IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 14

District Court Appeal No 96 of 2021

Between

WAY

… *Appellant*

And

WAZ

… *Respondent*

AND

District Court Appeal No 132 of 2021

Between

WAZ

… *Appellant*

And

WAY

… *Respondent*

JUDGMENT

[Family Law — Ancillary Matters — Variation of Access Orders]

WAY
v
WAZ and another appeal

[2022] SGHCF 14

General Division of the High Court (Family Division) — District Court Appeals Nos 96 and 132 of 2021
Choo Han Teck J
18 May 2022

9 June 2022 Judgment reserved.

Choo Han Teck J:

1 The parties married in December 2012 and have a child ("the Child"), born in 2014, presently 8 years old. The Mother commenced divorce proceedings in March 2016 and Interim Judgment was granted on 8 May 2017. District Judge ("DJ") Azmin Jailani heard the parties on ancillary matters and made the following access orders ("the Access Orders") in November 2018:

(a) the Father to have weekend overnight access either on Friday, Saturday, or Sunday night — it is not disputed that the Father elected to have his overnight access from Sunday 10.15am to Monday morning;

(b) the Father to have weekday access on Tuesday and Thursday from 5.00pm to 7.30pm and one school run, to pick the Child up from school on Monday and drop the Child at the Mother's residence;

(c) the Father to have specific access on specific occasions, such as Father's Day, the Father's birthday, the Child's birthday, Chinese New Year, Christmas and other public holidays; and

(d) the parties and the Child to enrol in any family therapy or counselling programme to incrementally extend the periods of access to the Father, which includes increased access in Singapore and overseas travel with the Child.

2 After the DJ gave the Access Orders, the parties attended family therapy and had their first session with their counsellor ("the Counsellor") sometime in late January 2019. However, due to the lack of cooperation between the parties, the family therapy programme had no positive outcome, and the Counsellor terminated it in December 2019, before it was completed.

3 The Father commenced Summons 71 of 2021 in January 2021 to vary the Access Orders. He sought significant variations, which included an increase of overnight access from one night to three nights, the inclusion of school holiday access, and overseas travel access.

4 The learned DJ accepted that it is in the Child's best interest for the Father to have more time with the Child since it had been more than three years after the Access Orders were made, but was not minded to grant the entirety of the variations sought by the Father. Therefore, the learned DJ partially allowed the Father's variation application and granted him:

(a) one additional weekday overnight access, from Tuesday 4.30pm to Wednesday morning from October 2021 onwards;

(b) a 30-minute earlier pickup time for weekday access;

(c) make-up access if a public holiday allocated to the Mother falls on the same day as the Father's access; and

(d) one additional weekday access and two days of back-to-back overnight access during the school holidays in June 2022 and November to December 2022, and school holidays thereafter.

5 Both parties appealed against the learned DJ's decision. In District Court Appeal No 96 of 2021, the Mother appeals against the variation of the Access Orders. The Mother says that the learned DJ erred in varying the Access Orders without ascertaining if there had been a material change in circumstances. The Mother says that the completion of the family therapy programme was a precondition that must be satisfied before the Father can have increased access to the Child and that precondition was not met since the family therapy programme was terminated prematurely. The Mother also says that even if the DJ was minded to vary the Access Orders, he should have ordered a Social Welfare Report ("SWR") or Custody Evaluation Report ("CER") to ascertain the Child's aversion to going to the Father's residence.

6 District Court Appeal No 132 of 2021 is the Father's appeal against the learned DJ's decision. The Father says that the DJ had erred in failing to specifically order that the handover of the Child should take place at a neutral location in the absence of the Mother. The Father says that the child psychologist had come to the conclusion that the Child was distressed during handovers because of the multiple episodes of failed handovers and hostility between the parents. He further says that the child psychologist recommended delegating the handover to a neutral party and varying the handover location to a neutral location so that the parties do not have to meet during the handover of

the Child. The Father also seeks an order to prevent the Mother from enrolling the Child in any enrichment classes or activities during the Father's access time.

7 Dealing first with the Mother's appeal, I am of the view that the DJ was right in varying the Access Orders to give the Father more time to see the Child. One of the very purposes of the family therapy programme ordered by the DJ was to incrementally extend the periods of access to the Father under a structured programme. Given that the family therapy sessions had ceased, maintaining the original Access Orders would mean that intended opportunities for a gradated access to the Father would be gone. As the learned DJ pointed out, this was a material change that justifies a variation of the Access Order.

8 Furthermore, more than three years have passed since the original Access Orders and the Child is now eight years old. Having interviewed the Child, I am of the view that the Child is well-adjusted and able to relate to adults. The Child also seems to get along well with his stepbrother and has a better relationship with his stepmother now. Therefore, I am of the view that there is no need to order a CER or SWR, and that he should spend more time with his Father. I find that the modest increase in access granted by the DJ to be reasonable, and in the best interests of the Child. I therefore dismiss the Mother's appeal.

9 Turning to Father's appeal, I agree that the Child may be distressed under the current handover arrangements because of the hostility between his parents. This is also supported by the views of the Child's psychologist who stated in his report that when the parents knowingly or unknowingly show hostility during the handover, the Child will perceive the hostility and have a psychological fear reaction, and over time, repeated experiences of failures during the handover can become a trigger for negative reactions in the Child. In

my view, to reduce the Child's stress at handovers, it is the duty of both parents to be cordial during the handover process. However, this may sometimes be difficult or impossible due to the unresolved animosity from their separation. In such cases, the court may need to intervene to ensure that the hostility between the parents does not harm the welfare of the Child. The Father's proposal for handover is as follows:

(a) he will pick up the Child for weekend access on Sunday at 10.15am from tennis class, to be conducted at the Father's residence (or whichever enrichment class that the Child is enrolled in) and send the Child to school on Monday morning;

(b) he will pick the Child up for Tuesday access from gym class (or whichever enrichment class that the Child is enrolled in) at 4.30pm and send the Child to school on Wednesday morning; and

(c) he will pick the Child up for Thursday access from fencing class (or whichever enrichment class that the Child is enrolled in) at 4.30pm and return the Child to the Mother's residence at 7.30pm.

10 I find the Father's proposal reasonable and practical, and I allow his appeal. The Father's proposal may not work in situations where there are changes to the Child's schedule, for instance, on days when enrichment classes are cancelled. I therefore further order that where it is not feasible to comply with the Father's handover proposal as set out above, the handover of the Child should be conducted at a neutral or public location, by a neutral party who is known to both parties (such as a close friend or relative) and the Mother should not be present at the handover. Both parties equally are at fault for their lack of cooperation during the handover process, but it is unfair for the Child to suffer

because of his parents' inability to reconcile. The Father's proposal offers a practical way to protect the Child for the time being and minimizes the chances of failed handovers.

11 Lastly, I order that the Mother does not enrol the Child in any enrichment classes or activities during the Father's access time, without the consent of the Father. The Father says that after the Access Orders were varied, the Mother enrolled the Child in drum classes on Tuesdays, which takes place during the Father's access, leading to a situation where the Father picks up the Child from gym class at 4.30pm only to send him for drum class. Such a situation should be avoided in the future to ensure that the Father can spend his fair share of meaningful time with the Child.

12 My decision above reflects the fair and proper adjudication of access time for the Father, which the DJ below had largely recognised and ordered. What is of greater importance is that the parties in a divorce fully understand the concepts of custody, care and control. These are concepts that lawyers, counsellors, and judges should remind themselves when dealing with legal issues arising from them.

13 In a happy marriage, the custody of the children is aligned with the right to care and control, for the interests of both parents are themselves aligned. When the parents are divorced, this alignment is torn asunder, and the parents may be given joint custody of the children as that is an obvious right, save in exceptional cases where one party is found to be unsuitable to have custody rights. But when the parents are separated by divorce, it is impossible to have joint care and control. That is why one parent is given care and control, and the other, access to the children.

14 The award of care and control is no more a prize than an access order is a consolation prize. Both are of equal importance to the child. Without meaningful access, the child may not be able to build a loving relationship with the parent having access. Should any calamity befall the parent having care and control — such as ill-health or incarceration — the other parent would be the most appropriate person to take over care and control. But a handover in those circumstances will be awkward if the parent taking over does not have a sound relationship with the child. It is therefore important that the child is encouraged to build a healthy parent-child relationship with both parents after their divorce. To that end, generous access time subject to the child's personal needs, such as rest and schooling, should be given. If there is objection to the amount of access time, as in this case, the court will evaluate the objection against the circumstances of the child and the desire of the other parent. In many cases, the present one included, the parent seeking access has a genuine interest in developing a parent-child relationship. Those who have no such interest are usually reluctant to seek access. In the present case, the Father has a new family, and yet still hopes to be the father that he should be to the Child.

15 For the aforementioned reasons, I dismiss the Mother's appeal and allow the Father's appeal. I make no order as to cost.

- Sgd -
Choo Han Teck
Judge of the High Court

Lee Leann and Linda Joelle Ong (Engelin Teh Practice LLC) for the mother;
The father in person.
