

APC v APD
[2014] SGHC 260

Case Number : Divorce Transfer No 2507 of 2009 (Summons Nos 682 and 1464 of 2014)
Decision Date : 04 December 2014
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Lim Poh Choo (Alan Shankar & Lim LLC) for the plaintiff/respondent;
Defendant/appellant in person.
Parties : APC — APD

4 December 2014

Woo Bih Li J:

Introduction

1 This is yet another matrimonial dispute. On 12 July 2013, I gave an oral judgment on the ancillaries including custody, care and control and access in respect of the children. I granted:

- (a) joint custody over the three children of the marriage to the parties;
- (b) care and control over the three children to the wife; and
- (c) the husband's access to the two younger children on various terms.

2 On 26 August 2013, I heard further arguments on maintenance which are not relevant for present purposes.

3 On 11 February 2014, the husband filed Summons No 682 of 2014 ("Summons 682") for a variation of my orders on care and control of the two younger children as follows:

- (a) that the husband be granted care and control of the two younger children with access to be given to the wife;
- (b) alternatively, that the husband be granted joint care and control of the two younger children from Wednesday 12pm to Sunday 10am and the wife from Sunday 10am till Wednesday 12pm;
- (c) the wife and the husband to attend counselling with the children.

4 On 21 March 2014, the wife filed Summons No 1464 of 2014 ("Summons 1464") for various reliefs including an order to insert a penal notice against the husband in respect of various court orders made earlier and seeking an order granting her leave to apply for an order of committal against the husband.

5 Both applications were heard together. On 3 October 2014, I made an order for the insertion of a penal notice against the husband in various earlier court orders but made no order on her

application for leave to apply for an order of committal against the husband. I dismissed Summons 682 which was the husband's application for variation of my earlier order on care and control of the two younger children.

6 The husband has filed an appeal against my decision in respect of Summons 682. I set out my reasons below.

Issues

7 As is evident from what I have stated, the husband did not appeal against my original decision on 12 July 2013 granting care and control of the three children to the wife. It was through his Summons 682 filed on 11 February 2014 that he sought a variation of that order in respect of the two younger children. The issue therefore was whether there were adequate reasons to justify a variation.

The court's reasons

8 There are three children from the marriage:

- (a) the eldest is a son born in 1996;
- (b) the second child is a son born in 2002;
- (c) the youngest child is a daughter born in 2004.

9 The husband is a senior bank manager. The mother is a tutor teaching Chinese.

10 At the time when the ancillaries were heard, the couple and the children were staying in a three-storey bungalow with five bedrooms.

11 The husband slept in the master bedroom on the top floor with the two younger children. The wife slept in a bedroom on the second floor. The eldest child slept in a third bedroom. The maid slept in the fourth bedroom. The fifth bedroom (on the first floor) was used for storage.

12 The husband was no longer close to the eldest child. He alleged that the two younger children were closer to him than to the wife who was often playing golf and going out.

13 The wife's version was that the husband was domineering. He had insisted that the two younger children sleep with him after the couple slept in different rooms. She said she did not play golf as frequently as the husband was alleging.

14 The husband asked for care and control of the two younger children only. The wife asked for care and control of all three children.

15 The main matrimonial asset was the matrimonial home. Its net value was \$2,236,000. I granted the wife 45% of the matrimonial home so that the parties could retain the other matrimonial assets held in their sole names. The wife did not have the financial resources to acquire the husband's 55% interest. However, it did not make sense to order the matrimonial home to be sold in the open market since the husband was prepared to acquire the wife's 45% interest. Therefore, I granted the husband an option to acquire the wife's 45% interest which would work out to be \$1,006,200.

16 It was clear that the wife would have to move out of the matrimonial home. If she was granted

care and control of the two younger children (together with the eldest child), they would have to move out with her.

17 I was of the view that a change of home will not have a drastic effect on the two younger children. Indeed, the husband did not use that as a reason to ask for care and control of the two younger children. His reasons were that they were closer to him and that the wife was not spending time to care for them.

18 I interviewed all three children without the presence of the husband or the wife. My notes of the interview are confidential and are available only to the court. I also met with the couple and their counsel.

19 I was of the view initially that it was preferable for all three children to be together but it seemed that perhaps the two younger children were not particularly close to the eldest and vice versa. Hence I did not give that factor much weight.

20 The two younger children appeared to be quite close. Therefore they ought not to be separated. Indeed, there was no suggestion by either parent that they should be separated.

21 As the youngest child is a female, I was of the view that that was a factor in favour of granting the wife care and control of her and hence the second son as well.

22 It was not disputed that the husband had a full-time job. On the other hand, the wife, as a tutor, had more flexibility with her time and was able to spend more time with the children. I was mindful of the husband's allegation that she was spending much of her time on her own pursuits such as golf. I was of the view that there was some truth in the husband's allegation about the wife's interest in golf but that he had also exaggerated the extent of that interest. Notwithstanding her interest in golf, I was of the view that she would be a responsible mother if given the full chance to carry out a duty as a mother.

23 This brings me to the next point. I was of the view that the husband was domineering. I accepted that the younger children were sleeping with him at night because he had insisted on this. In my view it would be in these children's interest that the parent who was not domineering should have care and control of them. Furthermore, if they remained with their father, there was a risk that they would become distant from their mother even with access being given to her. On the other hand, as their mother was not domineering and had even given in to their father's wish that they sleep with him at night in the past, there was much less of a risk that they would grow distant from their father, although they might not be as close to him as before since they would be living in a separate household from him.

24 In the circumstances, I granted care and control of the two younger children and the eldest child to the wife with access to the husband.

25 As mentioned above, the husband filed Summons 682 for a variation. By then, he was acting in person. The primary relief he sought was to have care and control of the two younger children. The wife filed Summons 1464.

26 The husband said that the wife moved out of the matrimonial home on 13 January 2014. By then the two younger children were 12 and 10 years old.

27 The husband said that, on the day the wife moved out, the school bus vendor refused to

accept the wife's instruction on a change of location to drop off the daughter as he was the one who had been liaising with the vendor.

28 The wife was at the daughter's school to pick up the daughter but the daughter refused to return with her mother. The husband had been called to school by a vice principal to clarify the school bus arrangement and he claimed that he spoke to the daughter about going to a new house but she insisted on returning with him. The wife refused to let the daughter leave with the father. The police were called in. Eventually, the husband told the daughter that she had to go back with her mother and he left the school at about 3pm.

29 In the meantime, the wife had asked her father-in-law to pick up the second son from his school (as the two children studied at different places). That son too refused to go to his mother's house. The husband sent his domestic helper to school to talk to the second son but without success. So the husband rushed to the school at about 3.55pm and brought him back to the matrimonial home where the husband was still residing. The wife was not at this school at 4pm. At 7.30pm that night, the wife arrived at the matrimonial home with the police. The second son still refused to go with his mother. In the end, the police and the wife left without the second son.

30 I need not set out the husband's allegations about the events from 14 to 16 January 2014. In short he alleged that the two younger children wanted to be under his care. He claimed that they were not as happy as before.

31 He alleged that the police should not have been involved and the children were unhappy about a new arrangement whereby the school would escort them to the school bus which would bring them to the location of the wife's residence. The children were being neglected in the wife's care.

32 The wife's version was that it was the husband who instigated and forced the two younger children to go back to the matrimonial home to stay with him. He would also bribe them to do as he wished.

33 The wife said that the husband had married again. His new spouse had moved into the matrimonial home in late November 2013, before the wife and the children moved out. This was unpleasant for the wife who would have moved out earlier but she needed time to view various properties before eventually buying an HDB maisonette. Some time had also to be spent on minimum renovations.

34 In the meantime, the wife said she did not insist on her right to have care and control of the two younger children pursuant to my original order of 12 July 2013 until she moved out as she did not want to make things difficult for the younger children as the husband would still insist on his way.

35 After hearing various arguments on the filing of affidavits and Summons 682 and Summons 1464, I directed on 21 May 2014 that a social welfare report be done to assist me to decide whether to vary my original order on care and control for the two younger children. The eventual report is dated 5 September 2014. Its contents are confidential and are available to the court only.

36 After considering the welfare report, I heard the parties again on 3 October 2014. By then there were other developments which I will elaborate on later.

37 I made various orders on Summons 1464 and dismissed Summons 682.

38 It may be that there are certain advantages that the husband could offer the two younger

children such as:

(a) the matrimonial home was a bigger place and had more rooms and a garden. It was therefore a more familiar and more physically comfortable place to them;

(b) the husband could drive them around in his car while they had to take public transport or a taxi with the wife; and

(c) the husband could afford to buy them more expensive gifts.

(%2) However, he was still busy with his full-time job and had to travel occasionally.

39 The husband's new spouse was pregnant. Therefore, even if she might be available to help to care for the two younger children, I was of the view that it would not be safe to assume that she would be able to care for her newborn and the two younger children even with domestic help.

40 I was also not persuaded that the wife was the irresponsible mother that the husband was painting her out to be or that the two younger children disliked staying with her as much as the husband wanted the court to believe or at all.

41 The wife appeared to have the support of her in-laws or at least her father-in-law. As the husband himself had admitted, the father-in-law was the one who went to the school of the second son on 13 January 2014 to fetch him to the wife's residence. The father-in-law went there at the wife's request. If she was as irresponsible or if the children disliked being with her as much as the husband wanted the court to believe, it was unlikely that she would receive help from her father-in-law who was apparently closer to her than to his own son.

42 As for the husband's allegation that the wife was not even at the second son's school by 4pm of 13 January 2014, it should be remembered that the wife was having difficulties that same afternoon to persuade the daughter at her school to go home with her. As the husband had left the daughter at her school to return home with the wife, he could go to the school of the second son. The wife would be busy trying to bring the daughter home and staying with her at home to comfort her.

43 The husband also accused the wife of failing to be strict with the elder son. He blamed the wife for that son's refusal to attend a polytechnic and for giving him \$700 a month only. As a result, the elder son was asking the husband to pay that son's maintenance directly to him. These were the new developments I mentioned above. Consequently, the husband suggested that he be allowed to pay that son's maintenance directly to him instead of paying it to the wife.

44 The wife said that the elder son was unhappy with her because they had argued over his girlfriend. The wife was having a difficult time with him.

45 I found the husband's suggestion to pay the maintenance for the elder son directly to him telling. He was accusing the wife of not being strict enough with the elder son and yet he was quick to make that suggestion. It did not dawn on him that that suggestion might undermine her authority. Furthermore, the \$700 a month which the wife was giving the son was not a paltry sum.

46 It was also telling that for all the husband's concern for the elder son, the husband was not asking for care and control of this son. The wife was the one who was saddled with this responsibility. I was sad to learn that that son was no longer going to a polytechnic. When I had a conversation

with him previously, he seemed to be mature to some extent. It seems to me that his parents' disagreements have taken a toll on him but he also has to take some responsibility for his situation. In the meantime, the parents should avoid allowing him to play one against the other.

47 As for the two younger children, there was no dismay from them when I last broached with them the possibility of their staying with their mother. Whether or not they appeared to prefer to be with their father, they appeared to still love their mother then.

48 I was of the view that the husband was the cause of the current state of affairs. It was clear to me that he had a great deal of influence over the two younger children, although I could not say whether that was due to their fear of or love for him or both. If he was prepared to tell them sincerely to stick to the arrangements for care and control under my original order and to assure them that he still loved them, they would not insist on returning to his residence after school. This would then avoid the need to have the school escorting each of them to the school bus and thus avoid any embarrassment for them. When I last spoke with them, they came across as sweet young children who were not defiant. In my view, he had instigated them to go back to him. Perhaps he is afraid that they will become closer to the wife. Whatever the reason, it is in his power not to create the unhealthy situation which has arisen. If he is not careful, the two younger children may eventually become defiant teenagers who resent both their mother and him.

49 In the circumstances, I was of the view that there was no reason to vary my order so as to allow the husband care and control.

50 I was also of the view that his alternative request for split care and control would confuse these children as to whom they should be listening to. Furthermore, in view of his domineering character, a split care and control order was likely to encourage him to continue to insist on his views.

51 As for counselling for the parties and the children, the husband did not give any specific reason why the court should make such an order. Neither did he press for this relief. It seemed to me that it was not the wife or the two younger children who needed counselling. He himself needed to adjust. However, if the parties voluntarily wanted to have counselling for themselves and the children, that is a different matter. Counselling for the elder son was also a different matter unrelated to the issue of care and control of the two younger children.