

VXM v VXN
[2021] SGHCF 42

Case Number : Divorce (Transferred) No 3863 of 2020
Decision Date : 29 December 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Debbie Ong J
Counsel Name(s) : Kee Lay Lian and Shawn Teo Kai Jie (Rajah & Tann Singapore LLP) for the plaintiff; Loo Ming Nee Bernice, Yam Hoe Soon Lester and Lim Wan Jen Melissa (Allen & Gledhill LLP) for the defendant.
Parties : VXM — VXN

Family Law – Custody – Access

Family Law – Custody – Care and control

29 December 2021

Debbie Ong J:

Introduction

1 The plaintiff (the “Father”) and the defendant (the “Mother”) were married on 4 June 2011. The parties have two daughters – J, who was born on 9 January 2015 and is six years old this year, and W, who was born on 23 September 2016 and is five years old this year.

2 On 4 August 2020, the Mother filed FC/OSG 115/2020 (“OSG 115”), her application for interim joint custody and sole care and control of the children with reasonable access to the Father, and interim maintenance for the children. The Father filed the Writ of Divorce on 4 September 2020. On 28 September 2020, the Father filed FC/SUM 2905/2020 (“SUM 2905”), his application for shared care and control and for the children to be with each parent every alternate week, with handover on Sundays at 7.30pm.

3 OSG 115 and SUM 2905 were heard by the District Judge (the “DJ”) on 12 January 2021. On 18 January 2021, the DJ granted interim joint custody to the parties, with sole care and control to the Mother and access to the Father (the “Interim Order”). The Interim Judgment of Divorce (“IJ”) was granted on 19 March 2021. On 24 August 2021, the DJ dismissed the Father’s application in FC/SUM 2093/2021 (“SUM 2093”) to vary the Interim Order.

4 The ancillary matters (the “AM”) have been bifurcated, and the matters pertaining to the children (custody, care and control, and access) were heard on 15 and 18 November 2021.

Custody

5 The parties agreed to have joint custody of both children. I ordered that by consent of the parties, both parents shall have joint custody of J and W.

Care and control

Mother’s submissions

6 The Mother submitted that she should have sole care and control of the children. I summarise her reasons as follows. First, this provided continuing stability for the children and preserved their routine since the Interim Order was made. The children also had a strong and stable support network from the Mother's extended family. Further, the parties had divergent parenting styles, and there was a significant discrepancy between their respective experience in understanding and looking after the children's needs. Next, the Mother submitted that the parties had serious communication issues despite her best efforts, and they led very different lifestyles – the Father did not have the time or ability to look after the children, whereas she did. Finally, the parties had different perceptions of what is best for the children. The Father's plan to delegate the care of the children to third parties meant that it was unsuitable for the children to be placed under a shared care and control order.

Father's submissions

7 The Father submitted that the parties should have shared care and control of the children. He submitted that the circumstances had changed since the Interim Order as he had been having regular access with the children since January 2021 and has had the opportunity to build strong relationships with the children. He submitted that he had also played a significant role in the children's lives since they were young. Further, he had a strong familial ecosystem supporting him in the care of the children and it would be in the children's best interests to have the opportunity to maintain their close relationships with his extended family. The Father was also assisted in caring for the children by his domestic helpers. He submitted that there were no divergent parenting styles as the Mother claimed, which would preclude the court from making a shared care and control order.

Decision on care and control

8 I remind the parents that the joint custody order makes it crystal clear that both parents are "equals" as parents and both have parental responsibility (and authority) over important matters concerning their children. The *care and control and access orders* relate largely to the *practical day-to-day* care and living arrangements of the children.

9 In the present case, both parents had domestic helpers and extended family to support the caregiving of the children. Between the two parents, I accepted that the Mother had been the main caregiver of the children (which was also the DJ's finding in determining the Interim Order). Between the two parents, I found that the Mother will have relatively more time and flexibility to care for the children herself, including supervising third parties who carry out the more physical aspects of caregiving.

10 The Mother's counsel submitted that the Father is a busy man who delegates the caregiving of the children to third parties such as his family members and domestic helpers. I noted that the Mother herself also relied on domestic helpers, and it was certainly a privilege that both parents have the benefit of such assistance and extended family support. In my view, having such assistance certainly does not in itself make one a lesser parent.

11 It is common in families with children for one parent to take on the breadwinning role while the other takes on the homemaking role. This enables parents to *discharge together* their parental responsibility of *both providing and caring* for the children (see s 46 of the Women's Charter (Cap 353, 2009 Rev Ed)). The practical reality of being the breadwinner, generally, is that she or he has less time than the homemaker parent to spend with the children – in such a case, it is very important that the time spent with the children is of quality. Meaningful positive memories are created during these times that will remain significant in the children's minds and hearts; these bring closeness to the parent-child relationship. In the present case, the parties' marriage has ended and this family will no

longer enjoy the cooperative discharge of parental responsibility where one parent's role complements the other's. The children must now spend time separately with each parent.

12 In the present case, the Father can continue to spend quality time with the children but the children need to be cared for by others while he is at work. This 'quality time' to be spent with the children can be preserved post-divorce by substantial or generous access. 'Access' is a description of a practical arrangement of sharing time necessitated by the marriage breakdown and is *not* an indication of the quality or type of parenting that contrasts with care and control. In *VJM v VJL and another appeal* [2021] SGHCF 16, I said (at [17]):

I accept that a parent will need sufficient amounts of regular and frequent time with the child to build a strong relationship with the child. Equally important is how the time is spent with the child. If there is sufficient time with the child for the care or access period to be meaningful, then a strong parent can do much to bond and create many positive memories with the child. To be clear, 'sufficient' time is not equivalent to mathematically equal time between parents.

13 I noted that much of the Father's submissions related to how he has continued to forge a strong bond with the children after his access to them was regularised by the Interim Order. That was very heartening to read. However, this argument did not necessarily lead to the conclusion that the children should therefore *live* with the Father on *alternate weeks*, as he proposed. In such an arrangement, there is a real and practical possibility that due to his busy work schedule, the Father *himself* may not be the one caring for the children for substantial periods of time during that alternate week the children live with him. Instead, the strong bond that has been cultivated between the Father and the children can be maintained and further strengthened through a substantial access arrangement in which he will spend meaningful substantive time with the children.

14 Further, I did not think it was in the children's best interests to be shifting between houses on alternate weeks, particularly when the older child, J, is just starting primary school next year.

15 I was of the view that it was in the welfare of the children for the Mother, who had been their main caregiver, to have sole care and control of them. It was less disruptive to the children's routine to have their primary residence at the Mother's home and spend substantial time with the Father at his home for access. I ordered that the Father shall have access to the children, which I address next.

Access

Weekly access

16 The Interim Order stated that the Father's weekly access is as follows:

- (a) For the next 12 weeks from the date of the Interim Order, on Sundays from 9am to 8pm.
- (b) After 6 weeks, an additional one weekday access on Thursdays from 5pm to 8pm.
- (c) After 12 weeks, access at [16(a)] will be replaced with access from 3pm on Fridays after school to Saturdays at 8pm. Weekly access on Thursdays from 5pm to 8pm to continue.

Thus, as at the time of the hearing, the Father's weekly access arrangement was access on Thursdays from 5pm to 8pm, and access from 3pm on Fridays after school to Saturdays at 8pm.

17 The Father submitted that he should have weekly access to the children on Thursdays from 5pm to Saturdays at 8pm, such that he had overnight access with the children on Thursdays in addition to Fridays.

18 The Mother submitted that the Father should no longer have Thursday access at those times. Instead, he should have weekly access to the children on Fridays from 3pm to Saturdays at 8pm. She submitted that as J was starting Primary One in January 2022 and her school hours would start earlier, she would need to go to bed earlier; thus, there would hardly be time for access on Thursdays. She also submitted that the Father could not commit to spending quality time with the children on Thursday due to his busy work schedule, and the Father's proposed alternative of the children staying overnight with him on Thursdays would be an unnecessary disruption for them.

19 At the hearing, I asked both counsel for the parties' views on the suitability of the Father having access from Fridays to Sundays instead, *ie*, he would have overnight access on Friday nights and Saturday nights. After discussing with the parties, both counsel conveyed the parties' views to the court. The Father's counsel informed that while the Father was amenable to this arrangement, he was concerned about the issue of when the children would have to be returned to the Mother on Sundays, since they had Sunday school on Sunday mornings from 10.30am. I understood that, at the time, the parties were attending the same church, though the Mother's counsel indicated at the hearing that moving forward, the Mother might wish to attend a different church. Both parties expressed concern over the possible disruption to the children's Sunday morning routine. The Mother's counsel conveyed that it was difficult for the Mother to accept the option as Saturday night was a "golden opportunity" for her and the children – as it was a weekend night, it would be more leisurely, compared to the usual weekday evenings; Sunday was also a precious day to her because it was the only full day in the weekend she had with the children.

20 The Mother also proposed an alternative solution for the Father's weekday access. She suggested that the Father should have weekday access once a week on a day of his choice, when he could personally be with the children during the access sessions. This suggestion also came with several conditions and guidelines:

- (a) First, that the Father should indicate his selected date to the Mother at least two weeks in advance;
- (b) Second, that the access start time was to be agreed between the parties at least one week in advance and the Father's access would end by 7pm; and
- (c) Third, that the Father was to personally pick up the children at the start of his access and return them to the Mother's residence at the end of access, as well as bring the children to their usual activities and classes if those fell during his access.

21 I carefully considered the parties' views and concerns, and set out my views below.

22 I did not think that the children should have *overnight* access with the Father on Thursdays, as the next day is a school day and, in my view, it would be disruptive for the children to have to shift or duplicate their personal belongings and school supplies to the Father's house for one day of school on Friday. While the Father said he can prepare a few sets of spare uniform and books for the children, realistically speaking, it was not feasible to have two sets of everything, *eg*, two sets of school work books or assignments given by their teachers. In particular, as J was just starting primary school, she would benefit from having a constant routine in the same residence on weekdays.

23 In respect of the Mother's alternative proposal of having the Father identify a date for his weekday access with the children two weeks in advance, with the access start time to be agreed between the parties at least one week in advance, I found this suggestion too vague and haphazard. Based on the children's tentative schedules for 2022, their weekdays were clearly very packed with activities and classes and there was also some uncertainty in the schedules – for example, the Mother noted that the art class on Thursdays from 4 to 5 pm may not continue for J depending on her "availability and interest"; that the English enrichment centre where the children attend classes on Fridays from 5 to 7pm, will change its teacher's schedules from January 2022; and that play therapy for J, which is currently from 12 to 1pm on Tuesdays, would have to be shifted to another slot in 2022 as J would only end school on Tuesdays at 1.30pm. To enable certainty and stability for both the children and the Father, weekday access should be fixed and the children's schedules should be planned around that access. The Mother's suggestion would entail the parties agreeing on the access start time at least one week in advance – this left open the possibility that, should the parties be unable to agree, the Father would then not be able to have the weekday access to the children in that particular week.

24 I was of the view that the Father's Thursday access in the Interim Order should remain. I thought it was beneficial for the children to have as much time with the Father as is practicable, in an arrangement that was certain, fixed and regular.

25 I thus retained clause 3(c) of the Interim Order pertaining to the Father's weekly access: the Father shall have weekly access to the children on Thursdays from 5pm to 8pm, and on Fridays from 3pm to Saturdays at 8pm. This would allow the Mother to spend the rest of Saturday evenings after 8pm with the children, and also gave the Father part of the weekend to enjoy his time with the children. For avoidance of doubt, clauses 3(a) and 3(b) of the Interim Order did not apply.

School Holiday access and Special Occasion (including Public Holiday) access

26 Under the Interim Order, the Father will have the 1st half of the children's mid-year and year-end school holidays in odd-numbered years, and the 2nd half in even-numbered years. During the children's week-long school holidays, eg, in March and September, weekly access shall apply, save that the Father's weekday access shall commence at 9am instead of 5pm. I ordered that this arrangement was to continue, based on the parties' agreement, and in the light of my order above on weekly access for the Father.

27 As for Special Occasion (including Public Holiday) access, the Interim Order stated that the Father's access would be as follows.

(a) Chinese New Year ("CNY"):

- (i) Eve of CNY from after school (or 3pm if the eve of CNY is a non-school day) to the 1st day of CNY at 3pm;
- (ii) 3rd day of CNY (in the event that it is a Public/School Holiday) from 9am to 8pm;
- (iii) For 2021 only, the eve of CNY from 3pm to 9pm, 1st day of CNY from 9am to 3pm, and the 3rd day of CNY from 9am to 8pm.

(b) Christmas:

- (i) Eve of Christmas from 3pm to 9pm.

(ii) The children will be with the Mother for Christmas Day.

(c) All other Public Holidays:

(i) Alternate Public Holidays from 9am to 8pm.

28 Apart from [27(a)(iii)] above (since CNY for 2021 was already over), I ordered that these arrangements for Special Occasion access as set out in the Interim Order were to continue, based on the parties' agreement. I noted the Mother's proposal for the handover time to be 7pm rather than 8pm if the next day was a school day – I address this in more detail at [32] below.

Make-up access

29 At the hearing, the Mother's counsel noted that there had been a suggestion by the Father that, if he were unable to carry out his access session with the children on a particular week, he should have make-up access on another week. The Mother did not agree with this as, in her view, this would be disruptive for the children.

30 The Father's counsel said that it would be sensible for the parties to arrange for make-up access as they would have to learn to cooperate in the long run, *ie*, they could work this out on their own and thus a court order was not necessary.

31 I agreed with the Father's position that it was not necessary to make orders on make-up access – the parties should discuss and come to an agreement on their own. In making such arrangements, each party should extend grace and flexibility to the other, because this promotes the children's welfare. This is not a competition over who gets more time with the children. This should not involve a microscopic scrutiny of the Father's reasons for missing a particular access session. The focus must be what is in the children's best interests. As the Mother had more days with the children, being the parent with care and control, she should support liberal access in general, and thus be supportive of make-up access when the Father has time to spend with the children.

Handover time to be 7pm or 8pm

32 In relation to school break and "special days" access, the Mother proposed that the handover time should be 7pm instead of 8pm if the next day was a school day, as J would need to wind down earlier at 7pm once she starts primary school in January 2022. She submitted that the same should apply to W too, so as not to give the impression of preferential treatment between the siblings. She also submitted that the same handover time of 7pm would apply to her own "special days" access with the children.

33 The Father submitted that the handover time should remain at 8pm as it was in the children's best interests for him to spend more time with them; returning the children at 8pm would allow them to have sufficient rest for the next school day.

34 In my view, changing the handover time to 7pm may cause the Thursday access with the Father to be somewhat 'rushed'. I ordered that the handover time remains at 8pm.

35 Given the constraints of a post-divorce arrangement where the children have to split their time between two parents, they must be supported in having a routine (including the bedtime routine) that allows them to return home at 8pm and still be supported to be ready for school the next day. I did not think that the return time of 8pm is so late that it is unreasonable. This was an arrangement that

was necessitated by the physical separation of the parents; separated parents must work around issues to support these arrangements. Strong parents help their children to adjust to routines and bedtimes set for them.

Handover and ferrying arrangements

36 The Mother submitted that unless otherwise specified or agreed, this court should order that the Father must ferry the children to and from access, and the default location of handover should be the lobby of the basement carpark of the children's current residence or at the school itself where applicable; the Father should also bring the children to their classes/activities during the time they are with the Father. These were the terms of the Interim Order, which were not varied by the DJ in SUM 2093. The Mother said that if the Father was unwilling or unable to partake in the mundane or less glamorous tasks of parenting, there was no basis for him to seek any increase in access time.

37 The Father submitted that there was no need for the court to make these orders and that there should be some flexibility in the arrangements, especially given his busy work schedule.

38 In my view, it was onerous to require these parents to *personally* ferry the children to and from access *every single time*. Both parents relied on the assistance of their respective family members or the helpers and drivers that they employed. It appeared during the hearing that the Mother's concern was security, and whether a trusted party would be ferrying the children around. I did not think that security was a significant concern given that the Father's counsel had said during the hearing that the children would be ferried by the Father's immediate family members, the Father's cousin, or by one of the family's domestic helpers – who had also ferried the children to their various activities in the past. It seemed to me that the Mother also perceived that the Father personally ferrying the children should be part of his responsibility in sharing this mundane parenting task and which would enable him to spend time with the children during the ferrying time. In my view, the Father should be trusted to decide how to spend his time with the children meaningfully – which may or may not be through personally ferrying them to and from access or to their various activities.

39 In summary, I declined to make an order on the ferrying arrangements for the children.

Overseas travel with the children

40 The Mother submitted that the Father should not be allowed to bring the children overseas without her supervision before June 2023, as the Mother had always accompanied the children on all their short and long-haul trips, and it would be distressing to subject them to trips without her. She also submitted that at least two immediate family members should go along as well to care for the children. The Mother also submitted that, after June 2023, overseas access with the Father should be for a maximum of 14 days at any one time, as it may be too taxing on the children to be overseas without her for longer than that.

41 The Father submitted that overseas access should be allowed by either party during their access periods to the children, subject to that party giving the other parent prior notice of 14 days and providing information on the trip, such as contact, flight and accommodation details.

42 I saw no basis to limit overseas access in the manner proposed by the Mother. As the Father submitted, there was nothing to suggest that the children were uncomfortable with the Father or that they would not be adequately cared for. The Mother herself had previously gone on trips without her children and left them in the Father's care.

43 Thus, both parents may take the children overseas during their access periods with the children and should give the other parent two weeks' notice of and information on the overseas trip.

Birthday access

44 In the Interim Order, the Father's access for birthdays was as follows:

- (a) The Father's birthday (25 February) from 3pm to 8pm;
- (b) Both children's birthdays to be celebrated by both parents;
- (c) Father's Day from 3pm to 8pm;
- (d) The paternal grandfather's birthday (6 August) from 3pm to 8pm;
- (e) The late paternal grandmother's death anniversary (21 January) from 3pm to 8pm;
- (f) In the event the Father has access to the children on the Mother's birthday (12 September), the maternal grandfather's birthday (10 June), the maternal grandmother's birthday (21 December) and Mother's Day, the Mother shall have the children from 3pm to 8pm.

45 The parties initially disagreed over how to celebrate the children's birthdays. The Father submitted that he wanted both children's birthdays to be celebrated jointly with both parents. The Mother submitted that the parent whom the children were with on that particular day could celebrate with them, and the other parent could celebrate on the prior weekend or the weekend after.

46 At the hearing, I was glad to hear from the parties' counsel that they would not require any order as to birthday access for the children as they can sort this out themselves. I therefore made no order pertaining to the celebration of the children's birthdays. Thus, clause 3(i)(ii) of the Interim Order (at [44(b)] above) no longer applied.

47 I ordered that the other arrangements at clause 3(i) of the Interim Order, as set out at [44(a)] and [44(c)] to [44(f)] above, were to continue, based on the parties' agreement, and in the light of my order that the handover time remained at 8pm.

Remote access

48 For remote access, the Interim Order stated that there will be daily video/voice calls with the children when they are with the other parent. There shall not be any specification on the timing or duration of the calls and both parents should consider the children's schedules and temperament at that point of time. The other parent should facilitate the video/voice call and encourage the children's participation, but should not interfere in the call. I ordered this to continue, based on the parties' agreement.

General

49 Lastly, the Interim Order also stated that parties were encouraged to adjust the exact times for the access arrangements by mutual discussion and arrangement, and that the hierarchy of access shall be as follows (in order of precedence):

- (a) Special Occasion (including Public Holidays) Access;

(b) School Holiday Access;

(c) Weekly Access.

The Interim Order also stated that neither party shall record the children in any manner (audio, video or photograph) for the purposes of usage in the court proceedings, without the express leave of court.

50 Based on the parties' agreement, I ordered that these clauses (clauses 4, 8 and 10) of the Interim Order were to continue to apply. For the avoidance of doubt, clauses 5 (concerning the handover and ferrying arrangements), 6 (concerning the Father bringing the children to their classes/activities when they are with the Father), 7 (stating that overnight access will commence after 12 weekend day access sessions) and 9 (stating that no orders may be made on overseas access in the meantime pending further order) of the Interim Order no longer applied, in the light of my other orders above on the handover and ferrying arrangements, the Father's weekly access, and overseas travel.

51 For completeness, clause 11 of the Interim Order stated that prayers 2(5) and 2(8) on the issue of maintenance for the children and costs respectively in OSG 115 were to be adjourned. The issue of interim maintenance for the children has already been separately resolved before me (in HCF/RAS 15/2021).

Parenting after divorce

52 Parenting within a functioning marriage already has its challenges, because children are both wonderful and in need of much care, time and guidance from their parents. A recent op-ed in the *Sunday Times* (Li Xueying, "Let's have an open conversation about how hard raising kids is", *Sunday Times [Singapore]*, (5 December 2021) at p A24), offered a frank and candid look at how hard parenting can be. There are great joys in parenthood, for children are precious and delightful. Yet, the responsibility and sacrifices that come with parenthood are very heavy. Divorced parents may experience some loss of the cooperative support or shared resources that would have been present in functioning marriages, and hence post-divorce parenting may be even more challenging in this way. Divorced parents can be stronger parents when they let the other parent share in the responsibility of child-rearing, including simply spending time with the children, which will in turn give the other parent some time to rest, focus on work or on self-care. Children will benefit from such strong parents.

53 The *legal principle* in proceedings involving children is that the *welfare of the children* is the *paramount consideration*. If it is in the welfare of the children to require parents to be cooperative with the other parent, to extend grace, and even to help the other parent to be a stronger parent if needed, then these *needs of the children prevail over* the personal needs of the individual parents. Parental responsibility includes the commitment to carry out parenting cooperatively, even if it is difficult and to some divorced parents, practically impossible. It is understandable that when parties are in the midst of court proceedings, cooperation is probably at its lowest levels. The parties should *recast* their future ahead, a future that is no longer tied to court proceedings which would have concluded, one where co-parenting is carried out smoothly. Parental responsibility is not an option. It is imposed by the law.

Costs

54 The matter of costs shall be dealt with at the conclusion of the AMs (including the other financial reliefs sought).

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