

AYD v AYE
[2012] SGHC 42

Case Number : Divorce Petition No 2429 of 2005 (RAS No 131 of 2011)
Decision Date : 29 February 2012
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Ellen Lee (Ramdas & Wong) for the petitioner/wife; Tan Bar Tien (B T Tan & Co) for the respondent/husband.
Parties : AYD — AYE

Family Law

29 February 2012

Woo Bih Li J:

Introduction

1 The present issue between the couple in this action is whether AYD (“the Wife”) may bring two sons of the marriage, which has been dissolved, to the United States of America (“USA”) where the Wife will be residing.

2 The elder son [R] was born in 1993. At the end of 2011, he was 18 years of age. He is currently serving national service in Singapore and is staying with his maternal grandmother. The younger son [S] was born in 1999. At the end of 2011, he was 12 years of age.

3 On 28 July 2011, District Judge Angelina Hing (“DJ Hing”) granted the Wife sole custody of the two sons and allowed her to leave Singapore with the sons to USA to continue their education there and to make decisions about their welfare without the consent of AYE (“the Husband”). DJ Hing also made orders on access for the Husband. As regards [R], the order allowing the Wife to leave Singapore with the sons would be implemented after he completed his national service.

4 The Husband appealed against DJ Hing’s decision. I heard the appeal. On 12 January 2012, I varied DJ Hing’s order in that I granted joint custody to the parties over the two sons and gave some directions which I need not elaborate on. However, I upheld the rest of DJ Hing’s order. The Husband has filed an appeal to the Court of Appeal against that part of my decision which upheld DJ Hing’s order.

Background

5 The parties were married in Singapore on 6 January 1990. Subsequently, the Wife filed the divorce petition herein in 2005 seeking a divorce. A Decree *Nisi* was granted on 29 November 2005. This was made absolute on 2 March 2010.

6 The Husband said that he was working as a manager in Singapore up to April 2007 when he was retrenched. He then worked overseas on a freelance basis from May 2007 to June 2008. Thereafter, he returned to Singapore for six months till January 2009. He said he made numerous applications to

find a job in Singapore but was unsuccessful. He then went back to India to help his father in his business. He claimed that the Wife denied him access to the sons in the meantime. Thus he had to file an application by way of Summons No 2239 of 2008 to obtain access. He claimed that the Wife opposed the application and had brainwashed the sons so that they did not want to see him.

7 In any event, a district judge made an order by consent on 8 August 2008 ("the 8/8/2008 Order") for his access. The terms of that order were as follows:

(a) Except for the access period set out hereafter in this Order, [the Husband] shall give 3 weeks written notice to obtain access of the children. Any cancellation of access by either party must be notified at least two weeks or more before actual date of cancellation.

(b) [The Husband] shall be entitled to access of the children for half of every school holidays in March, June, September and December. [The Husband] shall have the first half of the said school holidays in every even years [*sic*] and the second half of the said school holidays in every odd years [*sic*]. In particular in the March and September holidays each side should have a weekend plus 2 days.

(c) No access during examination months in May and October.

(d) Both children ... may spend their birthdays with [the Wife] and in that event [the Husband] shall be given overnight access to the two (2) children on the weekend that immediately follows from the birthday of the children.

(e) [The Husband] to be given overnight access to the children on alternate weekends from 4.00pm (Saturday) to 6.00pm (Sunday).

(f) [The Husband] to be present during all access. If access to [the Husband] on the due date is not possible for valid reason [the Wife] shall grant alternative access to replace or to make up for the original access period lost.

8 The Husband said that he was not able to try and see the children regularly notwithstanding the 8/8/2008 Order because he was still working in India. However, he did try for four times in 2009. He complained that except for one occasion in March 2010, he had been denied access by the Wife when he was in Singapore and tried to see the sons. He said that she gave the excuse that the sons did not want to see him

9 The Husband relied in particular on one incident to demonstrate the Wife's obstructive attitude. On 11 November 2010, his solicitors requested access on 4 December 2010. On 20 November 2010, the Wife's solicitors responded and said that she "may be out of the country for the holidays at the moment". On 3 December 2010, the Wife's solicitors wrote again to say that she was hospitalised and was at home and that [R] did not wish to see him. Nevertheless, the Husband went to the Wife's residence at Bishan ("the Flat") to try and see the sons. However, no one was at home. He made inquiries with the neighbours and learned that the Wife and sons were no longer residing there. He investigated further and learned that the Wife had sold the flat.

10 Consequently, the Husband filed Summons 3888 of 2011 ("Summons 3888/2011") on 2 March 2011. The main relief sought was as follows:

(a) Without Prejudice to the Order of Court dated 8.8.2008 [the Husband] be granted reasonable access to the children ... upon two (2) week's advance notification by [the Husband]

to [the Wife].

11 The terms of the relief sought were curious. It was not clear why he was stating "Without Prejudice to the Order of Court dated 8.8.2008" in his application. It was also unclear why he was seeking to be allowed to give two weeks' advance notice to enjoy access. His complaint was not so much that he had difficulty in giving three weeks' notice under the 8/8/2008 Order but that the Wife was being deliberately obstructive.

12 On 28 April 2011, the Wife filed Summons 7470 of 2011 ("Summons 7470/2011"). The main reliefs sought were:

- a) That [the Wife] be granted sole custody of the children ...;
- b) that [the Wife] be allowed to leave the jurisdiction with the children to America so as to continue their education there and to make decisions about their welfare without seeking [the Husband's] consent;
- c) that access of the children to [the Husband] be allowed only if the children want to have access to him;

...

13 The first affidavit filed in support of the Wife's application was from [R], the elder son. This was filed on 28 April 2011 although it was executed on 14 April 2011. He said that the Husband would occasionally drop an email to pry for information about the Wife. When the Husband had access to him, the Husband would bring him to the paternal grandparents' residence where he would be interrogated about the Wife. He said the Husband was an alcoholic and was violent and abusive when he was drunk. The Husband also scolded him for working as a night cleaner in a foodcourt. [R] said he was closer to his mother, brother and maternal grandparents and to his mother's American fiancé. He did not want his father, *ie*, the Husband to have access to him.

14 The Wife's affidavit in support of her application was filed on 6 May 2011 although it was apparently executed also on 14 April 2011, the same day when [R] executed his affidavit. The Wife said that the Husband failed to pay interim maintenance for more than a year. He had married again without the sons' knowledge. She claimed that the Husband would suddenly try to make arrangements to see the sons, expecting them to change their plans for him. Both sons did not want to see him. She offered the sons to be interviewed as she did not want to be held liable for contempt of court. She wanted sole custody of the sons as the Husband would make things difficult for her whenever she tried to get his consent about them.

15 The Wife said her American fiancé was in the construction business in the USA. She had resigned from her job as a lecturer in a tertiary institution in Singapore due to a medical condition. She intended to migrate to the USA and marry and settle down there. Both the sons have begged her to take them with her.

16 In his reply affidavit filed on 5 August 2011, the Husband denied that the sons disliked his company or the company of his parents. He exhibited photographs evidencing the happy times they had previously spent together (although it was not clear to me when the photographs were taken). The Husband alleged that the Wife's plan to move to the USA with the sons was part of her manipulation to deny him access to the sons. He alleged that the American culture was not suitable for the sons and would jeopardise their Indian cultural background. The Husband also offered to care

for the sons with the help of his mother in Singapore if the Wife was not able to do so. I should also mention that there is an access evaluation report dated 21 July 2011 tendered to the court.

17 On 28 July 2011, DJ Hing granted the Wife sole custody of the sons and allowed her to bring the sons to the USA to continue their education there and to make decisions about their welfare without the Husband's consent. The last part of her decision was pursuant to prayer (b) of Summons 7470/2011 (see [\[12\]](#) above)). This was actually unnecessary since she had decided to grant the Wife sole custody. DJ Hing also made orders for access for the Husband to [S] who would be brought to the USA and for his access to [R] while [R] was in Singapore to serve his national service and when [R] goes to the USA. I need not set out details of her order on access since the primary complaint by the Husband was that the Wife was allowed to bring the sons to the USA.

18 On 3 August 2011, the Husband filed RAS 131 of 2011 to appeal against the entire order of DJ Hing. In his appeal, he asked that her decision "be reversed or varied to such extent as the Court shall deem just...". This was rather vague bearing in mind that his issue was not so much on the terms of access that she had granted but on the fact that the Wife had been allowed to bring the sons to the USA.

19 I heard his appeal on 12 January 2012 and varied DJ Hing's decision as set out above at [\[4\]](#).

The court's reasons

20 It was arguable whether the Wife had deliberately obstructed the Husband's access to the sons. I made no finding one way or the other because it was not disputed that the Wife has an American fiancé with a business in America and she has a good reason to wish to settle down in the USA. It was also undisputed that the Wife was the primary care giver of the two sons. It would only be reasonable for her to want to bring the two sons with her and for them to want to be with her. If the move made it more difficult for the Husband to have access, that was a separate matter. Any hindrance or further hindrance to his access must weigh less than the children's interest in being with their mother. Indeed, the Husband was not residing in Singapore but in India. Yet he was insisting that the sons remain in Singapore.

21 Furthermore, [R] remains in Singapore for the time being and it is for the Husband to make use of the opportunity to connect with [R] again who is almost an adult. The Husband will be given details of how to contact [R] as part of the decision of DJ Hing or mine. He is also supposed to be given details of the Wife's residence in the USA. If he requires further information to contact [S] or the Wife in the USA, that is a separate matter which he did not raise before me.

22 It seemed to me that the Husband's reason that American culture is not suitable for the sons was really an excuse to support his position that the Wife should not be allowed to bring the children to the USA. I also thought that his offer to care for the sons with the help of his mother in Singapore was really also another attempt to stop the Wife from bringing the sons with her. There was very little evidence about the children's relationship with this grandmother to support his offer. It was my view that the children should be with their mother and not the paternal grandmother.

23 However, I agreed that, notwithstanding the acrimony between the parties, the Husband should still have joint custody of the sons and I so ordered. As their father, he should still have a say about matters concerning their welfare but not day-to-day care and control. Our courts have said repeatedly that the existence of acrimony between the parents should not in itself be a reason to deny joint custody to both the parents. The Wife has not appealed against my decision on joint custody.

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