

VMG v VMH and another appeal

[2021] SGHCF 31

Case Number : District Court Appeals Nos 78 and 79 of 2020 and Summons 362 of 2020
Decision Date : 23 August 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : The Father in-person; Krishnan Sivanandam (Krishnan Sivanandam & Co) for the Mother.
Parties : VMG — VMH

Family Law – Custody – Care and control

23 August 2021

Judgment reserved.

Choo Han Teck J:

1 The parties were married in India in December 2016 and have one son from the marriage. On 8 August 2018, parties entered a consent order on 8 August 2018 for joint custody of the child, care and control to the Father and access to the Mother. The Father filed for divorce in 2020, and interim judgment was granted on 21 May 2020 on the basis of both parties' unreasonable behaviour. The learned District Judge below made an order for the ancillary matters on 8 December 2020. Parties have each filed an appeal against the DJ's order.

2 The DJ's order was that parties are to retain assets in their sole names. They are to have joint custody, and shared care and control over the child. The Father was ordered to pay maintenance amounting to \$14,400 in total as a lump sum maintenance to the Mother, and \$200 per month as the maintenance for the child. As for the travel arrangements, the Mother will have to provide the Father with a banker's guarantee of \$5,000 or equivalent no later than one month before departure, if she takes the child overseas. Each party may bring the child out of Singapore for up to 30 days, so long as they give notice to the other side no later than one month from the date of departure. The DJ also ordered that parties take turns to keep the child's documents such as birth certificate, passport and health booklet. During the hearing, the Mother informed me that the current arrangement is that the Mother has care and control of the son, with daily access of three hours to the Father. The Mother would pick the son up at 4.15pm, spend some time with him before handing him over to the Father for the daily access from 6.15pm to 9.15pm.

3 I heard parties on 18 February 2021, dismissed the Father's appeal on maintenance to the Mother, but ordered that the further maintenance for the child be reviewed after the Custody Evaluation Report is issued. As of February 2021, the Father has confirmed that he paid \$14,400 as a lump sum maintenance to the Mother.

4 The Father is a Singapore citizen. He is 45 years old, and works as an engineer in a shipyard. In DCA 78 of 2020, he sought to have sole care and control of the child, and asked for a \$100 reduction for maintenance to the child. He also prayed that the court reinstate a stop order to prevent the child from leaving Singapore. The Father also sought the return of the "Thali" jewellery which allegedly belonged to him. Additionally, the Father has filed an application to ask that the Mother be sent for a psychiatric assessment in IMH.

5 The Mother is a Singapore Permanent Resident with Indian nationality. She is 39 years of age.

She was educated in India, having obtained a master's degree in engineering there. She came to Singapore to follow the Father under an arranged marriage. Since the divorce, she had found a job in a store. She has informed me that she is still looking for a new job. By way of DCA 79 of 2020, she appealed against the order granting parties joint care and control. She seeks to have sole care and control of the child, with unsupervised access to the Father every Saturday and Sunday from 9am to 12pm, and access to the child on his birthday on 24 September from 3pm to 9pm. As for the travel arrangement, she asks that she could travel out of Singapore with the child without furnishing any guarantee to the Father, and prays that she keeps the child's documents at all times.

6 The DJ has previously dismissed the Father's application under SUM 1524 of 2020, which is his application to send the Mother for a second mental health assessment. By way of SUM 362 of 2020, the Father is effectively seeking to appeal against the DJ's decision below. The DJ found that there was a lack of evidence to prove a *prima facie* case that the Mother had mental health issues that required another examination. The Mother was admitted to IMH for the first and only time between 21 to 29 March 2018, after the Father called an ambulance to send her to IMH. She was referred to the early psychosis team for assessment, following which it was concluded that the Mother had "no mental illness with marital problems [sic] and interpersonal relationship problems". The Medical Report from IMH dated 10 May 2018 for the Mother's first outpatient appointment states that the Mother has no mental illness. She was again examined by IMH two other occasions thereafter, and no contrary diagnosis was found. Looking at the facts, even if I am minded to review the merits of SUM 362, there is no evidence to suggest that the Mother had mental health issues. I therefore dismiss the Father's application.

7 I turn to the issue of the custody, care and control of the son. In deciding all matters relating to the Child, the court's paramount consideration is always the welfare of the Child, as *per s* 125(1) of the Women's Charter (Cap 353, 2009 Rev Ed). The court's role is to determine what is in the best interests of the child. Joint custody is generally preferred as both parents are expected to be involved in the child's life. In this case, both parents acknowledge that the son would benefit from the presence of both parents in his life. Both parents have been taking care of the son, although to varying extent. I find that joint custody is appropriate, and both parents are expected to cooperate with each other to make decisions on significant matters such as the child's education and healthcare.

8 Care and control, on the other hand, deals with the day-to-day decision making concerning the child. Shared care and control means that the child will spend roughly equal amounts of time with each parent. The court needs to take into account the needs of the child, and whether parents are able to co-operate with each other to make this arrangement workable. Where it is important for the emotional well-being of the child to have continuity in the care arrangement, shared care and control can be disruptive and may not be in the child's welfare. Having had sight of the Custody Evaluation Report, and taking into account all the facts of this case, I would vary the DJ's order for the reasons below, and grant sole care and control to the Mother with reasonable weekend access to the Father.

9 The son is almost four years old. He was diagnosed with Global Developmental Delay in 2020. He has been under speech-language therapy support and occupational therapy support. It is clear to all stakeholders, including his teachers and social workers, that early intervention is needed to assist the son. The Mother is cognisant of that. She has taken active steps to cooperate with the school, and has been learning how to manage the son's special needs. But the Father, unfortunately, has been slow to accept and acknowledge his son's needs. He has been fixated on the conflict with the Mother, and was quick to blame the Mother for having done something wrong when the child was merely just tired and restless after a day in school. He has also repeatedly levied the same allegations about the Mother's mental health (when there are none as I have found). This shows that co-

parenting would not be desirable at this stage. Further, given the son's young age and special needs, shared care and control or the current arrangement of daily access to the Father would be too disruptive and would not be in the son's best interest. The Mother, being the primary caregiver, has displayed sensitivity in attending to his needs, and is thus capable of taking care of the son at this stage. The Father, however, is still at liberty to apply to vary this order if there is a change of circumstances, such as when the son is older and more well-adjusted.

10 The Father will be given reasonable weekend access. Although he currently spends time with the son daily, the access takes place in the evening when the son is weary from a day in school. To help improve the quality of their time, I grant the father unsupervised access on Saturdays and Sundays for four hours a day, and parties are to agree on the timing. If parties cannot agree, the access time would be from 11am to 3pm.

11 As for the maintenance of the child, the Father sought a reduction of \$100, since the medical expenses and school fees would be paid for by the plaintiff. I maintain the DJ's order of \$200. Bearing in mind that the Mother's list of expenses adds up to \$304.75, I find the DJ's order of \$200 to be reasonable. The son would be under the care and control of the Mother, and expenses such as food and diaper are to be factored in. Going forward, the Mother would have to bear some of the expenses as well.

12 The Father has also sought a stop order to prevent the Mother from bringing the child out of jurisdiction. The Custody Evaluation Report notes that the Mother has no relocation plan, and has also expressed a strong desire to remain in Singapore, given the son's Singaporean citizenship and the availability of special education services in Singapore. However, I acknowledge that she has no roots in Singapore, and maintain the DJ's order for the Mother to provide a guarantee of \$5,000 before bringing the son out of jurisdiction. A stop order is not necessary, as the Mother should be permitted to bring the son to meet his grandparents in India. The guarantee is a sufficient safeguard.

13 The Father also sought the return of the "Thali" jewellery. The Mother claimed that this was a Hindu marriage symbol given to her as a gift by the Father's family. As the Father did not deny that this was from his family, there is no evidence that the "Thali" jewellery, which was a gift to the bride, has been transformed into a matrimonial asset, either through use or substantial improvement by both parties. Hence, I find no basis to make any order on this, and allow parties to retain the assets in their sole name or possession.

14 I vary the DJ's order to grant the Mother sole care and control, but dismiss the remaining appeals by both parties. I urge parties to prioritise their child, and not let their acrimony get in the way of the child's well-being and development, as it has in the past. I make no order as to costs.