

ABW v ABV
[2014] SGHC 29

Case Number : Divorce Suit No 3480 of 2010 (Registrar's Appeals Sub-Court No 3 of 2013)
Decision Date : 19 February 2014
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Mary Ong & Chong Yue-En (Mary Ong & Company) for the plaintiff; Choh Thian Chee Irving & Looi Min Yi Stephanie (Optimus Chambers LLC) for the defendant.
Parties : ABW — ABV

Family Law – Custody – Care and control

19 February 2014

Judgment

Judith Prakash J:

Introduction

1 This case, sadly, involved a tussle over the care and control of two young girls. Care and control are important to parents because they determine which parent has more frequent contact with the child and the right to make the daily decisions that are encountered as the child grows up. The other parent has access. While this is essential for maintaining the parent-child bond, it often does not allow as much influence over the child's development as the parent might want.

2 The parties were divorced in July 2011. At the time, the girls were staying with their father, as they had been since the mother left the matrimonial home in June 2009. Shortly after the interim judgment, the mother in her ancillary affidavit prayed for the care and control of the girls and the father likewise prayed for the same relief. The mother's application for care and control was successful and the father was ordered to hand the children over to her. The father did not do so. Unhappy with the decision, he appealed to the High Court. He argued that the girls had had a stable home environment with him and no compelling reasons had been given as to why that care arrangement should be altered or why it would benefit the children for the mother to be granted care and control.

3 The mother responded that she had not been able to have "genuine access" with the children since November 2011. The father had manipulated the children's emotions - they displayed fear and anxiety in her presence when there was no reason for such behaviour. In order to maintain the mother-child relationship and ensure the healthy development of the children, the order for her to have care and control should be maintained.

4 I dismissed the father's appeal and would like to explain my reasons. The issue of alienation of affections is a sensitive and difficult one.

The children's care arrangements

During the marriage

5 The parties were married in May 2003. The mother stopped work in May 2004 and gave birth to the elder daughter in August 2004. She remained at home to look after the baby until about July 2005. The second daughter was born in January 2007. Later that year, the family went to live in the United States for a year because the father was posted there for work. During that period, the mother was a full-time wife and mother. On their return to Singapore, the family moved into a flat in Bedok with the paternal grandmother and the father's sister. A full time domestic helper was engaged and the mother returned to work. The children lived in Bedok from sometime in 2008 and remained there with the father, his sister and their grandmother when the mother moved out.

After the mother left home

6 Initially, the mother went to stay with her eldest sister in Woodlands. She kept in contact with the children and the access arrangements were amicable for a few months. The mother saw the children on Wednesday nights for two hours and took them to the Woodlands flat from Friday night to Saturday afternoon. Things changed in December 2009.

7 In December 2009, the elder daughter who was then about 5 years old, told the father that her male cousin (aged about 13 years) had touched her private parts. The father was upset. He forbade the mother to have any further overnight access to the children. The mother immediately moved to another sister's home. She made sure that the daughters did not come in contact with that particular cousin anymore. The father however, did not change his mind. From then on, the mother could only see the children for two hours on Thursday nights and during the day on Sundays.

8 The mother was not happy with meeting the children only in public places. In 2011, she decided to move into a flat in Sengkang so she could have a home in which she could spend more time with the children in private. She asked the father for overnight access in the flat and one week's holiday access in December 2011. The father rejected this request: he preferred the access arrangements to remain as they were and for the mother to see the children in public.

9 The mother complained that thereafter she had difficulties with access. She described three incidents in November 2011 in which there had been conflict of one sort or another. After these incidents the children became increasingly unwilling to see or meet the mother.

What the Family Court did

10 Due to the difficulties with access, the mother asked for interim access pending the final orders made in the divorce proceeding. Two interim access orders were made in December 2011. These did not help the mother. She saw the children on 21 December 2011 but not often thereafter. The father said that the children had refused to see their mother and he could not drag them to the access sessions.

11 The Family Court heard the final applications relating to the children in December 2012. On 18 December 2012, District Judge Tan Peck Cheng ("the DJ") gave the mother care and control and the father generous access. Her detailed orders provide that:

- (a) The father and the mother would have joint custody of the children with care and control to the mother and access to the father.
- (b) The access granted included one weekday access, access every Friday night to Saturday morning, half of the school holidays, alternate public holidays, Father's Day and over the Chinese New Year period.

(c) To give effect to the care and control order, the children were to be handed over to the mother at her residence by 22 December 2012 at 12 noon.

12 The DJ considered that these orders were in the best interests of the children. Giving the mother care and control and the father access would prevent them from being put in a stressful situation regarding contact with the parent who did not have care and control. The findings on which she based this conclusion can be summarised as follows:

(a) The father's assertion that he wanted the children to have a close relation with the mother was mere lip-service. When he rejected the mother's request for overnight access, he said only that he wanted the status quo to remain and did not give any reason why the mother should not have overnight access. No reason was given for his insistence that she continue to have access in public areas.

(b) The children were comfortable with the mother. They were not fearful of her, contrary to the father's allegations. They remained comfortable with her in the absence of the father and his family.

(c) The negativity of the father and his family regarding access by the mother was not good for the children. The father's conduct on 6 and 11 November 2011 was incomprehensible. The father should have been able to foresee that his crying and running off with the children would affect them.

(d) In contrast to the father, the mother had acknowledged that the children needed parental love from both parents and had indicated that she would respect the father's right to access if she was given care and control. The DJ believed that the mother would be more reasonable regarding access than the father. She was also in a position to look after the children because she had re-employed the foreign maid who had looked after them previously and had the support of her parents.

What happened after the Family Court decision and before the appeal

13 The father did not hand the children over to the mother as ordered. He explained that on 22 December 2012, he had driven the children to the mother's home. When he arrived outside her apartment block, the children had refused to get out of the car and go to the mother's home. The mother had come down to the car to try and persuade the children to go with her but they refused. He said that the children were very upset and crying. Given that the children showed no signs of leaving the car, he had no choice but to leave the premises with the children.

14 The father then applied for a stay of the care and control order. He was granted this stay on 2 April 2013 on the basis that the mother was to have interim access to the children at the Centre for Harmony ("CFH"). On 16 May 2013, the parties appeared before me. The mother complained that since the DJ's order, every attempt at access she made had failed because the children would not leave the father without his consent. On the surface, he was giving consent. However, the actual signals he gave were interpreted by the daughters as meaning no, so they screamed and resisted when handover was attempted. The mother wanted me to order access for her during the upcoming June holidays. The children were then aged 6 and 8.

15 I granted the mother 2 weeks' uninterrupted access to the children in June 2013. The father was given uninterrupted access between 15 June and 29 June 2013 and thereafter the normal access arrangements according to the interim order were to resume. I also directed the CFH to report on all

access sessions supervised by the CFH between 20 April and the end of May 2013.

Factors considered on appeal: stability and interfering with parental bonds

The case for stability

16 The father criticised the DJ's findings in relation to the various incidents in November 2011. His main point was that the DJ had been wrong to change the existing arrangement in respect of the children's living arrangements by granting the mother care and control.

17 The father had been the primary person looking after the children from their births and he had been the sole caregiver since July 2009. The children had an established daily routine with him. Further, he supervised the children in their homework and had actively participated in their academic development. The mother, on the other hand, had made no effort to participate in the children's daily routines despite having weekly access to them. Further, the father had made substantial efforts to facilitate the children's access to the mother over the years. The father also contended that the DJ had erred by placing too much weight on the reports given by the social services and the CFH.

18 The mother had not provided any compelling reasons as to why the current care arrangement should be altered or why it would benefit the children for her to be granted care and control. The father relied on a number of cases decided in the Family Court which he said showed that the Family Court accepted the principle that maintaining continuity of care of the child is of overwhelming importance in deciding which parent should have care and control.

19 The father made a powerful argument that it would upset the children if their established daily routines and established home and caregivers were to be re-organised. The father was a loving father and the evidence demonstrated that the children responded well to his care and were equally attached to him. The question faced by both the DJ and myself was whether maintaining the established situation had to be the main criterion in the decision.

20 Continuity of arrangements or stability is an important factor for the emotional well-being of a child. In *Lim Chin Huat Francis and anor v Lim Kok Chye Ivan and anor* [1999] 2 SLR(R) 392, for example, the court refused to make an order to vary care and control of a girl caught in the midst of a custody battle between two sets of adoptive parents. It considered that pending the outcome of the application, she should remain in the care of the existing parents as she appeared to be well taken care of by them.

21 Here, for more than four years, the father had provided a home for the children in which they had been looked after by him, their grandmother and aunt. There was no doubting the strength of the attachment of the children to the father and that he in turn had showed his care and concern for them in the way that he attended to matters like their schooling and academic development. Indeed, the mother offered no criticism of the father in regard to his interaction with his daughters or his care of them.

Other factors to be considered

22 The fundamental question that a court asks itself when making a decision affecting a child is whether that decision will promote the welfare of the child. The concept of 'welfare' is not a narrow one: it has to be considered in the widest sense and is not to be measured by money or physical comfort only. The child's moral and religious well-being must be taken into account and his relationships with his siblings and other relatives. It is important to maintain the ties of affection the

child enjoys. (see *Soon Peck Wah v Woon Che Che* [1997] 3 SLR(R) 430).

23 The decision as to what is in the best interests of any particular child depends on the circumstances of the individual case and the individual child. However, this does not mean that that decision is a subjective one for the judge hearing the case. Rather, a number of relevant circumstances should be taken into account when arriving at a decision. The stability factor is but one such circumstance. Others include:

- (a) The need for both parents to have an involvement in the child's life;
- (b) Which parent shows the greater concern for the child;
- (c) The maternal bond;
- (d) The child's wishes; and
- (e) The desirability of keeping siblings together.

24 The degree to which any one factor or the other is to be given pre-eminence is not fixed but depends entirely on the facts of each case. Here, the mother stressed the need for both parents to have an involvement in the children's lives. She emphasised that the strength of the maternal-child bond should not be weakened or destroyed.

25 The mother argued that allowing children to have "genuine" access to both parents in a non-hostile environment would enable them to bond with their parents and flourish emotionally. This type of access is necessary to preserve and maintain the ties of affection between the child and the non-custodial parent and it is an important part of the welfare principle. The courts have observed that a child who understands that both his parents have custody of him and continue to be involved in his life is likely to feel more secure and that the same surely applies to access orders as well (see *BG v BF* [2007] 3 SLR(R) 233 at [13]). In the same judgment, Andrew Ang J noted that as far as possible, "a child should be allowed to interact with both parents, so that despite the breakdown in relations between the parents, he is assured, to the greatest extent possible, of a normal family life with two parents".

26 It has been said that the child is the unseen and unheard victim of a marital breakdown. The courts do their best to help minimise the negative impact of a divorce and we recognise that it must normally be in the child's interest to maintain a relationship with both his parents. In England, this recognition has gone so far as to impel the courts to reverse residence orders, the equivalent of Singapore care and control order, when it is established that the parent with whom the child is residing has been undermining the relationship between the child and the other parent. Such behaviour can have an alienating effect on the child.

27 The concept of alienation was considered in a recent English case, *Re S* [2011] 1 F.L.R. 1789. The judge cited the description of the concept given by a child psychiatrist. To paraphrase, the expert said that the term alienation applies to a cluster of psychological responses in a child towards a parent with whom he once had a loving relationship. Alienation may not result from any deliberate campaign of denigration by one parent in respect of the other. The research data supports multi-factorial causes for alienation following parental separation, involving contributions from both parents and vulnerabilities within the child. The judge said that in England this description of the concept of alienation as a feature of some high conflict parental disputes may be now regarded as being mainstream (see *Re S* [2011] 1 F.L.R. 1789 at [46]).

28 In *Re S*, the judge recognised various possible approaches that could be taken in dealing with a case involving an alienated child. The first possibility was that of transferring the care of the alienated child from the resident parent to the non-resident parent. Another possibility was to resolve the difficulty by therapy of the parents and child. A third possibility was to make an interim care order for the child and place him in foster care prior to transfer of residence from one parent to the other. Sometimes, however, the alienation is so entrenched that nothing can be done and the child's situation cannot be changed. The judge emphasised that there was no one-size-fits-all solution and the circumstances of each particular case required careful consideration. I think this is a warning that applies with equal force here.

29 Having said that, it is clear that switching care and control is a remedy that can be adopted if a judge finds that the parent having care and control has been either deliberately or unconsciously interfering with the bond between the child and the other parent. This remedy would be most suitable in a situation in which the child begins to show animosity towards a parent with whom he previously had a loving relationship. The court would have to consider if there is any apparent external reason for the animosity. A situation in which the child has previously had uneventful and loving interactions with the relevant parent may call for this approach. It may also be that this approach is most helpful when the animosity has recently manifested itself and has not had a chance to become ingrained.

30 *Re S* itself provides an object lesson of when the switching approach does not work. In that case, the child, S, had been born in 1998. Prior to his birth, his mother, M had separated from his father, F. As early as 1999, F went to court in order to have contact (access) with S. The proceedings took a long time and culminated with a decision that S be transferred from M to F. The decision was upheld on appeal but the appellate court ordered that the transfer be effected by placing S in foster care and then transferring him to F. By then, S was 12 years old. During the period of foster care, S was taken to see F on several occasions. On each occasion, he refused to engage with F. He sat with his head in his lap and his fingers in his ears. Finally, F agreed that S should be returned to M. In the end, the court had no alternative but to discharge the order for the change of residence.

Balancing the needs of the children

31 On our facts, just as much as the father appeared to be a concerned and loving parent, so was the mother. It was incorrect that the father had been the primary caregiver of the children prior to the mother's departure. She had been a full-time mother for almost the whole of the elder daughter's first year of life; she had spent a full year looking after both daughters in the United States; and after the family's return although she resumed working, she was still involved with the children's care.

32 After the mother moved out, access was carried on without apparent difficulty until November 2011. This was despite the shortening of access times after the allegation regarding the girls' cousin. There was no complaint about the mother during the times she had access to the children. The children were comfortable with her and no issue regarding her parenting ability arose.

33 It was only in November 2011 that problems arose. It is not a coincidence that this was after the mother requested resumption of overnight access.

34 The first incident took place on 6 November 2011. That was a Sunday. The children spent the day with the mother in her Sengkang flat in accordance with the usual Sunday day access arrangement. The mother sent the father a text message asking if the children could spend the night. He refused and went to the flat that evening in order to take the children back to his Bedok home. The children were reluctant to leave and then he insisted that if they were to spend the night, he

should too. The police were called. They ascertained that the children wanted to stay on with the mother and the mother then decided to take them to her sister's house. As they were leaving, the father shouted out the girls' names and started to sob. The father's version of this incident was similar except that he denied shouting out the children's names. He admitted however that he was crying and that he had called out to his daughters.

35 Next, on 11 November 2011, the father and his sister took the children to attend a class at the White Sands Shopping Centre. The mother went to the shopping centre with the intention of seeing the children there. According to her, when the father saw her coming, he ran into the classroom and took the children out. She went up to them and held the younger daughter's hand. Once they were outside the classroom, however, the father grabbed hold of the younger daughter. He ran away with her while his sister ran away in the opposite direction with the older girl. The father's account was that the mother had attempted to snatch the daughters and that was why he and his sister had had to run away with them.

36 The father's own accounts of these two incidents showed that he had over-reacted to the prospect of the daughters spending time with the mother. He had made his unhappiness plain. His daughters could not but be affected.

37 Two days later, on Sunday 13 November 2011, the mother went to pick the children up at the father's Bedok flat. The father demanded to know when she would bring them home. Her reply was that it depended on what activity they engaged in during the day. The father then warned the elder daughter that they were not supposed to stay overnight with their mother. After this, the elder daughter started crying and hid behind her paternal aunt. The younger daughter appeared to be frightened. The mother eventually left without either child. The father's account of the incident was that when the elder daughter heard that the mother was not sure at what time she would take the children home, the elder daughter became uncomfortable. Eventually the mother had to leave as the children did not want to go with her.

38 After these three incidents, the children became increasingly unwilling to see or meet their mother. When the mother called on 17 November 2011 to speak with the children, they were so fearful that they locked themselves in the toilet and refused to speak with her. Three days later, the mother was able to spend two hours with the daughters in the father's flat doing colouring with them but they refused to leave the house with her. On 24 November 2011, the elder daughter refused to return home from the childcare centre when she learnt that the mother was waiting for her there.

39 As stated earlier, interim access orders were made in favour of the mother in December 2011. Notwithstanding this, access continued to be difficult and the children showed their reluctance to see the mother. However, it was observed by the counsellors at the CFH that when they were in her company, they were comfortable and interacted fairly well with her. This was especially true for the younger daughter.

40 The evidence above was before the DJ. In itself, I think it was sufficient to support her finding that the father was only paying lip service to the idea of a close relationship between the children and the mother. In truth, he was contributing to an estrangement between them. Events that occurred thereafter, and before I heard the appeal proper, only reinforced that finding.

41 First, there was the children's behaviour on 22 December 2012. They refused to get out of the car and move in with the mother despite the mother's persuasion. Second, even though the interim access order was restored pending the hearing of the appeal, the mother was not able to have unrestricted access to them in accordance with the proposed arrangements. Third, what happened in

June 2013 was significant.

42 According to the order I had made in May 2013, the mother was to have the children from 1 June 2013 until 15 June 2013 and they were to be handed over to her at the CFH. On 1 June 2013, the father brought the children to the CFH to meet the mother but they were reluctant to leave him. Whenever he attempted to go, they clutched his arms and cried loudly. An hour and several attempts later, the father finally left the centre. The children had to be held in the room by the mother and her helper as he left. The children settled down quickly thereafter, however and left the centre with the mother with smiles on their faces.

43 On 15 June 2013, the mother took the children back to the centre. They appeared to be comfortable with her. When the father arrived, the girls were excited and ran to him. Two weeks later, the father returned to the centre to hand the children to the mother. On this occasion, they hid behind him and refused to step into the centre until the father entered first. They then followed him. When the mother approached them, they clung onto the father's legs. They repeatedly said no when encouraged by both parents to remain in the centre so that the mother could have access. They tried to prevent the father from leaving by clutching on to his legs. When the mother placed her arms around the elder daughter, the child struggled to push her away. The father told the mother to stop traumatising the child. He then had an emotional breakdown: he wailed loudly, beat his chest as he slowly collapsed onto the floor and laid down there. Both children cried. Given the children's emotional state, the attempt to give the mother access that day was terminated.

44 All this evidence was before me at the hearing of the appeal in July 2013.

45 I concluded that the children's relationship with the mother had been adversely affected without any apparent reason for the same. I agreed with the DJ's finding that it would be in the children's interests for them to be with the parent who was willing to be reasonable about access and could share them with the other. The children were in danger of becoming completely estranged from the mother. This was not a desirable development: they were young girls who would benefit from the care and attention of a loving mother. They also needed a good relationship with their father but a relationship in which they felt it necessary to cling on to him every time they were supposed to see their mother was not a healthy relationship. This was not a case of an abusive or neglectful mother. From their birth, she had cared for the children; after she left the matrimonial home, she had continued to be in regular contact with them until after the incidents of November 2011. All observers of the children's interaction with the mother made positive comments on her relationship with both of them and how she handled them.

46 These considerations overrode the emotional upset that might result from a change in the children's residential arrangements. Stability is desirable. It cannot however be the paramount factor. Leaving the children with the father would in the short term avoid the distress associated with change but, in the long run, it risked the children losing one of the most important human relationships they could have.

47 I agreed with the DJ that the appropriate course to be taken in the best interests of the children was to give the mother care and control while maintaining generous access for the father. However, in order to allow them to settle down in the mother's care, I decided that it would be helpful to suspend the access arrangements which the DJ had ordered. Instead, for the first four weeks from the time of handover, the father's access would be limited to monitored phone calls between 6pm and 8pm daily. Thereafter, he would have access to the children once a week on Saturday from 10am to 8pm. I also fixed a date for the review of the access arrangements.

48 The father had criticised the DJ's reference to reports from the social welfare services and the CFH. In reaching my decision, I read those reports and a further one from the CFH in relation to the access sessions in June 2013. The court is entitled to have regard to the contents of such reports though it must always consider matters as a whole. It is, however, very useful to have an account from an objective third party as to the interactions of parents and children. In this case, there was no reason to doubt the objectivity of the various reports or the accuracy of their contents, much of which were echoed in the parties' affidavits.

Postscript: how my orders were implemented

49 I conducted a review of the access and care arrangements in October 2013. I was pleased to learn that overall the change in the children's residence and care arrangements had been implemented without too much heartache.

50 The father reported that the children were handed over to the mother on 13 July 2013 by his sister and his aunt. The handing over took more than one and a half hours because the children were reluctant to leave with the mother. Thereafter, the girls would call him every day to chat with him. After two weeks, the plaintiff asked him to call the children instead and he did so. On 17 August, he finally had access to the children. The access went smoothly and the children were very happy to see him as they had not seen him for a month. The father also said that since late August 2013, he and the children had been speaking to each other every night for half an hour before their bedtime.

51 Tellingly, the father did not make any assertion that the children had reacted badly to the new arrangement. The sole complaint that he had was that he only had ten hours with the children each week. He wished to have more time with them so that he could supervise in their schoolwork. He also wanted liberty to call them at any time during the day. He therefore made a request for access to be enhanced. Basically he wanted the access order made by the DJ to be restored.

52 The mother reported that during the first two weeks that the children spent with her, the elder daughter was cheerful and happy during the day but at night she would withdraw and keep to herself. Sometimes, she would cry. This crying also occurred occasionally when she came home after having seen the father. The situation improved as the children became more used to and comfortable in the mother's home. By October, the emotional state of both children had improved tremendously and they seemed relaxed and comfortable in their new home. Over the three months she had built up a stronger relationship with both of them. She gave details of how the children reacted to her and of the things that they did together. The mother was willing to grant the father increased access.

53 After hearing the parties I gave the father more access, including overnight access, although not to the extent that he wanted.

54 I saw the parties again in January 2014. It appeared that all was progressing smoothly and they were able to agree on final access arrangements for the father. This included overnight access, school holiday access and access on public holidays and important birthdays. It was heartening to note that the children were stable and happy and in regular and loving contact with both parents.