

ADL v ADM
[2014] SGHC 95

Case Number : Originating Summons (Family) No 365 of 2013 (Registrar's Appeal from the State Courts No 20 of 2014)
Decision Date : 09 May 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Foo Siew Fong (Harry Elias Partnership LLP) for the appellant; Simon Tan Hiang Teck (Attorneys Inc LLC) for the respondent.
Parties : ADL — ADM

Family Law – Custody – Access

9 May 2014

Judgment reserved.

Choo Han Teck J:

1 The wife is a lawyer working as an in-house counsel. Her lawyer said she was 36 years old and the husband, a lecturer with a local university, was 37 years old. However, the parties' respective NRIC numbers indicate that they were about 37 and 40 years old respectively as at the date of the hearing on 5 May 2014.

2 They married in Singapore on 8 August 2009 and have a daughter aged 21 months (born on 10 August 2012). The wife left the matrimonial home on 12 July 2013 with the child. The husband filed for divorce on 26 August 2013. In the interim, the parties appeared before the Family Court and, after arguments, obtained an interim order for care and control to be given to the wife with liberal access to the husband.

3 The court below fixed access times to be from 9am to 2pm every Monday, Wednesday and Friday (save for 31 January 2014 and the first day of Chinese New Year, when the husband was to return the child to the wife by 12noon). The husband appealed because he wanted greater access, as follows:

(a) Access from Monday to Friday from 9am to 5.45pm; and

(b) Access on Sunday from 11am to 9pm.

He was represented by Miss Foo Siew Fong and the wife was represented by Mr Simon Tan.

4 The crux of Miss Foo's submission was that the husband has a more flexible work schedule and should be given greater access. Miss Foo submitted that the husband is free to look after the child each day from 9am to 5.45pm. She said that under the prevailing arrangement, the wife left the child in the care of her parents (the child's grandparents), in whose home the wife and child were staying. However, the wife's mother works full-time and that leaves only the wife's 70-year-old father (together with a domestic helper) to look after the child.

5 Miss Foo submitted that the husband loved the child and has shown himself capable of looking

after her. He wished to have more time to form a bond with the child. Miss Foo and Mr Tan disagreed as to whether the wife had applied for the child to be admitted to a day-care centre. Miss Foo argued that the plan to send the child to a day-care centre was a clear indication that the wife's father was incapable of looking after the child. Mr Tan claimed that this was untrue and that the decision to send the child to a day-care centre was a joint one. Mr Tan also submitted that the wife would return home during lunch on weekdays to feed the child and put her to bed for her afternoon nap.

6 The crux of Mr Tan's submissions was that the order of the court below should not be disturbed, on the substantive grounds of parity (between parties) and the procedural grounds of "constancy". He argued that if the husband were to be given more access time, it would be tantamount to sharing care and control, and that would be contrary to the court order granted below. He then gave a substantive reason not to disturb the order below. He argued that if the husband were given access from Monday to Friday and on Sunday, the wife would not have the opportunity to feed the child or put her to bed in the afternoon, save for Saturday afternoons. Mr Tan also submitted that since the husband already has access during the weekdays, he should not be entitled to access during the weekend, so that the wife can have "quality time" with the child on weekends.

7 Mr Tan submitted that the access order had already been amended twice before by the family court to allow the husband greater access. While the days remained the same, the window was increased. It was originally 10.30am to 12noon, then 9am to 12noon and finally 9am to 2pm. This, Mr Tan argued, showed that the court below was satisfied that an order for access from 9am to 2pm on Monday, Wednesday and Friday sufficiently served the purpose of according liberal access to the husband, incorporating the unique facts of this case. Thus he submitted that for the sake of "constancy" and consistency, the order ought not to be disturbed.

8 Mr Tan was persuasive in his arguments, and as this was an interim application (divorce proceedings have not completed), I would have dismissed this appeal. However, two important factors convinced me otherwise: the young age of the child and the flexible working hours of the husband. It is not often that a child this young is the subject of the "care and control and access" contest. More often than not, the children involved are much older and have already become more accustomed to one parent than the other. Those situations often (but should not) hamper the plea for greater and more liberal access. In those cases, the schooling hours of the child, as well as the working hours of the parent further stand in the way of the parent seeking access. The result is that courts grudgingly accept that they cannot impose greater access time. This is not a desirable outcome because a child ought to have the benefit of the love and attention of both parents. I am, of course, not here referring to cases where the parent has neither the desire nor the capacity to attend to the child.

9 Grandparents may in cases stand as substitutes for the child's parents, but in the general order of things, they are one step removed from parents. Parents ought to retain the main responsibility of bringing up their children. Grandparents may play a supporting role; next come domestic help and day-care centres.

10 In this case, we have a twenty-month-old infant. She has not been influenced by one parent to the detriment of the other. She has a young mother able to look after her in the evenings after work, and a father able and desirous of attending to her in the day. Her mother is a lawyer and her father is a university don. Neither is known to be an unsuitable parent by reason of bad social habits or undesirable character. The falling out between them should remain a matter strictly between them. The child should not suffer from their split. Care and control of children in a divorce is given to one party entirely for practical purposes only, and mostly to meet their daily needs. Access is given to the

other parent to supplement the remaining requirements of the child – mainly to help him or her secure some emotional stability.

11 Mr Tan's submission that the wife should not be deprived of "quality time", I think, is unmeritorious. On a count of the hours, his client has both quantity and quality in abundance. The husband should be given a few more hours to allow him to put in his share of "quality time". With "quality time" from both parents, the interests of the child should be well looked after.

12 In a happy family, it is natural for both parents to spend as much time as they can with their children; access to the children is flexible and unrestricted – truly liberal. In the unhappy situation of a divorce, access to the children of the marriage is usually regulated because the divorced parents no longer seem willing to communicate rationally with each other. In such circumstances, the court will decide the conditions of access as best it can, with the interests of the child foremost in mind. It is undeniable that it is in the best interests of the child to continue a relationship with both parents. Yet ever so often, the parent having care and control will try to restrict the other parent's access to the child. They fail to see that in doing that just to spite the ex-spouse, they are impoverishing the child's experience in his or her growing years.

13 In this case, the best interests of the child stand starkly in the face of the court. In the absence of impediments, the child should be given as much time as possible to be familiar and comfortable with her father – given that her mother has care and control. The child should be given the chance to be looked after and loved by him so that she can grow to love him in return. This is the kind of prospect that courts dealing with access hope to achieve, but such prospects are often dimmed because of the adverse circumstances of acrimonious divorces. There are no impediments in the way in this case and so I have no hesitation in granting more access time to the husband.

14 Mr Tan believes that the husband's teaching hours on Tuesdays are from 9am, but it is not clear if they really are. Miss Foo did not dispute nor confirm Mr Tan's claim, save as to state in her written submissions that "[i]f the [husband] has lectures, he will return their child back to the [wife] before he works". I think this is a reasonable arrangement and hope parties can work together in the best interests of the child. I will partially allow this appeal. The access time from 9am to 2pm on Mondays, Wednesday and Fridays are extended to include Tuesdays, Thursdays and Sundays. There will be liberty to apply.