UDF *v* UDG
[2017] SGHCF 17

Case Number	: Divorce Transfer No 63 of 2010
Decision Date	: 04 July 2017
Tribunal/Court	: High Court
Coram	: Foo Tuat Yien JC
Counsel Name(s)	: Khoo Boo Teck Randolph and Ho Wei Jing, Tricia (Drew & Napier LLC) for the plaintiff; Kronenburg Edmund Jerome and Thng Yu Ting, Angelia (Braddell Brothers LLP) for the defendant.
Parties	: UDF — UDG

Family law – Custody – Access

[LawNet Editorial Note: The appeal to this decision was withdrawn.]

4 July 2017

Foo Tuat Yien JC:

Introduction

1 This matter relates to a request made by a father ("F") for interim access to his young teenage daughter ("X"), who is 14 years old and living in the Midwest of the United States of America ("the US"). She is living with her mother ("M"), who is an American citizen. X has been schooling in the US for the last four years. F lives and works primarily in Singapore.

2 The parents share interim joint custody. Interim care and control of X was given to M. Both M and X have been living in the US after their court-sanctioned relocation from Singapore in June 2012.

3 At a judicial case conference on 5 June 2017, counsel for F asked for certain access orders for the 2017 summer vacation. I rejected F's requests by: (a) declining to make an order for X to return to Singapore to spend part of her 2017 summer vacation 2017 with F; and (b) declining to order that F be given interim access to X in the US during her 2017 summer vacation. F has appealed against my decision. I now set out the grounds of decision for my refusal to make these orders.

Background

4 The divorce ancillary matters proceedings are pending before me with the first part of a substantive hearing on the parties' pre-nuptial agreement to be held in late July 2017. These Singapore divorce proceedings, begun in 2010 by M, were stayed because of overlapping proceedings brought by F in the US. The overlap in proceedings was only resolved in March 2013, when the Supreme Court of the State of New York made an order for the divorce ancillary matters and the issue of their pre-nuptial agreement to be heard in Singapore. F's appeal against the New York court's decision was subsequently dismissed by the New York Appellate Division in May 2014. I was informed by counsel that by 2016, parties had filed around 70 affidavits for the divorce and related proceedings.

5 I have been managing this case through judicial case conferences to ensure that the case is ready for hearing, in the course of which I dealt with an appeal relating to discovery and interrogatories and the issue of F's interim access to X.

Relevant information on X

6 X is in her early teens and was at the cross-roads of her education at the start of 2017. She had to choose between continuing her high school education in a private school in the US or to study in an international school in Singapore or the region. It was mainly for that immediate purpose that I directed that X come to Singapore to enable me to interview her to understand her situation as well as her feelings and views. The interview would also help in deciding on the final care and access orders to be made. I will elaborate further on the circumstances which led to the interview below.

7 At the interview of 31 March 2017 in Singapore, X informed me that she was comfortable with me letting her parents know that she wished to continue her schooling in a private school in the Midwest of the US, which admitted 10–15% of their applicants. She was proud and happy to have been admitted on merit, based on her test results, to an academically challenging feeder school, which would facilitate her later admission to top Ivy League universities in the US. She stressed that she wanted her parents to understand that she was making an education choice and not a choice on which parent she would prefer to be with.

Procedural history

8 On 28 May 2012, the Family District Court granted Order of Court No 9310 of 2012, which permitted M and X to relocate to the US, but not earlier than mid-June 2012 ("the relocation order"). The relocation order provided in detail on F's access to X before and after the relocation, and during and outside of school term. X was to continue to receive counselling before and after relocation, and to be assessed on whether "she [was] still subjected to improper influence" by F, as had been stated in two psychologist reports in 2011. The District Judge, in her oral grounds, found that F was not a positive influence on X, that he had no qualms running down M in X's presence and had shared information on court proceedings with X. [note: 1] The relocation order was upheld by the High Court *vide* Registrar's Appeal No 91 of 2012 on 4 June 2012, save for a variation of the terms of F's access to X before her school term in the US. [note: 2]

9 The orders for access were, along the way, varied on 10 February 2014 and on 14 August 2015 for F to have overnight access in the US every month, school vacation access and to take X for holidays in the US and overseas.

10 Along the way too, various orders were made for the parties and X to undergo counselling. On 4 July 2013, Lai Siu Chiu J (as she then was) dismissed F's appeal against a Family District Court order refusing to rescind Personal Protection Order No 236 of 2011, which was granted by consent. However, Lai J suspended its operation till 31 December 2013 on F's undertakings, embodied in her order, that: (a) F would not influence X to return to Singapore to study or live with him; (b) he would not abuse M verbally or physically in his contact with her when having access to X in person or by Skype; and (c) he would continue with his counselling sessions with a counsellor in Singapore and continue counselling sessions with an American counsellor in the US until any further order.

11 Thereafter, the parties continued with counselling pursuant to various orders of court, the latest of which were made on 25 August 2014 and 12 February 2015 by Lee Seiu Kin J for parties to undergo joint family counselling and for separate counselling to be arranged for X. The parties agreed

on a joint counsellor in the US ("Dr A") for the both of them and another counsellor ("Dr W") for X. The joint counselling sessions for the parties with Dr A were to be conducted when F was in the US visiting X. Dr A would sometimes meet X together with either party.

12 On 24 June 2016, Dr A, on my earlier direction, provided a counselling report on "her counselling of the parties and X, including but not limited to X's education, X's expressed wishes, the parties' respective parenting of and relationship with X and their ability to co-parent X". Pursuant to Dr A's recommendations, parties subsequently agreed that: (a) F would suspend his access to X on a temporary basis and undergo individual counselling in Singapore with a counsellor acceptable to both Dr A and the court; and (b) Dr A and F's Singapore counsellor would have regular discussions on the progress of F's individual counselling to determine when and how F could resume access to X. X was to continue her counselling with Dr W. F stated that his agreement was to act in the best interests of X and that he did not admit to Dr A's report "in their entirely [as] some corrections or clarification are required, and these will be address with due course [*sic*]."

13 In her report, Dr A expressed concern that there might be pathogenic parenting in this case by F. This refers to parenting by one parent that produces psychological dysfunction in a child, causing attendant developmental problems for the child, who then has difficulty bonding with the other parent. Dr A opined that there was a need to protect a child from this until the professionals were satisfied that the parent involved in such conduct had received adequate therapy to address and resolve the psychological issues that had led to such parenting practices. A child exposed to pathogenic parenting could, in the future, also turn against the parent who had engaged in such practices.

14 On 15 July 2016, Dr A and Dr W spoke to X on the relevant aspects of Dr A's report and reiterated that it had been agreed that F's access to X was to be temporarily suspended pending counselling. M and F started their individual counselling sessions with Dr A on 4 August and 2 September 2016 respectively. Meanwhile, X continued her counselling with Dr W.

15 At some point, as X and F had not communicated since July 2016, there were arrangements made to facilitate communications between F and X by email through Dr A. As that did not work out, the parties then agreed that there could be a WhatsApp chat group comprising X and F and F's counsellor in Singapore for X and F to communicate. This mode of communication was equipped with some safeguards as F's counsellor would be involved and Dr A would sit in with X in Dr A's office in the US. However, the first attempted communication did not get off to a good start because of a misunderstanding over the contact phone number to be used for the WhatsApp chat group, and whether the mode of communication had been changed to a telephone call. There were also issues raised by F on a telephone call, which he claimed was made by Dr W for him to speak to X.

16 In view of both the acrimony between the parties and F's suspicion that X's lack of response to some of his communications stemmed from M's influence and doing, I felt it prudent to speak to X to understand the situation myself. I thus directed, at the 13 February 2017 case conference, that X come to Singapore for interview.

17 At the same case conference, I also directed that F was to have direct WhatsApp communication with X without a need for any third party involvement. Should there be a subsequent need to find out the contents of the WhatsApp communications, the court could order their disclosure. These communications were to take place twice a week for up to one hour each time, outside of X's school and sleeping hours. At my direction, counsel agreed on the wording of a note. This was signed by both parties and given to X by M to inform X of the prescribed arrangement and assure her that she was free to stop messaging at any time she wished. The note also stated that I

wished to meet her in Singapore to find out more about her, where she would like to study and how she was getting on. The note would have been given to X on or before 19 February 2017.

18 I separately informed counsel to let the parties know that: (a) they were not to seek to influence X or prevail in their views in relation to X; and (b) they were not to ask X or try to find out what had transpired in my interview with X as the interview was confidential. One of F's concerns, as expressed by F's counsel, was whether X had been told by Dr A or M of F's proposals for X to attend either Marlborough College Malaysia in Johor Bahru, Malaysia ("Johor"), United World College of South East Asia in Singapore or Anglo Chinese School (International), which is also in Singapore.

19 On 31 March 2017, I spoke with X for about an hour. In the main, my questions of her were open-ended and aimed at understanding her life in the US, save for where she would prefer to continue her education and on issues of access. Although she had flown into Singapore only on the morning of the interview, I was satisfied that she was not adversely affected by the overnight plane travel from Amsterdam. X, when speaking of family matters, was oftentimes emotional and she also cried.

20 After the interview was over, I spoke with both parents together with F's counsel, who was also present, and then with each parent separately. When I spoke with F without M, F's counsel was present. X was not present at these sessions. When I spoke to M alone, X was outside speaking to F. When I spoke to F and his counsel, M and X left the court as they were due to fly out of Singapore later that night. I informed the parties that F's WhatsApp communication with X was to continue. I also informed them that, in three to four months' time, I would consider directing counsel, if appropriate, to ask X if she wished to write to the court on her wishes for access. It would be left open to X to decide if she wished to write to the court directly.

21 On 4 May 2017, counsel for F wrote to court to inform that: (a) X had informed F that she had written to court on her "access and/or communication" with F *via* post directly to the court on or about 15 April 2017; (b) F was not aware of and had not been shown the contents of the letter; and (c) X had told F that she wished for him to resume visiting her in the US and also wanted to spend the first half of her 2017 summer break with F in Singapore.

22 On 18 May 2017, counsel for F wrote to the court stating that, on or about 14 May 2017, X had told F that she had wanted to return to Singapore for the summer break "but she thereafter changed her mind (and did not write to the court as she said she had) because she somehow was given the impression by persons other than her father that (1) 'people' in Singapore would be angry with her because of her choice to continue living in the United States; and (2) 'a lot of people' would be mad at her if she were to travel to Singapore." Selected extracts of X's WhatsApp messages were reproduced in that letter.

23 On 24 May 2017, the court, before it became aware of F's letter of 18 May 2017, requested counsel to ask X to forward a copy of her letter to the court's personal secretary.

24 On 29 May 2017, counsel for M wrote to inform the court that, pursuant to the court's 24 May 2017 letter, M had asked X about the letter that F claimed X had written to the court. In response, X gave M a screen shot of the WhatsApp exchange with F cited in his letter of 18 May 2017. The screen shot revealed that, in addition to what was extracted in F's letter of 18 May 2017, X had told F that she "also choose to stay here [*ie*, the US] – for vacation" because she needed to "improve [her] Chinese … and other educational skills". The court records will show the complete exchange and it is not necessary that I reproduce the entire extract here. My view is that revealing the entire contents of the WhatsApp message in these grounds of decision is not in X's interests.

My decision

25 On 5 June 2017, at a judicial case conference to deal with the filing of documents relating to the parties' prenuptial agreement and other aspects, counsel for F asked for certain access orders for the 2017 summer vacation. I rejected F's requests. First, I declined to make an order for X to come to Singapore to spend the 2017 summer vacation with F. Second, I also declined to make an order for F to have access to X in the US during the 2017 summer vacation.

Clarification of my orders

26 At the outset, I should state that after I had given my decision at the judicial case conference on 5 June 2017, it has since come to my attention that the second order was inadvertently not recorded in my notes of evidence for 5 June 2017. Having said that, there could have been no mistake about the orders that were made. If there had been any doubt in F's counsel's mind as to the orders that I had made on 5 June 2017, counsel for F could have clarified with counsel for M or have the matter arranged for clarification before me; this was not done.

27 In any case, it was clear that my earlier orders on the twice weekly WhatsApp messaging access would still apply as there was no application to vary those orders. It should also have been clear that any final orders on care, if that was in issue, and access by F would only be made upon the conclusion of the divorce ancillary matters. The orders sought by F were only for access to X during her 2017 summer vacation.

Reasons for my orders

28 In stating my reasons for rejecting F's two requests, I am constrained to respect the confidentiality of certain matters told to me by X. I am also mindful that although I can direct parties not to let X know of these proceedings and my grounds, there is always the possibility that she will come to know of it through other means or other people. She is a teenager, on the cusp of a new phase in her life, who will likely be mortified and embarrassed to know of these proceedings and the disclosure of her WhatsApp messages to the court and the world at large.

29 Based on my understanding of X's situation, formed from my 31 March 2017 interview with her and on the entirety of the evidence before me, it was clear to me that X was not only capable of expressing her wishes for her education, but was also able to decide for herself that she did not wish to come to Singapore for her 2017 summer vacation. I was satisfied that X had not been influenced or pressured by M in coming to that view. F's account of how he understood X's wishes, as stated in his counsel's letter of 4 May 2017 (*ie*, that X had written a letter to court on or around 15 April 2017), was clearly inconsistent with X's expression of her wishes in her WhatsApp messages to him that she "[chose] to stay here [in the US] – for vacation." Although she had also alluded to another reason for not coming to Singapore which F emphasised (see [22] above), I viewed that as her oblique way of expressing her reluctance to come to Singapore for her summer vacation to F. That F may not understand or appreciate her discomfort in openly expressing her wishes to remain in the US for her summer vacation does not detract from the strength of her desire and wishes on this issue. From my interview with X on 31 March 2017, I could understand her decision not to come to Singapore. Quite apart from that, as I had informed counsel at the hearing on 5 June 2017, X, a teenager, was leaving her current school to enrol in the next semester in a different school; it was natural that she would want to spend time with her school friends from whom she would be parting. She would also need time to prepare for this major move.

30 I declined to make orders for F to have access to X during the 2017 summer vacation as it was

clear to me that, for the time being, this was not in X's best interest. I also had regard to my interview with X on 31 March 2017 and the entirety of the circumstances of this case, including the views of the various counsellors. Additionally, I saw parallels between the relocation order made on 28 May 2012 (when X was about ten years old) and my order of 5 June 2017. Just as the Family District Court had deemed it necessary for the 28 May 2012 relocation order to provide that F should be at liberty to speak to X about relocation only three weeks after X had arrived in the US, so too was there a necessity for X, who has decided that she wishes to continue her studies in the US, to be given time and space for herself during the 2017 summer holidays, which was an important transition period for X, without any attempt by F to prevail on her to change her mind on her study options. I was aware in coming to my decision that X, in her WhatsApp messages, had reassured F that she wanted to see him.

31 In arriving at my decision, I also noted a distinct pattern in the following WhatsApp communications between F and X:

(a) In a March 2017 WhatsApp communication, X had told F on 8 March 2017 that she had applied to a private school that she really liked and had been accepted. She told him that it was really hard to get into the school, but she had studied hard and did well on the test. F replied on 12 March 2017 asking if she had seen the letter signed by parties sent to her, pursuant to the court's direction on 13 February 2017. F did not, however, respond to X's news of her private school admission. On the same day, X said that her birthday was coming up, and that she was sad to be leaving her friends but excited to meet a more diverse community and make more connections in the world as it would be beneficial to her future. She was not sure what she wanted do, but she liked law and was also starting to like science as it was interesting and fun to her. F responded on the same day, and on 16 March 2017, to ask again if she had read the letter, whether she knew she would have to meet the judge in Singapore and replied: "[a]s for high schools, you had told me you wanted to study back here so did you consider all the schools." Thereafter, despite F's birthday wishes to X on 17 March 2017 and his subsequent emails of 19 and 23 March 2017, X did not respond. This WhatsApp exchange was tendered by counsel for F at the case conference on 28 March 2017. At my interview with X on 31 March 2017, it was clear to me that X had known of F's proposed school options.

(b) As noted above, in the 18 May 2017 letter from counsel for F, it was stated that, on or around 14 May 2017, X had communicated *via* WhatsApp to F that she had changed her mind on writing to the court and that she now did not want to go to Singapore for her 2017 summer vacation. This WhatsApp message was enclosed in the 29 May 2017 letter from counsel for M. At the judicial case conference on 5 June 2017, counsel for F informed the court that since then, F had not heard from X for the last 21 days and he asked counsel for M to write to him after checking with X that she had her hand phone and was free to WhatsApp F. Counsel for M said that he would do so by the end of the week. The court was not copied on the reply from counsel for M.

32 It suffices to note that when F does not receive a response from X on a matter important to him, his reaction is to suspect that X's WhatsApp communication had been restricted, possibly by M, instead of considering the possibility that X may not want to respond to him and seeking to understand why. For the first WhatsApp exchange, I surmised that X, having informed F that she was excited about her new school in the US, did not know thereafter how to explain to F that she was, in essence, turning down his options for her to study in Singapore and Johor when F pressed his options. As for the second WhatsApp exchange, I surmised that X, after stating clearly that she had chosen to spend her vacation in the US, did not respond to F thereafter for 21 days as she did not know how to engage him further, and thus decided to keep silent. X had been specifically told in the letter

signed by the parties (and on the court's direction) that she could stop the WhatsApp messaging any time she wished. In my view, her silence at these critical points in the two WhatsApp exchanges spoke volumes.

33 Without over-stating the position, this is a situation where the legitimate wishes of a young teenager on her education and where she chooses to stay, not only for the 2017 summer vacation but also possibly in the longer term, were at risk of being overborne by F, who would prefer that X studies in Singapore or Johor and seems to have difficulty in understanding her wishes or views. My overall impression of X based on my interview of 31 March 2017 and the entirety of the evidence was that she was clear on her education choices and she enjoyed her school life in the US. She was not comfortable with, and not confident of, explaining to F her wishes for her education. She was afraid that she would end up alienating him.

Conclusion

34 For all of the reasons stated above, I declined to make an order for X to return to Singapore to spend part of her 2017 summer vacation 2017 with F, and declined to order that F be given interim access to X in the US during her 2017 summer vacation.

35 Finally, I should state that at the conclusion of the 5 June 2017 judicial case conference, counsel for both parties agreed that M would inform X that if she had any need to write to the court, she could use the email address provided or the court's postal address. She was to be informed that the court was not asking her to write and that it was for her to avail herself of that option, if she so wished, and she could write in any medium of her choice

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[note: 1] Notes of Evidence of, *inter alia*, Summonses Nos 367 of 2010, 2629 of 2010 and 3972 of 2011 filed on 23 December 2011, p 38 at para 9.

[note: 2] Order of Court No 10118 of 2012.