AWN *v* AWO and another appeal
[2012] SGHC 228

Case Number : Originating Summons (Family) No 274 of 2010 (Registrar's Appeal No 189 of 2011) & Divorce No 4739 of 2011 (Registrar's Appeal No 148 of 2012)

Decision Date : 16 November 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan-Goh Song Gek Alice (A C Fergusson & Partners) (appointed by Legal Aid Bureau) for the wife; The husband in-person.

Parties : AWN — AWO

Family Law – Custody

Family Law – Divorce

16 November 2012 Judgment reserved.

Choo Han Teck J:

1 These appeals before me were brought by the appellant–husband (the "husband") from two decisions of the family court. The first appeal before me is from the decision of the learned District Judge Angelina Hing ("District Judge Hing") in Originating Summons (Family) No 274 of 2010 under the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ordering, *inter alia*, joint custody of the child of the marriage with care and control to the respondent–wife (the "wife") and access to the husband by way of two-way assisted transfer on Saturdays. The second appeal before me is from the decision of the learned District Judge Tan Shin Yi ("District Judge Tan") in Divorce No 4739 of 2011 dismissing the husband's application under s 99(2) of the Women's Charter (Cap 353, 2009 Rev Ed) to rescind an interim judgment of divorce (the "interim judgment"). I now deal with the two appeals in turn.

2 In September of 2010, the husband filed in the family court Originating Summons (Family) No 274 of 2010 under the Guardianship of Infants Act praying for sole custody, care and control of the only child of the marriage between the parties, a son, and for supervised access to be granted to the wife. The husband alleged that the wife had since February 2009 prevented him from having access to the child. The child in the present case is of a very young age. At the hearing of the matter in the family court below, he was only 3 years of age. He also suffers from a submucous cleft palate, a congenital disorder, which affects his speech. Having sight of a social welfare report by the Family Welfare Service of the Ministry of Community Development, Youth and Sports ("MCYS") which was prepared pursuant to the order of the mediation judge, District Judge Hing was of the view that in light of the tender years of the child and the fact that he was attached to his mother having lived with her for more than two years, care and control should be granted to the wife. At the same time, District Judge Hing was cognisant that it is in the child's interest to be allowed to bond meaningfully with the father and so made orders granting access to the husband. District Judge Hing ordered four assisted access sessions to reacquaint the child with the husband and thereafter for the husband to have unsupervised access by way of two-way assisted transfers at the Centre for Family Harmony on Saturdays from 10am to 4pm. The parties were granted joint custody of the child. Unhappy with this decision, the husband appealed.

3 At the first hearing before me on 28 March 2012, it was disclosed that the wife had on several occasions failed to comply with the access order, citing reasons such as her work obligations on Saturdays and the child's sickness on two occasions. To this end, I ordered that the arrangement be continued for a further four Saturdays and for the facilitator of the two-way assisted transfer to report on the transfers. When the parties returned before me on 24 April, it was reported that the access orders had been carried out satisfactorily. I then ordered another social welfare report be prepared by MCYS to investigate the best interests of the child vis-à-vis the parties' wishes for care and control and access, as well as the conduct of the parents during the two-way assisted transfers for access. Several things were borne out in the report. First, the family welfare office was of the view that both parents and their respective families share a deep concern for and enjoyed a close relationship with the child. Secondly, the child is comfortable with both parents and their respective families. Thirdly, the wife appears to be harbouring fears and distrust of the husband, and this has led her to take steps to minimise the interactions between the child and the husband. Fourthly, the maternal grandparents appear (justifiably or not) to have a strong dislike for the husband, and persist in maintaining acrimony with the husband, even to the extent of not being willing to facilitate the husband's access to the child. The family welfare officer rightly notes that this could have negative impact on the child.

4 I now deal with the submissions of the husband. Amidst the voluminous submissions and documents tendered by the husband, some relevant grounds of appeal can be made out. For instance, the husband contends that the courts are wrong in adopting a default rule which invariably gives care and control of young children to the mother. The husband is mistaken in taking the view that any such default rule exists. In matters like the present, it is the welfare of the child that is of paramount consideration. Section 3 of the Guardianship and Infants Act, which governs the present matter, states in unequivocal terms:

> Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.

While the courts have recognised the maternal bond as one factor to consider in deciding such matters, this does not mean that there is an operating presumption in favour of the mothers in such proceedings. The husband took issue with District Judge Hing holding that she was "of the view that given the tender years of the child and the fact that he is attached to his mother, it will not be in his best interest to be taken away from the care of his mother". This did not amount to applying any presumption in favour of the wife. For example, a factor relevant in coming to this view includes the fact that the child had been staying with the mother for some two years before the proceedings and that it would be disruptive to the child to suffer a change in living environment should care and control be granted to the husband. In the circumstances, I am of the view that the appeal against District Judge Hing's decision on care and control be dismissed. I also order that the weekly Saturday two-way assisted transfer access arrangement should stand, except that the duration of such sessions be extended and varied to be from 9am to 8pm instead.

5 It should nonetheless be made clear to the wife that it is in the interest of the child's development as a healthy and balanced individual that the husband be allowed to play a significant part in the child's life. To this end, the wife ought not let her anxiety and distrust of the husband cause her to default on the husband's unsupervised access sessions. That the wife's parents have

themselves continued to maintain a spiteful and hostile view of the husband probably only makes matters worse. As stakeholders in the life of the child, the maternal grandparents should also try to understand that the child needs regular contact with his father and should not allow their prejudices to cause them to frustrate such contact. I thus also order that should the wife default on any access session with good reasons, a make-up session is to be held within a month. Whatever disagreements the parties may have or whatever animosity may arise out of the pending divorce proceedings, it is hoped that they and their families can put those aside and, at the very least, seek to do right by their child. Lastly, I order that the current access orders are to be reviewed in one year's time by the family court, with a view to increasing the access sessions or their length and to possibly include overnight access.

6 I now turn to the appeal in Divorce No 4739 of 2011. Divorce proceedings were commenced by the wife and interim judgment was granted on 21 December 2011 on the ground of irretrievable breakdown of the marriage as a result of the husband's "unreasonable behaviour". The husband seeks to rescind the interim judgment.

7 From the again unnecessarily lengthy submissions of the husband, it appears to me that the only vaguely viable ground he is relying on to rescind the interim judgment is his allegation that he was not given a chance to be heard in the proceedings. He alleged that he was not kept informed of the wife filing a statement of claim for uncontested divorce proceedings alleging his unreasonable behaviour, the wife's request for and the court's subsequent granting of dispensation of the parties' attendance at the uncontested divorce hearing, and the setting down of the action for hearing. As a result, he claims to have been prejudiced, but did not say how. In my view, District Judge Tan rightly dismissed his application. The brief reasons for the decision in District Judge Tan's notes of evidence show that she was of the view that the husband was in fact aware of the divorce proceedings at every stage. The husband had at various stages sent emails to the Family Court after being served documents, and he admitted to District Judge Tan that he was informed by the Family Court's Help Centre that he needed to file his Defence and Counterclaim if he wanted to contest the divorce but did not do so. When he found himself out of time to file his pleadings to contest the divorce, he called the wife's solicitor for her consent to an extension of time but that was refused. District Judge Tan noted that he could thereafter have made an application for leave of the court to file out of time, but he also did not do so. In any event, even if the husband's claims were true, it does not appear to me that an application under s 99(2) of the Women's Charter is the proper avenue to seek relief.

8 To succeed in an application under s 99(2) of the Women's Charter to rescind an interim judgment, the applicant is required to "show cause why the judgment should not be made final by reason of the material facts not having been brought before the court". In doing so, the applicant must satisfy the court that the non-disclosure of such material facts before the court vitiates the foundation of the interim judgment. In the present application and appeal, the husband has not shown that there were any material facts which were not disclosed in the making of the interim judgment which would have fundamentally affected it. Indeed, the motivation of the husband in the present application, as gathered from his submissions, is his unhappiness with being labelled as having behaved "unreasonably". He had also told District Judge Tan that he was willing to consent to the re-filing of the divorce relying instead on the fact of 3 years' separation should the interim judgment be set aside. On appeal, the husband expressed his hope that the interim judgment could be rescinded so that "some out-of-blue [*sic*] miracle could happen" to lead to reconciliation with the wife before the end of the 4 years' separation period. These are plainly not good grounds for rescinding an interim judgment.

9 Given the circumstances, I am of the view that there is no merit in the appeal and it is therefore dismissed. The interim judgment of divorce is to stand.

10 Much of the husband's lengthy submissions in both appeals was spent making unwarranted, ill-mannered and contumelious aspersions and allegations against the judiciary, the regime in the Women's Charter, counsel for the wife, the Legal Aid Bureau and all manner of persons involved in whatever way with the proceedings. The husband inexcusably called into question the integrity of the learned District Judges and the family court without any foundation for doing so. The husband appears to me from his submissions to be under an unjustified and self-perceived impression that there is a systemic bias in the legal system against male litigants like himself. These suggestions were, at the end of the day, irrelevant to the present applications and appeals. While litigants-in-person are not, like advocates and solicitors are, restrained by any code of conduct from such uncalled-for behaviour, it does not therefore make it acceptable for them to behave as the husband has in the present case.

11 I order that costs of the two appeals are to be paid to the wife and to be taxed if not agreed.