was a matter of choice, not borne out of necessity: GD at [43]. The DJ was of the view that where relocation is a matter of choice, the reasonableness of the wish of the primary caregiver must be

evaluated against the impact of the relocation on the welfare of the children: GD at [44]. There was no indication that relocation would better serve the Children's educational needs, and it would severely compromise the quality of access between the Father and the Children: GD at [51] and [62]. The DJ also found that the Mother did not give sufficient thought to the issue of the son's National Service ("NS") obligations: GD at [83].

8 The DJ concluded that the Mother's wish to relocate to the UK with the Children would adversely impact the welfare of the Children, disrupting the stability they currently enjoy without any real benefit: GD at [85]. Apart from the Mother's wish to relocate, there was no cogent reason to uproot them: GD at [85].

The present appeal

9 Both parties maintained the same arguments in the appeal before me. In summary, the Mother's position was that leave to relocate to the UK should be granted as parties always intended to relocate, and specifically provided for it in the consent order. The Father's position was that the Mother's only reason for relocating was to be with her partner.

10 As the DJ correctly recognised, the paramount consideration in relocation applications is the welfare of the child (see *UFZ v UFY* [2018] 4 SLR 1350 ("*UFZ*") at [7]; *TAA v TAB* [2015] 2 SLR 879 ("*TAA*") at [7]; *BNS v BNT* [2015] 3 SLR 973 ("*BNS*") at [19]). Every case must be decided on its own unique facts, and although analogies may be drawn with previous cases, the court does not check off a list of factors accumulated from earlier cases as if they are weights on a balancing scale (see *UFZ* at [17]).

11 One factor the court will consider is the reasonable wishes of the primary caregiver, but there is certainly no presumption in favour of relocation merely because the primary caregiver's desire to relocate is not unreasonable (*BNS* at [20]). While the wishes of parents may have a bearing on the welfare of the child, the court must determine if those wishes are incompatible with the interests of the child; where they may not be compatible, the law expects parents to put the interests of the child before their own (*TAA* at [17]).

12 I bore these principles in mind when I considered the facts of the present appeal.

The Mother's reasons for relocation

13 It appeared that the Mother's driving reason for relocation was to move to the UK with her partner and set up a new family unit there; she expressed her intention to marry him in 2020. As the Mother, who has care and control of the Children, desired to move together with them, she made plans for the Children's schooling and accommodation. In my view, the reasons she presented to the DJ appeared more relevant to how a relocation to Danbury would not harm the Children's welfare in light of her desire to relocate with her partner, rather than how such a relocation promoted the interests of the Children.

14 For example, the discussion in the hearing below on the UK education system was largely more relevant to showing that the education in Danbury was at least no less suitable for the Children than what they can currently access in Singapore schools. There was no suggestion that the intended relocation was motivated by the Children having any particular educational needs that required options not available in Singapore. Hypothetically, if a child had special needs or had difficulties in the Singapore education system, a parent might be motivated to seek a foreign educational system more suited to that child; the parent may consider that it would be in the child's best interests to relocate

to that foreign country offering those educational provisions (see *UFZ* at [13]). This was not the case here.

15 Another example was the Mother's approach to the son's NS obligations. She was willing to renounce the son's PR status in Singapore if his NS obligations complicated the relocation plan, and this appeared to be a hastily considered decision given that there is no indication that she discussed this option with the Father. Of course, the fact that the son has NS obligations in no way prohibits relocation; I had allowed relocation in similar circumstances in HCF/DT 4196/2012 (see *UFZ* at [14]). What concerned me in the present case was that the Mother did not appear to give sufficient thought to the consequences of her decision regarding the son's NS obligations.

16 The parties appeared to accept that this case does not fall into the category of cases where a trailing spouse has no significant connection to the forum country after the divorce, feels or is isolated, and wishes to return to his or her home country (usually the country in which he or she grew up and where the extended family remains). In such cases, depending on the precise facts, appropriate weight may be accorded to the possibility that denying the parent's wish to relocate may so deeply affect such a parent's wellbeing that this in turn has negative effects on the child (*BNS* at [17]).

17 I did not doubt, and neither did the DJ, that the Mother's wish to relocate was not to deprive the Father of time with the Children, but arose out of a genuine desire to move on to the next stage of her life and her relationship with her partner in a new country. As she has care and control of the Children, she naturally wished to relocate with them as well. The DJ was acutely aware that hers was an understandable wish, and noted that one was free to start the next phase of life after divorce. However, her wish – notwithstanding its reasonableness – must be considered in the context of the welfare of the Children, which is the paramount consideration in these proceedings.

Weighing the reasons for relocation against impact on the Children

18 A divorced parent can certainly move on with life with a new partner. Indeed, there are many reconstituted families formed by divorced parties who move on to marry a second time, or even a third time. No difficulty in respect of a loss of relationship with a left-behind parent arises when the reconstituted family resides in the same country as the other parent. In the present case, however, the Mother's wish directly affects the Father's relationship with the Children because she and her partner have plans to relocate to the UK, which will result in physically separating the Children from the Father.

19 The DJ quoted from *TAA* at [85] of the GD, and I quote [18] of *TAA* in full:

While one should not underestimate the risk of the negative effects on the child arising from frustrating the plans of the parent who is the child's primary carer, this must be balanced against the law's expectations that parents must place the needs of their children before their own. A parent with care of the children is no longer as free to live life as he or she may have been had he or she been single or divorced without children. Parents in functional families make sacrifices in their lifestyles all the time for their children. One may have to decline an attractive overseas job posting because of the needs of the children. Raising children requires heavy commitment. The law expects no less from parents in post-divorce circumstances. This is not to say that the law does not recognise the difficulties and pain parents may have to bear, but children do grow up and such sacrifice is not demanded endlessly of a parent. Sacrifices may have to be made temporarily in the years when the children require them. The law chooses to place the welfare of the child above all else.

20 A divorce may have ended the relationship between the parties as spouses, but their relationship as co-parents continues because of their children. Because of the centrality of their children's best interests, each parent, though divorced, may not always be entirely free to make choices that a single or divorced person without children might be able to make. This is the practical effect of the legal principle that the welfare of the child is the paramount consideration. Parental responsibility may seem like a burden to the Mother in this specific context, seemingly holding her back from her wish to move on in the manner she has sought, but as noted in *TAA* at [18], such sacrifices are not perennial.

21 It is of concern that the Mother's submissions suggested that there would be no loss of relationship with the Father simply because the Father allegedly failed to spend the current access time in Singapore fully. Her approach to measuring the "loss of relationship" was to quantify the amount of time he currently spends with the Children against the amount of time available upon relocation. This approach is too narrow and simplistic to fully assess the loss of relationship and its impact on the Children. The loss of relationship with the left-behind parent is likely to be more palpable for young children when they move to another country. Older children may be better able to control the effects of the loss of relationship through meaningful virtual and phone communications across the miles, especially if the parent-child relationship is already strong from close bonding in the child's younger years. Young children may not have had sufficient time to establish the bonding required to withstand a long-distance relationship when relocation occurs in their earlier childhood years. I stress that I am expressing concerns, not immutable principles, for each case must be decided on its own facts.

Balancing interests with the Children's welfare as the paramount consideration

22 The DJ had applied his mind to weighing the reasons and circumstances most pertinent to the present specific factual matrix (GD at [44]):

... In my view, where relocation is a matter of choice, the reasonableness of the wish of the primary caregiver would have to be evaluated against the impact of the relocation on the welfare of the children ...

23 The Mother submitted that this would be a "one-off relocation and not an interim move". However, it was not clear what were the Mother's partner's reasons or intentions for moving to Danbury. To what extent had the Mother and her partner discussed the reason or necessity to relocate to Danbury and the impact of relocation on the welfare of the Children? Were there other options discussed? I did not think the DJ was wrong to find that the Mother had a choice in whether to relocate; she "has a real option of staying put and thriving in Singapore ... [she] is a Singapore PR which means she can choose to stay on and continue to work in Singapore for as long as she wants" (GD at [41]).

24 In *TAA* at [21], I found that:

In the present case, the Father's main reasons for relocating to Spain appear to be prompted by his current wife's circumstances and plans. The Father's counsel has emphasised that the current wife cannot practice as a doctor in Singapore. *The Father thought that they would try living in Spain*. It is not that his wife cannot remain in Singapore, for she is a permanent resident of Singapore.

[emphasis added]

25 The current case appeared to share some similarities with *TAA* in that the applicant parent sought to relocate to a country that is not her own previous home country and intended to “try out” living in that country.

26 I had said elsewhere (in Debbie Ong, “Parental Relocation Across Borders: Is Relocation in the Child’s Welfare?”, *Law Gazette*, July 2009 (3)) that:

... It may well be that the loss of relationship is irreplaceable to the child; in such a case, even the combined benefits of better education, better physical living conditions and better physical care from grandparents may never replace the deep loss of a parent. The exercise in determining the welfare of the child is not a game of numbers where a judge checks off the number of points on each side of the equation ...

27 Considering the circumstances of this case, relocation gave rise to some real concerns. Relocation would require the Children to adjust to new living arrangements in Danbury, to new schools and new friends, and they would lose to a significant extent the relationship they currently have with their Father. Counsel for the Father also highlighted losing stability and certainty in immigration status, including the stability in the son’s PR status in Singapore when NS issues are added into the enquiry.

Support for parties

28 Each case is different; each parent-child relationship is unique. Factors relevant to the issue of relocation 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. Barring exceptional circumstances where a parent is unfit, parents know their child best and are the most suitable persons to make decisions and bear responsibility for their child. Parenting decisions, even those made after a divorce, should be made by the parents themselves. When parents are unable to reach an agreed arrangement despite their best efforts and they seek the court’s intervention as the last resort, the court will consider all the circumstances to determine what is in the child’s welfare, but this does not change the reality that the court is not the child’s parent.

29 It may be useful for the Mother and Father in this case to work with a psychologist or counsellor experienced in parent-child issues who can assist them in mediating any further issues and in their co-parenting journey ahead. If they, as parents, are able to reach good arrangements together, they may proceed to carry out those arrangements. It is not inconceivable that either or both parties may in future consider a relocation if circumstances then support that plan. If they do, they must ensure that the Children’s interests will be protected, including their interest in having the fullest relationship with both parents.

Conclusion

30 I was of the view that the DJ explained quite fully how he had weighed the relevant circumstances to reach his decision. I saw no error in the DJ’s exercise of discretion, and dismissed the appeal.

31 By consent, I ordered the Mother to pay the Father the costs of this appeal inclusive of disbursements, fixed at \$5,000.

