

VSL v VSM and other appeals and another matter
[2021] SGHCF 33

Case Number : District Court Appeals No 3, 5 and 6 of 2021, Summons No 221 of 2021
Decision Date : 13 October 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : The mother in-person; Lopez Sheela Grace Pandian (Lee Bon Leong & Co) for the father.
Parties : VSL – VSM

Family Law – Child – Maintenance of child

Family Law – Custody – Access

Family Law – Consent orders – Variation of consent orders

13 October 2021

Judgment reserved.

Choo Han Teck J:

1 At the time of the divorce, the couple’s relationship was amicable enough to reach a settlement on ancillary matters, but, strangely, deteriorated after they had moved on with their lives. They each filed applications before the District Judge (“DJ”) to vary the consent order based on their settlement agreement. The DJ granted the applications in part. The Mother and Father both appealed against the DJ’s judgment (“the Judgment”).

2 The Mother is a Russian national residing in Singapore. She is currently a Pilates instructor and a mindfulness advocate. She has remarried since the divorce. She is on the Long-Term Visit Pass, with her application to be a Permanent Resident pending. The Father is a Dutch national residing in the Netherlands. He works as a trader. Parties have one child who was born in 2011 in Singapore.

3 In the consent order recorded on 11 July 2017 (“the Consent Order”), it is stated that the parties shall have joint custody, with the Mother having care and control, and the Father having reasonable access. Parties agreed that there shall be no maintenance for the Mother, but the Father will pay for the Child’s educational costs and expenses, “half of the monthly rental of the [Mother and Child]’s residence”, and a sum of US\$1,500 as monthly maintenance from 1 December 2018 to 31 November 2019. They were to review the maintenance after November 2019, but they could not agree, and in 2020, both of them filed applications to vary the Consent Order. The Father sought to relocate the Child to the Netherlands, and the Mother sought to vary the clauses concerning monthly maintenance and rent. The DJ granted both applications in part.

4 In DCA 3 and 5 of 2021, the Mother appeals against the DJ’s orders concerning the Father’s access to the Child and the Child’s monthly maintenance, and claims for the arrears of the Child’s share of the rent and maintenance which the DJ had allegedly miscalculated. The Mother also seeks to adduce new evidence to support her case, which includes, *inter alia*, that the Child’s expenses have increased since the hearing before the DJ in October 2020, and the Father has delayed or refused paying for the Child’s maintenance. In DCA 6 of 2021, the Father appeals against the DJ’s dismissal of his application, which was to reverse the care and control and relocate the Child.

5 Before the DJ, the Father's main prayers were to reverse the care and control of the Child from the Mother to himself, and to relocate the Child from Singapore to the Netherlands. The Father also sought to rescind clauses in the Consent Order that he was to pay for the Child's educational expenses and share of rent.

6 The DJ rejected the Father's application and found that it would not be in the interest of the Child to be relocated to the Netherlands. The Child was born in Singapore, and has been living in Singapore all her life. She only speaks English and Russian, and not Dutch. Save for a few holidays in the Netherlands, she has never lived there. If the Child were to relocate, she would be living in a foreign environment, away from her mother's care, and would be living with the Father and the Father's girlfriend whom she had only met sporadically. Contrary to the Father's suggestion, the Child did not suffer from a lack of attention from the Mother. I am of the view that there is no reason to overturn the DJ's orders on these issues. I elaborate below.

7 In relation to access, however, the DJ granted the Father's prayer partially, varying Clause 3b(a) of the Consent Order such that the Father shall have overnight access to the Child in Singapore for nine continuous days which includes two weekends every other month. The Father shall notify the Mother at least two weeks in advance provided that during such access the Father maintains the Child's school and extra-curricular schedule. This variation order was made so as to foster a closer father-child bond in view of the Father's relocation back to the Netherlands; the Father could then spend more time with the Child when he is Singapore.

8 In granting the variation in access, the DJ dismissed the Mother's prayer to vary the same clause allowing the Father additional access for one weekend in a month upon giving the Mother four weeks' written notice in advance. The DJ noted that the Mother's proposal was untenable because the Father would be making a long flight to Singapore just to spend one weekend with the Child. The DJ allowed both parties equal remote access to the Child every other day when the Child is not living with them. But the DJ dismissed the Father's other requests such as the request to provide the Father with the contact details of the Mother's domestic helper, given parties' unhappy experience in the past where the Mother's helper allegedly acted as the Father's informant. The DJ, having found that the Father provided no valid reasons as to why the Mother should bear the travel costs, also dismissed his prayer to vary the Consent Order to state that the Mother or her helper shall bear the travel costs when they accompany the Child to meet the Father.

9 In relation to parties' respective applications to vary the Child's maintenance, the DJ ordered that the Father pay half of the Child's rent, to be capped at US\$1,000 per month. Affordability, the DJ found, was not an issue for the Father. As for the other expenses, the DJ quantified the Child's monthly maintenance as \$1,906 excluding the rent, and the 80% of which would be payable by the Father, which is \$1,525. In total, the maintenance payable by the Father is \$2,462.50 including half of the Child's share of the rent (which is \$937.50). Given parties' respective income, the apportionment of 80:20 between the Father and Mother to bear the Child's maintenance was fair. The DJ granted the Mother's prayer to remove Clause 3e(i) in the Consent Order which states that parties shall discuss and review the maintenance for the Child in the future, in view of the parties' inability to reach an agreement on issues pertaining to the Child.

10 The DJ dismissed the Mother's prayer for a lump sum payment of the Child's maintenance, which was a princely sum of \$1,116,046. Although such an order may prevent further disputes between parties, the DJ found that the Mother's calculation of the lump sum payment to be inaccurate, without proper basis and unfair to the Father. The DJ disagreed with the Mother's interpretation of the Consent Order that the Father should pay the full portion of the Child's rent, and pointed out that it would be unlikely that the Child's share of the rent would remain the same over the years. The basis

of the Mother's calculation of the lump sum was, therefore, incorrect. The lump sum calculation is also premised on over-stated expenses. The DJ also explained in detail why she disagreed and found that some expenses were over-stated (see [161]–[174] of the Judgment in *VSL v VSM* [2021] SGFC 67).

11 With respect to the maintenance the Father has not paid up, the DJ ordered that he pay the arrears of \$64,836.71 calculated from 1 December 2019 to 1 December 2020; this sum includes the Child's education fees, expenses and rent.

12 On appeal, the Father's counsel submitted that the DJ failed to give sufficient considerations to all the relevant factors impacting the Child's long-term welfare, citing instances where the Mother made it difficult for the Father to exercise access. The Mother has repeatedly denied the Father access to the Child on the basis that the Father had not paid up his share of the Child's expenses. In the alternative, the Father sought daily remote access to the Child to foster a stronger parent-child relationship, and asked that the order allowing the Child to decide which parent she wished to spend her holiday with once she reaches 16 be set aside as the Mother would be a negative influence on the Child, such that the Child would be placed in a difficult position. Further, if the Mother travels for the purpose of accompanying the Child on having her holiday access with the Father, the Mother should bear her own travel costs.

13 As the respondent in DCA 3 and 5 of 2021, the Father supported the DJ's order in relation to access to the Child, and the Child's maintenance should be affirmed. His counsel argued that the DJ did not err in finding that the maintenance should be payable from 1 December 2020. In the hearing before the DJ, Mother's counsel withdrew the Mother's initial prayer to backdate the interim maintenance to December 2019. Further, the Mother had no basis to claim that the Child's maintenance had increased significantly. The DJ was therefore correct in ordering the maintenance the way she did. She did not err in her interpretation of the Consent Order that the Father was only liable for half of the Child's share of the rent. The DJ was right in dismissing the Mother's request for a lump sum payment, as the Mother's calculation was based on incorrect premises and inflated expenses.

14 For the Mother's appeal on the issue of access, the Mother expressed her concern that the Father having unfettered access to the Child on weekdays would be disruptive, impacting the Child's well-being and educational progress. Hence, in relation to access, the Mother wants the Father to have only access for two weekends every alternate month, with weekend access starting from Friday evening to Monday morning. She asked that the Father's access be subject to the Child's schedule, and must be exercised subject to the Father giving the Mother notice four weeks in advance such that it would not be too disruptive for the Child. The Mother also appealed against the DJ's order giving the Father *ad hoc* access to the Child, as the court had already granted the Father additional access of nine days every other month, totalling 54 extra days in a year. Instead, the Mother would take reasonable steps to facilitate *ad hoc* access subject to reasonable notice by the Father. The Mother is also unhappy with the DJ's order that the Father be granted daily remote access. She asked for alternate days.

15 As for the Child's maintenance, the Mother submitted that the DJ erred in the calculation of the Child's monthly maintenance. She asked that the Father pay a sum of \$3,600 per month for the Child's maintenance starting from December 2019, and that this be paid as a lump sum totalling \$477,360, until the Child turns 21. The sum of \$3,600 is based on 80% of the Child's expenses per month (which amount to \$4,500), as the Mother is willing to pay for 20% of the expenses. As for the rental expenses, the Mother submitted that the DJ erred in ordering that the Father pay for half of the Child's share of the rent, as clause 3e(c) of the Consent Order envisioned that the Father would pay for half of the rent, rather than half of the Child's share of the rent. Hence, the Mother sought that

the Father pay for the full share of the Child's part of the rent, which amounts to \$1,875. Since the DJ has found it fair that the Father, who has a much higher income, should bear 80% of the Child's monthly expenses, the same approach should be applied towards rental payments such that the Father should bear at least 80% of the Child's rent, which is \$1,500.

16 With respect to the other items, the Mother submitted that the correct assessment of the Child's maintenance should be a sum of \$2,475, instead of the sum of \$1,906 assessed by the DJ, taking into account the increased expenses for the domestic helper, the Child's usage of internet services and *etc.* Hence, 80% of the monthly maintenance excluding the rent should be at least \$1,980, and not \$1,525 as assessed by the DJ.

17 In the hearing before me, the Mother complained that the Father had refused to pay for the Child's maintenance after she had remarried on 1 March 2019. The Father had allegedly failed to pay the Child's maintenance from 1 December 2019 to 30 November 2020, but the DJ erred in not taking this into account when the DJ ordered the monthly maintenance to be payable from 1 December 2020. Hence, the Mother asked that the Father pay for the maintenance arrears of \$68,020.30, including the maintenance arrears from 1 December 2019 to 30 November 2020 (calculated at \$2,227 per month), including the Child's rent arrears (\$1,500 per month).

18 I shall first address the Father's appeal in relation to care and control, and the Mother's appeal against the DJ's order on access. A court may vary a consent order relating to the custody, care and control of the child if it is for the welfare of the child to do so. The child's welfare is always of paramount importance. The court may also vary or rescind a custody order under s 128 of the WC, if it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

19 On issues of access, joint parenthood is the starting point because both parents ought to have a direct involvement in their child's life. Their acrimony should not be an obstacle to their child's happiness in having both parents remain in her life. When acrimony between the parents become an obstacle to the child's welfare, the court has to remove that obstacle, even if it cannot dissolve the acrimony, in the only way it can; and that is by making orders governing the access to the child.

20 The DJ did not err in dismissing the Father's application to reverse the order for care and control, which was made in tandem with his application to relocate the Child. The Mother has always been the primary caretaker of the Child, who is now still only nine years' old. Though the Child is not a Singapore PR, she has grown up here and has not lived in the Netherlands. It will not be in the best interests of the Child to remove her from the environment she grew up in, to a country which, including the language, is foreign to her. The Father's complaint about being denied access is an issue to be addressed by varying the access order, instead of changing the Child's current care arrangement.

21 As for the access order granted by the DJ, I do not think that the DJ erred in law or fact to grant the Father additional access given that he now lives in Europe, and travelling to Singapore just to spend one or two weekends with the Child is simply not sufficient. The Father's request for daily remote access and additional *ad hoc* access, in the same vein, is also reasonable, provided he takes into account the time difference between the Netherlands and Singapore, and does not expect his electronic messages be given immediate attention. Geographical distance should not be a hindrance to the Father's fostering closer ties with the Child. As stated above, joint parenthood is the default. It is best realised when the Father could spend meaningful time with the Child. I therefore find no reason to disturb the DJ's order on access, and dismiss the Mother's appeal in relation to the issue of access. In relation to the travel costs, I agree with the DJ that the Father provided no valid reason

as to why the Mother should bear the travel costs when she has to accompany the Child to enable the Father to exercise access. This was parties' initial agreement in the Consent Order, and there has been no material change of circumstances to justify varying this clause.

22 Before turning to the Mother's appeal, I will address her application to adduce further evidence. The Mother submitted a 274-page affidavit to adduce new evidence. Even though most of the evidence, which relate to events that happened after the hearing in October 2020, could not have been adduced with reasonable diligence in the hearing below, I decline to admit most of the evidence, save for the e-mail showing the increase in the expenses of hiring a domestic helper, and the e-mails between the parties dated 13 January 2021. I do not find the other evidence to be relevant nor material to my decision in this appeal. For instance, the Father's overseas assets discovered through the Mother's extensive detective work do not materially impact my decision regarding the Child's maintenance, as it has been established by the DJ that the Father's income is higher and should therefore bear more of the expenses. As such, I would only allow SUM 221 in part to consider only the evidence pertaining to the costs of hiring a helper and the parties' correspondence on the issue of the Child's maintenance, as that evidence was not available before the DJ.

23 I now turn to the issues of maintenance for the Child, the rent and the lump sum payment sought by the Mother. The variation of the agreement for maintenance of child is permitted under s 73 of the WC, if the court is satisfied that it is reasonable, and for the welfare of the child, to do so. Alternatively, the order for maintenance could be varied on proof of a change in the circumstances of the parent making the variation application, under s 72 of the WC.

24 The Mother has sought to appeal against the DJ's decision on the quantification of certain items for the Child's expenses. I see no reason to disturb the DJ's findings. Even if I accept that the costs of hiring a helper have increased by \$100 based on the new evidence adduced on appeal, this would be at most a \$25 increase for the Child's share. This increase is not sufficiently significant given that the total expenses of a helper are \$1253.13 a month as found by the DJ.

25 As for the other items the Mother assiduously enumerated, and challenged, I do not think that the DJ was wrong in assessing the Child's maintenance at \$1,906. For instance, regarding the internet usage of the Child, the Mother suggested that the Child's maintenance ought to be 1/3 instead of 1/4 of the internet service fees because the Child uses the internet more. There is no evidence to bear out her claim. The Mother also sought an increase for groceries based on her claim on the amount of much fruit the Child consumes, and her preference for a specific ice cream parlour. It is, of course important that details are to be considered. That is part of the nature of judicial work. But taking everything into consideration does not mean that the judge needs to deliberate verbally, the minutiae of quotidian activities, less she loses sight of the forest for the trees. I thus affirm the DJ's order on the monthly maintenance excluding rent.

26 On the issue of rent, the question is whether the Father is responsible for half of the rent, *ie*, the Child's share of the rent, or half of the Child's share of the rent. The Mother claimed that the phrasing of Clause 3e(c) of the Consent Order should be construed to mean that the Father was to pay for the full share of the Child's share. If the Mother were made to pay for half of the Child's share of the rent, that would amount to \$11,250 per year, when the Mother's income for the year 2020 was a mere \$16,815.

27 Even if I were to take the Mother's case at its highest that the original phrasing of Clause 3e(c) is for the Father to bear the entirety of the Child's share of the rent, there has been a material change in circumstances. The Mother has remarried an Indian national with a permanent residency status here, given birth to another child, and moved into a different flat with the new family. It is

inequitable, therefore, to make the Father bear the entirety of the Child's share, regardless of the phrasing of the original Consent Order. As I held in *VPX v VPY* [2021] SGHCF 13, there is an element of subjectivity in assessing what portion of rent should be attributed to the child. It is difficult to carve the rent between a parent and child with surgical precision. Half of the Child's share of the rent is not an excessive sum for the Mother to bear, and it is only fair for the Mother to contribute more to the Child's share of the rent, since she and her new family enjoy the benefits of living in the new flat. Furthermore, if not for her new family, she and the Child might make do with a smaller flat. As such, the DJ's order stands.

28 For the maintenance in arrears, the DJ ordered \$64,836.71. But the Mother submitted on appeal that this sum did not factor in the payments the Father ought to have paid for the Child's monthly maintenance from 1 December 2019 to 30 November 2020. Based on the Consent Order which applied to maintenance for the child before 1 December 2019, this would be a sum of \$2,060 per month. The Father's counsel pointed out that the Mother took the position in the hearing below that she would not proceed with the prayer requesting for interim maintenance to be paid from 1 December 2019, and it would be an abuse of process for the Mother to now argue that the DJ failed to backdate the maintenance payment.

29 The prayer initially sought by the Mother was for interim maintenance of US\$1,500 (\$2,085) to be backdated to December 2019. It could be that when the Mother's counsel took the position below that they would not proceed with this prayer, what they meant was that they would not ask for the interim maintenance, which no longer applied after December 2019, to be backdated. But it does not mean that the variation granted by the DJ for the maintenance order cannot be backdated. It is undisputed that the Father had not paid for maintenance since December 2019 as parties could not agree on the amount of monthly maintenance payable (see the Judgment at [117]). The Mother, as a result, had to bear the Child's maintenance excluding the rent by herself from December 2019 to November 2020. This is contrary to parties' agreement that the Father would at least bear part of the Child's maintenance for her day-to-day expenses. I would therefore vary Clause 3e(d) of the revised order such that the monthly maintenance of the Child, excluding her share of the rent, would be backdated to 1 December 2019. In backdating maintenance orders, we need to be mindful not to make overlapping orders. This does not arise here as the interim maintenance agreement has effectively lapsed by December 2019, after which parties failed to reach any consensus and no payment for monthly maintenance.

30 Lastly, on the lump sum payment of maintenance sought by the Mother, which amounts to more than \$1m, it bears emphasis that an order for a lump sum payment for the child's maintenance is ordered sparingly, where there is a need for a clean break between the former spouses, and where such a payment would not cripple the paying spouse financially. As between former spouses, a clean break may be desirable. But between a parent and child, a clean break is rarely desirable. In the present case, the Child is only nine years' old. Her financial needs will change. The assumptions underlying the Mother's calculation of the \$1m will change. An order for a lump sum payment of a rather princely sum, as the DJ rightly noted, is not appropriate. The Mother's suggestion that the Father delayed payments on several occasions does not mean that the Father did not pay. In fact, in her e-mails replying to the Father in January 2021, she acknowledged receipt of the Father's payment for the Child's dental expenses and medical bills. This fortifies my view that although the parties' relationship is acrimonious, it is not necessary to order a lump sum maintenance order.

31 For the reasons set out above, I dismiss the appeals by both parties, but vary Clause 3e(d) as follows:

The monthly maintenance of the child is assessed at \$1,906 per month excluding her share of

rent from 1 December 2019 onwards and the Defendant is to pay the sum of \$1,525 (excluding the rent of \$937.50) per month to the Plaintiff as child maintenance to her designated bank account on the 1st day of each month. The maintenance for December 2020 of \$1,525 is to be paid by 31 December 2020.

The arrears for the Child's maintenance from 1 December 2019 to November 2020 are to be paid by 31 November 2021.

32 I make no order as to costs.

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