IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 8

District Court Appeal (Family Division) No 141 of 2021

Between

VLI

… *Plaintiff*

And

VLJ

… *Defendant*

ORAL JUDGMENT

[Family Law — Custody — Care and control]
[Family Law — Custody — Access]
[Family Law — Child — Application for citizenship]

VLI
v
VLJ

[2022] SGHCF 8

General Division of the High Court (Family Division) — District Court Appeal No 141 of 2021
Debbie Ong J
3 March, 10 March 2022

10 March 2022

Debbie Ong J:

Introduction

1 In this appeal, the appellant is referred to as the Mother and the respondent is referred to as the Father.

2 The Mother raises the following issues in her appeal:

(a) whether the Court had erred in law in dismissing the Mother's application for sole custody, care and control of the Child with restricted and supervised access to the Father;

(b) whether the Court had erred in law and in fact by refusing to make orders directing or ordering that in the event that the Child's application for Singapore citizenship has been withdrawn or cancelled,

or rendered unsuccessful by reason of any act or omission by the Father to complete the application process, that the Father be ordered to re-apply for the Child's Singapore citizenship and to do all that is necessary to make the said application within 7 days from the date of this Order; and

(c) accordingly, whether the Court erred in law and in fact by not making the orders for relief sought for by the Mother.

Did the court err in dismissing the Mother's application for sole custody, care and control of the Child and supervised access to the Father?

3 The District Judge ("DJ") had, in an earlier decision in FC/OSG 102/2020 ("OSG 102") "made a finding of fact that there are no disagreements between the parties concerning the Child" and held that there was "therefore no need … to intervene unnecessarily and make any custody or care and control order" (Grounds of Decision for FC/OSG 112/2021 ["OSG 112 GD"] at [18]). He dismissed the Mother's prayers for interim sole custody and care and control of the Child in OSG 102. In his subsequent decision in FC/OSG 112/2021 ("OSG 112") that is presently under appeal, a similar conclusion was reached, as the DJ found that this matter was *res judicata* and there was no fresh dispute that would affect the earlier decision (OSG 112 GD at [14] and [20]).

The Mother's submissions

4 In relation to custody, the Mother submits on appeal that the Child's right to apply for Singapore citizenship falls within the ambit of the welfare principle. Moreover, a real dispute has arisen between the parties sufficient to invoke the Court's intervention to make orders on custody as "the Father does not agree with the Mother that the Child should apply for Singapore citizenship". She submits that it was agreed between the parties during the

marriage, before it broke down, that they would apply for Singapore citizenship for the Child, but the Father later changed his mind.

5 On the issue of care and control, the Mother submits "that the Court ought to have at the very least made care and control orders for the Child". The Mother argues that the Court's intervention to make orders for care and control arises from the breakdown of the marriage, and the question of whether or not there is a dispute between the parties is not a relevant factor to be considered. She submits that as the marriage has broken down, there is a need for the court to intervene to make care and control orders.

6 The Mother's position on access is that the Father's access ought to be on a restricted and supervised basis. She proposes that any access be conducted for 2 hours once a week under the supervision of the Plaintiff or through the DSSA". She submits that since August 2020, "the Father has only made half-hearted and insincere attempts to see the Child for the Child's 1st birthday. No other attempts were made by the Father to see the Child." As "the Father is practically a stranger to the Child", the Mother argues that it is not in the best interest of the Child to be "thrust into access arrangements with the Father without supervision or restriction".

The Father's submissions

7 The Father provides maintenance and leaves the Mother to care for the child. The Father's position is that the Child's citizenship application is a personal decision to be made by parents. As he is the Singapore citizen who does not wish to apply for citizenship for the Child, the Mother should not insist on this. He is of the view that it would be in the best interests of the Child to return to Israel to study, as the Israeli system provides good education and comparatively more education and healthcare benefits. He submits that

"currently the main interest of the plaintiff is … to obtain the child citizenship status that allows her to ride on and live in Singapore".

8 On the issue of care and control, the Father states in his Respondent's Case ("RC") that he "trust[s] that the plaintiff is the current primary care-taker of the child". However, he also disagrees that the Mother should have sole care and control of the Child as he does not have any "argument/custody fight" with the Mother over the Child. He has also indicated that he would prefer a shared care and control order, but is mindful of preserving peace between the parties.

9 The Father disagrees that access should be supervised and restricted. He wishes to bring his son to visit his family and highlights that it "is for the best interest of the child and his welfare to spend time bonding with [the Father's] grandparents, family, relatives and [the Father]." He also wishes that access will be unsupervised, with no third parties around. Previously, the Father had tried to organise a gathering at his uncle's place in celebration of the Child's birthday in 2020, but the Mother was not agreeable as she wished for the gathering to be at a Jewish restaurant which served kosher food. As parties were unable to reach an agreement, the gathering did not materialize.

My decision

10 The DJ held that (OSG 112 GD at [18]):

> … there are no disagreements between the parties concerning the Child. Applying the law as set out in *CX v CY* [[2005] 3 SLR(R) 690 ("*CX v CY*")], there was therefore no need for me to intervene unnecessarily and make any custody or care and control order. I therefore dismissed the Wife's prayers for interim sole custody and care and control of the Child.

11 He explained (OSG 112 GD at [15]-[16]):

> 15 … the fundamental issue before me was the same in both summons [OSG 102 and OSG 112] – whether or not there was an actual or genuine dispute between parties over any serious matters relating to the Child's upbringing. This to me, was the core issue for decision in both cases.
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> 16 I arrived at this starting point because the Court of Appeal in *CX v CY* [2005] SGCA 37 ("***CX v CY***") had made clear at [18] and [19] that where there is no actual dispute between the parents over any serious matters relating to the child's upbringing, it may be better to leave matters at status quo, and not to make any custody order. It was further noted that the courts should not intervene unnecessarily in the parent-child relationship where there is no actual dispute between the parents over any serious matters relating to the child's upbringing.

12 There appears to be some confusion with respect to the concepts of custody and care and control. The DJ relies on the Father's concession that there are no disagreements (or actual disputes) between the parties over matters relating to the Child's *upbringing* in OSG 102. This appears to be a reference to matters relevant to "custody". The DJ found in OSG 112 that there were no fresh events that gave rise to a genuine or actual dispute in respect of the Child's citizenship. However, in applying *CX v CY*, the DJ made no orders for care and control as well, not just in respect of custody.

13 It is clear from the law in *CX v CY* that *sole* custody is ordered only if there are exceptional circumstances that justify excluding one parent from important matters concerning the child, such as where the parent has abused the child (see *CX v CY* at [38]). An alleged disagreement over a child's citizenship is by itself not a sufficient basis to order sole custody, which is what is sought by the Mother. Some degree of acrimony is to be expected when parties are undergoing a marital breakdown, and acrimony alone is insufficient to justify a sole custody order (see *CX v CY* at [36]). Where there is no actual dispute between the parents over any major issues relating to the child's upbringing, the court may make a no custody order (*CX v CY* at [19]). Without a custody order,

the position is simply that both parents remain responsible for the upbringing of the child and should continue to exercise parental responsibility over the child. Where there have been attempts by one parent to exclude the other from the child's life, the court can also make a joint custody order that has the psychological effect of reminding parties that the other parent has an equal say in significant matters concerning the child's upbringing (*CX v CY* at [20]).

14 "Custody" thus pertains to decision-making over the major aspects of a child's life, such as the child's education and major healthcare issues while "care and control" relates to which parent the child should live with primarily, with that parent as the daily caregiver (see *TAU v TAT* [2018] 5 SLR 1089 at [8]-[9]). The principles encapsulated in *CX v CY* as outlined above (at [13]) apply to the question of custody, not care and control. There is no legal principle that a care and control order can only be made if there are disputes over the upbringing of the child. It is in fact common for the court to grant consent orders on care and control and access when both parties do not dispute but agree to those arrangements.

15 In my view, the present parties do not agree on the matter of the Child's citizenship – the Mother would like the Child to obtain Singapore citizenship, while the Father does not wish to apply for Singapore citizenship for the Child. The dispute in respect of the Child's citizenship is a matter that falls under "custody", not care and control. However, even if there is a dispute over such a matter, a dispute by itself is not a justification for an order of sole custody. I have already explained the principles on which a sole custody order may be made at [13] above. A joint custody order (or no custody order) preserves both parents' parental responsibility and authority in the important aspects of the child's life. In the present case, I think it appropriate to make an order of joint

custody. This will make it clear that neither parent can unilaterally decide on matters of importance in relation to their Child.

16 In the earlier application in OSG 102, the citizenship of the Child was not in issue – the issues largely lay in relation to the Mother's Long Term Visit Pass ("LTVP") and the lease of the Bishan property. In his grounds of decision for OSG 102, the DJ did not go into detail as to why he dismissed the Wife's application for the custody and care and control order.

17 From the evidence and submissions before the court below in both OSG 102 and OSG 112, it is apparent that there were disputes over the care and control and access arrangements. While the Father accepts that the Mother is the "primary care-taker of the child", he clarified at the hearing that he prefers to have shared care and control of the Child. He also wishes to have unsupervised access to the Child, while the Mother maintains that access should be supervised and restricted. Evidence on how the parties faced conflicts over the Child's access on the Child's birthday was before the court below. The Father clarified at the hearing that he would like access to the Child but has not recently nor presently pursued it due to serious concerns that doing so will cause more difficult issues and conflict, which he described as "trouble".

18 Presently, the Father accepts that the Mother is the "primary care-taker of the child" and does not wish to disrupt the *status quo*. He expressed his desire at the hearing that he may pursue shared care and control, or more access when he is able to afford a lawyer in future. Given that the Mother has been the main caregiver of the Child since the parties separated in June 2020, I accept that the Mother should be given sole care and control of the Child.

19 I also note the Father's desire to have unsupervised access to the Child. In the present case, there are no exceptional circumstances, such as abuse of the Child, that require or justify supervised access. The Father should have the opportunity to build a relationship with the Child; he should have reasonable access to the Child. However, I note that the Father has not had access to the Child since the parties were separated in June 2020. The Child is of tender age – presently two years of age. Where a young child has not spent time with a parent for a long period of time, the child may feel uncomfortable being left alone with that parent. The Father may have concerns such as whether arranging access will give rise to more conflicts and disputes and should be aware that the Child will need some time to be comfortable having access with him or be around his family whom the Child may not be familiar with. He can consider starting with access arrangements that could include someone familiar to the Child accompanying the access. The parties are to sort all these arrangements out themselves. I order that the Father shall have reasonable access which is to be reasonably arranged between the parties.

Did the court err by refusing to direct that the Father be ordered to apply for the Child's Singapore citizenship?

20 The Mother further submits that "the Child has a Constitutional right to apply for Singapore citizenship." She refers to *UKM v Attorney-General* [2019] 3 SLR 874 ("*UKM v AG*"), "where the High Court … ruled that the welfare of a child includes the opportunity for a child to apply for Singapore citizenship". She seeks an order that the Father be compelled to apply for Singapore citizenship for the Child.

21 The facts in *UKM v AG* are very different from the present facts. In *UKM v AG*, the main application by the father was for an adoption order. In determining whether the adoption order ought to be granted for the welfare of

the child, the court considered, amongst other things, whether making the adoption order would increase the father's prospects of securing Singapore citizenship for the child (at [65]). Of note is the fact that the father in *UKM v AG* was a citizen of Singapore and lived in Singapore; if his child was not granted Singapore citizenship, he as the only parent of the child would have had to leave Singapore to relocate elsewhere with the child. It was against this factual backdrop that the court considered that it was in the child's welfare to obtain Singapore citizenship, as this would strengthen the prospects of regularising the child's citizenship or residency status in Singapore, enabling the child's existing care arrangements to be maintained (at [67]). In any event, it was never stated in *UKM v AG* that the child has a constitutional right to apply for Singapore citizenship; the most that can be said is that the court considered that it would be in the child's welfare to have Singapore citizenship in the precise circumstances of that case.

22 It is also noteworthy that the father of the child in *UKM v AG* (who was a Singapore citizen) desired to apply for Singapore citizenship for the child, whereas in the present case, the Singapore citizen parent does *not* wish to do so.

23 In the Mother's long submissions totalling 56 pages, she also raised at various points, the issue of whether it was in the best interests of this child to be a Singapore citizen. She submits that:

> 55. … The Mother believes that it is in the best interests of the Child for the Child to have Singapore citizenship as this is the Child's right as the child of a Singapore citizen. Moreover, this was promised to the Child by the Father as early as February 2020 and when the parties had made the application for the Child's Singapore citizenship.
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> 56. … The parties had agreed that the Child was to be educated in Singapore and the Father had promised that based on his family background and income, the Child would receive the best education in Singapore. This would include the right of the

> Child to reside in Singapore. The Mother believes that Singapore is the best place to raise the Child as the Child is entitled to learn of his Singaporean heritage.

24 One of the Mother's justifications for compelling an unwilling party to apply for citizenship for the Child is that prior to the breakdown of the marriage, this was promised to the Child. However, this argument fails to take into account the reality of family relationships after the marriage has broken down. The intentions and plans of an intact family before the marriage breaks down may no longer be the same after the breakdown. The relationships have changed. Many personal decisions will have to be made to cope with life after breakdown.

25 Another argument advanced by the Mother is that Singapore is the best place to raise the Child, and it is in the Child's welfare to be a Singapore citizen and be raised in Singapore. Whether a child should be raised in country *x* or country *y* are personal decisions. The court is not in the position to, and should not, assess and compare the sufficiency of systems and quality of life of the various countries this family appears connected to – Israel, Thailand and Singapore (see *UYK v UYJ* [2020] 5 SLR 772 at [71]). Some parents of children with Singapore citizenship relocate and give up Singapore citizenship for personal reasons, which could, for example, be a belief that the education system in Singapore is too stressful for their children. Other parents think Singapore is a safe country with an excellent education system and choose to make Singapore their home. These are personal decisions.

26 I do not find any provision in the law that accords the Child the constitutional right to an application for Singapore citizenship. It is the parent with Singapore citizenship who can make such applications according to the legal and administrative provisions prevailing at that time. Thus the DJ did not

err by refusing to direct that the Father be ordered to apply for Singapore citizenship for the Child.

Conclusion

27 The parties shall have joint custody of the Child. The Mother shall have sole care and control of the Child and the Father shall have reasonable access which is to be arranged by the parties.

28 As the parties have joint custody of the Child, the Mother cannot unilaterally decide on the matter of the Child's citizenship. Her appeal to compel the Father to make an application for Singapore citizenship for the child is dismissed.

29 The appeal is dismissed to the extent stated above.

Debbie Ong
Judge of the High Court

Koh Tien Hua (Harry Elias Partnership LLP) for the plaintiff;
the defendant in person.