

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 5

District Court Appeal No 67 of 2021

Between

VWQ

... Appellant

And

VWR

... Respondent

GROUND OF DECISIONS

[Family Law — Husband and wife — Consent orders — Variation of consent order]

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VWQ

v

VWR

[2022] SGHCF 5

General Division of the High Court (Family Division) — District Court
Appeal No 67 of 2021
Choo Han Teck J
13 January 2022

21 January 2022

Choo Han Teck J:

1 The Husband applied by Summons 4150 of 2019 to the District Judge (“DJ”) to vary a Consent Order made on 18 May 2015 (“the Consent Order”). The DJ dismissed the application but varied certain clauses in the Consent Order. The Husband has since appealed against the DJ’s decision.

2 The Husband is a Singapore national who is 45 years old this year. He is working as a safe-entry ambassador. The Wife is a Singapore Permanent Resident and citizen of the People’s Republic of China. She is 39 years old this year and is working as a part-time assistant manager at a café. There is one child to the marriage who was born in 2011 and is a primary school student in Singapore.

3 The Parties married on 6 October 2009 in Singapore. The Husband commenced divorce proceedings on 2 October 2014 and interim judgment was obtained on 24 December 2014. Following a mediation, the Parties agreed to the Consent Order with respect to issues of custody, care and control, maintenance and matrimonial property.

4 The Consent Order provided for the joint custody of the Child with care and control to the Wife (“Clause 3(a)”), with reasonable access to the Husband (“Clause 3(b)”). The Husband is to pay the Wife a sum of \$700.00 per month for the Child’s maintenance (“Clause 3(c)”) and \$500.00 per year for Chinese New Year allowance (“Clause 3(d)”). The Husband was also required to pay \$1.00 nominal maintenance to the Wife, with an additional \$200.00 per month for every \$500.00 increment in salary (“Clause 3(e)”). The Wife could stay at the matrimonial flat (“the Flat”) for as long as she desires, and if the Flat is sold, the Husband will ensure that the Wife and Child have alternate lodging (“Clause 3(f)”). Upon the Child reaching 21 years of age, the Husband shall be required to transfer his share of the Flat to the Child, but if the Flat is sold before that and another property is purchased, the Husband would instead be required to transfer his share in that property to the Child (“Clause 3(g)”).

5 In Summons 4150, the Husband sought to vary Clauses 3(a), 3(b) and 3(c) of the Consent Order to reverse care and control of the Child from the Wife to himself and for the Wife to pay him \$700.00 per month for child maintenance. The DJ dismissed the Husband’s application but varied Clause 3(b) to grant the Husband liberal access to the Child during weekdays and weekly weekend overnight access to the Child.

6 The Husband also wants to rescind or delete Clauses 3(d) and 3(e) of the Consent Order relating to the Wife’s maintenance and Chinese New Year

(CNY) allowance on the ground that he had been unemployed because of his health conditions, but counsel says that he is now a Safe Distancing Ambassador. The DJ rejected the Husband's application, but in relation to the maintenance for the Wife, the DJ varied Clause 3(e) on the ground of impracticability. The variation allows the Husband to pay the Wife \$200.00 a month for maintenance if he is employed and earns at least \$3,500.00 a month.

7 The Husband also sought to rescind Clauses 3(f) and Clause 3(g) relating to the living arrangements in the Flat and the transfer of his shares in the Flat to the Child. The Husband says that the matrimonial flat is jointly owned by his mother and him and that the said clauses affect third party rights. The DJ rejected the Husband's argument, distinguishing the case from *UDA v UDB and another* [2018] 1 SLR 1015 ("*UDA v UDB*") and finding that the clauses only pertained to the Husband's shares in the property. With the consent of the parties, the DJ deleted the first sentence of Clause 3(f) which allowed the Wife to stay in the Flat for as long as she desired since the Wife had already moved out of the matrimonial flat.

8 The Husband appealed against the DJ's decision. The Husband has raised three main points on appeal:

- (a) Firstly, the Husband argues that the DJ erred in refusing to reverse care and control of the Child from the Wife to him. The Husband contends that there has been a material change in circumstances because the Wife has moved out of the flat with the Child, disrupting the Child's living arrangements. The Husband further contends that there is a lack of evidence on the Child's present caregiving arrangements, and it is in the welfare of the Child for care and control to be given to him.

(b) Secondly, the Husband says that the DJ erred in refusing to vary Clauses 3(c) and 3(d) concerning the maintenance of the Child and the Wife. The Husband contends that there has been a material change in circumstances because he stopped working as a sales manager at a Chinese restaurant in 2019 because of his diabetes, high blood pressure and high cholesterol. The Husband further contends that in November 2019, he was diagnosed with a growth in his large intestine and would require lifelong medication which impedes his prospect of securing a job.

(c) Thirdly, the Husband says that the DJ erred in allowing Clause 3(g) to stand. The Husband contends that Clause 3(g) should be rescinded on the ground of impracticality because, as a joint tenant of the flat he does not own any “divisible share” in the Flat and therefore cannot transfer “his shares” of the Flat to the Child.

9 Although the court has broad powers under ss 73, 119 and 129 of the Women’s Charter 1961 (2020 Rev Ed) to vary agreements on issues of custody and maintenance, such powers should be exercised sparingly and only in exceptional circumstances (*AYM v AYL* [2013] 1 SLR 924). Generally, a consent order is a contract negotiated and agreed upon by parties, and the courts would be slow to re-write their contract. Privately settled terms negotiated by the parties, especially in family matters are to be encouraged. As such, they should be respected, and not lightly changed. Otherwise, one party may lead the other to believe that obtaining a consent order would end their dispute, only to call in aid the provisions in the Women’s Charter to vary their agreement (*TOC v TOD* [2016] SGHCF 10) when they feel that the bargain was not to their liking subsequently.

10 I now turn to the merits of the issue of care and control in this appeal. The mere fact that the Wife had moved out of the Flat with the Child is not a material change in circumstances that justifies the reversal of care and control. The Specific Issues Report (“SIR”) directed by the DJ shows that the Child’s new accommodation was secure, clean, and adequately appointed and that the Child was observed to be emotionally stable and well-adjusted. The Wife has been the main caregiver of the Child from infancy. Thus, letting her continue to be the main caregiver will provide the child with the same stability in this living arrangement. Furthermore, the DJ has already varied Clause 3(b) of the Consent Order to give the Husband liberal and weekend overnight access. Therefore, I am of the view that there is no compelling reason to reverse care and control in favour of the Husband.

11 Since the Husband’s prayer for the reversal of care and control is not granted, the Husband’s prayer that the Wife pay him \$700.00 per month for child maintenance would necessarily fail. The Husband has not provided any other justifiable reason for the reversal of the \$700 maintenance payment.

12 Turning to the issue of wife maintenance, I take the view that the Husband’s loss of employment did not amount to a material change in circumstances in the present case. I accept that the Husband’s medical conditions may have caused him inconvenience in finding jobs in the food and beverage industry, his conditions are not so severe as to render him incapable of working. As I mentioned, the Husband had since found a job as a safe-entry ambassador.

13 Lastly, in relation to the Husband’s prayer to rescind Clause 3(g) on the ground of impracticality, the mere fact that the Flat is jointly owned by the Husband and his mother does not prevent the Consent Order from being carried

out. It is true that in a joint tenancy, each co-owner is entitled to the whole interest of the property jointly and nothing severally, it does not follow that the individual co-owners are prohibited from disposing of their share of the property. Furthermore, Clause 3(g) does not affect the rights of the Husband's mother as a joint owner of the property. The learned DJ is correct in finding that the present case can be distinguished from *UDA v UDB*. In that case, the wife's mother applied for leave to intervene in the divorce proceeding as she disagreed with the husband's claim that an immovable property she owned was held on trust by her for the couple. In that context, Justice Debbie Ong ordered a stay of the hearing to determine the ownership of the disputed property in a civil action. In the present case, Clause 3(g) only pertains to the Husband's interest in the Flat and does not affect the Husband's mother's interest. Therefore, I reject the Husband's argument that Clause 3(g) should be rescinded because it is unworkable.

14 Accordingly, I dismiss the Husband's appeal against the DJ's order regarding the variation of the Consent Order. I make no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Navinder Singh and Farah Zainudin (KSCGP Juris LLP) for the
husband;
Alice Tan-Goh and Susan Tan (A C Fergusson Law Corporation) for
the wife.