

VPG v VPF and another appeal

[2021] SGHCF 18

Case Number : District Court Appeal (Family Division) Nos 114 and 115 of 2020
Decision Date : 28 June 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Debbie Ong J
Counsel Name(s) : Wing Kuen Yim Jimmy SC and Yeow Ying Xin Madeline (Drew & Napier LLC) for the appellant in HCF/DCA 114/2020 and the respondent in HCF/DCA 115/2020; Abraham Vergis SC, Bestlyn Loo (Providence Law Asia LLC), Yap Teong Liang, Tan Hui Qing (T L Yap Chambers LLC) (instructed) and Ong Kah Liang Basil (PK Wong & Nair LLC) for the appellant in HCF/DCA 115/2020 and the respondent in HCF/DCA 114/2020.
Parties : VPG — VPF

Family Law – Custody – Care and control

Family Law – Custody – Relocation

28 June 2021

Debbie Ong J (delivering the judgment of the court *ex tempore*):

Background facts

1 The present cross-appeals involve the care and control and relocation of the parties' 3-year old child, [G]. The appellant in HCF/DCA 114/2020 is referred to as the "Mother", and the appellant in HCF/DCA 115/2020 is referred to as the "Father".

2 I highlight some background facts which I consider highly pertinent to these appeals. The parties are both Indian citizens. They were married in 2013 in India and lived there after the marriage. Their child [G] was born in November 2017 and is also an Indian citizen. The parties and their child lived with the Father's parents in Mumbai, India. Unfortunately, the Mother suffered a brain haemorrhage in May 2018; she sought treatment in the US and Switzerland. The marriage broke down by the end of 2019. The parties made an agreement in January 2020 in respect of a divorce and for [G] to move to Singapore with her Mother, and for the Father to have liberal and unrestricted access to her with no limits to any day in the year for day-time access. The Mother and the child left Mumbai for Switzerland for 2 months and then moved to Singapore on 14 March 2020. The Father came to Singapore on 20 March 2020. In May 2020, the Mother withdrew her consent to the divorce which would have been before the Indian court. The Mother and [G] resided with the Mother's extended family in a bungalow in Sentosa in Singapore. Both parties come from well-to-do families. The "Consent Terms" in their earlier agreement providing for the Father's access in Singapore had not been adhered to. The Father filed an application for sole care and control and for the child to return to India. The District Judge ("DJ") refused his application for the child to return to India and ordered that the parties will have shared care and control of the child in Singapore. She also made orders on overseas travel with the child as well as the retention of the child's important documents.

Issues in the appeals

3 Both parties appealed against the DJ's decision. The Mother appealed against "the orders in respect of [G]'s legal documents and overseas travel with the parties and ... the orders providing for

parties to exercise shared care and control from January 2021, with overnight stays” (as clarified by her in her 6th Affidavit of 24 March 2021, at [6]). The Father appealed against the decision, raising these issues: “whether ... it is in the best interest of the Child to return to Mumbai and ... sole care and control is in the best interests of the Child” (Appellant’s Case in HCF/DCA 115/2020, at [29]).

Relocation and care and control

4 I begin with the appeal of the Father in which he sought sole care and control of [G] and for leave to have [G] relocate to India with him. If the appeal against the DJ’s decision refusing relocation is allowed, then the other decisions on shared care and holding of the child’s legal documents will be affected and must be dealt with in that context.

5 The DJ explained that it was in the child’s best interests to remain in Singapore as:

The child is only 3 years old, a young toddler. She is familiar, close to and comfortable with her caregivers, environment and routine in Singapore by now. On the other hand, the Husband has made efforts to start his business, obtain residency close to the child and stay on in Singapore, all for the child.

Decision

6 I am of the view that the DJ had placed too much emphasis on the current living arrangements of the child as well as on the possibility or willingness of the Father to stay on in Singapore; as a result of the focus placed on these two factors, there was insufficient consideration of all other relevant factors. At the very least, the latter factor should also be balanced against the Mother’s (and her relatives’) ability to live in India. In any case, I do not think that the Father’s willingness to stay in Singapore to be with the child under these specific circumstances should be a focus in determining the relocation issue itself. It is perfectly understandable and indeed heartening to hear that should the child have to remain in Singapore, the Father will try his best to live in Singapore in order to be with the child. This speaks more of the Father’s commitment to the child than whether he can or intends to stay in Singapore. His application in FC/OSG 86/2020 filed in June 2020 is for [G] to return to India with him.

7 The Father had sought [G]’s return to India 3 months after [G] was moved to Singapore. The parties have only a transient connection to Singapore. I agree with the Father’s submission that the family’s connection to Singapore is tenuous. Both parties and the child are Indian citizens, with no permanent legal status in Singapore. The parties have only Employment Passes which do not give any secure long-term immigration status in Singapore. The child has lived in Singapore since only last year. These are highly relevant factors which did not seem to be given sufficient weight in the DJ’s considerations.

8 As the DJ’s orders were varied to effect a partial stay, more overnight access under the original order did not occur. Nevertheless, what had occurred suggests that overnight access with the Father posed no difficulty for [G]. [G] is very young and I accept that she is comfortable with being with both parents; had both parties intended to reside in Singapore, shared care and control seemed tenable and in the child’s welfare. However, the Father has sought leave for the child to relocate to India, and if this is granted, the shared care arrangement in Singapore is no longer possible.

9 The medical report from the Mother’s doctor dated 16 July 2020 states that she made a “remarkable recovery” and “is currently able to manage all daily living activities independently including eating, bathing, toileting...and moving around”. The fact that the Mother had difficulty with

those daily living activities shows how severe her condition must have been. It must have been very trying for the Mother to have suffered the brain haemorrhage and endured the difficult road to recovery. It is understandable that she sought support from her extended family. But this is also a reminder why she should, all the more, support her child's relationship with the Father. If the Mother has medical issues, the Father can take on a greater caregiving role especially during the times the Mother needs to focus on her health issues. Apart from her, the Father is [G]'s only other parent. The Mother's extended family members are not [G]'s parents. While kinship support is good for a child, it cannot replace the role of the child's parents in her life.

10 I am of the view that the Father is capable of caring for [G] should [G] be returned to India. I accept that the Father has the support of his parents in India. While I agree that [G] is currently generally well cared for in Singapore with the assistance of the maternal relatives, I note that the Mother herself has stated that she has a "current condition" (Mother's submissions in FC/OSG 86/2020, at [80]) which results in her having to stay in Singapore and leaves her reliant to some extent on her extended family. The reports from her doctor also include the qualification that she can care for the child *with the support of her family*. The Mother has also adduced further evidence on the allegedly less desirable parenting style of the Father, including giving [G] too much ice cream and chocolates, and allowing her too much TV screen time. Her submission is that shared care and control is not suitable due to their different parenting styles. I find that, ironically, her evidence is telling of her own pettiness and unwillingness to co-parent. I note that the Father's counsel had highlighted at the hearing that it was the maternal grandparents' unwillingness rather than the Mother's unwillingness to support the Father's role that had caused much 'gatekeeping' (limiting the Father's access to [G]). On the evidence before me, I accept that much of the tension can be traced to the involvement of the Mother's parents in the parenting of [G]. The current state of affairs where the Mother and her extended family engage in 'gatekeeping' is not as healthy for [G]'s welfare as the Mother appears to think it to be. Parental responsibility is a legal duty to be discharged by both parents. A strong parent is one who can support the child in having a close relationship with the other parent.

11 In determining the relocation issue, the DJ appeared to give too much weight to the present living arrangements of the child. It is important that I highlight what I have said in *UYK v UYJ* [2020] 5 SLR 772 (at [51]-[52]):

...whether a child is well-settled in Singapore is a relevant factor that should be given appropriate weight. It was also important, however, to bear in mind that in a globalised world, families are geographically mobile and adaptable, and the weight to be placed on well-settledness will depend on other related circumstances including how many years the child has lived in that country, the age of the child, and whether that country has been the family's home for many years. ...Well-settledness in a country is also not an immutable circumstance that can never change. The passage of time and support from a loving parent can enable a child to adapt well to transitions in life...

12 No one disagrees that Singapore is now the 'current home' of this young child. But that is not the only or dominant factor going to the child's welfare in relocation applications, which involve far wider implications on the child's life. If it was, relocations will hardly be allowed whenever young children are living in Singapore, living ordinary lives, schooling, and enjoying Singapore food, with no particular difficulties specific to life in Singapore.

13 I allow the appeal in respect of the decision refusing leave for the Father to relocate [G] to India. I have stated above the considerations that lead to this conclusion. India is the 'seat' of this family. The parties and their child are all Indian citizens; they do not have permanent immigration

status in Singapore. Even their stay in Singapore has not been long. The child had been residing in Singapore for only 8 months when the DJ made the decision that she should not be allowed to be relocated back to India. The parties are not even sufficiently connected to Singapore for a divorce to be filed in Singapore. I had observed in *UYK v UYJ* (at [62]):

In *TSF v TSE* [2018] 2 SLR 833 ("*TSF*"), the Court of Appeal reversed the High Court's order allowing the child to be relocated to the UK to live with his mother. Amongst a number of other reasons, the Court of Appeal also noted that the mother's immigration status in the UK was not permanent which resulted in uncertainty of a long-term stay in the UK for both the child and herself (*TSF* at [93]). In the present case, based on the evidence available before the court, the situation appeared to be reversed – relocating to the UK would be the option that granted C long-term stability in this context, while C did not have a secure basis for residing in Singapore.

14 The present case has similarities with *UYK v UYJ*, where relocation was allowed. The issue of a relatively harsher environment due to the pandemic issues in the country to which the child was to be relocated was also raised in that case.

Conclusion and directions

15 As I have said earlier, the Father is a suitable parent to care for [G] should she return to India. India provides [G] with long-term stability. With a loving parent, she can adjust and settle into life in India. It follows that upon her relocation to India, the shared care and control arrangement in Singapore is no longer feasible. If the Mother is willing to return to India (with or without her extended family members), the parents can share in the care of [G] in India. But this scenario is not before me. I grant the Father care and control of the child and leave to relocate the child with him to India.

16 The parties are directed to submit on the proposed arrangements that will increase the Father's access including overnight access to the child, the time that relocation should occur, and the access arrangements for the Mother after relocation.

[Postscript: After the delivery of this decision, the Mother indicated that she will make plans to return to India, a heartening development.]