

VFV v VFU
[2021] SGHCF 23

Case Number : Registrar's Appeal from the Family Justice Courts No 10 of 2021
Decision Date : 22 July 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Anuradha d/o Krishan Chand Sharma (Winchester Law LLC) for the appellant;
Patrick Fernandez and Tan Wee Tim Cheryl (Fernandez LLC) for the respondent.
Parties : VFV — VFU

Contempt Of Court – Civil contempt

22 July 2021

Judgment reserved.

Choo Han Teck J:

1 This is a protracted and acrimonious dispute on ancillary matters which has gone back and forth from the Family Justice Courts to the Syariah Court, and has landed in this court. The appellant mother (“the Mother”) and respondent father (“the Father”) are both Muslims and were married on 22 August 2008 under Muslim law. They have three children from the marriage.

2 On 9 March 2017, parties entered into a consent order (“the Consent Order”) in the Family Justice Court following a mediation. Under the Consent Order, the Mother had sole interim care and control. The Father had interim access to the children, which essentially allowed him alternate overnight weekend access, and weekday access on Wednesday from 7.30pm to 9pm when he had alternate overnight weekend access.

3 On 11 September 2018, the Father commenced divorce proceedings in the Syariah Court. I was informed by counsel for the parties during the hearing that the judgment [of the Syariah Court] was handed down on 29 June 2021.

4 On 19 June 2019, after the Father filed an urgent *ex parte* application in the Syariah Court to take over the care and control of the children, on the basis that the Mother’s friend had slapped one of the children across his cheeks. The Syariah Court made another Order, which did not vary the care and control to the Mother, but ordered the Mother to ensure that the children do not come into contact with the Mother’s friend, one [G].

5 Two other interim orders were granted by the Syariah Court subsequently. One on 13 August 2019, and another on 27 August 2019. The order made on 27 August 2019 by the learned Registrar Shahrinah binte Abdol Salam granted the Father interim weekly supervised access to the children on Saturday from 10am to 2pm. The Mother was to supervise access. It is undisputed that the Syariah Court order made on 13 August 2019 superseded the Consent Order.

6 However, before the Syariah Court made its orders, the Father filed a summons for an order of committal on 4 July 2019. He claimed that the Mother had denied him physical access to the children from 20 June 2019 to 26 August 2019, and telephone access from 19 June 2019 to 27 June 2019. The Father’s counsel submitted that this was a deliberate breach amounting to contempt of court.

7 The Mother took the position in the hearings below that she was no longer bound by the

Consent Order, as the Consent Order had been superseded by the Syariah Court's order when the Father filed the *ex parte* application on 19 June 2019. Further, the Mother's case was that the Father did not exercise his access regularly.

8 Before the hearing of the committal proceedings on 27 September 2019, the DJ ruled that the Family Court had no jurisdiction to hear the committal proceedings without a Syariah Court continuation certificate under s 17A of the Supreme Court of Judicature Act (Cap 332, 2007 Rev Ed). Upon appeal, on 3 February 2020, in *VFU v VFV* [2020] SGHCF 3, Debbie Ong J reversed the DJ's decision, and held that the Consent Order was valid until the Syariah Court made its orders over the same subject matter. Hence, the Mother was still bound by the Consent Order from March 2017 until the Syariah Court Order on 13 August 2019. Justice Ong further observed that the Syariah Court orders were made less than 2 months after the alleged breaches. Hence, the Mother's acts of purging the contempt would be relevant to the court.

9 On 13 April 2021, after five days of committal proceedings, the DJ found the Mother to be in contempt of court, that she had breached the Consent Order by failing to provide the Father physical access to the children between 19 June 2019 to 11 August 2019. The DJ was of the view that there was no need for a jail term, bearing in mind the consequences the committal proceedings had on the three children. The Father's counsel submitted below for a fine of \$1,000. But the DJ "suspend(ed) sentencing to allow the [Mother] time to rectify the breaches by coming to an agreement with the [Father] on the terms of her compliance with the [Consent Order]". Costs of the committal proceedings were reserved until the sentencing date, which was deferred to three weeks after the committal proceedings. The Mother now appeals against the conviction. The DJ has not passed sentence.

10 In determining whether the alleged offender's conduct amounts to contempt of court, we have to see what the order required the alleged offender to do, and then to see whether the alleged offender had the necessary mental culpability, namely, that the conduct was intentional and the alleged offender knew the facts that made such a conduct a breach of the order. It is not necessary to show that the party appreciated that it was breaching the order. The standard of proof is that of the criminal standard of proof beyond reasonable doubt: *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC* [2007] 2 SLR(R) 518.

11 I agree with the DJ's findings of fact that the Mother did not provide physical access to the Father from 19 June 2019 to 11 August 2019. This is also consistent with the Mother's position that she was not bound by the Consent Order to provide access to the Father. Based on the WhatsApp messages, the Father asked for physical access but there was no reply from the Mother. The DJ was correct, in my view, in finding that the Mother had breached the Consent Order. But, for reasons that I shall elaborate below, not every breach of a court order amounts to a contempt of court.

12 The Mother's counsel submitted that there was ambiguity as to whether the Consent Order was valid and subsisting because the AR in the Syariah Court stated that the Syariah Court is not bound by the Consent Order made in the FJC, and that any ambiguity in the consent order should be resolved in favour of the person who had to comply with the order. There is, however, no ambiguity here. While the Syariah Court is not bound by the FJC order, this does not mean that the Consent Order has ceased to apply as of 19 June 2019. The Consent Order is clear that the Mother was to provide the Father with physical access in a certain manner, which the Mother had failed to comply with. The Syariah Court order only asked the Mother to ensure that the children would not be in contact with the Mother's friend. This did not supersede the Consent Order.

13 The issue, however, is whether the Mother had the necessary mental culpability for the

offence. The Mother's counsel submitted that there was no requisite *mens rea* as she did not know that the Consent Order was valid and subsisting. The Mother took a consistent position in the proceedings below that she was not bound by the Consent Order after 19 June 2019. But the question is whether she knew of all the facts that made the conduct a breach, not whether she appreciated that she was breaching the Consent Order. She knew that she was not offering the Father access to the children, which is the conduct amounting to the breach.

14 However, under s 21 of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016), a person is not guilty of contempt if that person satisfies the court that the failure or refusal to comply with an order was wholly or substantially attributable to an honest and reasonable failure by that person, at the relevant time, to understand an obligation imposed on the person bound by the order, and that that person ought fairly to be excused.

15 In the light of the confusion in this case, the Mother's failure to provide access to the Father was indeed an honest and reasonable failure arising from a misapprehension of the validity of the Consent Order. In the unique circumstances of this case, the Mother took the consistent position that she was no longer bound by the Consent Order once the Father commenced proceedings in the Syariah Court. This position was taken as early as 25 June 2019, when the Mother's solicitors wrote to the Father's solicitors, stating the Mother's position that the Consent Order has ceased to have effect as the Father had filed an *ex parte* application on 9 March 2017 in the Syariah Court. Hence, the Syariah Court has jurisdiction over all matters relating to custody, care and control including the issue of access. This issue was not disposed of until Justice Ong ruled that the Consent Order was not automatically stayed upon the commencement of divorce proceedings in the Syariah Court. Due to the back-and-forth between the FJC and the Syariah Court, and the uncertain status of the Consent Order, it was reasonably possible that the Mother's misapprehension as to her obligations under the Consent, was an honest and reasonable mistake that should excuse her. Hence, I am of the view that the mental element for contempt is not satisfied.

16 In any event, I also agree with Justice Ong that since the alleged breaches were within a span of two months, whether the Mother had purged the contempt after August 2019 is relevant. It is not disputed that the Mother had abided by subsequent Syariah Court orders and provided physical access to the Father after August 2019. On those undisputed facts, it appears that the contempt has been purged.

17 I also observe that the DJ below deferred sentencing for contempt, and it was in the interim before sentence was passed when the Mother appealed against the conviction. While the court's power to defer sentencing is a liberal one, the court should be mindful of the consequences of deferring sentencing indefinitely after conviction. In this case, the DJ convicted the Mother, but chose to defer sentencing hoping that parties would settle. As the court who tries the matter has the power to punish, it is not within the power of the appellate court to sentence. As a result, if I uphold the conviction, the case will have to be remitted to the FJC for sentencing and may come back to this court again if either party decides to appeal against the sentence. I understand the intention of the court below, but the proper order should have been to adjourn for the parties to settle amicably so that the contempt proceedings can be withdrawn or settled, and only failing which, would the court then proceed to convict and pass sentence.

18 For the reasons above, this appeal is allowed.