

BDC v BDD
[2012] SGHC 211

Case Number : Originating Summons No 792 of 2012/D
Decision Date : 22 October 2012
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Tan Gee Tuan (Gee Tuan Tan) for the plaintiff; George Lim SC and Jinny Tan Ai Ling (Wee, Tay & Lim LLP) for the defendant.
Parties : BDC — BDD

Family Law – Custody

Family Law – Consent Order

22 October 2012

Lai Siu Chiu J:

1 This was the application by way of Originating Summons No 792 of 2012 (“the Application”) of the plaintiff (“the Wife”) for leave to appeal to the Court of Appeal against my dismissal of her appeal in Registrar’s Appeal No 78 of 2012/C (“the Appeal”) in Divorce Suit No 4863 of 2008/A (“the Divorce Proceedings”). I dismissed the Application and she has now filed a notice of appeal (in Civil Appeal No 122 of 2012) against my refusal to grant her leave to appeal.

2 The genesis of the Application (and the Appeal) was the decision of District Judge Tan Boon Heng (“the District Judge”) on 8 May 2012, where he dismissed the Wife’s application in the Divorce Proceedings to vary a Consent Order granting sole custody, care and control of her son to the defendant (“the Husband”). After hearing both parties, I dismissed the Appeal.

The legal framework

3 It is necessary to first explain why leave to appeal was required in this case. Under s 28A(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), the Chief Justice is empowered to order that certain classes or description of proceedings be heard and determined by the District Court. Section 28A(2)(b) further provides that the order “may make such provision governing appeals relating to proceedings transferred to the District Court (including provisions restricting the right of appeal) as the Chief Justice thinks fit”.

4 In exercise of this power, the Chief Justice made the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 2007 (“the Order”). Under para 2 of the Order, proceedings commenced in the High Court under Part X of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Women’s Charter”) are transferred to be heard and determined by a District Court. Paragraph 6(1)(b) of the Order grants a right of appeal to the High Court from District Court decisions in such proceedings. Paragraph 6(2) then provides that no appeal shall be brought to the Court of Appeal from a decision of the High Court in respect of any appeal heard and determined by the High Court pursuant to para 6(1), except with the leave of the Court of Appeal or a Judge of the High Court.

5 The principles governing leave to appeal in such cases were laid down by the Court of Appeal in *IW v IX* [2006] 1 SLR(R) 135 at [10]-[24]. This case similarly concerned a custody dispute under Part X of the Women's Charter. The appellate court re-affirmed the guidelines set out in *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew v Tang Liang Hong*") at [16], which held that there are at least three limbs which can be relied upon when leave to appeal is sought, viz:

- (a) *prima facie* case of error;
- (b) question of general principle decided for the first time; and
- (c) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

I now turn to the facts of the Divorce Proceedings and the Appeal to explain why I dismissed the Application.

The Divorce Proceedings

6 The parties were married in Singapore on 21 July 2003. The Wife is a Singapore citizen while the Husband is an Italian citizen. They have a son ("the child") who is now eight years old. Unfortunately, their marriage broke down and the parties obtained an interim judgment from the Family Court on 21 August 2009 dissolving the marriage. On 1 October 2009, the parties attended a mediation session where they agreed, *inter alia*, that the Husband would be granted sole custody, care and control of the child and be responsible for his maintenance, while the Wife would be given liberal access. Those terms were recorded in a consent order ("the Consent Order") made by the Family Court on the same day.

7 On 14 February 2012, the Wife applied for a variation of the Consent Order on the ground that there had been a material change in circumstances pursuant to s 128 of the Women's Charter. The Wife wanted sole custody, care and control of the child, with the Husband being granted reasonable access. She also wanted the Husband to pay her \$4,897.42 as monthly maintenance for the child. In support of her application, she made, *inter alia*, the following submissions:

- (a) The Husband was too busy with his restaurant business and the baby he had with his new wife in April 2010. As a result, he had no time to look after the child or guide him with his school work.
- (b) The Wife has effectively had care and control of the child for the year preceding her application. This was because since 28 February 2011, the child had been living with her on weekdays and only spent time with the Husband on weekends.
- (c) However, the Husband took the child back on 22 February 2012 (after the Wife filed her application) and has made it difficult for her to see him since then.

8 The District Judge found that the only significant material change was the Husband's re-marriage in 2010, and that there was no evidence that the re-marriage had put the child in a worse-off position. He was also of the view that the present arrangement – with the Wife having liberal access – had worked extremely well for the child. He therefore refused to grant the variation the Wife requested. Dissatisfied with the District Judge's decision, the Wife appealed to the High Court.

The Appeal

9 I was of the view that the District Judge did not err in refusing to vary the Consent Order. There was no material change in the circumstances to warrant the variation requested. The nub of the Wife's complaint was simply that the Husband had not been spending as much time with the child as *she* would like. For example, she cited the fact that the Husband did not spend time with the child from 8 am to 5 pm on weekdays, and instead left him at the childcare centre. However, I did not consider this unreasonable since the Husband had to work. While the Husband has since re-married and has a new child, this alone cannot justify a variation of the Consent Order without concrete evidence that the child's welfare has been materially compromised. On the contrary, the Husband's remarriage provided a stable home environment for the child.

10 Further, before the Wife applied for the variation order, the Husband had allowed her liberal access to the child by letting the child live with her on weekdays. This arrangement was beneficial to the child and it was unfortunate (as the Husband stated in his affidavit) that the Wife capitalised on it to attempt to wrest custody from him. I agreed with counsel for the Husband that granting a variation order in such circumstances would discourage a parent having care and control of a child from granting the other parent too much access. I therefore dismissed the Appeal with costs to the Husband fixed at \$1,500 excluding disbursements on a reimbursement basis.

The Application

11 Having considered the Application and the Appeal in the light of the Court of Appeal's guidelines cited at [5] above, on when leave to appeal for custody matters ought to be granted, I was of the view that the Application did not come within any of the three limbs set out in *Lee Kuan Yew v Tang Liang Hong*. Counsel for the Wife failed to show that there had been a *prima facie* error of law in this court's decision in the Appeal, that there was a question of general principle of law to be decided for the first time, or that there was an important point in this custody dispute that would benefit from the pronouncement of a higher tribunal. The Wife's primary submission without more, *viz*, that it would be in the interest and welfare of the child for the issues in this case to be ventilated before a higher tribunal, is in my view insufficient reason for granting leave to appeal. My grounds set out earlier show that this was yet another ordinary dispute on custody. There was no novel point of law involved that required the appellate court's pronouncement.

12 Consequently, I dismissed the Application with costs to the Husband.